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THE POONA SARVAJANIK SA

Established for representing the wants and wishes of the
tants of the Deccan, being appointed on a popular elec-
tion system under rules framed for the purpose.

WALEKAR'S WADA, DANE ALLI.

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Secretary.

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PROCEEDINGS OF THE SABHA.

AN ADDRESS OF WELCOME TO H. E. THE RIGHT HON'BLE THE EARL OF DUFFERIN G. M. S. L, VICEROY AND GOVERNOR-GENERAL OF INDIA, AND HIS EXCELLENCY'S REPLY THEERTO

The following address was presented to His Excellency by a large and influential Deputation from the Sabha at the Council Hall, Poona, on the afternoon of Friday the 19th November 1886, in the presence of a large gathering of Native and European gentlemen, official and non-official. Mr. K. L. Nulkar, the Chairman of the Sabha, read the address :—

To,

His Excellency the Right Hon'ble,

THE EARL OF DUFFERIN G. M. S. L. &c.

Viceroy & Governor-General of India,

MAY IT PLEASE YOUR LORDSHIP,

We, the members of a Deputation from the Poona Sarvajanic Sabha (an Association established more than fifteen years since for representing the wants and wishes of the people of the Deccan), crave permission to offer your Lordship and Lady Dufferin a loyal welcome to this City of ancient renown as the capital of the Maharashtra, and we humbly beg that your Lordship will be pleased to convey to Her Most Gracious Majesty the Queen-Empress of India a sense of the deeply loyal devotion which all classes of people in this part of the country, in common with their fellow-countrymen elsewhere, feel towards Her Majesty for the blessings which they enjoy under Her benign and merciful rule.

2. The Sarvajanic Sabha is fully conscious of the fact that on account of special circumstances external policy occupied a large portion of your Lordship's attention during the last two years, but we still feel very grateful to your Lordship that amidst so many cares the domestic needs of the country formed none the less the object of your deep and anxious solicitude. The Sarvajanic Sabha have accordingly to acknowledge that your Lordship's Government has instituted two important measures, and, with your Lordship's permission, we propose briefly to refer to them here. :

3. The Finance Committee, which is now drawing its labours to a close, will, we earnestly hope, be able to submit such proposals for effecting retrenchments in the present overgrown expenditure of the administration as will afford a substantial relief to the Treasury without in any way prejudicially affecting the efficiency of the administration, or without in any way retarding the onward march of the country in its material, educational and political development. The proposals which the Finance Committee may be deliberating upon are not yet authoritatively known, but deep excitement prevails among the people of the Mahabstra in consequence of an almost authoritative announcement which has been circulating during the past few weeks that, whatever may be results of the labours of the Finance Committee in other directions, it is proposed by that Committee, presumably in ignorance of the very important reservations distinctively and authoritatively laid down in the Education Despatch of 1854, and in direct violation of the recommendations of the Education Commission,—the Commission having distinctly and in unequivocal terms recommended, and the Government of your Lordship's predecessor having, with the full approval of the Secretary of State for India, accepted that recommendation, that none of the existing institutions of the higher order in this Presidency should be transferred to private enterprise except in response to a *genuine* and *voluntary* demand on the part of some fully competent local body,—to practically "adandon" not only to "probable," but to *certain*, "decay" a most flourishing and, prospectively, more flourishing educational institution of the higher order in this part of the country, like the Deccan College, an institution which is very highly valued by all classes of the people, and more especially by those for whose special benefit it was originally intended by its founder, and which till very recently was regarded even by Government as one not "entirely provided" by the State. As compared with the other overgrown departments, the Education Department not only in this but in other Presidencies also ought to be the last to be subjected to such an operation as retrenchment, because the provision now made in all the branches of this particularly very useful Department has been admittedly very inadequate as compared with the provision made in other civilized countries which, unlike India, do not stand in need of so much direct State aid in educational matters. We, however, feel confident that neither the Bombay Government presided over by so eminent an educationist as His Excellency the Right Hon^{ble} Lord Reay C. J. L. L. E. D., nor the Government of India under the sympathetic guidance of so appreciative an admirer of the existing system of higher education in the country as your Lordship, will be

party to sanction such a retrograde measure, and we accordingly pray that agreeably to the policy, announced after mature deliberations in October 1884 by your Lordship's predecessor, the Government of India will enable this and the other Provincial Governments to promote the cause of education generally and of higher education especially, because, as justly observed by Mr Howard, a former Director of Public Instruction in this Presidency, "superior education is in all countries, *the only kind* of education that is reproductive." On an occasion like the present we believe we owe it to your Lordship thus to briefly but prominently notice a local question of so much importance, the deep interest excited by which can be seen from the fact that during the past few weeks largely attended and influentially supported public meetings have been held in the principal cities of the Maharashtra for protesting against the contemplated step, which, if unfortunately sanctioned, is certain to leave a wound on the hearts of the people of Maharashtra not easy to heal; because the institution has become dear to them as much by its ever-growing usefulness and unvarying success as by its political origin and traditions; and we humbly and respectfully submit that it is at the best an extremely questionable policy to run the risk of just unpopularity for the sake of saving a few thousand rupees per annum.

4. Similarly we beg to avail ourselves of the present opportunity to offer to your Lordship the grateful thanks of the people of this province for your having induced Her Majesty's Principal Secretary of State for India to sanction the appointment of a Commission of Inquiry into the Covenanted Civil Service and its other allied branches with a view to the devising of a scheme which may be reasonably expected to "do full justice to the claims of Natives of India to higher and more extensive employment in the public service." In alluding to this measure it would be wrong in a representative body like this Association not to notice the scepticism which prevails as to the ultimate result of the labours of this Commission. The Sabha is, however, most willing to assure your Lordship that it does not share any such feeling, and it hopes that under the auspices of a statesman of your Lordship's firmness, political sagacity, and breadth of sympathies, the labours of the Public Service Commission will be crowned with success by securing, during your Excellency's Viceroyalty, a full measure of justice to all rightful aspirations of the Natives of the country. The composition of the Commission, so far as it has been already announced, is calculated to inspire confidence in the thorough and impartial character of the inquiry. There is, however, one point connected with the composition of the Commission to which, with your Lordship's permission, we beg to attract your attention. By the Res-

lution announcing the appointment of the Commission your Lordship has already reserved to yourself "the power of making, after due consideration and inquiry, additional nominations, with a view to the more complete representation of Native views." With all due respect we beg to humbly submit that the noble and important object implied by this very judicious reservation will be most effectually served if two Native members instead of only one be appointed from each of the three Presidencies, including the Panjab, as your Lordship has already been pleased to do in the case of the Bombay Presidency and the North-West Provinces including Oudh, and one each for the Central Provinces and British Burma. Such an enlargement of the composition of the Commission will, in our humble opinion, secure that "complete representation of Native views," to which due importance has already been attached in the Resolution. The other recommending feature of the proposed enlargement is that should your Lordship's Government be pleased to approve of it, it will enable your Lordship to secure an adequate representation, as has been happily secured in the two Provinces named above, of both the great sub-divisions of the Native community of this vast Empire, viz, Hindus and Mahomedans, which we apprehend will not be secured under the scheme laid down in the Resolution. Such a course, as has been respectfully suggested above, appears to the Sarva-janik Sabha to be all the more necessary, because, as intimated in the Resolution, the Commission is expected to draw up a scheme which should "possess the necessary elements of finality," and should "do full justice to the claims of Natives of India to higher and more extensive employment in the Public Service."

5. Connected with the forementioned subjects in a greater or less degree is one which has now for some time past excited a great deal of discussion, and to which we crave permission to prominently request your Lordship's attention. This subject relates to the improvement and development of our Legislative Councils both by the introduction into them of an adequately strong representative element, and by enlarging their powers in the direction of enabling Members of Council to exercise some effective and wholesome control on the annual expenditure of public revenues in their respective jurisdictions and in the direction of empowering them to exercise the reasonable right of interpellation. It is now a full quarter of a century since the existing Legislative Councils were established, and both the experience gained and the advance made in the gradual growth of public opinion of a fairly responsible character during the same period deserve, in our humble opinion, to be duly recognized in the manner suggested above. The leaders of both the great political parties, who alternately guide the fortunes of the British Empire,

have now fully recognised the desirability and necessity of instituting an exhaustive inquiry into the working of the Government of India Act of 1858, as amended by the Acts of 1869 and 1876, and, should the Parliamentary Committee about to be appointed for that purpose follow the same course that was pursued by its predecessor more than thirty years since, it is probable that the question of the working of the Indian Councils Act of 1861 will engage its prominent attention, and we have, in view of such a very probable contingency, to humbly suggest for the favourable consideration of your Lordship's Government that a full inquiry into the subject should be instituted in India by the appointment of a small Commission, constituted like the Civil Service Commission in all essential respects. Such a preliminary investigation of the subject by a competent Commission in India will, we respectfully submit, prove of great use to the Parliamentary Committee so as to enable it to advise Parliament as to the nature and extent of the modifications of the existing system which may be deemed necessary. We feel confident that the result of such an investigation will clearly demonstrate both the desirability and necessity of devising some scheme for the improvement and development of our Legislative Councils in the direction indicated above and in the third Resolution unanimously adopted after a prolonged debate by the Indian National Congress at its first meeting last year. As regards the introduction into the Councils of a *bona fide* representative element in some form or other, it may be useful here to prominently notice the significant fact that your Lordship's predecessor very justly deemed the time to be ripe enough to justify the introduction of a very important and significant departure, even though it was confined to one case, from the system usually followed in making nominations to the Supreme Legislative Council, and that your Lordship also was pleased to affirm the wisdom of the first departure by repeating it with equal success on a subsequent occasion. The particular significance of this remarkable instance, as bearing on the subject to which we have ventured to request your Lordship's attention, need not be enlarged upon here, for the reason that it is unnecessary and would be an unjustifiable encroachment upon your Lordship's valuable time and great indulgence in having permitted us to lay our humble suggestions for the favourable consideration of your Lordship's Government.

6. In conclusion thanking your Lordship for your great condescension in having accepted this humble address at our hands, and praying that the Almighty will grant you health and strength

to discharge adequately the noble trust reposed in you by our gracious Sovereign.

We beg to remain, My Lord.

Your most obedient and humble Servants,

KRISHNAJI L. NULKAR,

Chairman of the Sabha,

S. H. CHIPLONKAR,

SHIVARAM H. SATHE,

Secretaries of the Sabha.

His Lordship then replied:—

Gentlemen:—You will already have heard that pressure of business has prevented me from preparing a written reply to the loyal and friendly address you have been good enough to present to me; but the omission shall be supplied in due course. In the meanwhile, as in the case of the Municipality, I will venture in a few words to touch upon one or two of the points which you have so properly and so ably brought to my notice. With regard to the first of them, the recommendation of the Finance Committee in regard to the Deccan College, and the probable action of the Local Government in reference to that Institution, all I can say is that until I arrived in Bombay, I did not even know that a Deccan College existed. The subject has not yet been brought to the notice of the Supreme Government either by the Finance Committee, whose report indeed has not yet been drawn up, or by the Local Government. It is consequently altogether impossible for me to presume to discuss the merits of the question. The Supreme Government will be prepared to go into the whole matter as soon as it is brought to its notice through the proper channel, that is to say, in the shape of some recommendations from the Government of Bombay. Whatever may be the views of that Government, we shall be disposed to consult them with the greatest respect, and attention, in connexion with any observations or memorials by which they may be accompanied, whether emanating from yourselves or from any other parties.

I now come to the second point upon which you have treated, namely, the Commission which has lately been appointed for the purpose of examining the whole question of the Indian Civil Service. I note with great pleasure that you have not only expressed yourselves content with the composition of that body, but that you have also gone out of your way to

been expressed in other parts of India, with regard to the ultimate issue of that Commission and, what is still more remarkable, in regard to the good faith and sincerity of the Government of India in appointing it. X I confess that since my arrival in India nothing has filled me with such astonishment, nothing has so disheartened me, nothing has made me feel so deeply how great are the difficulties of Government in this country, as insinuations which have appeared in certain organs of the Press with regard to this subject. When the Government of India has succeeded after many years of persistent effort to obtaining a re-examination of the conditions of the Indian Civil Service, it is indeed a matter for surprise that there should be found. I will not say amongst you, for I am happy to think that you have repudiated so unworthy an insinuation, but amongst some of those who represent themselves as the guides and leaders of Indian public opinion, men so incapable of appreciating what has been the character of English Rule and of its English representatives, as to assert in the face of their countrymen that the only object of the Government of India in appointing the Civil Service Commission has been to deceive the people of India and to resort to a base, mean, and abominable trick for the purpose of restricting still further the privileges of those who are so justly anxious to serve our Sovereign in the Civil Service of their country. X Gentlemen, I say again that amongst the many disheartening incidents which I have experienced, none has more pained and surprised me than the discovery that men who profess to be the representatives of educated public opinion in India should have conceived the possibility of Her Majesty's Government at Home and of the Indian administration, conspiring to pass off a fraud upon their native subjects. I now proceed, gentlemen, to examine the various suggestions which you have been good enough to make to me in regard to the composition of the Commission; and in the first place, I must remind you, that a Commission is not like a Parliament. In a Commission, in order to obtain a proper representation of the interests likely to be affected, it is not necessary that it should consist of any fixed proportion of the representatives of those interests. The Commission itself is in a certain sense a judicial body. It is desirable of course that it should contain men well acquainted with the subject and consequently that it should be composed of persons drawn from the various classes of the community but the real representatives of the different views and interests likely to be affected by the results of the enquiry are the witnesses examined before it. It did not seem necessary therefore to us, or to the authorities at Home, that in the composition of the Commission we should be altogether guided by principles of geographical representation. Moreover

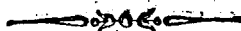
you must always remember that for practical purposes it is essential that the Commission should be of manageable dimensions. The Government of India originally intended that it should only consist of twelve members. That is the usual number, and it is the number best suited to the carrying on of the practical work of the Commission; but on the other hand there were other considerations which induced us to enlarge its number to sixteen. So far as I can make out, however, you wish it to consist of twenty or twenty-two members. I tell you frankly that I cannot consent to this proposal. So large an increase in the numbers of the Commission would be certain to interfere with its practical efficiency; and it was this consideration and this consideration alone, which induced us to omit from the Commission a representative of one of the most respectable, most intelligent, and most loyal communities in this country;—that is, of the Parsi community. Unfortunately, there is no Parsi member on the Commission: a fact which I much regret. Thus, gentlemen, I am sure you will see that we had good and sufficient reason for not enlarging the Commission. I think this is the only practical suggestion which you have made; but if you consider who are the members of the Commission you will find that it is constituted upon what I may call a most liberal basis. Does there exist in India a man who possesses more justly or more completely the confidence of the native inhabitants than Sir Charles Aitchison? Then again we were recommended by the Government at home to put upon the Commission an English lawyer. I immediately suggested that Sir Charles Turner should be sent out to us, as I knew there was no man who more entirely possessed the good will, affection, and confidence of the natives of India. We then referred the nomination of the other members to the Local Governments as was our duty. We appointed an Eurasian, because the Eurasians are a community which for special reasons ought, I think, to be given an opportunity of having their claims heard. Further, the Secretary of State gave a pledge in Parliament that the uncovenanted Civil Service should be represented; and a member of that body was accordingly added. When therefore you come to see the motives by which we were guided, and the conditions and restrictions under which the Commission was instituted, I think you will admit that the interests of all concerned have been carefully considered.

It now only remains, gentlemen, for me to refer to the concluding paragraph of your address. When I was at Madras in the early part of this year, it was my pleasing duty to announce to the gentlemen who were good enough to welcome me to the capital of that Presidency, that Her Majesty's Government had determined to appoint a Commission for the purpose of re-examining the conditions and operation

of some of our administrative machinery. In making that announcement I expressed my deep satisfaction at the course pursued by the Home Government. Although the shortness of the time which I had been amongst you had prevented me from studying as fully as I could have wished all the various important questions connected with Indian administration; yet it was obvious to me, as I then stated, that since the time of Sir Charles Wood a great change had taken place in the condition of the country: that higher education had made considerable strides; that there is now amongst you a large number of educated men of great intelligence and ability; that the intelligence of the educated classes had largely expanded; and that there was no lesson more forcibly taught to us by History than that institutions ought to be made to keep pace with the progress of events, and of a country's intellectual development. Further than this, I said, I would not go, first of all because I did not think my limited experience entitled me to pronounce a more definite opinion, but principally for the obvious reason, that from the moment Her Majesty's Government has announced that an enquiry is about to take place on any important subject, it becomes out of the question for the Government of India to commit itself prematurely to any opinion or line of action in regard to them. To make therefore, a pronouncement upon any of the questions to which you have referred, would be not only inopportune, but, as I am sure you will understand, absolutely and entirely impossible. This, however I will say, that from first to last I have been a strong advocate for the appointment of a Committee or a Commission of this sort; and that when succeeding Governments in England changed, I have on each occasion warningly impressed upon the Secretary of State the necessity of persevering in the nomination of the Commission in question. I am happy to think that in response to my earnest representations on the subject, Her Majesty's present ministers have determined to take action. In the sense desired I consequently do not really see what more during the short period I have been amongst you the Government of India could have done for you. The most important and most burning question which was perpetually agitating your minds and was being put forward by the Native press, was the alleged injustice done to the intelligent educated native classes of this country in not allowing them adequate employment in the Public Service. I do not think you can point out to me any other question which so occupied public attention, or was nearer to the hearts of your people. Now, the door to enquiry is opened, and it only remains for you by the intelligence, therefore, and the logic of your representations, and of the evidence you may be able to submit, to make good your case and, if you succeed in doing so.

all I can say is, that nobody will be better pleased than myself. In regard to the other matters which have been equally prominent in your newspapers, and in your addresses, and which have been so constantly discussed by your associations, I have also done my best to secure for you an ample investigation.

FOREST ADMINISTRATION IN NORTH KONKAN



PART I.

About the close of March 1885, that is about the time Lord Reay assumed the reins of government in this Presidency, a small *brochure*, commonly known as "The Red Pamphlet" owing to its cover being perhaps designedly blood-red in its colour, was published in Bombay, in which its anonymous writer described in very forcible and perhaps somewhat sensational language the straits to which "the cruel, grasping and relentless" forest policy of Mr. Shuttleworth, the Conservator of Forests N. Circle, had reduced the Thana Rayat. The *brochure* was well-timed to play an important part in the forest history of Thana; for immediately after its publication the whole question of forest administration in Thana came in the natural course of things before the Bombay Government for review and disposal with reference to the exhaustive Memorial to the Marquis of Ripon presented in 1884 by the Thana Forest Association, a detailed report upon which Memorial by Mr. Loch, then acting Collector of Thana, was submitted to the Bombay Government early in April 1885. And it is quite probable that but for the opportune publication of the "Red Pamphlet," the Memorial would have been disposed of in the usual fashion of red-tapism. At this juncture, as we have said above, Lord Reay became Governor of Bombay, and this circumstance contributed not a little to the turn the affairs were destined to take. Fresh from the free atmosphere of his distant western home, and quite uncontaminated by the usual stock prejudices

of an unusually strong bureaucracy, his Lordship brought a *virgin* judgment, if we may use such an expression, to bear upon the intricate problem which immediately came before him for disposal, and it would seem that having been considerably struck by the perusal of the "Red Pamphlet," he made up his mind at a very early date to appoint a Commission of Inquiry into the whole question of forest administration.

A Commission consisting of seven members, including the Chairman and the Secretary,—two (one European and one Native) Revenue officers, two Forest officers, and two non-official gentlemen with Mr. G. W. Vidal, then acting Collector of Thana, as Chairman,—was accordingly appointed on the 24th July 1885 to inquire into the forest grievances not only of the people of the Thana district, but of those of the whole Presidency; and with a view to mark the great importance attached by Government to this inquiry, His Excellency the Governor formally opened the Commission in the Council Hall at Poona on the 27th August following; "in the presence of a large number of European and Native gentlemen interested in the proceedings." In his speech His Excellency told the public, (a) that "the members of the Commission who represent the Civil Service are not acting *in any way* on the Commission as delegates or representatives of Government, but have been appointed to give their own views, the results of their own experience"; (b) that the chief object Government had in view in appointing the Commission was "to substitute cooperation for antagonism, confidence for distrust, contentment for disturbance"; and (c) that the Commission was to "take for granted that it is the firm determination of Government that wherever free grazing has been lawfully enjoyed, it will be continued by giving a full equivalent in all those cases where the area hitherto used has been absorbed." His Excellency added:—"Your Commission will fulfil the mandate contained in the Government Resolution of July 21, *unhampered* by

any extraneous influence. * * * This Commission will strengthen, not weaken, the ultimate actions of Government. It will uphold law and order; promote one of the chief elements of agriculture, namely, good pasture; promote harmony between the administration on the one side and the people on the other, whose interests will be ably represented on this Commission, not only by those whom they will perhaps more especially consider as their representatives, but also by officials whose desire I know, from personal experience, it is to preserve to the people privileges to which naturally they attach great value. You enjoy the confidence of Government, but YOUR LABOURS, GENTLEMEN, WILL, I AM SURE, GIVE YOU A FURTHER TITLE TO THE GRATITUDE OF THE PEOPLE OF THE PRESIDENCY." Such were the objects which Government had in view, and such the hopes entertained about the eventual results of the inquiry; and we have now only to see how far the Commission has fulfilled the one and realized the other in the published report of their work now lying before us.

Shortly after—in fact the day after its formal opening—the Commission was directed to confine its inquiry to the two North Konkan districts of Thana and Kolaba; for it was believed, as stated in His Excellency the Governor's opening speech, that detailed recommendations by the Commission on the situation of the said two districts "would afford scope for the examination of nearly all the questions with which Government had to deal." The Commission received from the said two districts (Thana 436 and Kolaba 168) 604 petitions setting forth the complaints of their signatories in respect of the local forest administration. The Commission received also 92 petitions from eight other districts,* of which six be

* The petitions from other districts were:—Poona 35, Ahmednagar 26, Khandeish 11, Satara, Sholapoor, and Nasik 4 each, in all 84 from the Northern Circle; and 4 each from Ratnagiri and Kanara of the Southern Circle. It should be remembered

longed to the Northern Circle and two to the Southern Circle. The work of taking evidence began on the 10th December 1885, and ended on the 3rd September 1886. The whole of the non official evidence and a part of the official evidence was taken at convenient centres in the two districts. The meetings of the Commission were open to the public, and the local meetings were, we are told in the official Report, "numerously attended by all classes of the population."

The Report of the Commission with its three volumes of Appendices has been now before us for a few weeks, and we propose to briefly review it in these pages. The Report is, perhaps in a technical sense, unanimous, although there are appended to it minutes by three members of the Commission, viz. Mr. R. C. Wroughton, Deputy Conservator of Forests, Poona District (formerly of South Thapa Division), Rao Saheb Ramchandra Trimbak Acharya, and Rao Bahadur Krishnaji Lakshman Nulkar. In the Report these minutes are not described as minutes of dissent, but as minutes of those members "who have thought it necessary to record independent remarks." Like the simple, innocent little maiden in Wordsworth's celebrated poem, "We are seven," who in her innocence insisted upon including her deceased brother and sister in her calculation, the Commissioners appear to be unwilling to recognise the fact that they are not "seven," i. e. that they are not unanimous. Be that as it may, we can not but regard these minutes as minutes of dissent from the general report on the important points particularly embodied in them, as we shall show later on.

At the very outset it will perhaps be better if we say at once that we read this report with its ap-

that Kolaba until very recently formed part of the Northern Circle. It would thus seem that forest administration in the Northern Circle has been more unpopular than in the other Circle.

pendices with very mixed feelings, and that it is impossible not to be struck with the highly unsatisfactory character of some of the principal recommendations contained therein. We regret for more reasons than one that there should have been any ground left for such a remark in regard to the work done by the seven gentlemen who formed the Commission, and than whom, so far as we can see, it would not be possible to bring together other seven men more competent to suggest a really satisfactory *modus operandi*. And it is grievous to have to think that the Forest Commission will have eventually and at no very distant date to be ranked along with the now abortive and completely discredited Thana Forest Conferences of 1882 and 1883, which more than anything else are principally, if not solely, responsible for the existing unsatisfactory state of affairs. It is perhaps not generally known, though it is an indisputable fact, that Mr. W. B. Mulock, who as the then Collector of Thana was *ex-officio* President of the Conference of 1882, and Mr. T. D. Mackenzie, who as the then Collector of Thana was *ex-officio* President of the Conference of 1883, regretted their having signed the reports of the said two Conferences respectively before the proverbial ink was dry.* The other Revenue Officers too, who

* The Report of the Conference of 1882, though signed in October 1882, was not submitted to Government by Mr. Mulock at all but by his successor Mr. Mackenzie in April 1883 or thereabout. Mr. Mulock plainly wanted to back out of it. This scandalous delay is believed to have led to some acrimonious correspondence between Mr. Mulock and Mr. Shuttleworth, a fact of which Government seems to have been ignorant when it sanctioned the recommendations of that Conference. As regards the Report of the second Conference, though it was promptly submitted to Government, it is widely believed that Mr. Mackenzie felt himself constrained within a month to submit a counter-report and to warn Government against accepting the recommendations of the second Conference. The warning was unceremoniously disregarded, and within six months Mr. Mackenzie was removed from

took part in the said two Conferences, may have similarly regretted the part they played or were required to play in them. The only officer who of course does not regret the part he played in both, and who perhaps glories in it, is Mr. Shuttleworth, the Conservator of Forests N. C., whose one-sided advocacy and counsels practically and for the time being dominated the proceedings and the ultimate decision of those Conferences. The Report under review presents a similar spectacle, and we are greatly mistaken if the day is *far distant* when, like Messers Mulock and Mackenzie and the other Revenue Officers who took part in the forementioned two Conferences, the President and other members of the Commission, with the exception, of course, of the two Forest Officers, will exceedingly regret their having submitted such recommendations as those embodied in the Report before us. It grieves us exceedingly to have to make such observations, and we are fully conscious also of the gravity of the situation; but we feel fully persuaded that no settlement of the forest question in the North Konkan districts, and others similarly circumstanced, can have the slightest chance of permanence, which is vitiated, like the report before us, by the omission to make a reasonably adequate provision for the more important agricultural interests at stake. The Forest Commissioners in their Report say:—"It is probable that for a year or two this new system will be looked on with some suspicion and disfavour, as an innovation on former customs. We need not here repeat the very strong arguments in its favour as compared with the old system, or the necessity of making the local population understand that it is not merely an experiment like the establishment of the agricultural depots, but the only way in which for the future they will be allowed to obtain timber and fire-

Thana, because he opposed the dominant forest policy of the
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wood from the forests." The members of the aforesaid Forest Conferences of 1882 and 1883; when they signed their respective reports, must have deluded themselves with the same hope, and, in spite of the overwhelming evidence to the contrary, some of them, perhaps still to this day, entertain a similar delusion. We believe a few year's experience will suffice to show conclusively that the Forest Commissioners have as little reason to claim infallibility and finality to the proposals they have now put forward as the members of the two Forest Conferences had in favour of theirs.*

With these few preliminary remarks we shall now proceed to the painful task of criticising the Report of the Commission in detail. We shall, however, first present the reader with a summary of the recommendations of the Commission under various heads, so that the reader may have at one glance a fair idea of the principal features of the general solution of the intricate problem as recommended by the Commission.

(1) As regards grazing the Commission recommends:—

(a) That the residents and cultivators (whether residents or not) of all villages in the Thana and Kolaba, districts from which waste land of any description has been taken in forming forest blocks, shall be allowed to graze their cattle free in all parts of the forest block, whether within or without the limits of their own village, which are not closed for purposes of forest conservancy.

(b) That while cattle should be rigidly excluded from the closed compartments of forest blocks all the year round, no close season should be fixed within which cattle entitled to free grazing should be excluded from other portions of the forests.

(c) That the practice of annual auctions of grass and grazing in forests, except in the case

of really valuable *kurans*, should be discontinued even in the case of the closed portions of forests.

(d) That all owners of cattle, other than residents and cultivators of villages which have contributed lands to forests, shall as a rule pay moderate fees for the privilege of grazing in forests; provided (1) that where provision has been made at the survey for the residents of one village to graze their cattle free in the *gurcharan* land of another village, and any portion of the land so assigned has been included in any forest block, the residents of the former (non-forest) village should have the same privileges, as regards free-grazing in the unclosed portion of the block, as are given to the residents of the latter (forest) village; and (2) that even should no such provision have been made at the survey for the cattle of one village, now a non-forest village, to graze free in the *gurcharan* lands of another village, now a forest village, claims of this nature founded on the insufficiency of pasturage within local limits and former long-established custom, should be inquired into, and that if such claims are admitted, and the area or any portion of the area to which the claims relate is permanently retained in forests, the residents and cultivators of the claiming village should be allowed to graze their cattle free in the unclosed portion of the block in which any part of the land they formerly used for this purpose has been included.

(e) That subject to any rules under the Land Revenue Code for the preservation of trees therein, all lands assigned for the free-grazing of village cattle and excluded from forests shall be left entirely to the care of the village communities, and that no measures for improving the grass supply in such lands, involving the closure of any portion of the area, or the exclusion of cattle at particular seasons of the year, shall be

undertaken without the full concurrence of the villagers concerned.

Such are the principal recommendations of the Commission under this heading. There are others providing for the reservation of power to Government to limit and define the number of cattle entitled to free-grazing, for giving the Collector of the district an influential voice in deciding what portion and how much of any forest block can be closed against grazing, &c; but we need not pause to specially note them here.

(II) As regards timber, firewood and bamboos the Commission recommends:—

(a) That special departmental cuttings shall be made early in each season in the different forest blocks to supply the timber and firewood demand of all villages dependent on these forests, the better class of firewood and all wood suitable for building and agricultural purposes being stacked in convenient places, and all branch and small wood of two inches and less in diameter being left on the ground wherever the trees are felled.

(b) That all branch and small wood left on the ground may be removed without any payment by all persons who choose to take it for personal consumption or retail sale throughout the district, large municipal towns being excepted. Such wood is not to be exported from bunders or railway stations. Head-loads of such wood, when taken to large municipal towns, shall be charged a fee of 6 pies or half an anna per load without any distinction as to whether the head-load be carried by a man, woman or child.

(c) That such wood may be used for *Rab* purposes if any one who takes it chooses to do so.

(d) That the better class of firewood stacked should be given to all residents of forest villages, and of villages whose boundaries touch the

boundaries of forest villages at 8 annas per cart load, while others should be charged 10 annas per cart-load. Passes should be given freely to cover all wood so bought when in transit between the coupes and any village in the district to which the purchaser may wish to take it, export passes being of course refused. Local industries, such as sugar-boiling in the Bassein Taluka, should be supplied with the necessary firewood at the latter rate.

(e) That wood suitable for building and agricultural purposes should be sold at prices, varying according to size and quality of wood, from Annas 4 to Rs. 1-4 per pole in the case of teak, and at prices similarly varying from Annas 2 to Rs. 1 per pole in the case of jungle wood, i. e. wood other than teak. These rates apply only to residents of forest villages and other villages whose boundaries touch those of forest villages, other purchasers being charged 25 percent more.

(f) That residents and cultivators of forest villages should be allowed to remove from the unclosed portion of the forest blocks any bamboos they may require for personal use only without any payment and without any passes. All other local residents should obtain them under the existing permit system at fixed rates.

(g) That the present privilege of collecting dead-wood from forests enjoyed by residents of forest villages and wild tribes should be discontinued, discretionary power being vested in the Divisional Forest Officer to allow it under very special circumstances, and in that case under very strict supervision, in particular forest areas where such supply is known to exist.

(h) That if the small and branch wood obtained from special departmental cuttings for local supply be found insufficient for the purpose it is intended to serve, a special reservation should be

made in all contracts for firewood cuttings for trade, binding the contractors to leave all such wood on the spot for local use to be removed by all people who may choose to do so, for personal consumption or retail sale, as described above.

(i) That a similar provision be made in such contracts, if necessary, to obtain a full supply of wood suitable for building and agricultural purposes for local wants.

Such are the main recommendations under this head, and we are confidently and in all earnestness and sobriety assured that in making the foregoing nine recommendations the Commission has been guided principally by two considerations. The Commissioners say :—

We assume in the first place, as the evidence fully justifies us in doing—

(1) That a certain proportion of the population of the Konkan districts requires, but can not pay for, firewood, and that no scheme which presumes that this section of the population can, under existing conditions, be made to pay for this commodity, *however strictly forest regulations may be enforced*, is, having regard to former customs, either practicable or just.

(2) That there is a further population whose chief means of livelihood depend on the collection and sale of head-loads of firewood, and whose wants as well as those of the classes who in their turn depend on them for their supplies, *must be amply provided for*.

The other two assumptions similarly made are (1) that " it is absolutely necessary for the proper preservation of the forests that all irregular exploitation therein of either dead-wood or live-wood for timber and firewood must be effectually prevented," and (2) that " the unauthorized export of timber and firewood obtained at favoured rates for local supply " should be prevented " by amending Section 41 of the Forest Act so as to bring the tree produce of occupied

lands under the same control in transit as all other forest produce."

(III) As regards the supply of *Rab* materials the Commission recommends :—

(a) That all residents and cultivators of forest villages be allowed to lop certain specified trees for *Rab* in all open compartments of their respective forest blocks.

(b) That this privilege be allowed for some specified time, not less than ten years at least, after the expiry of which the whole question of *Rab* supply should be reviewed *de novo*.

(IV) As regards minor forest produce the Commission recommends :—

(a) That no articles of minor forest produce other than those for which there is a considerable export demand, and for which the local demand, if any, can be fully satisfied from other than forest lands, should be strictly reserved,

(b) That in the interests of the wild tribes, if for no other reason, departmental collection of all minor produce, which it is considered desirable to make a source of revenue to Government, should be the rule, and the farming of the right to collect to contractors the exception.

(c) That the residents of forest villages, and the wild tribes generally, may remove all unreserved minor products for personal consumption, sale or barter.

(d) That *karvi* may be similarly removed by head-loads free of charge, provided that, if removed in a cart, a fee of Annas 4 and Annas 8 be levied on ordinary and large carts respectively. It is added that even if the carts be loaded outside the forests by bringing head loads to the point, the aforesaid fee should be levied.

(V) As regards free grants of wood the Commission recommends :—

(a) That the discretionary powers enjoyed both by Revenue and Forest officers under the rules obtaining before November 1880 should be restored both in the Thana and Kolaba districts, (VI). As regards the wild tribes the Commission recommends :—

(a) That "the only privilege which the wild tribes, as distinct from the other forest villagers, need be allowed, is the one they now enjoy of taking free from the forests wood of inferior kinds for the construction and repair of their huts." The reason assigned for not disturbing this privilege is that "*any regulations to prevent their doing this would be difficult to enforce,*" and that "so long as this privilege is limited to the material they actually require for this purpose, no appreciable injury to forests need be apprehended."

(VII) As regards trees in occupied lands, locally known as "*Malki* or proprietary numbers," the Commission recommends :—

(a) That as regards royalty trees (i. e. teak, blackwood, &c) in occupied lands throughout the Thana district certain doubts* raised in connection with the proprietary right to the said trees be authoritatively settled as soon as possible.

(b) That all rights which Government still retain in such trees be sold to occupants on condition that the material, either in the form of timber or firewood shall not be exported beyond the limits of the district.

* 66. The chief points for decision appear to be as follows :—

1st. Are the Joint Rules with or without modifications to be held to have been introduced into all the Konkan *talukās* except Kolran and Sanjan by Colonel Francis ?

2nd. If so, was the introduction of such rules contrary to any rule or order of Government in force at the time ?

3rd. If their introduction was not contrary to any such rule or order of Government, have they not been legalised *ex post facto* ?

(c) That all such trees over nine inches in girth be enumerated and valued, and occupants be invited to purchase all rights in such trees in the lands on which the enumerated trees stand, save and except the right of export.

by Section 40 of the Land Revenue Code. If the Joint Rules are thus held to have been legally introduced in any part of the Thana District, the question of the proprietary rights to trees in occupied lands in such parts will be governed by Joint Rule X. Further issues then arise as follows:—

4th. Having regard to the provisions of Section 40 of the Land

Revenue Code as stated in the margin and the wording of Rule X, how is the term "twenty years" as used in Rule X. to be interpreted? Does it mean simply twenty years before the introduction of the Survey Settlement, or twenty years' continuous occupancy completed at any time before or after the introduction of the Survey?

5th. If the latter interpretation is correct, have occupants who have held their land continuously for twenty years acquired under Rule X. full rights in the royalty trees in their holdings?

6th. Have such rights been affected by the provisions of Section 40 of the Land Revenue Code, which lays down that in all settlements effected prior to the passing of Bombay Act I of 1865, no such rights are to be held to have been conceded unless granted "by clear and express terms to that effect"?

Again where Ellis Rules as regards the disposal of teak and blackwood by sale to occupants have been applied instead of the Joint Rules the further issue arises—

7th. In certain villages lists of trees to be disposed of under the Ellis Rules were prepared. Certain lands in these villages were omitted from the lists, presumably because they contained either no royalty trees at all, or only trees of too small size to be included in the valuation. In such cases are the Ellis Rules to be held to have been applied to the entire village, or only to those survey numbers the standing trees in which were actually valued and sold? In other words do the trees which may have grown up since the application of the rules in survey numbers in which no trees were valued and sold, now belong to Government or to the occupants?

(d) That the benefit of the proposed settlement be extended even to the villages under the Kolwan and Dahanu settlements.

(e) That if the lands on which such trees are standing have not been cultivated for the last ten years, a further condition should be imposed that they shall not be cleared for future cultivation, but be permanently kept as *shindad* lands and properly demarkated.

(f) That the price of the enumerated trees be fixed with due regard to all local circumstances, and half such price should be charged to occupants.

(g) That trees of the reserved kinds in rice and garden lands be handed over to occupants without payment, but subject to similar conditions as those in occupied lands.

(h) That similar procedure be followed in all cases where doubts exist, whether the trees in occupied lands belong to Government or not.

(i) That reserved trees other than royalty trees in occupied lands under the Kolwan and Dahanu settlements be made over to occupants free of charge, but subject to the condition about export beyond the limits of the district.

As regards the unreserved trees in occupied lands in all Talukas other than those falling under the the Kolwan and Dhanu settlements, the proprietary right in which has already been unconditionally vested in occupants, the Commission recommends :—

(j) That privileges in state forests be made to depend on the discretion such occupants exercise with regard to the right they now have of disposing of such trees as they please.

(k) That such occupants should be invited to apply for previous permission before cutting trees for export, such permission being ordinarily granted if the applicant can show that he has a

surplus stock over and above his own and his tenants' or dependants' wants.

(l) That with a view to encourage all occupants of *warkas* lands to devote suitable portions of them exclusively for the growth of trees to supply wood and ash manure, they should be informed on the occasion of the new rates being announced at the revision survey, that, if at any time during the currency of the settlement, they signify their intention of setting aside any portion of their *warkas* land as *shindad*, and agree not to cultivate that portion during the currency of the settlement, or to export or sell for export either the trees or the grass produced in the said portion, such area shall be measured off accordingly, and the assessment thereon reduced to one-fourth of the normal amount, provided that the land in question comprises either the whole of one or more existing *phalni* numbers, or any portion or portions of an existing *phalni* number not measuring less than five acres.

As regards the royalty trees in occupied lands in the Kolaba district, it is recommended :—

(m) That such trees, wherever they may have still been reserved to Government, be disposed of unconditionally and once for all at the full market price.

(n) That reckless denudation of trees in occupied lands be checked by executive action in the same way as proposed in regard to the Thana district [*Vide Supra* (l)].

Such are the principal recommendations under this head. There are other minor recommendations which we need not detail here at length.

(VIII) As regards the claims to fruit trees in free-grazing lands, forests and other waste areas, it is recommended :—

(a) That all fruit trees in waste lands, which were formerly entered in the village registers as

private proprietary trees, and which may be found still in the *bona fide* enjoyment of individual cultivators, be registered in their names, and an assesment of one auna by way of ground-rent for the space occupied by each tree so registered, whether bearing fruit or not, be levied on the principle which has been already adopted in Salsette.

(b) That the entries cancelled under the orders of the Collector (Mr. Mulock) be treated as the best evidence of usufruct.

(c) That the registered holders of such trees be at liberty not only to take their produce, but also to cut down the trees, and dispose of the timber at their pleasure, provided notice of intention to cut down the trees is given that the necessary corrections may be made in the registers and the assesment struck off.

(d) That no future rights will accrue from planting new trees in waste lands unless special permission be in each case previously obtained.

(e) That on the death or removal of existing trees all interests of the holders in the land covered by the trees shall cease:—

(IX) As regards the Forest Act the Commission recommends,

(a) That section 41 of the Act be amended so as to bring under control all timber and other tree-produce, whether forest produce or not.

In support of this recommendation the Commissioners say that such power is necessary not only for the more effectual protection of Government forests and of private property, but for the proper regulation of privileges in Government forests. It should be remembered that a similar recommendation was made by the Bombay Government to the Government of India about three years since, but that it was disallowed on the ground that such legislation must "involve the opening up of many wide and difficult

questions which had much better be left untouched." The Forest Commissioners, fully conscious of this fact, say:—"The justification of these privileges rests mainly on the assumption that the supply available from private sources is insufficient to meet the local demand. In order, therefore, to ensure that the privileges allowed by Government are not abused, an efficient control over the transit of timber from private lands is absolutely necessary. *In fact all our recommendations as regards local supply and as regards the disposal of reserved trees in occupied lands, are based upon the assumption that it will be possible to regulate the removal of wood from private lands under section 41 of the Forest Act.*" And finally, the Commissioners express a strong hope that even if it should not be found possible to amend the section as originally suggested "so as to include every description of forest produce removed from private lands," the Government of India "will at least see the very urgent necessity of bringing under control the removal of timber (as defined in the Forest Act) from such lands."

(X) As regards the abuse of privileges it is recommended:—

(a) If it should appear that the inhabitants of any village are combining to obstruct the new arrangements, or continue in spite of due warnings to cut wood for themselves instead of resorting to the appointed *coupes*, the Collector should be empowered, with the previous sanction of the Divisional Commissioner, to suspend all the forest privileges of the offending village.

(b) That the responsibility of preventing forest fires should be laid on the residents of villages, and that when these are of frequent occurrence, forfeiture of grazing privileges for a term would be a just punishment.

Such are the principal recommendations under this heading. In this chapter also great stress has

been laid on the amendment of Section 41 of the Forest Act.

(XI) As regards forest establishments it is recommended :—

(a) That the village officers should be employed as now in the collection of grazing revenue, and that as far as possible all the *coupe* depots that will be opened every year for the supply of timber, firewood, &c., to local residents should be placed in charge of the most competent of the *watandar patels* residing in the groups of villages for whose convenience they may be intended, the officers selected being treated as stipendiary servants of the Forest Department.

(b) That the guard service should be recruited as far as possible from the local *watandars* and heads of wild tribes, and that the enlistment of foreigners and Pardeshis be discouraged.

(c) That if it be found possible hereafter to form village forests in any part of the district, their protection should be entrusted exclusively to the village officers.

(d) That the Collector should be empowered to issue orders direct to the Divisional Forest Officer whenever he considers anything in the action of the department to be against the spirit of Government orders, or to call for immediate interference. The Collector should in every such case send immediately to the Conservator a copy of the order issued by him to enable the latter, if he thinks fit, to refer the matter to higher authority. The Divisional Forest Officer should, however, carry out any instructions so received from the Collector without hesitation, and without waiting for further orders.

(XII) As regards meeting the demands other than those of local trade, it is recommended :—

(a) That the permit system is no doubt unsuited in every way for the purpose.

(b) That it is an open question whether the fellings to meet trade demands should be effected departmentally or by contract.

Such are the main recommendations under the various heads set forth above. The Forest Commissioners make no distinction whatever between Reserved and Protected Forests, and indeed they go so far as to recommend that "all the protected forest blocks in the settled Talukas, except those of the Matheran plateau, should be made reserved forests if they are likely to repay systematic conservancy," while "those that will not do so had better be disforested." They proceed to add:—"Should this be thought undesirable or inconvenient, we see no objection to the areas in question being retained nominally as protected forests, *provided the rules for their management are identical with those for the reserved forests.*" We are also told:—"Our proposals for the settlement of each question, though separately described in the report, are but links in one connected chain, and component parts of what we trust will be considered and accepted as one homogeneous scheme. All our recommendations are made in this hope and understanding. Minor alterations in the details of the proposed settlements may of course be found necessary. *But the rejection of the leading principles of any one portion will in our opinion destroy or materially impair the efficiency of the remaining parts.*" Such credit is more easily claimed than justified.

Before we proceed further it will be more convenient if we briefly notice here the three supplementary minutes. Mr. Wroughton at the very outset of his minute tells us that he has signed the report "as the opinion of the majority of the Commission;" and that having been outvoted on most of the proposals, he did not think it becoming to review the report in detail. On three points, however, he says he feels bound to record his protest. He objects to the establishment of *coupe* depots for the retail sale

of firewood and timber, on the ground that the system "is scarcely distinguishable from that of the agricultural depots, and has nearly all its defects." He objects to the proposal of the Commission under the heading of free grants, which aims at meeting urgent cases promptly. The Commission recommends:— "In cases of urgency, however, duly certified as such by the Collector, should the stock available from the annual fellings be exhausted, the Forest Department should be required to make special arrangements to meet the demand by felling the necessary trees, or pointing out the trees which may be felled, within a reasonable distance of the locality where the timber is required." This recommendation is objected to on the ground that it is incompatible with any system of working plans. Mr. Wroughton says that "it is a mistaken policy to treat the rayat as a helpless child," and that "money help may be legitimate, but in no case should the regular rule of free grants be departed from." As regards the recommendation for supplying residents and cultivators even of forest villages with *Rab*, Mr. Wroughton says:—"I differ so entirely from everything recorded by the Commission on this point that I scarcely know how to formulate my protest within reasonable limits." He then devotes about a page and a half to air his, or rather his Chief's, crude theories on the question of the necessity or otherwise of tree loppings for *Rab*. And finally he tells us:—"I must record in conclusion that I have signed this report as distinctly limited to the conditions of the Thana and Kolaba districts, and as offering not one single argument for the concession of similar privileges in any other districts." Colonel Peyton, the late Conservator of Forests S. C., who was a member of the Commission, has made no such reservation, and this fact constitutes the best refutation of the propriety and wisdom of the reservation sought to be laid down by Mr. Wroughton.

Mr. Acharya apparently confines his minute to

only one portion of the report. He holds that sufficient provision is not made for meeting the *Rab* requirements of the cultivators of non-forest villages who have hitherto resorted to the forests of neighbouring villages for that purpose; and he accordingly recommends that "non-forest villagers, who can succeed in proving their long customary rights of taking *Rab*, firewood, &c, from a particular neighbouring forest should be allowed to exercise those rights at least for a period of ten years, when the subject of the *Rab* supply is likely to be reconsidered according to the recommendation of this Commission." It is worthy of note that Mr. Acharya wants the long customary rights of non-forest villagers to be duly recognized not only in respect of *Rab* supply, but in respect of firewood also.

Mr. Nulkar opens his minute by stating that he has agreed to the several recommendations in the report "as the only practical means of redressing the grievances of the people, and providing the only possible eventual solution of the difficulties presented by the existing confused state of the relations between land revenue and forest administration of the districts under review." Nevertheless with a view to impress upon Government the absolute necessity of giving effect to the recommendations of the Commission with the utmost fair-mindedness and liberality compatible with rational forest conservancy, he has drawn the prominent attention of Government to the glaring sins of omission and commission on the part of the Forest Department in the Thana district from 1879 to 1885, and winds up this part of his minute with the following very significant paragraph:—

12. The entire tone of the forest administration of Thana in recent years as disclosed through the writings and proceedings of the head of the circle, is so stubbornly one-sided that there is small hope of an effective cure by conversion. We have tried to formulate our recommendations so as to militate in the least degree against effective conservancy of the forests consistently with the

popular rights and privileges which have grown with the settlement and progress of the district, which are absolutely necessary for the continued well-being of a rural population like that of the Konkan, and which the people have uninterruptedly enjoyed with the willing consent of the present and former governments. In one part of the report [Chapter IV., Section II., paragraph 86, page 77], the Commission has indicated the necessity of the loyal co-operation of the local forest officers, and of earnest exertions on their part to meet and smooth over all minor difficulties which the first introduction of the proposed arrangements must necessarily bring to light. Our recommendations, however, happen to be so opposed to what might be called the articles of faith embraced by the school of forestry which supervises the conservancy operations in Tlâna, that I for one entertain no hope of securing anything like cordial co-operation on the part of any one who prides himself as the apostle of that faith, and who allows himself to fall into such extravagancies as to prophesy, in all the seriousness of official reports, the utter destruction of the Bombay harbour as among the least evils, if his scheme for a wholesale adoption of the European Continental systems of forest conservancy be not at once adopted here. A concord between the two executive branches of administration seems to be hopeless when we take into consideration the fact that one of the chief characteristics of such one-sided advocacy is the ostentatious disregard of all other interests which in the agricultural Konkan districts happen to be almost paramount, and which demand a rigid subordination of all forest conservancy to the continued remunerative cultivation of the soil. A policy of prevention suggests itself as the only alternative if the past virulent strife is to be effectively laid far ever without further uneasily struggle, and if a fair chance is to be given to the success of the recommendations of this Commission.

Like Mr. Acharya, Mr. Nulkar also considers the official distinction drawn between forest and non-forest villages, and accepted in the Commission's report as "the basis on which the forest claims of the people are to be considered" to be "wrong in fact." And although no provision has been made in the report for supplying the *Rab* requirements of residents and cultivators of non-forest villages,—not even of

those non-forest villages whose boundaries are contiguous to those of forest villages,—Mr. Nulkar trusts that “the general spirit of justice and equity in which the wants of these rural populations are to be met, will duly recognize the customary rights of any village coming within the arbitrary category of a non-forest one, if the people were found to have always depended for their *Rab* supply on the forest in their immediate vicinity.” So Mr. Nulkar would have the Thana Rayat rely upon the spirit of justice and equity, as understood by Government in the Forest Department, to do the needful, although he himself has most clearly shown how utterly unreliable the responsibilities of such “moral obligation,” even when enjoined by the Legislature* with all the solemnity

* In this connection the following extract from Mr. Nulkar's minute may also be read with interest :—

8. At this juncture the Government of India passed its Forest Act VII of 1878—an event which happened to be synchronous with the advent into this presidency of a regime characteristic for its grasp of conception and vigour of execution of large measures of development and reform; a regime which would brook no human obstacle or opposition, which sought to compress within its narrow span of five years' lease of office the ordinary achievements of a generation or two. It was under such a regime that section 34 of the said Act (VII of 1878) was enforced in this presidency. The section provides that

“Within twelve months from the date on which this Act comes into force within the territories administered by any local Government, such Government shall, *after consideration* of the rights of the Government and *private persons* in all forest lands or waste lands then under its executive control for purposes of forest conservancy, determine which of such lands (if any) can, according to justice equily, and good conscience be classed as reserved forests or protected forests, under this Act, and declare by notification in the local official gazette any lands so classed to be reserved or protected forests as the case may be.”

It seems plain that such lands as may be already under the actual executive control of the local Government “for purposes of forest conservancy,” were alone to be notified and treated as protected or reserved forests. About 135 square miles had been, up to the date

of diction it could command, have proved themselves to be in the past. Mr. Nulkar says:—

14. Although I have agreed to the several recommendations as the result of our inquiries, I do not quite agree with the process of reasoning adopted in arriving at some of them. For instance, the executive Government is virtually the maker of the land revenue laws and codes of the country, the landholders, though parties to the contract which these laws are intended to regulate, having no voice in the framing of them. It has been the policy of Government to strengthen the hands of the executive by vesting them with discretionary legal authority to divert communal village lands from one specific object to another, leaving the local interests affected by such legal diversions to be provided for by such small mercies as a "moral obligation" to do so may dictate. Instances of how these moral obligations have been practically recognised and fulfilled or lost sight of abound in the official literature relating to the application of the Forest Act of 1878 to the Konkan, and in the proceedings of the youthful Forest Settlement Officers of four or five years' standing in the service, appointed to adjudicate upon civil rights of such magnitude that in other departments the District Judge alone is considered competent to try them. In other Presidencies these duties are entrusted to officers of the standing of a Collector, who are appointed there as Forest Settlement Officers. Further, how were the legal maxims of common law that "prescription does not run against

of the Act of 1878, marked off and set apart as Government forests in Thana, and this area only could be correctly said to be under Government control "for purposes of forest conservancy" as contemplated by that Act. But by a notification of March 1st, 1879, Government arbitrarily added to this area, about 1,529 square miles, and suddenly declared the same as Government forest, in the name of law, "justice, equity and good conscience." The schedule which was appended to this notification containing detailed lists of lands so taken up, included all recognised communal lands belonging to the village communities, such as common *shindad* lands, village forests specially set apart for village use in former forest demarcations, village grazing lands recognised as such by survey settlement, salt-marshes, &c. In short, by this notification, Government, claimed as forest every acre of land which did not happen to be entered in their land registers as actually owned and occupied by private individuals.

the Crown," or that "trees go with the land on which they stand," applied to practical questions which arose in these same districts? This common law was applied in some such executive fashion. Such prescriptive rights which had grown with the growth and settlement of the country, which were specifically recognised in all village revenue transactions, which were at one time fostered and directly encouraged by specific orders of Government for their extension, were summarily brushed away, literally by running the pen through their record, which was treated as manufactured without authority, the individual owners concerned being shown to the law courts for a remedy if they felt aggrieved. I therefore prefer to base the proposals of settlement on the popular rights and privileges which have necessarily grown with the settlement and growth of the communities affected, holding as I do that the legislation is defective which injuriously affects such rights and privileges, by leaving them to be dealt with at the discretion of the executive as a mere "moral obligation," at best an indefinite quantity necessarily varying with personal opinions and idiosyncracies.

We shall leave the reader to judge for himself whether, after such evidence as that so pointedly commented upon by himself, Mr. Nulkar is justified in asking the Thana Rayat to rely with any confidence on the "moral obligation" of Government to duly respect their customary rights and privileges. We shall also leave the reader to form his own conclusion as to whether or not the Report of the Commission can, with such three minutes of dissent, be regarded as an unanimous report.

Of all the questions connected with the forest administration in North Konkan none is of so "burning" an importance as the question of *Rab*. Both literally and metaphorically, it is a "burning" question, and no settlement of the local grievances deserves to be called fair, still less of a final and enduring character, which does not deal with the *Rab* question in an equitable manner. And if we apply this test, the reasonableness of which must be admitted on all hands, to the Report of the Forest

Commission under review, it is difficult to resist the conclusion that the work is most disappointing, not because the investigations failed to elicit sufficient information to enable the Forest Commissioners to formulate definite conclusions, but because they have clearly shirked their duty in adequately fulfilling the mandate contained in the Government Resolution appointing the Commission. This is no doubt a very serious charge to level lightly against so respectable a body as the Forest Commission, but we hope to convince the reader in the sequel that we have formulated the charge in no light spirit.

At the very outset of the chapter on *Rab* it is distinctly stated that the Forest Commissioners have arrived at the following conclusions on the necessity and utility of *Rab* as a *sine qua non* of rice and similar other cultivation :—

(1). That *ráb*, as practised in the Thana and Kolaba districts, is good farming, and is, under the peculiar conditions of the tract, the best known method of cultivating rice, *náglí* (*Elen-sine coracana*), and *vari* (*Panicum miliare*), and that the profitable use of other modes of cultivation known and practised in these districts, is extremely limited, risky, and incapable of any considerable extension.

(2). That there appears no reasonable prospect of replacing *ráb* by a cheaper artificial manure, or by any method of cultivation, customary in other parts of India or elsewhere.

(3). That without first exhausting the available supply of cowdung, shrubs, and brushwood, for the principal layer, the use of loppings from valuable timber trees for *ráb* is unwise ; that, therefore, in the best interests of the *rayat* and of forest conservancy the State should, as far as practicable, insist on the full utilization of cowdung, shrubs, and brushwood, before recourse is had to trees which are valuable for timber and firewood.

(4). That the supply of grass and leaves available for *ráb*, is not greatly in excess of the present demand ; that the utilization of these substances in the manner approved by custom and empirical knowledge, *viz.*, as subordinate layers over the main

layers of cowdung, leppings, brushwood, and shrubs, gives the best results and also effects considerable economy; and that therefore all estimates of the sufficiency or otherwise of *rab* material in any locality should be based on the available supply of cowdung, loppings, brushwood, and shrubs, the amount per acre of rice land being calculated on the assumption that the necessary grass and leaves for the upper layer will be readily obtainable.

It is no doubt true that the interests of cultivation and of forest conservancy in a tract of country, circumstanced as the North Konkan districts are, must necessarily be conflicting; but it is equally true and indisputable that if a fair settlement of the conflicting claims of these rival interests can not be arrived at without sacrificing one to the other, no one who has the slightest pretensions to have been endowed with even the necessary minimum of that ordinary but invaluable commodity, termed "the common-sense," will have the rashness to recommend that the interests of cultivation—at least of the existing cultivation,—should be sacrificed to those of scientific forestry; for the former interests are too important to be lightly treated for the sole object of bolstering up the fiscal interests of the Forest Department. The Forest Commissioners have, therefore, frankly admitted that "if cultivation by *Rab* is—as we believe it to be—a necessity in the Konkan, a reasonable and sufficient quantity of the necessary material must be placed, wherever possible, within the cultivator's reach." But as it is not profitable to a cultivator to carry his *Rab* for more than a few miles, a natural check is necessarily provided against a wasteful use of the common wooded lands for this purpose. The Forest Commissioners accordingly state that "*Rab* materials can not, under any circumstances, be made available from forests to cultivators living beyond a radius of some five or six miles from the source of supply." If, therefore, *Rab* materials can profitably be carried over a distance of five or six miles at least, it becomes absolutely necessary to provide for the demand in this respect of all non-forest

villages within a radius of five or six miles from the forest lands, from which they have been in the habit of carrying *Rab* materials, to supplement those available from private holdings and common waste lands within their own limits. If such materials are not made available in a legitimate way, it stands to reason that the people concerned will be constrained to resort to unfair means to obtain the requisite supply, in-as-much as they can not afford to dispense with the said material, and also because the labour and cost of carrying it over a distance of five or six miles is not prohibitive. One most serious defect in the Commissioners' recommendations is that, notwithstanding their recognition of the necessity of *Rab* both in forest and non-forest villages, no provision whatever has been made for meeting this demand as regards the latter class of villages.

It is admitted that, in the *ante-Survey* period, all waste lands, except such as were specially reserved as state forests by former Governments, were available to the people for this purpose. It is further admitted that at the Survey, owing to some cause or other, a considerable portion of the lands to which people resorted for *Rab* purposes were not allotted to individual occupants according to their individual rights of user, but remained as unoccupied, and unassessed waste lands over which, as was insisted upon with wonderful unanimity by the witnesses examined on behalf of the Thana Forest Association, the people were told by the Survey officers at the time to exercise their customary right of user as before. That the popular witnesses did in no way overstate their case in this respect is clearly proved by the evidence of Colonel C. W. Godfrey, Superintendent, Revenue Survey, Thana and Ratnagiri, who, true to the general traditions of his Department and in a very frank manner, gave straight replies to the questions of the Commission on this and similar other points. He clearly gave his opinion as an expert that "the failure to

record a custom such as taking *Rab* in the Survey record did not operate as a cancellation of any former right or privilege," and that though the assignment of waste lands for special purposes by the Survey Department at the original survey might stop cultivation in such lands, such assignment did in no way "interfere with old customs in other respects." * It is further admitted that when, subsequent to the survey settlement, the first forest demarkation took place, village forests were specially assigned, not only for the use of the villagers within whose limits they happened to be situated, but for the use of other villages also, thus clearly showing that the immemorial custom of the people in this respect was formally and specifically recognized. Captain Lloyd, the Survey officer who demarkated Imperial and Village Forests in the Thana District wrote in 1866 :— "Half the rayats in those districts now look to getting their supply of *Rab* from the village allotments," namely, the village forests demarkated by him in the Bhiwandi, Murbad, Karjat, Kolwan (i. e. Shahapur and Wada,) and Salsette Talukas. And it is further admitted that the custom, thus formally and specifically recognized in 1866, has been in force down to the present day, inspite of the frequent attempts during more recent times to interfere with these customs. There is thus the clearest possible evidence, admitted to be sound by the Forest Commissioners themselves, to prove that these customs, more especially that relating to *Rab*, have steadily grown with the progressive growth of the districts under the survey settlement, and, according to Mr. Nulkar's view, such customs, more especially that relating to *Rab*, ought to have been clearly and specifically recognized by the Forest Commissioners; for without the recognition of the *Rab* custom "the continued remunerative cultivation of the soil" can hardly be maintained. And yet what has been pro-

* Vide Report Vol II pp. 246-8.

posed in the recommendations of the Forest Commissioners to render "the continued remunerative cultivation of the soil" possible?

Early in 1879 the Government of Bombay was roused, as if from a deep slumber, to a sudden consciousness of its duty under Section 34 of the Forest Act, and then it proceeded to hastily make up for the lost time with the result that the notifications under that section were most perfunctorily prepared. The Thana lists were prepared by Mr. A. Clarke-Jervoise, the then Collector of Thana, who, according to the Forest Commissioners, "anticipated that only so much of the Protected (*i. e.* of the area notified as Protected) Forest, as was in excess of the area necessary for the exercise of forest privileges, would be finally included in the Reserved Forests." We are further told that such "was the principle which had guided all former demarkations." But before the Forest Settlement Officer could in his judicial capacity proceed to do his work with an open mind, the Forest Conference of 1882, in which very strangely enough this judicial officer took the most prominent part, decided the principles upon which the work of Forest Settlement should be carried on! And the Bombay Government of the day was so infatuated as to ratify the said principles with its approval. The indecently insane and absurd character of the whole procedure can not be brought home to the reader's mind except by an apt illustration. Let the reader fancy, for instance, that, in the Surat riots case of 1878, the local executive officers had assembled in conference to settle upon the line of prosecution, and that their decision was wholly directed and dominated by the counsel of "that Pearl of a Policeman," cordially seconded by Dr. A. D. Pollen who was deputed as a Special Judge to try the case. Let the reader further fancy that Dr. Pollen afterwards tried the case as Sessions Judge, and found the accused guilty of the offence with which they were charged! If such a procedure had been adopted by

the Government of Sir Richard Temple in that case, and if a judge had been found weak enough to be drawn into it, what a scandal it would have been! The procedure adopted by the Thana Forest Conference of 1882, with Mr. E. J. Ebdon, the then Forest Settlement Officer at Thana (now Collector of Bijapoor), as one of its dual tutelary and guiding deity,—the principal deity being Mr. Shuttleworth himself,—was no less scandalous than the procedure described above would have been, had it really been adopted by the Bombay Government under Sir R. Temple. The Conference of 1882 recorded the following explicit opinion on the *Rab* question :—

“ The Committee are of opinion that the various circular orders that have been issued in the district giving the rayats the privilege of cutting *tahal* or *shindad* for *rab* in *gurcharan* and *gavbhag* forest without payment must be considered to have been at variance with the expressed wishes and policy of Government. For this reason and for the additional reasons stated below, they recommend that the privilege be now stopped elsewhere than in assessed *varkas* lands. These reasons are :—

1. *Tahal* or *shindad* is not absolutely necessary as manure for rice nurseries, and in many parts of the district is never used for the purpose. Where both are available cowdung *rabing* is preferred by the better and more industrious classes of cultivators.

2. The impossibility of conserving forests where *tahal* cutting is allowed.

3. The direct incentive given to those cultivators who hold *varkas* land to cut down and sell to the dealer the trees on the land, and fall back on the free supply of *tahal* obtainable from the Government jungles.

4. The assessment of the privilege will induce the holders of *varkas* to utilise the land for its proper purposes, and will give a local marketable value to such excess supply of material as they may be able to produce.”

As we have already stated, the recommendations of this Conference were sanctioned by Government.

It was added as a caution by Government, perhaps more with the object of giving its sanction an apparently decent form,—otherwise the local executive would not have dared to openly disregard a *seriously meant caution* as they actually did—that the process of extinction in respect of popular privileges should be gradual and not abrupt, and that the orders passed upon the report of the Conference should not be regarded as affecting any rights that might be found to exist after judicial inquiry by the Forest Settlement Officer. It need scarcely be added that the Thana people refuse to this day to have any confidence in the so-called judicial character of the settlement work, professedly guided by principles settled upon in secret conclave * between the judge and the more powerful of the two parties interested in the decision. That Conference recommended also that “all hill ranges and large forest blocks,” most of which, if not all, were notified as Protected Forests in March 1879, should be forthwith “constituted Reserved Forests,” and further that “no cutting or lopping of trees to obtain materials for *Rab* should be allowed.” These recommendations were accordingly given effect to long before any inquiry was made by the so-called “Civil Court,” i. e. the Forest Settlement Officer. As the Forest Commissioners have observed, the net result of the departure taken in 1883 on the recommendation of the Conference of

* Mr. W. F. Sinclair, Forest Settlement Officer, Kolaba, (now Collector of that district) in his evidence before the Commission said :—“In the earlier settlements Messrs Hamilton and Winchester and others considered themselves bound by some Government Resolutions to find that pasture and lopping &c were not rights but privileges, and they therefore found the lands to be held free of rights. I have always held that as a Judge I am not bound by any executive order of Government and have never taken such order into consideration in a decision in settlement.” (*Vide* Vol II p. 297). The foregoing extract from Mr. Sinclair’s evidence shows very clearly how the anticipatory decisions of Government in such delicate questions affected forest settlement operations.

1882 was that "the idea of setting apart forest lands exclusively for local supply was abandoned." "IN OTHER WORDS LOCAL SUPPLY WAS NO LONGER TO BE A FACTOR IN THE DEMARKATION." The reason why we have gone into these minute details relating to the proceedings of the notorious Thana Conference of 1882, and their important bearings upon the whole question, will be apparent later on, when we shall show on the most unimpeachable evidence that the said proceedings and the action founded upon them constitute the most shameless violation of the intentions of the framers of the Forest legislation of 1877-78, and of the spirit in which the Indian Legislature sanctioned it.

The Forest Commissioners then give a brief summary of the arrangements now in force for meeting the *Rab* requirements of the people, both in those Talukas which have been settled under the Forest Act, and those which have not yet been so settled. And then they proceed to show by a figured statement that the provision made for *Rab* privileges in the forests of the settled Talukas is not sufficient. We give below an analysis of the figured statement, which refers to the five settled Talukas of Kalyan, Bessein Salsette, Karjat and Bhiwandi.

1	Number of Forest villages in the said five Talukas.....	251.
2	Total area of sweet rice land.....	43,329
3	Total area of occupied <i>warkas</i>	62,374
4	Area of <i>warkas</i> land under annual cultivation	12,796
5	Proportion of total occupied <i>warkas</i> area to rice land	1.4
6	Total area of unassessed waste land...	134,767
7	Area of former <i>gurcharan</i> and <i>van-rakshan gurcharan</i>	58,752
8	Area of Reserved Forest.....	64,517
9	Area of Protected Forest... ..	16,805
10	Total area of Forest.....	81,322.

11 Area of <i>gurcharan</i> lands &c. included in forest	33,995
12 Area of unassessed waste land excluded from forest.....	56,555

The results of this figured statement are thus explained by the Forest Commissioners.

37. It will be seen from the above statement that the total area of occupied *varkas* land, taking the five *talukas* together, is to the total area of rice land, as 1·4 to 1. Out of this *varkas* area, however 12,796 acres are annually cropped. Allowing for fallows, we may assume that about three times this area, or 38,388 acres is periodically cultivated. If we deduct this cultivated area from the total *varkas* area, there remain 23,989 acres only of *varkas* land to supply *rab* materials to 43,329 acres of rice land. In other words, for every acre of rice land, there is little more than half an acre of *varkas*. Our inquiries lead us to believe that not less than one acre of well wooded *varkas* land is required to supply permanently the tree-lopings necessary for an equal area of rice cultivation, presuming that the cow-dung and other materials such as grass, leaves, &c. ordinarily available are fully utilised. If this estimate is correct, it is clear that the occupied *shindad* lands of these *talukas*, however carefully and economically used, cannot supply tree *rab* for more than half the rice cultivation. About 24,000 acres, roughly speaking, of well wooded land will, therefore, be necessary to supplement the area of *shindad* land now included in private *varkas* holdings. Deducting the area of *gurcharan* land included in forests as shown in column 12 from the total area of former *gurcharan* shown in column 8, there remains a balance of nearly 25,000 acres which is available for village use both as pasture and *rab* land. Column No. 13 shows the total waste area excluded from forest to be 56,555; but this area includes village sites, roads, streams, *nalas*, &c., which obviously cannot be considered as sources of *rab* supply. If the 25,000 acres of excluded *gurcharan* were well wooded, and if the area were evenly distributed amongst the different villages in exact proportion to their wants, the local *rab* demand could, we believe, be fully supplied without allowing anything to be taken from the forests, except grass. A certain proportion of this land is probably suitable for the growth of *rab* plantations. Whatever supply of *rab* materials may be available from such lands should of course be fully utilized

before the forests are laid under contribution. But we infer from the fact that these lands have been excluded from Protected as well as Reserved forests either that they are isolated plots of too insignificant area to repay conservancy, or that they contain no tree growth worth preserving. The exclusion of these lands from forests cannot at present be assumed to give the people a fair equivalent for *shindad* lands which have been absorbed in the forests.

The Forest Commissioners then proceed to discuss the several measures adopted as the result of the Forest Conferences of 1882 and 1883, for meeting the *Rab* requirements of the people, and pronounce them to have failed. They similarly pronounce their opinion that it is inexpedient at present to make additional allotments of *shindad* lands to the occupants of forest villages, or to mark off *Rab* forests for communal use, until "reliable data as to the supply of *Rab* now available, or which can be made available in future from private holdings, and more particularly from waste lands excluded from forests" are obtained by further experience. Seeing how extremely reluctant they are to disturb the existing demarkation and settlement in the Talukas already settled on the principles laid down by the Conference of 1882, even when they frankly admit that "had the evidence which we have now collected on the *Rab* question been before those officers (*i. e.* Forest Settlement Officers) when their schemes were being matured, we feel very little doubt that their proposals would have been considerably modified," one would naturally expect the Forest Commissioners to recommend that the demarkation and settlement work of the remaining Talukas should be carried out on the principles of 1882. But if they had done so, they would have been guilty of consistency; and consistency is the last sin which can be laid at the doors of these amiable gentlemen, or, for the matter of that, at the door of any Revenue or Forest Officers, including of course the Forest Settlement Officers, connected with the forest administra-

tion of Thana from 1881 down to the present time. The Forest Commissioners recommend:—"In the Talukas of which the demarkation and settlement is yet incomplete, we trust, that it will be found possible to exclude altogether from forests such an area of waste land as will, together with the existing *warkas* allotments, fully supply the local *Rab* demand, and make the concession of *Rab* privileges in the Reserved Forests unnecessary. But as regards the Talukas already settled, we feel that it would be unwise to disturb the existing demarkation until further experience enables Government to determine with approximate accuracy the actual areas, if any, which may eventually be necessary to make good any deficiency there may now be in the supply available from private holdings and waste lands excluded from forests." It is not explained how the Forest Settlement Officer is to determine, in the case of the unsettled Talukas, with any approximate accuracy the actual area that should be excluded from forest "to make good any deficiency in the supply available from private holdings and waste lands" which would be ordinarily excluded from forest.

The Forest Commissioners then assign reasons why they decline to recommend the concession of any *Rab* privileges to the people of non-forest villages, the principal reason being that if such concession were made, it would enable the concessionaries to obtain from forests firewood and timber under cover of the said privileges, and finally they wind up the chapter with the recommendation which we have already given in the foregoing summary of their recommendations.

To sum up; the whole position on the *Rab* question, as, in fact, on the whole question of local supply, may be briefly stated thus:—

(a) That a very large portion of the *shindad* lands, owing to some cause or other, remained unallotted. Mr. Mackenzie ascribes this result to three causes; (1) "the ignorance or apathy of the occupants as to what was being done;" (2) "their

belief that they would be allowed to do as regards *Rab* just as their ancestors had done from time immemorial;” and (3) ‘the indifference of the Survey parties of that day one of whose ideas at least seems to have been to get through their job as quickly as possible, and remove themselves from the unpleasant and unhealthy Thana climate with as little delay as might be.’* We think the last named cause is much more responsible for the result than the other two causes combined.

(b) That the people were told by the Survey officers to exercise their right of user over the waste lands as before, an assertion the truth of which can be easily tested by Colonel Godfrey’s evidence already referred to.

(c) That subsequent to the Survey settlement, Survey officers were directed by Government to demarkate Imperial and Village Reserves or Forests in most of the Talukas, the latter class having been avowedly assigned, as explained by Captain Lloyd in his report of 1886, for the use not only of the people of the villages within whose limits they happened to be situated, but also for the use of the people of adjoining villages who were in the habit of resorting to them for their requirements in forest produce. It should be remembered that the old Forest Act of 1865 was never extended to this Presidency, and that that Act most scrupulously guarded the prescriptive rights of the people even in Imperial Reserves demarkated under it from interference or extinction. Such Imperial Forests could only be declared free of all adverse rights by the application to them of the process mentioned in the Land Acquisition Act of 1870; but the Act of 1870 was never applied to any demarkated forest. The demarkation of old forests in Thana was accordingly done under the Survey (Local) Act of 1865, which contained no provision whatever for extinguishing any adverse rights except those of cultivation. It

* *Vide* Vol II p. 325.

will be thus seen that even the old Imperial Reserves in Thana were not legally free of all adverse rights, while the Village Reserves were avowedly intended for the principal, if not the exclusive, benefit of the people concerned.

(*d*) That much of the occupied *warkas* land in Thana, as well as in Kolaba, is under cultivation, and yield hill grains which form the staple food of the masses; that this kind of cultivation has increased largely since the Survey settlement; that even rice cultivation has increased largely during the same period; that this result was due to assessed waste rice lands having been brought under cultivation, and also to several *warkas* lands having been converted into rice lands by private enterprise; that this increase it was the chief object of the Revenue Survey to encourage; and that both kinds of cultivation require *Rab*. It will be thus seen that this increased cultivation of both kinds operated prejudicially in two ways on the private sources of *Rab* supply; (1) that the assessed waste rice lands brought under cultivation required additional *Rab*, and (2) that the *warkas* lands brought under cultivation since the period of the settlement not only proportionately decreased the private sources of *Rab* supply of those lands that originally depended upon them, but required *Rab* supply for themselves over and above that required for the lands originally dependent upon them for that supply. Thus the demand for *Rab* from unassessed waste lands increased considerably with the growth of cultivation.

(*e*) That these waste lands, now constituted state forests, are fully capable of meeting not only the existing increased demand for *Rab*, but even a much larger demand if necessary in the interests of agriculture, as admitted by Mr. J. De. C. Atkins, Forest Settlement Officer, Thana, (now Under-Secretary to Government) in his evidence before the Commission. He said:—"Probably no more profitable way of using the land in Thana than growing rice

on it can be found, and the more rice cultivation is extended the better, *even if* the forests have to provide the whole of the extra *Rab* material that will be required."* The increased cultivation that has already taken place, so far from being a source of anxiety, ought accordingly to be a matter for unmixed congratulation and satisfaction all round, if the testimony of Mr. Atkins who, it must be remembered, appeared before the Commission not in his individual capacity, but as the accredited representative of Government, is worth anything.

(f) That the Thana Forest Conference of 1882 declared it as its mature opinion; (1) that it was "a mistake" to have set apart tracts of forests for the use of local inhabitants; (2) that it was "a mistaken idea" which led in 1879 the officers charged with the preparation of lists under section 34 of the Forest Act to classify them into "Reserved" and "Protected," on the supposition that it would not be possible "for Government to grant permissive privileges within the limits of a reserved forest;" (3) that when Government in 1879 made the distinction between Reserved and Protected forests, they were probably under the impression that "the public possibly had legal rights of which they could claim the exercise in the forest area;" (4) that "as a matter of fact no such rights, except those of an incorporeal nature, had been discovered by the Forest Settlement officer to exist" in such lands; (5) that as regards *Rab* "the lands used for the purpose had *all* been assessed and handed over to occupants" at the time of the Revenue Survey; and (6) that accordingly the exercise of *Rab* privileges in waste lands notified as forest in 1879 "must be considered to have been at variance with the expressed wishes and policy of Government," as announced in a Government Resolution of September 1856.

It is impossible to do adequate justice to the Report of that notorious Conference within the short space available to us, but we would earnestly recommend the reader to peruse it, as it is published *in extenso* in Vol IV pp. 88-101. We are inclined to fancy that it would be impossible to produce a document more perverse and disingenuous than this precious report, and that both the signatories of that document, and the Government that accepted the recommendations embodied therein, richly deserve to be congratulated, the former on the rare ability displayed by them in having completely perverted the policy of the Forest Act, and in having converted it into a measure of spoliation, and the latter on having blindly sanctioned such a measure of spoliation! Our only surprise is that it should never have occurred to either of the parties to the disgraceful transaction, before they finally committed themselves to such a policy, to refresh their memory by a perusal of the Objects and Intentions of the Indian Legislature in passing the Forest Act of 1878!!! This surprise is further enhanced when we see the Forest Commissioners blindly and quietly endorsing the perverse policy laid down in that document to the extent of coolly recommending that even the Protected forests in the settled Talukas should be converted into Reserved forests, or should at any rate be treated as such *in fact, if not in name*, and this without having troubled themselves for a moment whether in doing so they were furthering the policy of the Forest Act of 1878 or defeating the declared intentions of the Legislature!!!

It is necessary here to take the reader back to the year 1878 when, at a meeting of the Viceregal Legislative Council held on the 6th March, the legislative measure which was apparently conceived with the best of intentions, but which has become in its practical working an unmitigated cursa to the Konkan rayat, was finally sanctioned. On that occasion the

debate was naturally confined to the elucidation of the main principles underlying that measure. The principal text on which the debate turned, was the memorable section 34 of the Act as it now stands. It will perhaps considerably help the reader to properly understand the following extracts from that remarkable debate if we give here in juxtaposition Section 34 of the Act as it now stands, and the same Section (Section 22 of the Bill as revised by the first Select Committee) as it first stood:—

Section 34 of the Act.

34. Within twelve months from the date on which this Act comes into force in the territories administered by any local Government such Government shall after consideration of the rights of the Government and private persons in all forest-lands or waste-lands then under its executive control for purposes of Forest Conservancy, determine which of such lands (if any) can, according to justice, equity and good conscience, be classed as Reserved Forests or Protected Forests, under this Act, and declare by notification in the local official Gazette, any lands so classed to be Reserved or Protected Forests as the case may be.

Provided that such declaration shall not affect any rights of the Government or private persons to or over any land or forest-produce in any such forest, which have, previous to the date of such declaration.

Section 22 of Bill No. II.

22. Every forest constituted a Reserved Forest, whether under the designation of Government Forest or otherwise, previous to the date on which this Act is extended to the territory in which such forest is situated shall be deemed to have been constituted a Reserved Forest under this Act: and the Local Government shall, within twelve months from such date, declare, by notification in the official Gazette, what forests shall be deemed to have been so constituted.

Provided that, if any rights to or over any land or forest-produce are claimed in such Reserved Forest, and such claims have not already been enquired into and settled, the Local Government may direct

been enquired into, settled and recorded in a manner which the Local Government thinks sufficient. that such claims shall be inquired into and settled in the manner provided by this Act.

Provided also that if any such rights have not on such date been so enquired into, settled and recorded, the Local Government shall direct that the same shall be enquired into, settled and recorded in the manner provided by this Act for Reserved or Protected Forests, as the case may be; and until such enquiry, settlement and record have been completed, no such declaration shall abridge or affect such rights.

Mr. (now Sir Theodore) Hope, who was in charge of the Bill, opened the debate with the following explanation He said :—

A third important change is in Section 22 of Bill No. II, which has been recast, and appears as Section 34 of Bill No. III. The intention of Section 22 of course was that forests which are now so closely reserved as to be subject to restrictions practically, if not precisely, such as a forest might be which was reserved for the first time by inquiry under the new Act, should be constituted reserves under the latter. And provision against any injustice in individual cases was made by the second clause of the Section, allowing inquiry into unadjudicated claims. It has, however, been pointed out that this intention is not expressed with sufficient clearness, and that as the term " reserved " has hitherto been very loosely used, and applied to forests with very varying degrees of restriction, *it would be possible to take advantage of it, so as without inquiry, and in violation of existing agreements or settlements, to convert what were really mere " protected " forests into highly restricted reserves under the new Act.* The feasibility of such action has been specially represented with regard to certain forests in Kumaon, which are officially styled " reserves," but in which the people enjoy under very formal and clear engagements or guarantees,

rights of a very extensive character. I need scarcely say that I should consider any such course of proceeding to be grossly inequitable and a complete perversion of the intention of the Act. I find it hard to believe that any local officers, of whatever department, could be found to recommend such confiscation, or that any Local Government would sanction it, if recommended; still, as the doubt has been raised, it is better to remove it, and this is done effectually by the new section 34.

We need scarcely do more than request the attention of the reader to the concluding passage specially marked by us with a view to emphasize its bearing on what occurred in Thana in 1862-83. What Mr. Hope found it so hard to believe in March 1878 came to pass in 1882-83 in his own Presidency. Mr. Hope added:—

The concluding terms of Section 34, providing that, pending any inquiry which may be necessary, the declaration of a forest as "reserved" or "protected" shall not affect the rights under inquiry, is analogous in principle to a new clause which we have inserted in Section 29 (now 28), the origin of which I will now explain. The Section provides that a protected forest shall not be constituted unless the rights of Government and private individuals have been inquired into and settled in a sufficient manner. The Chief Commissioner of British Burmah pointed out that the area, in that province, of forest lands which had not yet been examined with reference to their capabilities for becoming either reserved or protected forests, and in which no inquiry and settlement of rights of any kind had taken place, was so vast that many years would be consumed in the process, and that in the meantime the forests would be unprotected and might be seriously injured. As there appear to be good grounds for his apprehension, we have provided that when such a state of things is found, the local Government may declare the forests "protected" previous to inquiry, and that during such inquiry the declaration shall not affect existing rights of individuals or communities. In other words, we have kept alive temporarily, pending inquiry and settlement, the old provision of Act VII of 1865. I must, however, say that I rely upon no advantage being taken of this clause to postpone due enquiry and settlement one day longer than is necessary. The old basis may have been very well for 1865, or rather for a time when

forestry was so much in its infancy that we did not understand the position ; it may then have been the only basis practicable. But I feel no doubt that a condition of affairs under which a man may be brought before a Magistrate for any act done in a forest and have laid on him the burden of proving then and there that he did it in exercise of a right, is a condition fit only for an uncivilized country and Government, and quite undeserving of permanent recognition. Some parties, I see, look on this old saving clause as if it were a protection, but I consider it to be quite the reverse. The only safe ultimate condition is one where all parties know and respect each other's rights.

It need not be pointed out that, according to this view, only the old Imperial and Village Reserves in Thana should have been notified under Section 34 as Reserved and Protected forests respectively, and that such portion of the other waste land, as in the opinion of Government required special protection, should have been notified under section 28. Mr. Hope continued:—

“ I will now offer, in conclusion, some remarks on the general principles of the Bill. When introducing to the Council the Bill which became Act VII of 1865, Sir Henry Maine stated that *it was the desire of Government not to affect or abridge petty rights over the soil or produce of forests which had been prescriptively acquired by individuals, villages or wandering tribes.* THIS DESIRE, SPEAKING GENERALLY, STILL CONTINUES, and there is abundant evidence of it in the present Bill. But experience has shown that it is not possible to avoid some interference with rights in certain cases, and that it is better for all parties that rights should be defined, whether they are interfered with or not. I will endeavour to illustrate this. There can be no real forest conservancy in any country without a certain proportion of close reserves, and no such reserves can be maintained if all sorts of rights are to be freely exercised inside them. Expropriation is consequently indispensable, though to a greater or less extent according to the circumstances of each forest. But the Bill provides for expropriation a machinery and procedure far more lenient than the ordinary Land Acquisition Act of 1870. It provides, in the first place, for enquiry and settlement being effected by an officer free from any departmental bias adverse to the people ; it lays upon that officer the duty of seeking

out from the records of Government and the evidence of individuals, rights which the people themselves may be too ignorant or too apathetic to claim; it locates the inquiry in the vicinity of the forest, to ensure all claimants being aware of it; it admits free appeal, and that to officers who will, in large portions of India, be personally identical with the Civil Courts; it super-imposes the revising power of Government; and, finally, it allows of compensation being given in kind instead of in money, by the setting out of land in lieu or otherwise.

The passage in the foregoing extract, which we have specially marked, will no doubt appear to all unsophisticated and uninitiated readers as a cruel satire on the proceedings of the Forest Settlement Officers in Thana who, in common with their brother officers elsewhere, were fondly expected to be "free from any departmental bias adverse to the people." It is certainly a strange fulfilment of these expectations when Forest Settlement Officers took part in the Conferences of 1882 and 1883; when those officers also to whom free appeals against the decisions of Forest Settlement Officers were to be preferred took part in the said Conferences, and finally when the authority whose revising power was super-imposed participated in the transaction by sanctioning the recommendations of the said Conferences. All this was permitted to take place, and yet we are asked to believe that all these three graded authorities were "free from departmental bias," and that they must have decided upon the claims of the people without partiality !!!

Mr. Hope continued;—

Again, there exists throughout India a vast mass of forests which are not reserves, and for the most part never can be; in some cases because they are not good enough, but mostly because they have other purposes to fulfil, and are needed for the current use of the people. There is an idea in some quarters that the formation of strict and close reserves is the Alpha and Omega of forest conservancy. This idea I believe to be mistaken. IF OUR SOLE OBJECT WERE REVENUE, IT MIGHT BE OTHERWISE. BUT REVENUE IS NOT, AND I TRUST NEVER WILL BE. EITHER OUR SOLE OR OUR PRINCIPAL OBJECT. Our

aim is, I take it, the preservation of forests of all classes throughout India for climatic reasons and the supply of the varied needs of the people. To maintain the forests, on which the population at large depend for the grazing of their cattle, the thatching, repair and construction of their houses, and *even (in some cases) the fertilisation of their fields*, and the eking out of their slender meal, and to ensure, with this view, the provident and reasonable exercise of rights *the existence of which is not disputed*, appears to be as essential a part of forest conservancy as the formation of reserves, and the nursing of gigantic teak trees. *But by the present Bill we contemplate no such regulation until the rights themselves have been sufficiently defined.* I say "sufficiently," because it will be seen that the enquiry contemplated in the case of protected forests is *not of that minute kind which is necessary in the case of expropriation, but corresponds with that usual throughout India at a survey or settlement, where the record is only presumed to be true till the contrary is proved.*

After this how shall we characterize the conspiracy or Conference at Thana in October 1882 in which an officer, who above all other officers ought to have been "free from any *departmental* bias adverse to the people," took a prominent part, and which made the wonderful discovery that the record in the Government village registers of certain private rights in fruit trees in waste lands, which had remained unchallenged for years together was a forgery, and required the private usufructuaries to prove that the *official* record was true!!!* The Forest Commissioners and rather the authorities, who will have to pass orders on the report under review, will do well to take a due note of the fact that the author of the Forest Act repudiated with great energy and emphasis the mere mention of the idea that revenue was the sole or even principal object of the legislation, and pronounced the doctrine to be "mistaken," which supposes that "the formation of strict and close reserves is the Alpha and Omega of forest conservancy." The Forest Commissioners have evidently

* *Vide* Thana Forest Conference Report of 1882 para 11 (Vol IV p. 99) ; also Vol. I. pp. 177-179.

persuaded themselves into the belief that revenue is at least the principal, if not the sole, object of the policy of that Act. In their chapter on timber and firewood the Forest Commissioners put forward the following *apologia* in support of their recommendations under that head:—“ We entirely differ from his (Mr. Shuttleworth's) conclusion that the scheme (*i. e.* the one proposed by the Commission) *will involve a large sacrifice of public revenue.* * * * On the contrary, we believe, as we have above stated, that the revenue from forest produce locally consumed *will under our proposals be very considerably in excess of what is realized under the existing arrangements.*” This abnormally jealous regard for the fiscal interests of the Forest Department would appear to have haunted the Forest Commissioners like a night-mare throughout their labours, and to have vitiated their work throughout. And while we entirely agree with what Lord Reay said during the course of his speech in reply to the address of welcome from the Poona Sarvajanic Sabha in the autumn of 1885, namely, that, the larger the amount realized from such indirect sources of revenue as the Forest revenue, the greater the protection to the people from liability to submit to more obnoxious forms of direct taxation, we feel fully persuaded that unless this argument is confined within reasonable limits, the freedom from liability to submit to more obnoxious forms of direct taxation will be very dearly purchased. If we write strongly on this point, our only excuse is that we find the limit has been exceeded in the recommendations of the Commission. The “Town Duties” in Bombay are, it will not be denied, a less obnoxious form of taxation than the “Consolidated Rate,” but would the Bombay Government be prepared to allow the Bombay Municipality to increase the revenue from the former source to any abnormal extent on the ground that such an increase proportionately reduces to a minimum the liability to the direct rates which

are admittedly more obnoxious in their character and incidence? The untenability of the position, taken up by Lord Reay, if it be pushed to unreasonable length, will thus be self-evident. And that the forest policy of the head of the Northern Circle is too extensively dominated by an inordinate greed for increased revenue is a fact which has left so indelible an impression on the administration that no one who has the slightest regard for truth in its most elementary form will dare to deny it.

But the most important point in these extracts has yet to be noticed. Mr. Hope stated that "there existed throughout India a vast mass of forests which were not reserves, and for the most part never could be," principally because "they had other purposes to fulfill, and were needed for the current use of the people;" that the existence of rights in "this vast mass of forests" was "not disputed;" and that the only thing that was sought to be done with respect to them was "to sufficiently define them." But the Thana Conference decreed it otherwise, and the Bombay Government of the day, having risen superior to the occasion, brushed aside with scant courtesy the original intentions of the Legislature, and affirmed the decree. The fiat went forth that no rights existed in this "vast mass of forests," and the fiat was enforced even before any settlement had taken place. The people whose rights were intended to be jealously secured to them, even when "the people themselves might be too ignorant or too apathetic to claim them," were suddenly told that they had no rights in this "vast mass of forests," though the Survey record clearly showed that they had. And when these poor, ignorant, unsophisticated people continued to exercise their rights as before, they were prosecuted under the Forest Act, and criminally sentenced before any settlement had taken place. And in this career of madness and crime the local executive continued to indulge without let or hindrance,

until the High Court intervened in its extraordinary jurisdiction, and quashed all the proceedings as illegal. It is scarcely creditable to the local magistracy that they should not have seen that the proceedings were illegal, as no settlement under the Act had taken place; but the magisterial and the executive functions being combined in the same officers, it is no wonder that the subordinate magistracy were overawed by the dominant passion of the hour. It will not be out of place to mention here that the then District Magistrate of Thana (Mr. Mulock) directed the subordinate Magistrates by a written order that on conviction for a forest offence the accused should not be furnished with copies of the findings, even if asked for with a view to appeal against the conviction, on the ground that, as he thought and held, "THERE WAS NO PROVISION IN THE ACT OR IN THE HIGH COURT CIRCULAR ORDERS TO THE EFFECT THAT SUCH COPIES SHOULD BE GIVEN TO THE ACCUSED"!!! And such a senseless order was slavishly obeyed by the subordinate Magistrates. This will clearly show how the subordinate magistracy was completely overawed by the reckless and defiant attitude of the chief executive and magisterial authority in the district on the subject of forest administration. Did the executive, however, stay their illegal proceedings after the intervention of the High Court? They ceased, indeed, to prosecute the people under the Forest Act, but substituted in place of the proceedings under the Forest Act executive and departmental action under the Land Revenue Code!!! The executive were determined not to be beaten down or thwarted in the wild course they had chalked out for themselves. So much for the *bona fides* of the local executive.

And it was this officer (Mr. Mulock) who pretended not to know that it is the inherent right of every British subject, when convicted of any offence, to be furnished with a copy of the judgment so

that he might, if so advised, appeal against the conviction, and moreover one who, inspite of twenty years' service in the district, was admittedly so utterly ignorant of the agricultural condition of Thana as not to be aware that *Nagli* and *Wari* are locally grown on an extensive scale, and not imported by *Pandharpesha* superior holders;—it was this officer, we repeat, who presided over the Thana Conference of 1882, and whose alleged hearty concurrence in the recommendations of the Conference must have led the Bombay Government to accept the same under the belief that if the said recommendations had been injurious to the agricultural interest, they would have been protested against very strongly by the District Collector, who is the chief responsible representative of the central Government, and also by the Divisional Commissioner. We believe we are not in any way mis-stating the case when we say that the most hearty concurrence of the Collector and the Divisional Commissioner in the forest demarkation and settlement proposals is not a safe guide for Government to follow, because very few officers have the knowledge and the will to oppose the dominant policy of the hour, and the few, who do their duty manfully, suffer so much for their sincerity that others are not encouraged to protest on the same lines. As an illustration of the foregoing remarks we may refer to a Report dated March 1884 by Mr. Mackenzie, then Collector of Thana, to Mr. Sheppard, the Commissioner N. D., in which the Collector stated that the action of the Forest Department in preventing the Rayats of the Kolwan Taluka from obtaining forest produce from the area notified as protected forest in 1879 was contrary to the guarantees given at the survey settlement, and that it was his intention to republish the old orders, but that he abstained from doing so without previously obtaining Government orders, because having been once severely censured for his action in forest questions he preferred taking instructions on the question raised

Mr. Sheppard, however, appears to have been so over-awed by the attitude of Government that he had not the heart, although earnestly entreated to do so, to submit Mr. Mackenzie's report to Government for orders lest he himself along with the Collector should be reprimanded. That the report was not submitted to Government is clear from the papers published;* and we very strongly suspect that Mr. Sheppard must have declined to forward the report to Government probably on the ground that it would be a more convenient procedure to induce the Forest Department to modify its rules than that the Revenue Department should, by republishing old and inconvenient notifications and thus reminding the people of inconvenient promises made to them at the time of the Survey settlement, assume a sympathetic attitude towards the people, if not a position directly antagonistic to the Forest Department. If our suspicion be well-founded, it will show to the reader how even a Divisional Commissioner was, and perhaps still is, afraid of incurring the displeasure of Government by appearing to be hostile to the Forest Department, and sympathetic towards the people. And it is no wonder that the demarkation and settlement work which was carried out on principles, recklessly laid down by the Conference of 1882 and concurred in by the Collector and the Commissioner with the same recklessness or in a spirit of helplessness, does not inspire confidence. And it is perhaps this spirit of helplessness that explains the attitude of the Forest Commissioners when their report evinces such reluctance to recommend that the work already done be revised, even when they find it altogether unsatisfactory. It is by no means unlikely that they too, like the Commissioner N. D., have been unwilling to court the displeasure of Government by undertaking upon themselves the re-

sponsibility of condemning the policy of 1882. If so, what a strange fulfilment it is, to be sure, of the fond hope entertained, when Lord Reay exhorted the Forest Commission to "fulfil the mandate contained in the Government Resolution of July 24, *unhampered by any extraneous influence.*"

It will be thus seen that the Forest Conference of 1882 and the then Bombay Government were clearly wrong, the former in having recommended, and the latter in having sanctioned, the conversion of this "vast mass of Forests" into Reserved Forests under the Forest Act. The principles laid down in 1882 may or may not be sound, but this we can affirm without the slightest hesitation that the said principles have nothing in common with those which the Government of India had in view when they matured their scheme of forest legislation, and which the Indian Legislature sanctioned in 1873. We regret we have not sufficient space at our disposal to give further extracts from that remarkable debate, especially from the speeches of Sir John Strachey and Sir Andrew Clarke; but we earnestly recommend the reader, and especially the authorities who have to pass final orders upon the Report under review, to study them—in fact the whole debate—with earnest care and attention. We may only state here that, after hearing the speeches of Mr. Hope and Sir John Strachey, Sir Andrew Clarke was inclined to withhold his consent to the measure in the belief that "the Council was asked to pass an instrument which was to be put into the hands of the Government, and to be worked by an agency in which Government itself had no confidence," and that "the Bill involved the extinction of a large number of private rights." On a careful perusal of the whole debate, and on a calm study of what occurred in Thana, every dispassionate student of the question must come to the conclusion that Sir Andrew Clarke's apprehensions have been more than realized, principally because the demarkation

and settlement work has been carried out by very inexperienced young officers on principles first laid down by the Forest Department itself—principles which involved, as we have shown above, “a complete perversion of the intention of the Act.”

We felt bound to go into this history of the question, and to show that the policy, or rather the departure, inaugurated in 1882-83 in the forest administration of North Konkan had nothing in common with the policy and principles authoritatively laid down in 1878, and sanctioned by the Legislature, because the Forest Commissioners in their Report have clearly shown an unmistakable anxiety to uphold that departure. The conviction has, however, grown very strong upon us that unless that policy of 1882-83 be completely reversed by returning to the more statesman-like and legitimate policy of 1878, the forest question in North Konkan will never be laid at rest. We shall now show by a detailed consideration of the actual facts that the conviction to which we have given expression is sound and well-founded.

To return to the analysis of the figured statement in the Report under review which we have given at pp. 34-35, it is necessary to observe at the outset that the figured statement is incomplete, and that while apparently the statement professes to give the necessary information for *all* the forest villages in the five settled Talukas, a large number of such villages has been omitted. The reason of this omission is not apparent; neither is it possible to form any accurate guess as regards the principles on which the Forest Commissioners could have selected particular forest villages, or excluded others. For instance, the total number of forest villages in three out of the five Talukas named above is as follows:—Bhiwandi 175, Karjat 140, and Bassein 52; but in the figured statement the number of villages for which the requisite information has been given is Bhiwandi 121, Karjat 33 and Bassein 18. We can not of course undertake to definitely say what the result will be

if similar information for *all* the forest villages in the said Talukas were given. We shall not be surprised if the result of such detailed information proved more unfavourable and inconvenient to the gratuitous theory set up by the Forest Commissioners, that ordinarily the *Rab* requirements of non-forest villages can be fully met by the supply from occupied *shindad* lands and from the local waste lands. It is also not clear why the Forest Commissioners should not have given similar information, howsoever partial, for the settled Talukas of the Kolaba district. Can it be that this information was omitted because it was found to be far more inconvenient than the Thana statistics? We can not say. Again, having clearly admitted that *Rab* materials can profitably be carried over a distance of five or six miles, the Forest Commissioners would have acted wisely if they had collected and published information for all non-forest villages within a radius of six miles from the forests under the following heads:—(a) Sweet River land, (b) Occupied *warkas* land, (c) Occupied *warkas* land under cultivation, (d) *Gurcharan* and such other waste land, excluding of course the area covered by village sites, streams &c. If they had collected and published such information, the wisdom or otherwise of their omission to make any provision for the *Rab* requirements of non-forest villages would have been apparent. As it is, it is somewhat difficult to fully expose the folly of this omission in the absence of such detailed information. We shall, however, try our best to show, as clearly as we can, without the advantage of that detailed information which was essential, that so long as the *Rab* requirements of these villages are not provided for, no amount of firmness and tact in carrying out the policy now in force, and substantially recommended for adoption in future, and no amount of notifications by the Government that the policy is final, and no way subject to revision or modification, will ensure its success. The Forest Commissioners have with great

force pointed out that it will never do for these people to purchase the requisite *Rab* materials; for they say:—"But no cultivators can afford to purchase *Rab* materials in this way (i. e. at the depots). * * * * The cost to the cultivators of the *Rab* material stored at the depots would, therefore, have been Rs. 4-8-0 to Rs. 13 per acre of rice land, a charge equal to from two to eight times the average assessment." So the purchase of *Rab* materials is out of question, though the coterie of half-a dozen ignorant officials who met at the conference board in 1882 imagined that it would be possible. The Forest Commissioners in their no less surprising ignorance think, firstly, that the non-forest villagers will not, except in very isolated and exceptional cases, have to depend for *Rab* supply on resources outside their own villages, and secondly, that the small branch wood available from the departmental cuttings for local supply, and also, in exceptional cases, from the contract cuttings for trade, would be sufficient for the purposes of these exceptionally situated non-forest villagers, and also that these cuttings would be so conveniently situated as to be of much practical use to any considerable majority of these people. The Forest Commissioners say:—"If any cultivators residing in non-forest villages have hitherto *really* depended for their supply of tree-loppings required for *Rab* on the forests of neighbouring villages, their wants in this respect will be *fully* met by the privilege they will have, under the proposal made in the preceding section, of removing *by head loads* all the small branchwood available from the annual fellings either for *Rab* or firewood." The Italics are of course our own. In the first place the Forest Commissioners, in spite of Captain Lloyd's unqualified statement made in 1866—twenty years ago—that "half the rayats in these districts (i. e. the Talukas whose forests were demarcated by him) now look to getting their supply of *Rab* from the village allotments," pretend to believe that the number of non-forest villagers really depend-

ent upon the neighbouring forests for their *Rab* supply, if any such people at all exist, must be very small indeed, and they further affect to hold seriously that the supply to be made available in the manner proposed will suffice not only for the *Rab* requirements, but also meet the demand for free firewood both for consumption and sale ! And the most ridiculous part of the arrangement proposed is that the supply of small branch wood required for *Rab*—144 head-loads of tree-lopings per acre—must be removed by head-loads ! !

Captain Lloyd demarkated Imperial and Village forests in five, or rather six, Talukas of the Thana district shortly after the Revenue Survey and Settlement was introduced in this District. These five Talukas are Bhiwandi, Murbad, Nasrapoor (now Karjat), Kolwan (now Shahapoor with the Mokhada Peta, and Wada), and Salsette. From his report of 1866 it appears that the demarkation work was completed in all Talukas with the exception of the Kolwan Taluka where a considerable portion of the work had remained to be done. In the tabular statement appended to his report, Captain Lloyd stated that the work then done amounted to 87,942 acres of Imperial Reserves, and 94,856 acres of Village Reserves, in all the said five Talukas. The detailed figures of each kind of forest for each of the said five Talukas are not given in the said report, but with the information available in that report, supplemented by information obtained by private inquiries, we have been able to prepare the following tabular statement which will show by a strong contrast the marked features of the old demarkation as compared with the new demarkation under the Forest Act of 1878. The comparison can not be complete because the new demarkation has not yet been completed in two out of the said five Talukas.

A comparative statement contrasting the old and new forest demarkation.

Name of the Taluka.	Old Forest.			New Forest.			Increase over the old Imperial Forest.	New land taken over and above the Imperial and Village forests.
	Imperial.	Village.	Total.	Reserved.	Protected.	Total.		
1	2	3	4	5	6	7	8	9
Bhiwandi	13,713	13,000	26,713	38,743	8,320	47,060	33,347	20,347
Karjat (Nasrapoor) ...	21,331	26,573	47,904	52,799	7,620	60,419	39,088	12,515
Salsotte .....	.....	.....	.....	15,043	1,025	16,068	.....	.....
Mokhada .....	.....	.....	.....	51,198	.....	51,198	.....	.....
Shahapoor.....	41,909	.....	.....	21,009	107,709	128,718	.....	.....
Wada.....	.....	.....	.....	55,864	35,521	91,385	.....	.....
Murbad	17,597	.....	.....	18,750	71,132	89,882	.....	.....
Total	87,942	94,856	182,798	253,406	321,336	484,742	396,800	301,944

Kolwan.

The last three Talukas have not yet been settled under the Act of 1878, but bearing in mind that they are more wild in their character than those already settled, except perhaps the Mokhada sub-division, we may safely assume that a very small portion, if any, of the present protected forest in the said three Talukas will be disforested. It should be also borne in mind that, according to the view of the Forest Commissioners, there is to be no distinction between Reserved and Protected forests. If accordingly we compare the total figures in column 2 with those in column 7, we find that in that division of the Thana district, in which Captain Lloyd demarkated Imperial and Village forests, 396,800 acres have been suddenly added to the then modest area (87,942 acres) of Imperial Reserves. This new addition of 396,800 acres not only includes all the old village forests in the area, on which half the rayats in the Talukas depended even for their *Rab* supply, but also lays under contribution for forest purposes an altogether new area of 301,944 acres outside both the old Imperial and Village Reserves. The truth is that both the old Village Reserves (94,856 acres) and the last named area of 301,944 acres, which constitute an entirely new acquisition to the domain under the full control of the Forest Department, were available for *Rab* purposes, and were actually resorted to for the said purposes by the people of non-forest villages in common with those within whose local boundaries they happen to be situated, and we are seriously asked by the Forest Commissioners to believe that not only the area which, according to Captain Lloyd, could not even in 1866 have been withdrawn from the exercise of the customary rights of user of non-forest villagers without serious inconvenience to agriculture, but even an additional area three times as large as the former, could in 1887, twenty years later, be altogether withdrawn from the exercise of the said customary rights, and yet no appreciable inconvenience will be caused to the agricul-

tural interest, and all this when during the interval a considerable extension of cultivation has admittedly taken place. The non-forest villages in this division have an area of 115,136 * acres of grazing land in addition to the area of occupied *warkas* land, the area of which, and more particularly the area of the occupied *warkas* land not under cultivation, has not been given in the report under review; and yet it seems to be believed that ordinarily the *Rab* supply available in this restricted area will suffice! If the information we have asked for above be collected for the non-forest villages, we shall not be surprised to find that the proportion of real *shindad* hand to one acre of sweet rice land in the non-forest villages is at least as low as, if not lower than, the proportion (i. e. .55 of real *shindad* to 1 acre of rice land) which has been arrived at in the case of forest villages. This bare statement of facts would, we feel confident, carry conviction home to the mind of every student of this question who has not forest conservancy on his brain, that the Forest Commissioners have failed, not for want of information, to make adequate permanent provision for the *Rab* requirements of the people, both of forest and non-forest villages.

The reader will, we think, understand the whole question better if we examined more closely the detailed information as regards one Taluka. We shall take the Bhiwandi Taluka as a fair instance, more particularly because it is a Taluka completely settled under the Forest Act. We extract the following information about this Taluka from the tabular statement on page 90 of the Report under review:—

1	The number of forest villages included in the statement	121
2	Total area of sweet rice land in the said forest villages	20,629
3	Total area of occupied <i>warkas</i>	25,915

* This figure has been arrived at by totalling up the figures given in column 7 of the statement on p. 33 of the Report (Vol. I.)

4	Area of <i>warkas</i> land under annual cultivation	7,035
5	Proportion of total occupied <i>warkas</i> area to rice land	12
6	Area of the occupied <i>warkas</i> which is real <i>shindad</i>	4,810
7	Proportion of total occupied <i>shindad</i> to rice land	23
8	Area of Reserved forest in the said villages	24,314
9	Area of Protected forest	7,777
10	Total area of forest	32,091
11	Area necessary to supplement occupied <i>shindad</i> in the proportion of one acre of <i>shindad</i> to one of rice land	15,819
12	Area of former <i>gurcharan</i> and <i>ran-rakshan-gurcharan</i>	26,331

We might add to the foregoing information about the Ehiwandi Taluka the following items.

13	Total number of villages, both forest and non-forest	201
14	Total area of rice land	34,734
15	Total area of occupied <i>warkas</i>	39,285
16	Total area of occupied <i>warks</i> under annual cultivation... ..	14,812
17	Total number of forest villages	175
18	Area of old Imperial Reserves	13,713
19	Area of old Village Reserves	13,000
20	Total area of old forest	26,713
21	New Reserved Forest	38,743
22	New Protected Forest	8,320
23	Total area of new Forest	47,060
24	Increase over the old Imperial forest	33,347
25	Area over and above the total old forest, now included in the new forest... ..	20,347
26	Grazing area in non forest villages... ..	12,887

It will be seen from the foregoing information that the proportion of total occupied *warkas* to the sweet rice land in 121 forest villages of the Bhiwandi Taluka is as 1-2 to 1, and that the proportion of the total occupied *shindad* to the sweet rice land is as '23 to 1. Now, according to the evidence of the Mamlatdar of the Bhiwandi Taluka, the proportion of the total occupied *warkas* to the total rice land in the Taluka is as 1-4 to 1, * which is nearly the same as that arrived at in the case of the 121 forest villages. We are aware that the area of salt rice land has to be deducted from the total area of rice land before any reliable data can be arrived at. But even if that were done,—and here it is necessary to observe that, according to the Thana Gazetteer, the area of salt rice land in the Bhiwandi Taluka is very small indeed—and also the area of occupied *warkas* under annual cultivation, which we fancy will be found to be larger than that in forest villages, is ascertained, we are inclined to believe that the result of all this needful scrutiny will very nearly be the same as, if not actually worse than, that in the case of the 121 forest villages, namely, that the proportion of occupied *shindad* to the total area of sweet rice land in the non-forest villages will be as '23 to 1, or very slightly better if at all; for we find the Mamlatdar of the Taluka stating in his evidence that “by *warkas* was meant land devoted to *Rab* beds, *nagli*, *wari* and *udid* cultivation and grass plots,” and that “in rare instances *tahal* was also obtained from this land, but the term did not include *shindad* lands, pure and simple.” And the non-forest villages in the Bhiwandi Taluka have an area of 12,887 acres only of *gurcharan* land for supplementing the *Rab* supply from the occupied *shindad* lands, and yet we are asked to believe that ordinarily this will suffice!

Again, according to the Forest Commissioners' own estimate, the 121 forest villages will require at

* Vide Vol II p. 55.

least 15,819 acres of well-wooded land to supplement the *Rab* supply from their occupied *shindad* lands, even if we assume that these latter are well-wooded. And even if the Protected forests in these 121 villages, which amount to 7,777 acres, were forthwith disforested, and even if we assume them to be well-wooded, at least 8,000 acres from the Reserved forests will have to be disforested before the *Rab* question as regards even these 121 villages—to say nothing of the remaining forest and non-forest villages—can be said to be reasonably disposed of on the lowest estimate. And yet the Forest Commissioners coolly recommend that even the Protected forests (7,777 acres) should be made Reserved forests, or should at least be treated as such !!!

It may also be pointed out that even if similar statistics for the whole district were collected and duly inquired into, the result of such inquiry would not give results different from those arrived at above. According to the Thana Gazetteer the whole district of Thana, including of course the Panwel Taluka which since the publication of the Gazetteer has been transferred to the Kolaba district, in 1879-80 contained 343,369 acres of rice land, and 614,626 acres of occupied *warkas* land. Of this latter area 135,657 acres were devoted to the cultivation of grains which grow in rotation, and require a great deal of land to be set aside as fallow, and 78,254 acres were under other dry crops, giving a total of 213,911 acres of occupied *warkas* land under cultivation. And following the same process which the Forest Commissioners have followed on pp. 90-91 of their Report, we arrive at the result that of the total acre of 614,626 acres of occupied *warkas*, 129,401 acres only represent the real occupied *shindad*, which gives to one acre of rice land 37 of occupied *shindad*.* In short the foregoing figures conclusively show that only a little more than one third of the total *shindad* land necessary for

* Vide Thana Gazetteer Vol. I pp. 280-304.

rice cultivation has been allotted and made over to the occupants. But what about the remaining two thirds, even if we assume that the whole of the occupied *shindad* is really well-wooded? How is this deficit to be made up?

But in the case of the non-forest villages this deficit is still larger than that represented above by taking the average for the whole district as one unit. To turn once more to the figured statement on page 90 of the Report, an analysis of which we have given above, we find that the proportion of occupied *shindad* to sweet rice land is as .55 to one acre of rice land in the 251 forest villages of the five settled Talukas, while the same proportion for the entire district is as .37 to one acre of rice land, including the salt rice land. But even if we make a due allowance for the salt rice land, the proportion will not, we fancy, be higher than .40. We may therefore safely assume that the proportion of occupied *shindad* to sweet rice land in the non-forest villages will be found to be between .30 and .25, if not even lower than this. And such a large deficit as this is ordinarily expected to be met from the branch-wood and small wood of two inches and less in diameter, proposed to be left on the ground in the *coupes* when the departmental and contract fellings take place! And it must not be forgotten that this branch-wood and small wood in addition to supplying the requisite *Rab* material to the people of non-forest villages is also expected to fully meet the whole of the demand for free firewood, both for domestic consumption and sale, from the entire district!! And the Forest Commissioners appear to set so high a value upon this alleged act of portentous generosity that every now and then they appeal to it with a feeling of satisfaction and vanity. They seem to think that their recommendation about giving the branch-wood free to all who choose to remove it by head-loads has all the virtues of Aladin's Wonderful Lamp, and that its adoption will enable the

Rayats to obtain every thing they really want in the shape of free forest produce. We, on the other hand, while by no means unmindful of the somewhat substantial character of the said concession, so far as the supply of free firewood is concerned, are not at all inclined to attach much importance, if any, to the said concession as a means of providing to any appreciable extent the *Rab*-requirements of the Thana Rayat. The generosity of the Forest Commissioners in this respect is, to say the least, of a piece with the characteristic generosity of the present Lord Lytton who, when a child of four years old, went one morning to his mother praising himself for having given some grapes to his nurse,—an act of characteristic vanity on his part for which he was severely scolded by his mother. "I told him," writes the late Dowager Lady Lytton, "he had better not have been guilty of this piece of generosity if he thought so much of it as to boast about it." We have little or no doubt that every one who carefully studies the forest question in Thana, will be inclined to administer the same rebuke, perhaps in a more cutting style, to the Forest Commissioners for the manifest pride with which they make special mention of the said concession as an adequate provision of the *Rab*-requirements of the Thana Rayat.

The reader will thus perceive how miserably the Forest Commissioners have failed to make a reasonably adequate provision for the *Rab* requirements of the Konkan Rayat, although the *Rab* supply is the foremost of the Rayat's requirements in Thana. And now we shall leave the reader to judge for himself whether the Forest Commissioners can even in courtesy be said to have fulfilled the mandate, contained in the Government Resolution appointing them, "unhampered by any extraneous influence," as they were foudly expected to do. We find it very hard to persuade ourselves into the belief that if the Commissioners had not set about the work with a predetermination to support the past

settlements at any cost, a better solution of the problem could not have been arrived at without, be it remembered, sacrificing in the slightest degree the *real* interests of *rational* forest conservancy. No one wants the *real* interests of *rational* forest conservancy to be sacrificed, and if they have hitherto been sacrificed, as we fear they have been, the principal, if not the sole, responsibility of the mischief thus far wrought must be laid at the doors of the Forest Department, and not at the door of the poor, ignorant, helpless Rayat. No officer—not even Mr. Shuttleworth himself—can *honestly* charge the Rayat with that crime—and we do regard it as a NATIONAL CRIME,—we mean the heedless destruction of forests to that extent, to which on the strength of the testimony of Mr. Mackenzie, now Secretary to Government in the Revenue Department, the Forest Department,—the very Department entrusted with the conservancy of forests,—may be charged with being the principal offender.* If it be once conceded that the realization of an increasingly large revenue is neither the sole, nor even the principal, object of forest conservancy, we hold that rational forest conservancy is not incompatible with the full recognition of customary popular rights, and we further hold that only a reasonable regulation, and not the extinction, of these customary rights is all that is necessary in the real interests of forest conservancy with a view to ensure a permanency of supply. How to secure this object was the problem which the Forest Commissioners were required to solve, but they have disappointed us most completely as regards the most important portion of their task. We were assured by Lord Reay in his inaugural address that “the members of the Commission who represent the Civil Service are not acting in any way on the Commission as delegates, or representatives of Government, but have been appointed to give their own views, the results of their own experience;” but

* File Vol. III p. 92.

we are afraid that these three members have acted as prudent men of the world in choosing to be guided by the experience of their elders in the past, several of whom had, instead of having been able to do any service to the Konkan Rayat in the direction of minimizing their forest grievances, burnt their fingers in the bargain, and found to their cost that their benevolent attitude had only resulted in making matters worse than before. Under these circumstances it was impossible in the very nature of things, that these members of the Civil Service on the Commission, from whom so much was expected, should have had the courage to formulate any recommendations of a radical nature. Their recommendation that the *Rab* question even as regards the forest villages should be deferred for a period of at least ten years, even when they find that the existing provision is meagre, on the miserably plausible pretext that sufficient data are not available for the satisfactory solution of the problem, is a distinct proof of this want of moral courage in the discharge of an unpleasant duty. Their anxiety studiously to abstain from recommending any thing calculated to throw discredit on the past work of the department is so transparent, that any one who has eyes to see may satisfy himself about the truth of our assertion. It grieves us exceedingly to have to write in this strain, and we express our regret for the hundredth time; but we feel that we should be untrue to ourselves and guilty of trifling with the interests of millions of poor, helpless, ignorant and voiceless people if we allowed any considerations of personal regard that we feel for these highly amiable gentlemen to interfere with the discharge of a public duty.

In conclusion we may observe that unless the existing demarkation and settlement work is altogether set aside, and commenced *de novo* on the principles laid down in the extracts from Sir T. C. Hope's speech which we have given above, or unless large and ex-

tensive areas of the settled forests are permanently assigned as Village Forests, and excluded from the operation of the system of working plans, with of course suitable rules for regulating the exercise of popular rights therein, and unless the local Revenue authorities are given a real, and not merely nominal, control over the Forest officers, no permanent solution of the problem will be possible. Sir John Strachey, who was in 1878 Finance Minister, during the course of the debate to which we have already referred spoke as follows :—

“ In Northern India the position held by the Forest Department is less satisfactory than that which it holds in the Bombay Presidency, with which my honourable friend who has charge of this Bill is so well acquainted. Instead of being, as I think it ought always to be, intimately connected with the regular administration of the country, *the Forest Department is in a great measure a thing apart.* The District Revenue Authorities who know the people best—*who are, I may say, the natural guardians of the people's rights, and who possess at the same time an influence which gives them the best possible means of protecting the interests of the Government—* **HAVE PRACTICALLY LITTLE OR NO VOICE IN THE MANAGEMENT OF THE FOREST DEPARTMENT.**

“ The Forest Officer ought, in my opinion, to be an expert performing his duties under the control of the Revenue Authorities of the district. *He ought not to exercise, independently of such control power which may sometimes seriously affect private rights and interests,* **THE PROTECTION OF WHICH MAY BE MORE IMPORTANT THAN THE PROTECTION OF THE FORESTS THEMSELVES.** In my opinion and I speak as an ex-Lieutenant Governor who has had some experience of the matter—*the present state of things is not in this respect satisfactory, and its existence will render it necessary to exercise peculiar care in the application of this section.*

Whatever may have been the state of things before 1878, it will scarcely be disputed, we think, that in Bombay the Forest Department is now more of “ a thing apart” than in any other province of India, and

that the District Revenue authorities, including the Divisional Commissioners, have practically abdicated their functions as "the natural guardians of the people's rights," and have surrendered the people to the tender mercies of the officers of a Department whose sole ambition would appear to be to aggrandize the revenue at the expense of the people, and even of forest conservancy, showing that the Forest Department as a Revenue Department is as important as the Land Revenue Department, and that it also can bring in a large and increasing revenue to the treasury. Strictly speaking, the Forest Department is nothing more or less than an ancillary branch of the Land Revenue Department, and as such ought to be in subordinate alliance with the former,—nay, at times, as ably pointed out by Sir John Strachey, it ought cheerfully to content itself with absolute subordination or even effacement, if Mr. Shuttleworth will like that term better, seeing that at times the protection of "private rights and interests," as essentially contributing to the agricultural prosperity of the country, "may be more important than the protection of the forests themselves." But the prevailing idea of the Bombay Forest Department—especially of that so-called, unprofessional "master mind" which supervises and controls the conservancy operations in the Northern circle—is that the Land Revenue has been bolstered up at the expense of the Forest Revenue, as though the latter revenue is anything better than a part of the Land Revenue. It is this intra-departmental jealousy, of which only a non-professional person is capable, and which is more responsible than any other cause for the hardships the Koukan Rayat—in fact the Bombay Rayat—has been complaining about so long and so fruitlessly. And this miserable jealousy will continue, perhaps in increasing force, so long as the Forest Department continues to be "a thing apart," endeavouring to vie with the regular Land Revenue Department by

annually showing an increasing revenue. It is this foolish feeling that must be put down with a high hand, and unless the Forest Department is really subordinated to the Land Revenue Department, as it is in name only at present, it will be impossible to effectually put down the miserable tendency referred to above.

It is by no means unlikely that, on Mr. Vidal's return from privilege leave, the Forest Commissioners will be requested to reconsider their report, especially that portion of it which deals with *Rab*; and in case our surmise proves correct, it is to be hoped that the Forest Commissioners will find in the foregoing pages some fresh light thrown upon the subject, and that they will not hesitate to grapple with the difficulty in the only way in which it can be successfully grappled with. They must face the question boldly,—in fact they must be prepared to catch the wild bull by the horns. The evil is too deep rooted to be remedied by any superficial or half-hearted measures. Sooner or later radical measures will have to be adopted; and the sooner this fact is realized the better will it be for the interests of all parties concerned.

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S. H. CHITPLONKAR

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PROCEEDINGS OF THE SABHA.

RESTITUTION OF CONJUGAL RIGHTS.

No. 147 of 1887.

SARVAJANIK SABHA ROOMS,

Walekar's Wada Dane Ali

Poona 23rd October 1887.

To

A. SHEWAN Esquire,

Acting Under Secretary to Government

Judicial Department

Bombay.

Sir,

I have the honour to acknowledge the receipt of your letter No. 3940 dated the 9th July last, enclosing copy of a letter from the Government of India on the subject of the proposed amendment of Section 260 of the Code of Civil Procedure of 1882, so far as its provisions relate to the execution of decrees for the restitution of conjugal rights, and requesting to be furnished with an expression of the opinion of the Sabha on the same.

2. In reply I am instructed by the Managing Committee of the Sarvajanic Sabha to state that after due consideration of the important question on which their views are asked and after consultation with the leading members of different communities the Sabha is of opinion that the punishment of imprisonment should be reserved for the most obstinate cases of disobedience and sparingly resorted to. And with the view of securing a due proportion between the actual circumstances or merits of each case and the punishment of imprisonment or attachment of property, the said Section 260 should be so amended as to invest the Court trying the case with the discretion to award either of the two kinds of punishments or both, dispensing altogether with that of imprisonment whenever the nature of the case might not call for such a severe example. The period of such imprisonment should in no case exceed six months, and the defendant should under no circumstances be liable to imprisonment a second time for persisting to disobey the decree to return or consent to cohabitation. X

3. With regard to paras 3 and 4 of the letter from the Government of India which refers to judicial separation and divorce, I am directed to point out that any such legislation to regulate matrimonial disputes among the Hindus generally would amount to a direct violation of the Hindu Law on the subject, and to a breach of the solemn pledges given to the people by Her Majesty's Government from time to time against interference with their religious laws. If among any particular section or sections divorce be customary, contrary to the Hindu Law, and the British Courts consider it proper to take cognizance of such a custom, the circumstance cannot, in the opinion of the Sabha, be held to justify, a sweeping legislation of the nature suggested in the circular.

I have the honour &c.,
 SHIVARAM HARI SATHE
 Secretary Poona Sarvajanic Sabha.

14

No. _____
 988-96

FROM

A. P. MACDONNELL, Esq., c. s.,

Secretary to the Government of India,

To

Home Department.*Judicial.**Simla the 17th June 1887.*

SIR,

I am directed to forward the accompanying copy of a letter* from the Government of Bombay containing a proposal for amending the provisions of section 260 of the Code of Civil Procedure, 1882, so far as they relate to the execution of decrees for the restitution of conjugal rights. It will be seen that this proposal is made with reference to the case † of Dadaji

* No. 1973, dated 30th March 1887.
 † Indian Law Reports 9, Bombay 629.
 Indian Law Reports 10, Bombay 301.

Bhikaji *versus* Rukhnabai, recently decided by the High Court at Bombay, and that, as regards the form which

the amendment might take, an opinion is expressed that it will perhaps be sufficient to follow the course adopted by the English legislature, and, while retaining the suit for restitution of conjugal rights, exempt the person against whom a decree is made in such suit from liability to imprisonment.

2. The Indian law recognizes two classes of suits by a husband for the purpose of obtaining the society of his wife, namely :—

(a) for the recovery of a wife (Act XV of 1877, Schedule II, article 34); and

(b) for restitution of conjugal rights (Act XV of 1877, Schedule II, article 35).

The execution of decrees in suits of these kinds is provided for in section 259 and in section 260 of the Civil Procedure Code respectively. With the first class of suit, which is an action to recover a wife out of the possession of a person who is harbouring her, we are not now directly concerned, though, if legislation in regard to the second class of suit be considered expedient, it may be desirable to take advantage of the opportunity to clearly establish the distinction between the two classes of suits. In regard to the second class, it is to be observed that the law which recognizes the relation of husband and wife recognizes also that the husband is bound to live with the wife, and the wife with the husband. The suit for the restitution of conjugal rights is therefore an useful one, provided that no means which are indefensible on moral or social grounds are adopted to enforce compliance with a decree given in such a suit. Under the Hindu law, " it is one of the express conditions in the nuptial vow that each should be the associate of the other ; and the sages denounce the desertion or neglect of either party by the other as punishable in this world and in the next." (Jagendro Siromoni's Commentary, page 96.) If, then, the obligation be denied by either of the parties to the marriage, it is only just that Courts should *declare the right to exist*. A difficulty, however, arises when the Courts have to deal with a refusal to perform conjugal duties by one of the parties to the marriage, and the question for consideration is in what way the State ought to interfere to enforce such performance.

3. The earlier practice of the Indian Courts by which " the wife was given bodily into the husband's hands" may have been in accordance with Hindu usage ; but in the case of *Chohur Bibee versus Amoor Chund* (6 W. R., C. R. 105), it was held that disobedience to the order of a Court directing a wife to return to cohabitation fell within the scope of section 200 of the Civil Procedure Code of 1859, and might be dealt with either by imprisonment or attachment of property, or by both. This view was adopted by the Privy Council (11 Moore I. A., 551), and thus not unnaturally became incorporated in section 260 of the revised Code of 1877, on which section the provisions contained in the Code now in force are based. It has been represented to the Government of India that the earlier practice above referred to, as well as that of subjecting a reluctant wife to imprisonment, are alike repugnant to modern ideas : and it has been suggested

that as a remedial measure, the best course will, as proposed by the Bombay Government, be to follow the movement of the English law especially, if by so doing the Indian legislation in this matter can be brought into greater conformity with the ordinary practice of civilized nations. By the English law (47 and 48 Vic., cap. 68) it is enacted that—

- (1) a decree for restitution of conjugal rights shall not be enforced by process against the person— (section 2) ;
- (2) when the application is made by the wife, the Court may order that, in the event of the decree not being complied with, the respondent shall make payments as for alimony (*ibid*) ;
- (3) when the application is made by the husband, the Court may order the property of the wife to be paid or settled for the benefit of the petitioner and children of the marriage (section) ;
- (4) the Court may vary any order for payment as it may think just (section 4) ;
- (5) non-compliance with the decree shall be deemed desertion, and a suit for judicial separation may be forthwith instituted. If a husband has also been guilty of adultery, the wife may petition for dissolution of marriage (section 5) ;
- (6) the Court may make order for custody, maintenance, and education of children (section 6) .

4. As divorce is easily arranged among Muhammadans, and as it is also common among many castes of the Hindu community, although forbidden by the written law, it has further been suggested, with reference to point (5) above, that non-compliance with the decree should be made a ground for dissolving the marriage upon the application of either party, provided—

- (a) that compensation were given to the party divorced; and
- (b) that a suitable and effective arrangement were made for providing for the children of the marriage.*

5. Finally, it has been suggested that if any action in the directions above indicated be taken, it will be necessary with a view to uniformity of law and practice to repeal the penalty clause of section 36 of the Parsi Marriage and Divorce Act, XV of 1865.

6. Before coming to a final determination on these suggestions, the Governor General in Council thinks it desirable to ascertain the

views of Local Governments and Administrations in regard to them I am accordingly to request that you will be good enough after such enquiry and consultation with those members of the various communities concerned who are most competent to advise the Government on such questions, to favour the Government of India with an expression of opinion on the questions referred to above as soon as conveniently can.

I have the honour to be,

SIR,

Your most obedient Servant,

A. P. MacDONNELL,

Secretary to the Government of India,

PROPOSED REFORM IN THE SYSTEM OF TRIAL BY JURY.

Trial by Panchayat was an immemorial and dearly-cherished indigenous institution of the land. The deep political debt we owe to it as a struggling nation during our long and much-chequered historic past, cannot, and ought not to, be forgotten.

Trial by Jury is an analogous institution of still greater value. As Mr. Amos justly observes in his "English Constitution" (p. 92), "this institution is one of those which it is the custom of Englishmen to prize more than almost any other." It is rightly viewed as one of the main stays of English liberty.

In a country like India, the political value of Jury trial cannot be exaggerated. It is as essential as any other free institution to solid and regulated progress in political freedom. It is an indispensable complement of Local Self-Government, and an equally, if not a more, necessary part of the national apparatus of political education, required to give the people a practical training in public duties by compelling them, *nolens volens*, to take a daily and active share, on a footing of responsible independence, in the administration of the laws. Looked at from this point of view, the question relating to its extension in this country, far from being a question of merely provincial or local interest, is eminently one of national importance in its bearings, and is, in our judgment, worthy of a more prominent place in the deliberations of the coming National Congress at Madras, than it occupied in the deliberations of the Calcutta Congress last year.

We shall begin with a brief review of the position of the question as far as our information extends, and space permits.

The Criminal Procedure Code of 1862 marks the starting point in the history of the Jury

system as it obtains in India. The eminent English jurists who were the framers of that code, rising superior to the narrow prejudices of the Indian bureaucracy, and guided by their English experience, approached the question from the point of view of practical statesmanship and deemed it expedient to give a political institution of such uncontested value as the Jury system a fair trial in India. The experiment was a new one, and had to be conducted under the somewhat peculiar conditions of foreign rule. Very naturally under these circumstances, the question of introducing Jury trial was rightly regarded as one of practical administration, and the scope and other details of its working had therefore to be left entirely to the executive discretion of the local authorities, like the kindred question of Local Government a decade or two after.

Accordingly under the Code, large discretionary powers were conferred upon the local Governments in respect of the new reform. They were empowered :—

- (1) To “ direct by order in the official Gazette that the trial of all offences or of any particular class of offences before any Court of Session, shall be by jury in any District, and to revoke or alter such order ;”
- (2) To delegate to their District Officers the task of preparing lists of jurors according to their judgment, from which no appeal should lie, and no qualifications, and no property, educational, or other tests were laid down in the Code,
- (3) Within certain limits, to fix the number of Jury men in Sessions trials. “ In trials by Jury before the Court of Session, the jury shall consist of such uneven number, not being less than three or more than nine, as the local Government by order applicable to any particular district,

or to any particular class of offences in that district, may direct."

In the absence of any provision to the contrary, the system of trial by Jury had to be put in force and worked on the broad basis of the municipal law of England.

The Local Governments necessarily proceeded in a most cautious and tentative manner in the exercise of the new powers thus entrusted to them under the Code.

The Bengal Government was the first to move in the matter, and led the way, as indeed befitted the Government of a province, the oldest in the date of its acquisition, and, therefore, the longest in close contact with the liberalizing influences of an advanced civilization. Its action was at once liberal and courageous. By a Resolution, dated 7th January 1862, it ordered the introduction of trial by Jury into seven Districts [viz., the 24-Pargannas, Hooghly, Burdwan, Murshidabad, Naddea, Patna and Dacca] in respect of a limited number of offences (included in chapters VIII, XI, XVI, and XVII of the Penal Code.) By subsequent Resolutions, offences under chapter XVIII were added to the list, and trial by jury was extended to abetments of, or attempts to commit, these offences. In March, 1862, all trials in the courts of sessions in Assam were ordered to be by jury.

Then followed Madras, but at a considerable distance, and in a more hesitating manner. Here, the system was introduced also into 7 districts, namely, Chinglepat, Cuddapa, Rajmahendry, Tanjore, Tranquebar, Cuddalore and Vizagapatam; but its sphere of operation was much more restricted than in Bengal. *Thefts, receiving stolen property, Dacoity, Robbery, and House-breaking* were the only classes of offences, which the Local Government declared to be triable by jury.

Next came Bombay, with its narrow bureaucratic jealousies. One and one District only was selected for the trial of the system, and that was Poona. By a

Notification dated November 1, 1866, criminal trials in the Sessions Court of Poona were ordered to be by jury. No other district, not even Satara, was deemed worthy of the privilege, the fact being wholly ignored that in no other Province of India had the Panchayat system been more developed, more vigorously worked, and better appreciated than in the territories lately under the direct administration of the Peshwas. What a change of attitude on the part of the Provincial Government since the days of Mountstuart Elphinstone with his Bombay Regulations of 1827 which contemplated the use of jury trial even in Civil cases!

The other Governments took no action in the matter.

Such was the state of things down to 1872. The new Criminal Procedure Code of that year was the work of Sir Fitz James Stephen, and marked an important departure, and a slightly retrograde movement. While, under the old law, the traditions of English jurisprudence had been boldly followed, and the verdict of a free Jury was accepted as a final decision even in cases when the Judge disapproved of it, under the amended code a remedy was proposed with a view to set right perverse verdicts. Sec. 307 of that code provided a statutory safe-guard against the supposed risk of the miscarriage of justice, incidental to trial by Jury on the English model, by investing the High Courts with the powers of review and revision in cases in which "the Session Judge disagrees with the verdict of the Jurors, or of a majority of the Jurors, on all or any of the charges on which the accused has been tried, so completely that he considers it necessary for the ends of justice to request their intervention". This provision in the code of 1872 was evidently intended to meet the objections of those who were dissatisfied with the working of the Jury in India as a judicial institution, as well as of those who, in common with many distinguished Jurists

in Europe and America, were opposed to it on general grounds. The possible chance of a failure of justice was thus taken away, and the line was cleared for the extension of the system; *no excuse was now left to the provincial Governments for withholding this privilege, on grounds of administrative safety and the interests of pure justice, from any but the most backward communities within their local jurisdictions.*

Here, it must be acknowledged that the Imperial Legislature rose to a rare level of truly large-minded statesmanship. The results of the working of the Jury during the ten years previous in those parts of the country where it had been introduced, were by no means, in the opinion of the Judicial authorities, either favourable or encouraging, but the Supreme Government refused to look upon the system merely in the light of a *judicial* institution, and to abandon the experiment of such *political* interest and promise, simply on the ground of administrative inconvenience and a possible but avoidable risk of failure. Administrative inconvenience was felt to be apparently inevitable, but all possible chances of failure of justice could be, and were, obviated in the new *Code*. The amendment which compelled reference to the High Courts in cases in which "the ends of justice" should require it, no doubt increased the work of the High Courts, and to some extent diminished the independence of the juries; but the system, even when so modified in its Judicial character, retained all its political value unimpaired, and the Supreme Government was content, possibly at the cost of some administrative inconvenience, to let it work more as a *political* than as a *judicial* institution. Full reliance, was, however, placed upon the discretionary judgment of the subordinate Administrations, who retained all the old powers of defining the class of offences, and naming the districts and the tribunals where the trial was to be by Jury.

The High Courts also were fortunately in complete sympathy with the liberal views and intentions

of the Supreme Legislature in the matter. They were determined to give the system a fair trial as a *judicial* institution, quite as fully as the Government of India were prepared to allow it to work as a means of *political* education, and took frequent opportunities to declare that, though armed with large powers of interference and revision in respect of jury trials under the new Code, they would do nothing, as far as in them lay, likely to impair its judicial utility. In the case of *Khanderao Bajerna* I. L. R., 1 Bom. 10, the Bombay High Court made the following remarks:—(Vide Prinsep's Criminal Procedure Code 82.) " It is a well-recognised principle that the Courts in England will not set aside the verdict of a jury unless it be perverse and patently wrong, or may have been induced by an error of the judge. We adhere generally to this principle, notwithstanding our large discretionary powers, first on the constitutional ground of taking as little as possible out of the hands to which it has been primarily assigned by the Legislature, and secondly because any undue interference may tend to diminish the sense of responsibility. * * * When juries know that they are liable to the scrutiny and supervision of this Court, they will feel the necessity of exercising conscientious deliberation in arriving at their verdict. "

Such being the intention of the Legislature, and such the declarations of the High Courts, there clearly stood nothing in the way of the Local Governments giving the greatest possible extension to the Jury system in their respective Provinces, except the usual bureaucratic jealousy of popular liberty and free institutions.

The Governments of the N. W. Provinces, Panjaub, and the Central Provinces, at once availed themselves of the new opportunity, and proceeded to take liberal action in the matter. In 1873, the Central Provinces Government introduced trial by Jury into 5 districts, namely, Nagpur, Jubulpore, Saugor, Raipore and Hoshangabad; the Panjaub

Government went further, and extended the system to 7 districts, viz., Lahore, Delhi, Rawalpindi, Peshawar, Umballa, Multan and Sealkote.

We have no information as to what further action the Bengal Government took after the passing of the Code of 1872.

In Madras, however, the Local Government, in the exercise of its discretionary powers, saw fit, instead of enlarging the sphere of Jury Trial in that Presidency, to reduce the number of its Jury Districts from 7 to 5. In the "standing Information regarding Administration" in Madras, revised edition for 1879, we read,— "as yet the jury system has not been extended beyond the five Districts of North Arcot, Cad-dapah, Godavari, Tanjore and Vizagapatam, and in the latter case only to part of the District, as it is difficult to procure the services of a sufficient number of qualified persons in the other Districts." The restrictions imposed in 1862 upon the operation of jury-trial were maintained, and we are told :—"The crimes triable by juries are theft, robbery, gang robbery, house-breaking, receiving stolen property ; and it is to this careful selection of offences that the measure of success hitherto attained is chiefly attributable." While it is impossible to agree with the Madras-Government, and endorse the wisdom and necessity of its policy of maintaining those limitations as regards the classes of offences to be tried by jury, till further experience should suggest their removal, we are free to admit that there might be some justification from the official point of view for such a course. We are unable, however, to understand the grounds on which the Madras Government deemed it expedient in the interests of the judicial administration to curtail the geographical area of the Jury system. In this connection, however, we must take note of the fact that about this time we find a change of front in the grounds of objection urged to the extension of trial by Jury. Before 1872, the favorite objection urged against it was grounded on apprehensions of failure of justice

due to the incompetence, inexperience, or deliberate perversity of the mofussil juries; after the passing of the Code in 1872, which took away the force of this objection, the Jury system was opposed on the ground that it was difficult "to procure the services of a sufficient number of qualified persons" in most parts of the mofussil. Further, as bearing on the reason so given by the Madras Government for not extending the Jury system, we can not shut our eyes to Section 321 of the new Code, under which the selection of jurors was entirely left to the absolute discretion of the local authorities;—"The Sessions Judge and the Collector of the District or such other officer as the Local Government appoints in this behalf shall prepare and make out in alphabetical order a list of persons liable to serve as jurors or assessors, and qualified in the judgment of the Sessions Judge and Collector or other officer as aforesaid, to serve as such." The powers herein conferred were large, and we cannot but think that they must have been most stringently exercised, when we read the Local Government's declaration in 1879 to the effect that it was unable to find a sufficient number of persons qualified to serve on the jury beyond the limited area of 5 out of its 21 executive Districts, after 20 years and more of the toterably successful working of the system of trial with Assessors, and of the still more successful working of the Education Department.

In Bombay, we have no advance to record, after the passing of the Code of 1872, almost down to 1882. The Local Government was apparently not satisfied with the working of the Jury in Poona, and did not think it right to extend it to other Districts, even though the ground of objection on the score of the alleged risk of failure of justice was entirely taken away under the new Code. Nay, its action in this matter was somewhat of a retrograde nature. By a Resolution dated December 9th, 1873, it adopted the Bengal arrangement regarding the restriction of

offences to be tried by jury and ordered that the trial by the Court of Session of Poona of all offences (provided for under chaps. VIII ; XI ; XII ; XVI ; XVII ; XVIII of the Penal Code) for which the punishment awardable is death, transportation for life, or transportation or imprisonment for 10 years and upwards shall be by jury in the Poona District. " By a subsequent Resolution two years later (1875) the list was only slightly extended.

The Code of 1872 was again amended in 1882 but it did not disturb the *status quo ante* in regard to this question. The discretionary powers, conferred upon the Local Governments in respect of the extension and working of the system, were left untouched. The subject, though of such vital moment to the political progress of the nation, did not receive its due measure of attention at the hands of the Supreme Government. No inquiry was instituted as to (1) the way in which the Local Governments exercised their powers, (2) the advance achieved during 20 years since 1862, and (3) the results of the experience so gained. The official attitude of watchful distrust and scarcely concealed opposition to the system as a *political* more than as a *judicial* institution was overlooked, and the Supreme Government, reposing full confidence in the liberal views of the subordinate Administrations, was content to leave the matter in their hands as before.

In 1883, however, the subject forced its way to the front, during the burning controversy over the Ilbert Bill. Lord Ripon in one of his concluding speeches on that Bill, in which he addressed an impressive appeal to his native colleagues in the Council to accept the compromise proposed by Government, had occasion to incidentally notice this question of the system of trial by jury, and assured the public that the Local Governments would be liberal in exercising their powers in connection with the exten-

sion of the jury system in general. The compromise was agreed to early in 1884, and under it the European British subjects of Her Majesty in India were allowed their native privilege of trial by jury. But though nearly four years have elapsed since this assurance was given, Bengal and Bombay are the only Provinces which have profited in any measure by the assurances of the late Viceroy. We have no information as to what extension the Bengal Government has given to the system in its Provinces, but we learn on good authority that it is considerable, and, what is more, that its attitude on the question is one of liberal sympathy. We regret, we cannot speak in similar terms of praise of the action of our own Local Government in the matter.

The Government of Sir J. Fergusson, who not unjustly claimed the credit of having suggested the final compromise on the Ilbert Bill on the basis of the further concession of Jury trial in Magisterial cases, thought it necessary to take some action in regard to the matter, more with a view to avoid the charge of inconsistency than with any other object. Accordingly the local Government issued a Resolution dated September 16th, 1884, by which it was ordered that "in the *Ahmedabad, Belgaum, and Surat* districts and in the city of *Karachi*, the trial before any court of session of all offences punishable with death, transportation for life, or transportation or imprisonment for 10 years and upwards, shall be by jury." The Resolution was to come into force from March 1885. By another Resolution, dated 8th December 1884, trial by jury was extended to the *Thana* district.

Here, no doubt, there was a considerable extension given to the system of the jury in the Bombay Presidency. Besides the city of *Karachi*, it was introduced into 4 new districts, and adding *Poona* to the list, we have the jury system in work in 5 districts in all. But still, we are left much to the rear of several other Provinces in this respect, and considering

how ahead we are in educational, political, and other activities generally, we have good reason to complain of the meagre progress thus far achieved. The Bengal Government is moving forward with a firm and courageous step, and it is hardly excusable for authorities in Bombay to hesitate and falter and lag behind.

On closer analysis, however, the extension given by the Government of Sir James Fergusson to trial by jury in Bombay is found to be less substantial than it at first sight appears. By a resolution dated 29th April 1886, modifying the Resolution of 15th September 1884, it was ordered that "in *Ahmdabad*, trial by jury shall be limited to offences punishable with death." We are afraid that this restriction of offences to be tried by jury leaves that District only the shadow without the substance of this great agency of popular education. The limitations imposed in Thana, Surat, and Belgaum are only a shade less stringent and take away from the jury much of its value.

This restricted selection of offences triable in the Sessions Court by jury, made by the Local Government in pursuance of the discretionary powers vested in it by Sec. 269 of the Criminal Procedure Code of 1882, appears to us objectionable on more grounds than one. With the safe-guard of a reference to the High Court no room was left for apprehending failure of justice, and the illiberal restriction referred to above could only have been dictated more by considerations of administrative convenience than by any regard for the progress of the nation. In restricting trial by jury in Ahmedabad to offences punishable with death, and in Surat, Thana and Belgaum to such as are punishable with death, transportation for life, or transportation or imprisonment for 10 years and upwards, the Local Government seems evidently to have consulted in a larger degree the convenience of the High Court, and sought to minimize its work of revision and review in jury cases

referred for its interference by the Sessions Judges, than the interests of the public which required an anxious solicitude not only for promoting the highest political education of the country but also inspiring public confidence in the Judicial administration. Such a limitation of the area of trial by jury had the effect of withdrawing the bulk of criminal business done in the Sessions Courts from the cognizance of the juries and reducing, almost to the lowest point, the occasions on which juries had to be summoned. Such a policy argued on the part of the Local Government a most inadequate appreciation of the value of the jury system, which, as De. Toqueville in his "Democracy in America" page 288 so rightly urges, depends very much on the frequency with which it is allowed free scope of action. Further, such restrictions had not even the justification put forward by the Madras Government in defence of its selection of offences triable by jury, viz. that it was necessary to begin with the lesser and minor classes of offences in order to familiarize the mofussil juries with the operation of the new system before entrusting to their untried hands the cognizance of the more serious ones.

Similarly, in choosing the new Districts for the extension of the system, the local Government appears to us to have been influenced rather by geographical considerations than by consideration of the political fitness of the people in the areas selected or excluded. No body who knows the different parts of the Bombay Presidency can for a moment maintain that Districts like Satara, Nasik, Sholapore or Ratnagiri are a whit behind Belgaum or Thana in point of public spirit or public intelligence, and therefore deserved to be kept out of the Jury pale within which the latter were admitted.

The difficulty of finding a sufficient number of persons qualified to serve as jurors is here, as in Madras, often pleaded as a reason for withholding this boon

from the Districts which still do not enjoy this privilege, and the plea has perhaps as little basis in fact in this as in the so called benighted Presidency.

On the whole the recent action of the Bombay Government in giving a considerable extension to the Jury system in this Presidency, after giving it all the praise it deserves, betrays, in our judgment, a narrowness of views and an unworthy, unsympathetic spirit of distrust in connection with this reform of which we are entitled to complain.

From the foregoing hurried review of the position of the question it will, we trust, appear that the Provincial Governments, except perhaps the Bengal Government, have not dealt with it in a manner either satisfactory or encouraging to the Public. The attitude of the Provincial bureaucracies on the subject cannot be mistaken. Clearly, it is not one of "watchful suspense" or of sympathetic anxiety but one of narrow-minded distrust and autocratic jealousy. The progress achieved during the last 25 years in this direction is so small in the different Provinces that it does not encourage any large hopes for the future, should the *status quo* be maintained and the discretionary powers in respect of it be continued to the Provincial Administrations as hitherto. The whole question, however, is too important to be so lightly dealt with.

Trial by Jury is regarded both in Europe and America as an institution of inestimable value, whether regarded from the judicial or from the political point of view. Its value is all the greater in a country like India only recently rescued from the irresponsible and repressive absolutism of centuries. It is eminently one of those free institutions which go to build up and consolidate a people's political liberty and confirm the foundations of its progress. Nothing evidently is so well calculated, in the peculiar conditions of British rule in India, to perfect and strengthen the broad basis of the British power as well as to level

up the immense populations under its sway, as the policy of associating the people, to the widest possible extent and on a footing of well regulated responsibility, in the *carrying out of the laws* as well as in the *making of them*. Regarded from this stand point, the extension of the Jury system coupled with the development of Local Self-Government seems to us as necessary and desirable, as the expansion of the Legislative Councils on an elective basis.

The institution is viewed by constitutional writers more as a *political* than as a *judicial* one. "To look upon the Jury" says De Toqueville in his "Democracy in America, (Vol. I. p. 286) " as a mere judicial institution is to confine our attention to a very narrow view of it; for however great its influence may be upon the decisions of the law courts, that influence is very subordinate to the powerful effects which it produces on the destinies of the community at large. The jury is above all a political institution, and it must be regarded in this light in order to be only appreciated." The same eminent writer proceeds to describe some of its political effects in these words :—It " raises the people itself, or at least a class of citizens to the bench of judicial authority," it "serves to communicate the spirit of the judges to the minds of all the citizens; and this spirit, with the habits which attend it, is the soundest preparation for free institutions;" it "imbues all classes with a respect for the thing judged, and with the notion of right;" it "invests each citizen with a kind of Magistracy" and "makes them all feel the duties which they are bound to discharge towards society and the part which they take in Government." "By obliging men to turn their attention to affairs which are not exclusively their own, it rubs off that individual egotism which is the rust of society." "The jury contributes most powerfully to form the judgment and to increase the natural intelligence of a people, and this is, in my opinion, its greatest advantage." It is "one of the most efficacious

means for the education of the people which Society can employ."

These remarks of De Toqueville on the subject sufficiently set forth the great political and educational advantages of the Jury system, and their peculiar applicability to the conditions of political advance in India will not be, we trust, contested. Looking, with that eminent French statesman and writer, upon the institution as one of the most efficacious and powerful instruments of political education and of sustained, regulated and well-ordered progress in freedom, we would advocate its extension in this country to the widest possible extent attainable under the circumstances. We submit that this question of its extension is one of *imperial* importance, and cannot be safely or conveniently left to the capricious or narrow-minded discretion of the subordinate Provincial Governments. We would, therefore, venture to recommend that, though essentially and practically a question of administrative reform, it should be taken up by the Supreme Government and dealt with in a comprehensive spirit of liberal statesmanship which we cannot expect from the Provincial Administrations, as the kindred one of Local Self-Government was taken up and dealt with by the Government of Lord Ripon in 1882 after it had been left for full 30 years and more in the hands of the Local Governments. This jury-question, which is one of special importance in a backward country like India, derives its special significance from, its peculiar educational feature, namely, that while every other agency of political and moral education is more or less permissive and optional in its character and is somewhat restricted in its scope, the Jury system, as an agency of political and moral education, involves the element of general statutory compulsion in regard to the association of the people in the administration of the laws. The vulgar prejudice, which looks upon the cooperation of the Jury as in any degree diminishing the power and moral

hold of the constituted Magistracy of the state, may be discarded from our mind as ignorant and unworthy. As De Toqueville observes, "the Jury, then, which seems to restrict the rights of Magistracy, does in reality consolidate its power, and in no country are the judges so powerful as there, where the people partake their privileges."

With these observations, we will proceed briefly to indicate in a rough and general way the lines, on which, we think, the Congress might usefully recommend to the Government of India that further action should be taken in respect of this most important and urgently called-for reform.

(1st) We would suggest that the whole question should be withdrawn from the sphere of *provincial executive administration*. The discretionary powers vested in the hands of the Local Governments by Sections 169 and 321 of the Criminal Procedure Code would have to be largely curtailed. The choice of Districts for extension of the jury, the selection of offences triable by jury, the nomination of jurors,—these should no longer be left, in our opinion, to the practically uncontrolled and irresponsible discretion of the Local Executive, but should be provided for by statute. This would necessitate the repeal of Section 321 and a large modification of Section 269.

(2nd) Section 307 of the Criminal Procedure Code is a very useful Section, and providing as it does a necessary safeguard against the judicial risk involved in the working of the system, should, in our view, be left untouched. It adds no doubt to the work of the High Courts and causes considerable administrative inconvenience, which is, however, to

some extent inseparable from the working of the experiment in India under the present circumstances. It further tends also to detract from the judicial utility of the institution. But both the administrative inconvenience and the judicial disadvantage are far out-weighted by the political value of the system, which therefore deserves to be given a fair trial with due safe-guards against failure.

This statutory safe-guard against the judicial risk incidental to the working of the jury system, as provided for in Sec. 307 being maintained, the widest possible extension should, we think, be given to it in the mofussil. The "inestimable privilege" should not be withheld from any but the most backward communities, and we would recommend its extension throughout the Regulation and Non-Regulation Provinces, the so-called "scheduled" Districts alone being for a time kept out of the jury area till they are brought more fully than now under the Regulation system.

As regards the selection of offences to be tried by jury, we would suggest the Madras arrangement at present in force as a convenient and safe minimum to start with in backward Districts, while in the case of more advanced Districts the Bengal plan would, in our opinion, be the best. Whatever the arrangement adopted, all that we would insist upon in this connection is, that the *minimum* area of its operation should be fixed by the Legislature instead of being left as now to the discretion of the Executive Governments. Further extension of that area might be entrusted to the High Courts or the Local Governments as convenience might suggest. The principle should be, however, steadily kept in view, namely, that the wider the operation area of jury-trial, the greater the frequency with which jury trials take place, and that the larger the sphere of civil transactions, social relations and interests that come

under the cognizance of the juries, the greater the usefulness of the institution.

Finally, the nomination of jurors suggests a question at once difficult and important. The privilege of being a juror is a justly valued privilege, and the choice of its recipients should not in our opinion be left, as under the present Criminal Procedure Code Section 321, to the arbitrary will of the local Executive authorities. It should be rather dependent upon definite qualifications statutorily fixed, which the people can understand, and regard as giving a statutory claim to it. De Toqueville's remarks on the point (Vol. I. pp. 287-8) are worth quoting.—“The jury is pre-eminently a political institution; it must be regarded as one form of the sovereignty of the people; when that sovereignty is repudiated, it must be rejected, or it must be adapted to the laws by which that sovereignty is established. The jury is that portion of the nation to which the execution of the laws is entrusted, as the Houses of Parliament constitute that part of the nation which makes the laws; and in order that society may be governed with consistency and uniformity, *the list of citizens qualified to serve on juries must increase and diminish with the list of electors.* (The Italics are ours) This I hold to be the point of view most worthy of the attention of the legislator, and all that remains is merely accessory.” In America, every “citizen is qualified to be an elector and a juror.” The qualifications of jurors in England are thus set forth in Amos's “English Constitution” (page 94):—

Grand jurymen must be free-holders—that is, must have an estate in land for life at least—resident in the country.”

“*Common* jurymen and *special* jurymen must have the following qualifications:—

1. They must be between the ages of 21 and 60.
2. They must have either 10 $\frac{1}{2}$ a year in land

free hold ; or 20 £ a year leasehold, for 21 years or a longer term ; or be house-holders rated for the support of the poor, or (in Middlesex) pay " house-duty " on not less than 30 £ " .

Here, in India, we may go further and insist that it is essential to the good working of the system, at least in the initial stage, that qualifications should be imposed, calculated not only to ensure independence, but also a certain amount of intelligence and culture, in the person claiming to be put on the jury. We would, therefore, suggest that *property* as well as *educational* qualifications might be statutorily attached to the privilege of being a juror. He who proves that he possesses those qualifications should be able to claim it as a matter of legal right. This qualification might be tentatively proposed as follows:—(1) A juror should be a householder, paying a certain amount of municipal or imperial taxes, or an occupier paying a certain amount of rent, or a land-owner or lease-holder possessing free hold or leasehold of a certain amount, &c. (2) He should have passed some educational test-recognized by Government in Vernacular or English.

Under some such arrangement, we have no doubt that jurors can be found in sufficient numbers in most of our Mofussil Districts, and the chief difficulty now urged in connexion with the extension of the Jury-system would be removed ; but, above all, the invaluable privilege of serving on the jury would be made a matter of legal claim, dependent on certain well-defined conditions intelligible to all, and within the reach of all, instead of continuing (as at present under Sect 321) a favor in the gift of the Local Executive Officers.

These are briefly the lines on which we would recommend further action in this matter of jury-extension.

Here, we conclude these hurried observations on this important question with the expression of a hope that it may not be deemed unworthy of the attention of the coming Congress at Madras.

THE LAW ABOUT THE RESTITUTION OF CONJUGAL RIGHTS.*

THE agitation in favour of the reform of marriage customs among the Hindus, which has been going on for the last three or four years throughout the country, has now arrived at a stage when it may be expected to take a practical shape. Hitherto the questions involved in it have been discussed chiefly by the people themselves, though the Government of India were appealed to with a view to legislative action as regards one phase of the marriage law or customs, namely, the age at which boys and girls are married at present. But being a first attempt to give legislative relief in an obstinate and chronic social malady it did not succeed. The appeal did not, however, altogether fail in as much as it brought this dark social evil into prominent light, and enforced its serious consideration by those who are constitutionally responsible for the physical, social and moral welfare of the people. This explains to some extent the recent revival of the controversy caused by the same questions coming up again before the Viceroy and his advisers in another shape. The first appeal referred to the general evil effects of the custom of child marriage. The present appeal has reference to one of the numerous evils which result from this custom, namely, the strict and rigorous enforcement by the Civil Courts of the marriage contract as if the contract had been entered into by parties who were capable of understanding the nature and the binding force

* This paper has been contributed by a friend who is well-known to be an accomplished Sanskrit scholar, and who has for several years past made the Vedas and the antient social institutions of the Hindus founded upon them his special study.—By the Editor of the Journal. ✓

thereof. While the friends of reform were engaged in discussing the injustice and the enormity of marrying away young children at the age of eight and ten years, and the friends of the existing order of things were denying that serious and unavoidable evils arose from the custom, there arose opportunely the now celebrated case of *Dadaji versus Rakhmabai*. In that case the parties were married to each other when yet children.* The wife when she came to years of discretion refused to fulfill her obligations as a party to the marriage contract. The husband sued for restitution of conjugal rights, and the highest tribunal in the land allowed his claim eventually. The defendant Rakhmabai still refuses to fulfil the contract, and asserts that she will rather take the bitterest consequence of her refusal than consent to live with the person whom she refuses to regard as her husband. This consequence may take the form of imprisonment in a civil jail for a maximum period of six months or attachment of her property. At this stage the case at present stands pending disposal of an appeal by the lady, an appeal that has little or no chance of success under the existing law. In the meantime the friends of marriage reform and of individual liberty made their second appeal to Government to which we have already referred for legislative interference with a view to remove from the statute book of the law the power at present given to the Courts to send a recalcitrant wife like Rakhmabai to jail in enforcement of their decree to perform her part of the marriage contract. The Government of India to whom the proposal was formally submitted by the Government of Lord Reay, have called for the opinions of their constituted advisers and those members of the general community who are believed to take an interest in the question. We

* N. B.—It is hardly fair that Dadaji and Rakhmabai should be described as "children" when according to her own admission Rakhmabai was 11 and her husband 18 or 19 years old at the time of marriage.—By the Editor of the Journal. ✓

accordingly take this opportunity of giving expression to our own views on the subject as a contribution to the general discussion of the important issues involved in the proposal. X

X The proposal now before the Government is so to amend Section 260 of the Code of Civil Procedure of 1882 as to abolish the alternative imprisonment provided in that section in execution of decrees for the restitution of conjugal rights. By way of introduction to the discussion we may at the outset remember that the present law bearing on the subject is as follows, viz, (1) A husband can sue for the recovery of his wife when detained by a third party; and (2) Either a husband or a wife can sue for the restitution of conjugal rights when the other does not live with him or her. ✓

X The decree awarding a claim in the latter case can under Section 260 be executed by the seizure or sale of the property of the defendant,—the wife or the husband as the case may be—or by imprisoning her or or him, or by both. ✓

As regards suits of the first class we are not at present directly concerned with them. In suits of the second class, if the Court decrees that the defendant being the husband shall live with the plaintiff, and he refuses to do so, the decree may under Section 260 of the Civil Procedure Code be executed by his being imprisoned or by the seizure of his property or by both. It is important here to see and repeat that the husband is as liable to imprisonment as the wife, because this fact is not generally known or remembered by some people who have discussed the subject. If, however, the husband is imprisoned, no question has been raised as to the propriety or otherwise of that mode of executing the decree. But if a wife is the party who is decreed to live with the husband, and if on refusal to obey the Court's order she is imprisoned in execution of the Court's decree, the question is from hence raised whether imprisoning a recalcitrant

wife for refusing to live with her husband is not repugnant to modern ideas as being indefensible on moral and social grounds. We do not of course grudge to the fair sex the preference thus shown to it by the opponents of imprisonment; nay there may even be excellent reasons for the preference. But the equal liability, under the existing law, of both sexes to be imprisoned in enforcing their marital obligations should not be forgotten. It has further come to be represented that the provision of the code which empowers the court to imprison a recalcitrant wife is an importation from the old English canonical law, and that as Hindu law does not prescribe imprisonment in such cases, and as the English canonical law has recently been modified so as to do away with imprisonment, Section 260 of the Civil Procedure Code requires to be amended in such a manner as to abolish imprisonment in execution of a decree for restitution of conjugal rights.

Three points we think require consideration in connection with the question raised above and in connection with the recommendation which has been made to the Government of India for the amendment of the section, viz., (1) Even if it is true that imprisoning a wife for refusing to live with her lawful husband is repugnant to modern European ideas, is it a fact that it is repugnant to Native ideas modern or otherwise throughout the country? (2) Is it contrary to the provision or spirit of the Hindu Law to imprison a recalcitrant wife for refusing to live with her husband? (3) Granting that imprisonment of a wife is not repugnant to modern ideas in India, and granting likewise that the Hindu law sanctions directly or indirectly such imprisonment, is it right, is it just, that such a provision should remain the law of the country in the present social conditions obtaining among the people?

As regards the first point we confess that Native public opinion does not regard it as repugnant to

modern ideas that a recalcitrant woman should under all circumstances be imprisoned for disobeying an order of the Court to live with her lawful husband. On the contrary recent discussions in the Native Press and elsewhere in connection with the case cited before have clearly shown that Native opinion, whether educated or otherwise, does not regard imprisonment with much repugnance but considers, on the contrary, that abolishing it would be viewed as an indirect interference on the part of Government with native social institutions. The orthodox Hindu community, and even many educated people, do not think that the provision about imprisonment is a harsh one. Nor have the public yet seen many instances in which women were actually imprisoned for refusing to live with their husbands. We believe cases are rare of women preferring imprisonment to the society of their husbands. The fact is that most men or women, who are ordered by the Courts to live with their wives or husbands respectively, obey the order and make the best of their position. If persistence in refusing to obey the order after opportunity has been given to obey it leads to imprisonment, the imprisonment is regarded as a punishment which a recalcitrant wife deserves and which serves as a warning to other women. The orthodox public considers the law about the imprisonment as a valuable warning to wives. Indeed it is quite true that most people were not even conscious of the existence of the law of imprisonment, much less of the male's liability to it, before the case in Bombay brought it prominently to their notice. But there can be no doubt that they have had a general idea that the Civil Courts have the power of giving them substantial relief in cases where the wife or husband refuses to fulfil her or his contract. Those who fondly cling to the letter of the ancient law and consider it as their ideal of Divine perfection, regard it as a great defect of the modern times that so little

is done by the rulers to enforce that law, and that they allow too much liberty to women according to the laws of their own country. The orthodox Hindu or Mahomedan for instance cannot approve the criminal law introduced by the British which punishes the man who commits adultery with a married woman but which lets the woman go without punishment. He considers, when discussing the subject of the preservation of the ancient institutions of the land, that the power to imprison a woman who refuses to live with her husband is a small measure of regard paid to the law of the land which they have promised to administer to them.

As regards the second point, it has been urged that the law which prescribes imprisonment is an obsolete English law which has been imported into the Indian code, and it has been alleged that Hindu law books do not lay down that a wife should be punished with imprisonment for refusing to live with her husband. The latter allegation is true only in a liberal sense, but not in fact, and is one-sided. For, the purpose for which it is made is to show that the ancient Hindu law-givers considered imprisonment as too severe a punishment to be awarded to a wife who did not live with her husband. It also involves an implication that imprisonment was prescribed for many other offences and breaches of duty as an ordinary punishment but was not laid down for a recalcitrant wife. The fact is, however, that in ancient India, as in other parts of the world, there were no jails such as we have in modern times, and that imprisonment was not a punishment ordinarily prescribed for criminal or civil offences. Thus Manu generally prescribes three kinds of punishments which the king may award to all who break or fail to observe the law according to the gravity of their offences or failures. The three punishments are, imprisonment, shackling, and death of various kinds (Manu VIII. 310). All breakers of the law are liable to one or other of these

punishments, unless any offence is specially provided for with any particular punishment. Then he lays down for various offences and what in our times are civil breaches the punishments of death of various kinds, mutilation, burning alive, shackling or fettering, shaving the head, leading in procession on the back of an ass, whipping and fine. Most offences are to be punished with various amounts of fine. Imprisonment is rarely prescribed; indeed, it is specifically prescribed only in one case, that of a Vaisya male committing adultery with a Brahmin woman who is under the protection of her husband or other relations (Manu VIII. 375). But if the ancient Hindu law-writers or compilers did not punish a wife that did not live with her husband with imprisonment under the general clause which we have quoted, there is, we are afraid, ample evidence to show that they would probably have visited her with some punishment much more severe and barbarous than simple incarceration in a civil or debtor's jail. Thus in what light they would have viewed a wife that did not serve her husband or who was disrespectful towards him or who misbehaved in regard to him will appear from the following and similar texts.

1. "Whatever the husband to whom the father gives her away or a brother gives her away with the consent of the father she shall serve that husband during his life time and shall not transgress him after his death" (Manu V. 51.)
2. "Even when the husband is immoral, adulterous, void of all qualifications and education, a good wife shall serve him like a God" (Manu V. 154)
3. "Whether the husband is alive or dead the wife who wishes to attain to heavenly bliss in the company of her Lord shall not do anything that might not be approved by him." (Manu V. 156)

4. "When a wife, a son, a slave, a servant, and a uterine brother,—these commit a fault, they should be beaten with a rope or with a bambu stick." (Manu VIII. 299).
5. "When a woman trasgresses* her husband through the pride of her relations, or of her own qualities, the king shall cause her to be devoured by dogs in a public place where many people are assembled." (Manu VIII. 371)
6. "A wife, a son, and a slave can have no property of their own. Whatever they earn belongs to them to whom they belong" (Manu VIII. 416).
7. "A wife, who, being superseded by another wife, goes away in anger from the house, shall be kept in confinement or be cast away in the presence of the caste" (Manu IX. 83).
8. "From the hands of that woman who transgresses the command of her husband and conducts herself independently, no body shall eat, and she should be considered as an adulterous woman." (*Angiras*)
9. "A wife should always be fondled and should likewise be always beaten. If a woman is fondled and also beaten, it is only then that she becomes a good wife, not otherwise" (*Sankha*) †

* Some of the commentators interpret this to mean "*disgraces her husband by committing adultery,*" but the original text, though it may include such misconduct, does not necessarily mean it.

† It need hardly be pointed out that if the Rakhmabai Defence Committee would have her case decided *in full accordance with the Hindu law only*, her case must fall under the fifth heading which prescribes that the king, *i. e.* the Judicial Tribunals, shall

The position occupied by woman in certain epochs, especially the later ones, of old India will thus be seen not to have been very high; indeed there is too much evidence to show that she was regarded in the Smṛiti and Pauranic periods not only as naturally inferior to man and as one bound to rest content with whatever rights man assigned her, but intended only for the enjoyment of man and for the preservation and multiplication of his race. From these considerations we think it is reasonable to hold that putting in jail—a civil jail—a woman, who has been married legally to her husband and with whom she refuses to live, is not at all inconsistent with the spirit of Hindu Law as it has been preserved, and as it is interpreted in our days. However unwilling we may be to enter upon a minute examination of all authorities that may be and are quoted from Hindu law books for and against this view, and upon a lengthy discussion of a somewhat technical question whether Hindu law sanctions imprisonment or not, we can not here refrain from briefly touching upon the method which certain eminent scholars would adopt to show that Hindu law does not sanction the incarceration of a woman who refuses to live with her husband. That method is to rely upon certain texts which seem to prescribe what to our ideas is extremely lenient punishment, *i. e.* making her sleep on the bare ground—for such a serious offence as adultery by a woman, and then to infer that, since such grave misconduct is visited with little

cause a woman, who transgresses her husband through the pride of her relations or of her own qualities, "to be devoured by dogs in a public place where many people are assembled." The horrible nature of the punishment prescribed is a fair index of the horror with which the ancients viewed the desertion of a man by his wife "through the pride of her relations or of her own qualities," even if the husband be a mere Coolie, and his spouse a rich heiress of culture and refinement, as Rakhmabai is alleged to be.—*By the Editor of the Journal.*

or no punishment, the Hindu law can not possibly have prescribed, intended, or impliedly sanctioned the incarceration of a woman in a civil jail who fails to fulfil her marriage duties to her husband. But here we may observe in the first place that it is illogical to assume that the ancients necessarily regarded womanly misconduct of the kind with the same feelings of disgust and horror that we do, living as we do under very different circumstances. It is quite probable that under the peculiar circumstances of old Aryan life they treated her leniently in regard to her failings or mistakes as long as she continued under the roof of her lord. But, moreover, the way in which the so-called adultery texts are interpreted does not appear to us to be free from serious objections. Thus the passage already quoted from *Manu VIII. 371*, though in our opinion it includes all kinds of transgressions of the orders and wishes of the husband, including it may be adultery—is taken to provide for adultery alone. Assuming that this is correct what is the punishment prescribed for adultery in that passage? Death by being devoured by dogs in a public place—a kind of death which need not surprise us when we remember that for certain other offences, and not very serious too, *Manu* prescribes death under the feet of an elephant (*VIII. 34*), death by being burned alive in a fire made of dry grass and under other equally cruel and barbarous torments. But this death by being devoured by dogs is proposed to be interpreted as being merely a figurative threat in order that the theory of adultery having been leniently dealt with by the law-givers may not fall to the ground. Lastly we have to remember generally that there is no evidence to show—indeed the evidence is all the other way—that the Hindu law-givers viewed different offences with the same relative gravity with which they are treated in our times. What appears very slight offence to us was so grave in their sight as to deserve the most horrible death, and what we hang

criminals for, the Hindu law-givers would merely deal with by a paltry fine.

As regards the third point, viz, whether it is right and just that the imprisonment, as laid down in the Civil Procedure Code, should remain on the statute book in our present condition of social life. We come fortunately to a part of the subject which is more agreeable to us than the two points we have already treated, because we have not here to deal either with hard and disagreeable facts undeniably existing in our society or with the imperfections of an admittedly imperfect system of ancient institutes distorted into arguments in support of theories of doubtful utility. On this third point we can travel wider and with greater freedom and need not altogether forget that which is noble or even merely reasonable in humanity. For here, after we have admitted all that was to be admitted as to the existence of imperfect, unchivalrous and unjust sentiment in custom and law, we can claim the right to rise superior to custom and law and discuss the whole subject from the independent stand point of justice, chivalry, lessons of history, and expediency.

The cases of wives refusing to live with their husbands fall under one or other of the following classes:—

1. Cases in which both the husband and wife were adults at the time of their marriage (the religious ceremony) whether they afterwards cohabited with each other or not;
2. Cases in which both the parties or the wife particularly was under age at the time of their marriage, but where they ratified the marriage contract so to speak by cohabiting together after the minor had arrived at puberty; and
3. Cases in which one or both of the parties were under age at the time of the

marriage, but in which they have never ratified the contract by cohabiting after coming to years of discretion.

In the first class of cases it is, to Indian ideas of all shades of opinion, not unjust or wrong morally or socially that the obligation of the husband and wife to live together should be enforced by law, and that a recalcitrant wife or husband should be imprisoned as a warning to others. We are of opinion that the present liability to imprisonment should remain unaltered in this class of cases. As regards the second and third classes of cases some people are inclined to make a distinction between the two classes of cases on the ground that there is subsequent sanction by conduct in the one case, whereas there is no such sanction in the other, and that, therefore, wives who, though married when children, afterwards *i. e.* on arriving at puberty cohabited with their husbands, should be shown less consideration than those who did not so cohabit, if they appeared as defendants in suits for restitution of conjugal rights. But we have to bear in mind that in the cases falling under class (2) the wives, when they began to cohabit with their husbands, were still children, say of thirteen or fourteen years; * and

* It is indeed strange that the writer of this interesting paper regards as "children" girls who on attaining to the age of puberty or to the years of discretion have had their marriages consummated, apparently on the ground that even at that time they are not free agents, and that they have at that age no idea of the constructive significance of their action as ratifying the original selection of their husbands by their parents or guardians. It would seem that in his opinion consummation of marriage by a wife, before she has completed her 21 years, ought not to possess that significance. We are afraid that if such be his view, he will find very few to agree with him. We confess that this view appears to us absurd, if not ridiculous. It is a well-known fact that even in England the marriageable age or the age of legal consent for such purposes is 12 for girls and 14 for boys (*Vide* Broome's Commentaries on the Law of England Vol I. P. 526). We may

considering that such girls are certainly in a condition of pupillage and do whatever they are told by

also refer here to other evidence bearing upon the same subject.

Mr. J. A. Bourdillon of the Bengal Civil Service in his "Report on the Census of Bengal 1881" has taken 10 years as "the inferior limit" of marriageable age for Bengal, and justifies it on the following grounds. He writes:—"In England it has been established by observation embracing many hundred cases that the earliest age at which, as a rule, girls become marriageable is fifteen years and a quarter; and though there are to be found in medical works many instances of greater precocity, that may be accepted as the average age of puberty in Northern Europe, and it has accordingly been taken as the starting point of the marriage tables for the population of the United Kingdom. Further to the south, in Greece and the Levant, nature is so precocious that girlhood merges into womanhood at a still earlier age, and the statistics of female development in Bengal show that the comparison which has often been instituted between the climate of Hindustan during a great part of the year and that of Southern Europe is not unreasonable, for tables compiled from reported cases show that in Calcutta the mean age of girls at puberty is twelve years and six months. * * * * This being the position of affairs, it was obviously impossible to adopt the English starting point of fifteen years as the beginning of the marriageable age, either in the Indian or the European sense. Had there been any groups of years 10 to 12½ and 12½ to 14, it would have been possible to take the number of the population above 12½ years of age as those for whom marriage was more than a name, and to work out calculations accordingly; but in the absence of this information the best course seems to be to take the commencement of the tenth year as the inferior limit of the marriageable age, in the belief that by this means all those will be included who have actually undertaken the duties of matrimony, as well as the great majority of those who are married in the eyes of native society." It will be thus seen why we refuse to regard as "children" Hindu wives of 13 and 14 whose marriages are as a rule consummated about that time. And even if consent be accepted to be the essence of marriage, the simple fact that the English law assumes a girl of 13 to be capable of giving such consent and of contracting a valid marriage,—this fact alone, we repeat, clearly shows what the nature

their elders to do and have, during the time they have lived with their parents-in law, been trained morally

and value of that consent is, and that it can not in the nature of things be of that ripe and mature character which is deemed essential for making other contracts valid and binding. If marriage were nothing more or less than a contract, and that consent was its essence, it might have been reasonably expected that the so-called age of consent would have been placed at a much higher minimum than 12—even higher than 21—when it is borne in mind that, unlike other contracts, this contract is binding on the parties to it for all time to come, and that it can not be set aside even with their mutual consent. What then does this inferior age limit, obtaining in England, indicate? It indicates that at that age a girl ceases to be a girl and passes into womanhood, thus becoming capable of fulfilling the chief end and object of marriage. Again if, as has been pointed out in the extract from the Bengal Census Report, the inferior age limit for marriage in England is in practice found to be 15,—and it must not be forgotten that in England, as in other European countries, the term “marriage” has a different meaning from that it has in India, for there the ceremony of marriage is usually followed by immediate cohabitation unless, as in the case of Lord and Lady Colin Campbell, there be special reasons for deferring it,—surely there can be no reasonable objection to Hindu females or rather Indian females being married in the European sense of the term at 13 or 14, when due allowance is made for the climatic conditions of India, where nature, as in Southern Europe, is precocious. It is, therefore, extremely inaccurate to describe Indian wives at that interesting period of their life as mere “children,” and this inaccuracy strikes us as being of the same class which characterizes marriages of Indian girls of between 8 and 11 years as “Infant Marriages.” It is this inaccurate and careless way of stating the case in the fond but idle hope that thereby the cause of Indian social reform would be promoted, that we deprecate most, and we have always regretted the course which the promoters of the social reform agitation have followed from the first throughout this controversy. When will they learn that by such means the cause they have at heart and with a part of which we in common with all others heartily sympathise, is considerably retarded instead of being promoted?—*By the Editor of the Journal.*

and physically to treat their husbands, whatever their qualifications or education or character, as the highest object of their veneration, their cohabiting with them involves neither choice nor consent on their own part. Their compliance is not very much better as being voluntary and free than that of an under-age prisoner who, through feelings of shame, fear, vanity and training steps backwards and forwards as he is told to do. Consummation follows as a matter of course so soon as puberty is reached. The girl is not conscious that she has any choice in the matter or that she has a right to be consulted. Besides being placed in circumstances of great, though lawful, temptation she is not able to refuse the compliance which custom demands at her hands. The girl on the contrary who falls under class (3) is an exceptionally fortunate one, one who has probably been always kept at her parents' house for education ever since her marriage, or has been by some happy accident prevented from ever visiting her husband's house. If such a girl has not ratified the marriage rite with her subsequent conduct, it is the consequence of a mere external accident for which she herself deserves no credit and cannot claim any consideration as over the girl who refuses to live with her husband under class (2). The latter is the object of our pity; the former is simply fortunate. Whatever consideration therefore we might show to the cases of class (3) we ought to show to class (2) as well. So far as Native opinion goes, the recalcitrant wife of class (3) is a greater sinner than she of class (2), because the latter obeyed the authority of her parents, parents-in-law, and her husband as long as she could and at least made an endeavour to obey the law of her forefathers, whereas the other has not even tried to see what objections she could have to the husband of her parents' or guardian's choice, and has set at defiance the law of her country by never living with her husband, objecting to do so, probably because she thinks she is better educated or

richer, or more handsome, or of better standing than her husband. However reasonable such grounds of objection may appear to those among whom consent is the essence of marriage public sentiment does not accord with them in a country where for ages untold parental authority has held supreme sway in marriage dispositions, even when the age of the actual parties to the marriage—of the bride and the bride-groom—was much higher than it is in our own days, and where the position of woman with reference to her husband has never been distinguished for much liberty. The public will presume that the wife of class (2) must have some reasonable grounds for refusing to live with a husband with whom she tried her lot for some time, but that the wife of class (3) is a rebel trying to subvert the ancient law of her country founded on parental authority. Most cases of wives refusing to live with their husbands will fall under class (2), and very few, indeed, under class (3). If, therefore, imprisonment is abolished in the cases which fall under class (2), the abolition will virtually amount to a refusal by the state to recognise native marriages as valid, so far as the restitution of conjugal rights (using those words as applied in India) is concerned, unless the marriage has taken place between parties who were of age at the time. There can be no doubt, however, that there is much in the condition of wives of both classes, who object to live with their husbands which justifies a recommendation that imprisonment be abolished in the two last classes above specified. Speaking justly and without regard to vested rights and interests and to the unchivalry, narrowness, illiberality and prejudices of the age, we have no doubt all will admit that no recompense is too great to make to a woman who was married away when a child of eight or ten years of age, when she was not aware of the nature of the bond of marriage and presumably without due care being taken to provide that her boy-husband will be physically, intellectually and morally a fit com-

panion of her life. The recompense fails to be excessive, especially when the husband or wife is found when grown to years of discretion to have been so mismatched that they cannot live together as husband and wife without making life a perpetual curse and torment. Then we must not lose sight of the fact that the custom of child marriage is partially the result of the most mischievous doctrine carried out into practice with woeful faithfulness, that every man and woman shall be married. This doctrine and practice is one of those potent agents that have contributed to make of all Indians a herd of home-imprisoned convicts, enervated, indolent, slavish, utterly void of a spirit of enterprise, and, above all, ruinously studious to conserve the order of things social and political for the time being without regard to its capacity for producing adequate good for those who are subject to it. If a tyrannical foreign power were to bring an independent people forcibly under its yoke and wished to provide a permanent and enduring guarantee against a mutiny, a revolution, or any manifestation of discontent among its conquered subjects, it could never devise a more perfect means to secure its end than to order that every boy and every girl in the conquered kingdom should be forcibly married *nolens volens* or rather *sine potestate volendi* long before the time when they could possibly decide for themselves whether to marry or not. The tyrannical foreign power we have imagined could not devise a more efficacious means of making petty pigmies of all the men in the conquered province than force every boy-husband and girl-wife to cohabit with their partner respectively so soon as they showed the first doubtful signs of puberty.*

* There is, we confess, some force in what the writer of the paper says as to the disastrous results of a *premature* consummation of marriage. And we should certainly like to see the age at which marriage is consummated gradually increased to 16 in the case of

When the Aryans first settled in the country, there may have been good and sufficient reasons why

females and to 25 in the case of males. And, as we have pointed out in our number for April last (*Vide* p. 29) on the strength of the testimony borne by the late Dr. Sakharam Atjinn, a movement in that direction has already commenced, and may be expected in fullness of time to bear good results. But even as it is, it can be by an indefensible stretch of language only that the Indian people in any part of the country can be called a race of "petty pigmies." The simple fact that this race of the so-called "petty pigmies" furnishes two-thirds of the Army maintained by the Indian Government—an Army the fighting capacity of which has never yet been disputed—and the additional fact that it was this nation of the so-called "petty pigmies," which thirty years ago had shaken the British power in India to its very foundations; these two facts alone, we repeat, constitute the best refutation of the charge laid at the door of the Hindu marriage system. It must not be forgotten also that each Presidency has its own Native Army recruited from among its own population,—a fact which clearly shows that it can be truthfully said of no Presidency that it is wanting in martial resources. It should not also be forgotten that England would not have succeeded in establishing its power in India without the cooperation of the Natives themselves, and that it is doubtful whether without a similar cooperation it would have succeeded in retaining that power in the dark days of 1857.

As to the so-called "most mischievous doctrine," which is supposed to prevail in India, more especially amongst the Hindus, that every man and woman shall be married, we think it will scarcely be disputed that it is for the moral welfare of a nation that no man or woman, who is not confident of leading a *bona fide* single life, should remain unmarried. It is a fallacy to suppose that if a large number of men and women remain bachelors and spinsters respectively, they are so in anything but name. The abnormally large proportion, which the bastards bear to the total population, going up as high as 15 percent, and sometimes even more in those countries where the doctrine of the so-called prudential restraints on marriage is carried out into practice "with woeful faithfulness;" this fact we repeat ought to be allowed its due weight in arriving at the conclusion as to which of the two doctrines referred to above

they should have ordered that every opportunity should be utilized and all legitimate, and indeed even illegitimate, means should be adopted of increasing their numerical strength, and that, therefore, every man and woman should marry and increase the number of Aryans. There may have been good and sufficient reasons why the Hindus should have made general and adopted as an institution early marriage of all children, especially girls when the violence, outrage and bigotted lawlessness of the Mahomedans drove them to it as a means of preventing their unmarried daughters and sisters from being carried away by force.† But happily times are changed, and

is calculated to ensure the *moral* welfare of any given nation. And we do not suppose that *cæteris paribus* the *material* welfare of a nation is incompatible with its *moral* welfare. And if the Indian people be really "a herd of home-imprisoned convicts enervated, indolent, slavish, utterly void of a spirit of enterprise and, above all, ruinously studious to conserve the order of things social and political for the time being without regard to its capacity for producing adequate good for those who are subject to it," the cause for this state of things must be sought for elsewhere than in their marriage laws and customs.—*By the Editor of the Journal.*

† So then the practice of early marriage has been in force in India from the earliest period, viz, the settlement of the Aryans in India, firstly as a means of increasing largely, and that too speedily, the number of Aryan settlers or colonists, and subsequently or secondly as a means of protection to Hindu girls against the lust of Mahomedan rulers. And inspite of the fact that such a practice had continued in full force both in the pre-Mahomedan and the Mahomedan periods, the Hindus of the Deccan were able not only to throw off the Mahomedan yoke but also to shake the Mahomedan power to its very foundation. And this fact affords another refutation, if one were needed in addition to the one given in a former foot-note, of the allegation that this custom of early marriage has converted the Indians into a nation "petty pigmies." The ancient character of the institution of early marriage being thus self-evident, what becomes of the appeal to the modern Hindia

all the causes which gave rise to the custom and law of forced marriage and early marriage have ceased to operate in these days of liberty, reason and enlightenment. X If the imprisonment be retained in cases where the marriage took place between adults, but abolished in cases where the marriage was between an adult and a child, or between children, the distinction so prominently made will be understood to be based upon moral and intelligible grounds, and not upon merely sentimental grounds, as too many things regarding woman are believed by native society to be viewed by the British rulers of the country.

We would, therefore, recommend that while retaining suits for restitution of conjugal rights and also the power to seize the property—if she has any at all—of the wife, who refuses to live with her husband, the Legislature should abolish the alternative penalty of imprisonment. We base our recommendation on the fact that the marriage has taken place at a time when the parties were not only not capable of giving their consent, express or tacit, but were incapable of understanding the nature of the ties and obligations with which they were being bound for life. The Hindu law, which is doubtless severe to women who do not live with their husbands, and which in spirit would certainly sanction imprisonment and even a higher punishment in such cases, without doubt refers to cases of adult marriages and not to child marriages. This fact, though denied by some people, is proved beyond a shadow of doubt when we remember:—

- (1) That the marriage ritual, as observed even now, presumes that the parties are adults;
- (2) That the marriage service, consisting of verses from the Veda and other sacred

community that in substituting the system of adult marriage for that of early marriage they will be only reverting to a system followed by their forefathers?—*By the Editor of the Journal.*

- literature, is based upon the understanding that the marriage is between adults ;
- (3) That the Sutras on which the Smritis, like the Institutes of Manu, are based prescribe certain observances for married couples which necessarily presume that the marriage was between adults ;
 - (4) That even the Smritis themselves contain texts (see Manu IX. 89,90,91,93,94) which show that the marriage to which they refer was between adults ; and lastly,
 - (5) That the *Alankar Shastra* or science of rhetoric, under which falls the bulk of Sanscrit general literature relating to pre-marriage courting or love and subsequent marriage, comprising poetry, all the dramas, memoirs, legends, stories, history &c., would have to be condemned as false, because depicting a state of society which did not exist, for that literature is of such a character that it never refers to the love and marriage of children but only to those of adults. It extends over a period of considerably more than fifteen hundred years, and was written at different times by different authors who lived in different parts of India. Either we must condemn it as false or must accept the inevitable conclusion that in ancient India *i. e.* up to about 1000 A. D. marriage generally took place between adults and not between children.

When the imprisonment, which Section 260 sanctions, is abolished the law will remain thus :—

- (a) Marriages between children will still be valid for purposes of enforcement by the courts of their decrees for restitu-

tion of conjugal rights, only the seizure of the wife's property being resorted to in execution of a decree instead of the seizure of property or imprisonment or both as at present.

- (b) Such marriages will be valid for purposes of suits for alimony and for inheritance, and to declare other rights and disabilities arising out of marriage.*

* Here the writer of the interesting paper advocates the abolition of the penalty of imprisonment; but it should be remembered that in the earlier part of his paper he has advocated its retention in the case of those who might be married after having attained to the full years of discretion, i. e. who might be married after having completed their 21st year, and either of whom might subsequently refuse to accord to the other his or her marital rights. He thinks that in such cases the imprisonment of a recalcitrant wife or husband, as the case may be, would be a wholesome warning to others. It is thus clear that the writer is not opposed to the continued retention in the statute law of India of a provision sanctioning the imprisonment of a recalcitrant husband or wife, but that what he objects to is the liability to imprisonment of husbands and wives, who have had no voice or free choice in their marriage, and who, when they have become capable of exercising their independent judgment, might dislike each other. To be brief, the writer of the paper lays the greatest stress on consent as an essential factor in marriage, and he insists upon consent of a full-blown adult, whether male or female, and not of a minor under 21. He evidently attaches no importance to the presence or absence of consummation as a factor in deciding the liability or otherwise to the penalty of imprisonment of a recalcitrant husband or wife; for he would send a recalcitrant husband or wife to jail for six months even if the marriage be unconsummated, provided only that at the time of marriage they were full-blown adults, their consent we believe being presumed until the contrary is proved. We believe we have correctly stated the position of the writer of the interesting paper.

Now in the first place it would be interesting to know how the writer of the paper would deal with cases like the following:

To the abolition of imprisonment, as recommended above, it may fairly be objected that among many

Suppose a young boy of 17 married to a girl of 10, and that four years later the marriage was consummated. Let us further suppose that the girl, even after having completed her 21st year, cheerfully lived with her husband, and that when she was 25 and her husband 32, she refused to accord to her husband his marital rights. Let us further suppose that the recalcitrant wife has no property which can be seized in satisfaction of the decree against her for restitution of conjugal rights. Would the writer of the paper send her to jail, or would he leave the injured husband without a remedy? In short, would he treat the original marriage in such a case, though inchoate at the commencement, as a perfectly binding marriage and as analogous on all fours with a marriage the parties to which were adults at the time of the ceremony? Again let us suppose that in the above case the marriage has not been consummated, but that the wife on becoming an adult of 21 did not express her disapproval of the previous inchoate marriage. Let us suppose that a year or two later she refuses to accord to her husband his marital rights. Would the writer of the paper treat such a case as one of adult marriage? We fancy that in both the cases supposed above the writer of the paper would treat the parties therein under the first class, i. e., as parties who were married when adults, and that he would punish the recalcitrant party as a warning to others.

And if so, the question arises why he should deal with other cases differently. Is it because there is no original or subsequent consent to the marriage? If the original or subsequent consent be once accepted to be an important factor, then we fail to see why even the property of the recalcitrant party should be liable to be seized in satisfaction of a decree, in cases where no such consent can be pleaded. It is by no means difficult to imagine cases wherein the recalcitrant party, whose property becomes liable to seizure, would attach the greatest importance to the retention of the property so much so as to subordinate to it the temporary loss of his or her liberty in consequence of the incarceration in a debtor's jail. If we once accept a principle, we should be consistent and carry it to its legitimate conclusion, rather than be half-hearted in giving effect to it. We can understand those who advocate the entire abolition of the penalty of imprisonment,

backward and most of the non-Aryan classes, as well as some of the upper classes of Hindus, marriage is a

irrespective of the consideration whether the recalcitrant party was or was not a consenting party to the marriage; but we confess we can not understand those who, like the writer of the paper, advocate the retention of the said penalty in the case of a recalcitrant party provided he or she be a party to a consensual marriage, and who would deprive the recalcitrant party of his property in whole or in part in all cases where he or she is a party to a non-consensual marriage, irrespective of the fact whether there was subsequent consummation or not.

For our part we frankly confess that we have no faith whatever in the principle of consent as the basis of a valid marriage, more especially if the age of consent is fixed below 21 years. The question therefore arises, whether with a view to enforce the principle of consent in reality and not in fiction only, we are prepared to keep our daughters and sisters unmarried till they shall have reached the ripe age of real consent; and we believe we express the almost unanimous sense of the Native community when we unhesitatingly answer the question in the negative. We extremely doubt indeed whether even the most enthusiastic social reformer from among the Hindu community would for a long time to come seriously advocate that our girls should be kept unmarried till 14, if even as much as that. And can any one really suppose that even a girl of 14 is *bona fide* capable of making a selection of her partner in life for all time to come? For our part we frankly confess we feel no hesitation in answering this question in the negative also, and we have very little doubt that in this a very large majority of the Native community will agree with us. Under such circumstances we fail to see the justice or expediency of accepting the principle of consent as the sole or even the principal guide in dealing with marital offences. As the writer of the paper points out later on, it is no more possible for us "to restore the Hindu law to its original condition in our social life," even assuming that the system of *anyaswaras* or choice-marriages is enjoined by the said law, than it would be "to clothe ourselves in the swaddling clothes which covered us soon after we were born." The simple fact is that all the old landmarks have been so far obliterated as a result of the operation of various influences through

very costly event, and that a wife is so valuable that it would be a hardship to them if the state indirectly refused to assist the husband in recovering the company of his wife. Such classes are the Bhils of Khandesh and Gujerath, the Patidars and other castes in the latter province, among whom the girls always number very much less than the boys. The husband with whom his wife refuses to live has not practically the usual remedy of marrying another woman in place of the recusant wife, because of the difficulty and costliness of that course. Nor would seizing the property of the wife afford any relief,* because she has generally no private property of her

countless generations that it is impossible now to identify them with any certainty for the purpose of adapting our modern social institutions to them.—*By the Editor of the Journal.*

* In ninety-nine cases out of every hundred the wife can have no property liable to seizure in satisfaction of a decree against her. And yet with the full knowledge of such a fact it is gravely proposed that the seizure of a recalcitrant wife's property for the benefit of her husband ought to be a sufficient chastisement to her for her offence! We are inclined to fancy that it would be a more honest and straightforward course if those who agree with the writer of this paper advocated that the refusal on the part of the wife to fulfil her marital obligations should cease to be regarded even as a civil offence; in short that the suit for restitution of conjugal rights should forthwith be abolished as it has long since been abolished in the United States of America. It is difficult to perceive why we in India should be solely guided by the English standard, and not by the American standard according to which even the suit for restitution of conjugal rights is a "barbarous" process. Where is the propriety, we ask, of retaining the suit for restitution of conjugal rights if the mode of enforcing a decree under it, when the judgment-debtor happens to be the wife, is worse than nominal? We must frankly confess that we see none. We suppose that the model Indian reformer can not have the heart to advocate the abolition of the suit for restitution of conjugal rights until the British Parliament sees its way to do so!—*By the Editor of the Journal.*

own. In such cases the woman's refusal to live with her husband is either countenanced or instigated by her parents or by some one who would wish to marry her after she has obtained a divorce from her husband. It may be provided, therefore, that in those castes, among whom divorce is allowed by custom, the same should be awarded by the Court, after compensation is allowed to the husband for the marriage expenses and for other considerations. Though the wife may have no property of her own, her relations or her would-be future husband will in most cases make up or ought to be made to make up the amount of the compensation. In case the wife fails to pay the compensation she ought to be treated as a judgment-debtor failing to pay the amount of the decree against her, and imprisonment may then be awarded not for refusing to live with her husband but for failing to pay the compensation.*

* According to the writer of this interesting paper there would be no hardship in sending a recalcitrant wife to jail for her inability to pay the compensation awarded to her husband by the court, while he seems to regard it as very cruel that a wife should be sent to jail for her refusal to accord her husband his marital rights. In short, the pecuniary obligation of a woman is proposed to be regarded as more sacred than her marital obligation, and accordingly her failure to fulfil the former is proposed to be visited with a heavier punishment than her failure to fulfil the latter! For our part we freely confess that the fine sense of chivalry is unintelligible to us—that fine sense of chivalry which, while it professes to be shocked at the spectacle of a woman being confined to jail for refusing to fulfil her marital obligations, can coolly recommend the incarceration of the same woman if she be unable to pay the damages awarded to her husband for the non-fulfilment of her marital obligations. It is admitted that as a general rule a woman can have no property out of which she can pay the compensation; and it may equally be admitted that very few women in such a position will find relatives willing or able to find the necessary money. But it is suggested that the would-be husband of such a recalcitrant woman

Among castes which do not allow a divorce, it will be sufficient that a recusant wife should be debarred from alimony, inheritance and marrying again.

It may be generally observed that the Native community has no ground to complain if the state indirectly discountenances child marriage, because the present customs are opposed to the Hindu law by which they wish to be governed, and because they are calculated to interfere with the promotion of the best interests of the people. Government have hitherto laid aside both the provisions of Hindu law and time honoured customs of the people, and ordered that certain practices should cease to exist, and certain others should be materially altered. The proposed indirect interference with marriage customs will not be half so felt, as was the stoppage of *sati*, hook-swinging, infanticide, and the introduction of a wholly new system of criminal offences and punishments.

We can not take leave of our subject without making a few observations on the attitude taken with reference to the question of the proposed amendment of the law by those who, of course quite honestly,

should be made to pay the compensation money for her. Are we to understand that a woman is intended to have another eligible husband in view before she refuses to fulfil her marital obligations to the one to whom she is lawfully wedded, and that she should arrange with him for the payment of the compensation money? Such an arrangement strikes us as equivalent to the purchase of a married woman by her suitor through the instrumentality of a Civil Court, and it has only to be stated in this bare, naked reality to excite the moral loathing which such a mercenary transaction is fully calculated to excite. The writer of the paper can not, we suspect, have fully considered all the bearings of his proposals; otherwise we know him from personal knowledge for over twenty years to be simply incapable of seriously putting forward a proposal so fully calculated as the present one to excite the greatest moral loathing.—*By the Editor of the Journal.*

oppose all social reform on the ground that it is not sanctioned by the Hindu Shastra. The appeal to the Shastra is an expression of one of the highest and best sentiments that have preserved the Hindus from destruction through ages of mighty and sweeping changes. We have no wish to make light of that sentiment of being as our ancestors were. Nor can we be reasonably charged with making a convenience of the old law and, therefore, with distorting the texts thereof for the purpose of deriving support for the desired reform in the law relating to suits for the restitution of conjugal rights. But when too great a stress is laid upon what the Hindu law lays down and what it does not lay down, we are unfortunately apt to devote all our attention to find out what our ancestors considered as proper or what they did not consider as such, and much less to what they actually did and also what is proper and expedient for us, their children, to do and what is not so proper and expedient. On all questions of reform the first and most important thing to do is to satisfy ourselves of the justice, necessity and expediency of any proposed reform, and then to consider what means to adopt for carrying it out. Whether the Hindu Shastra sanctions it or not is altogether immaterial, except so far that if it sanctions it in express or implied terms, the process of carrying it out will be facilitated as being justifiable in popular eyes. It is needless to say that so far as the written Hindu law is concerned, we have strayed from it very far from age to age, and have outgrown the provisions of it to such an extent that it would be more feasible to clothe ourselves in the swaddling clothes which covered us soon after we were born than to restore it to its original condition in our social condition. All attempts to restore the old Hindu law in all its entirety must fail miserably and result in serious consequences to society. For who will be mad enough to wish that a disobedient or adulterous wife should be caused to be de-

voured by dogs at the crowded *chaudi** or to enforce the law † that the name of a Brahman's child should end in an affix indicative of auspiciousness, as Sharma, that of a Kshatriya should indicate prowess, as Varma, that of a Vaishya should signify wealth as Bhuti, and that of a Shudra should be indicative of lowliness and servility such as Dinadâsa, 'the humble slave' ? Or who would seriously wish that we should revert to a law that lays down that a man shall not marry a woman who is named after a river, or by a name which signifies a plant, a mountain, a bird or a servant or a star ? ‡ Under such a law all our Gangâs, Yamunâs, Godâvaris, Krishnâs, Kâvâris, Tâpis, Narmadâs, Bhîmâs, Revâs, Sarasvatis, Sâvitrîs, Bhâgirathîs, Chandrabhâgâs, Manakarnikâs, Târâs, Revatis, Tulasis, Champâs, Sevantis, Jâis, Bakulâs, Mainâs, Sakuntalâs, Dâis (in Bengal) Gulâbis, Gulâbbâis, Pârvatis, Hausâbâis, Chimnâbâis, Nirâbâis, Godûbâis, Koinâbâis, Sâlûbâis, Kamalâbâis, and others bearing similar names would be disqualified and would have to be declared ineligible as brides, and remain unmarried. Or who would seriously propose that we should now obey the law which prescribes that we should not live in a country of which the king is a Sûdra or an infidel, who does not believe in the Veda but follows some other religion ; which forbids us from singing and playing upon any instrument, and which considers those that break these injunctions as *adhârmikas* or offenders to be punished like criminals ? Century after century and one political revolution after another has witnessed us departing more and more from the ancient law of the country. The old land-marks have shifted their ground, and it is impossible to restore them to their old positions. That we changed as circumstances from time to time required is natural and is, therefore, one might say, to our credit. But one feature of these

* Vide Manu Chap. VIII. 371. † Ibid Chap. II. 31, 32.

‡ Ibid Chap. III. 9.

very great and numerous changes that we see in the old law, as compared with our actual life, is so remarkable that we can not leave it unnoticed. It is this, that we never made or adopted them, because we found them necessary or reasonable or required by the altered circumstances in which we found ourselves, but because being driven to make them we made them unwillingly and always under protest, always hoping that we should one day or other be able to go back to the purity of the old law. We have thus from time to time been driven to put up with changes made by foreigners or by circumstances which came upon us without our having been able to control them. We have again, as the circumstances changed, gone back and tried to restore the old law or custom and have sometimes partially succeeded in the endeavour. This restoration was often local, some parts of the country adhering to the changes, while others endeavoured the restoration. The result of this universal unwillingness to change the law, as the world changes, is that we have now to be ruled by a body of institutes the majority of which are not only unsuited to our present life and even actually obsolete, but are often inconsistent with each other. Another result is a feeling which is universal, that we are living in an age which is the worst of ages because we have strayed far from the original law and custom, and that perfection lies not in any change which we can adopt over that primitive law and custom but in a thorough restoration thereof,—a task which, not to speak of its suicidal character, is altogether impossible. A practical phase of this unreasonable fondness for the ancient law shows itself in the opposition which we see presented by our people to every change, adopted proposed or recommended, however, reasonable, expedient or necessary it may be.

Nor is the adherence to the established order of things always one which can be justified on the ground of its being the result of a desire to stick

to customs which are really ancient and cherished as national customs from time immemorial. The sentiment which prompts opposition to all proposals of reform, because they involve a change, is a blind sentiment in as much as it refuses to consider whether the proposed change is calculated to do good to the community. A flagrant result of the blindness is furnished by the strenuous opposition of our people to mitigate the rigorous custom of *Gosha* or *parda* which is so common in certain parts of the country. It is perfectly well-known, and no one hesitates to admit this, that the *parda* system of secluding our women in close confinement in certain parts of the house without allowing them to take exercise or to go out of the house or to see the face of any male other than their husbands and perhaps their brothers, fathers, and sons, was at first forced upon the people by the lawlessness of the Mahomedans, and then borrowed from them as a custom that was considered the fashion of the day because it was followed by the Mahomedan rulers of the country. But now it is neither forced upon the people, nor prescribed by the fashions of the present rulers, and there is therefore no reason why we should not revert to our ancient Aryan custom of allowing woman the liberty which is due to her. Take another instance. The early marriage of girls was forced upon Hindus by the anarchy and the lawlessness of the Mahomedan invaders of the country. During certain periods of their rule the Mahomedans considered and treated the Hindus as *Kaffars*, and as such not entitled to the possession of such valuable chattels as women who were not married. This led to every girl being married considerably before the marriageable age, and quite against the sacred law and the prevalent customs of the times. The causes which led to the adoption of this early marriage in those days have now ceased to operate, and being a relic not of our ancient civilization but of a tyrannical anarchy, to which we were subject, we ought to be more ready

than we are to receive favourably proposals made to alter the marriageable age of girls in accordance with our ancient law and history by which we still wish to be governed. But unfortunately such it not the case.

We will take one more instance to show that blind sentiment places opposition in the way of reform which aims at the removal of a custom which was either forced upon us or adopted by us because it prevailed in some community which was once in the ascendant. It is well known that the Hindu Shastra does not prescribe the shaving of widows' heads. And yet the custom is so prevalent in certain parts of the country, and the following it is considered a sign of high caste to such an extent that any proposal to abandon it is looked upon as subversion of all the social and religious fabric of the Hindus. Where did the custom come from? It is an inheritance from Buddhistic institutions which have left us so many legacies. Orthodox Hindus have such an abhorrence for the doctrines and practices of the Buddhists that they will not even enter a Buddhistic temple, and if they happen to do so, they will perform penance to wash their sin. The Buddhists have always been regarded as the greatest enemies of the Vedic religion of sacrifices and rites and therefore of all Hindu law. And yet here is a Buddhistic custom now followed and cherished as a most vital part of the Hindu religion by all!

X. All we say, therefore, is that when the altered circumstances of the times require a certain change to be made in existing customs, it is not fit and in keeping with the enlightenment of the age that we should oppose the proposal because it is not sanctioned by the Hindu Shastra. It behoves all who give a serious thought to the existing social evils to examine into every proposal for reform, and, if satisfied that it is calculated to remove an admitted evil, to put their shoulders to the wheel like men and take the best steps to carry out the reform.

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THE POONA SARVAJANIK SABHA.

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PROCEEDINGS OF THE SABHA.

A MEMORIAL TO THE GOVERNMENT OF INDIA ON THE RECENT ENHANCEMENT OF THE SALT TAX.

At a largely attended public meeting of the inhabitants of Poona, held under the auspices of the Poona Sarvajanic Sabha on 18th March 1888, the following Memorial was unanimously adopted. Sardar Rao Bahadur Gopalrao Hari Deshmukh was in the chair.

To,

His Excellency the Right Honourable
The Earl of DUFFERIN G. M. S. I. &c.

Viceroy and Governor-General in Council.

CALCUTTA.

MAY IT PLEASE YOUR LORDSHIP,

We, the members of the Poona Sarvajanic Sabha and the people of Poona in public meeting assembled, respectfully crave leave to lay before your Lordship in Council the following representation in respect of the recent enhancement of the salt duties from Rs. 2 to Rs. 2-8 per *manad* in Continental India and from 3 annas to one rupee in Burma, carried out under the Notification of 19th January last published in the *Gazette of India Extraordinary*, and request a favourable consideration, at the hands of your Lordship's Government, of the humble prayer for the repeal of the said measure of new taxation with which it concludes.

2. At the outset we unreservedly recognise the fact that the financial situation, as described by the Hon'ble Mr. Westland in his speech of 27th January last, imposes upon your Lordship's Government the necessity of meeting present requirements by securing an adequate improvement in the financial condition of the Empire. A large *present* deficiency of the revenues, as compared with the outgoings of the current year, on account partly (1) of adverse *exchange* and (2) mainly the Burmese demand for *extraordinary special expenditure*, coupled with what Government deem to be a reasonable apprehension of a *prospective* deterioration in the producing capacity of some of the existing sources of national income, particularly *Opium* and *Railways*, is the leading feature of the situation as presented in

the statement of the acting Finance Minister, above referred to; and as far as we are aware, though opinions may differ as to the responsibility of Government for this crisis, there is no divergence of views as to the imperative nature of its duty to make due provision for it and to restore the requisite financial equilibrium of annual income and annual expenditure which is undeniably the first condition of financial solvency.

3. On the question of ways and means, however, whether economies, borrowing, or taxation is the legitimate financial expedient to be resorted to for the purpose of meeting the exigencies of such a situation, we deeply regret that the conclusions at which your Lordship's Government, as at present advised, has arrived do not meet with the approval and support of the people of this country. Looking to the fact that the taxation in this country is already so heavy as to place it at a serious disadvantage in the industrial competition of the world, and that the pressure of taxation has always in this country fallen most heavily upon the poor classes, living from hand to mouth all the year round, it appears to us that, before proceeding to measures of fresh taxation of the poor man's necessities of life, Government would have consulted the interests of the country better and met public sentiment half way, if it had attempted to meet the present deficit by some other methods. There was room, in our humble opinion, for enforcement of economies in what is called "Optional Expenditure" *e. g.* *Public Works Ordinary*. The possibility of retrenchments in Military Expenditure also should have been considered, and the military measures of 1885-86, adopted by way of precautionary provision for a grave emergency at the time of the Russo-Afghan crisis, and not justified by subsequent events (as has been clearly proved by the fact that the increased army resources have been safely diverted for years together to the Eastern frontier in settling Burmah) should have been reviewed with an eye to economy in consideration of the materially improved position of affairs at the present time. But economies failing, as the crisis was due chiefly to the expenses connected with the occupation of Burmah, which was not a permanent charge, the next best course, in our humble opinion would have been, the raising of a temporary loan, to be repaid by means of *short-term* terminable annuities,—an arrangement which would have obviated the objections to such a method of meeting demands for extraordinary expenditure on the ground of injustice to future generations. Even if the general question of taxation *versus* borrowing or retrenchment be regarded as settled by the decision of your Lordship's Government to resort to fresh taxation, which would not have been arrived at if other sources were open to Government, yet we regret that in the choice of new burdens your Lordship's Government has resolved to have recourse, for the purpose of meeting the

present deficit, to an increase of the salt duties in preference to any other form of taxation, and we respectfully beg to submit that this resolution as to the further taxing of the poor man's salt, besides being open to serious financial objections, is unfair and harsh in the extreme to the millions of the poor classes, who barely earn enough to live upon from day to day, and of whom as many as 40 millions, according to Sir W. Hunter's calculation, "go through life on insufficient food," and who have, on all grounds of justice and humanity, special claims upon the consideration of the Government of India. No less objectionable appears to us also the procedure which Government has thought fit to adopt in promulgating and giving practical effect to this enhancement of the salt duties by 400 p. c. upon prime cost. Your Lordship regretted the cruel necessity which imposed upon your Government this painful duty, and the people of this country share in that regret. We should be, however, wanting in our duty as a representative Association, if we did not convey to Your Lordship's Government in adequate terms the general feeling of mingled surprise and alarm which this taxing measure and the unprecedented manner of its announcement have created throughout the length and breadth of the land.

4. First as to the manner of announcing the measure. As the taxing Notification of the 19th January last, adding, at a single stroke, no less than 1½ crores to the general revenues, makes a most important change in the budget arrangements of the current year and completely alters the complexion and conditions of the Budget of the next year, we humbly beg to submit that though issued on the strength of the statutory powers vested in the Executive Government by the Legislature under the provisions of the Salt Act 1882, and, therefore, technically unassailable in point of law, it would have been more in consonance with the spirit of the Indian Councils Act 1861, which seems, in its aim and purpose, to contemplate in matters financial a reference to the Legislative Council in respect of every large change in the financial status of the country, and more in harmony with usage and public sentiment, if its publication had been delayed till after the Budget statement in the Council at the beginning of the official year, a course which, in our humble opinion, would have caused in the present case no appreciable inconvenience to, or derangement of, the budget arrangements of the current year and would have saved the new measure from the charge of being a sudden surprise sprung upon the country with the precipitancy and haste of a measure for averting bankruptcy. The Government of India cannot afford to have its acts misconstrued as dictated by panic except in the face of a great war or famine, neither of which dangers threatened the country. As it is, we cannot but express our regret with all due respect that your Lordship's Gov.

verment should have elected to adopt in this case a procedure open to such objections and with no more justification than that afforded by the anticipated necessities of a financial situation, by no means unforeseen because they were neither so sudden nor so pressing as to constitute a grave emergency such as could alone have been made a legitimate ground for the exercise of the discretionary power of reserve taxation like that conferred by the Legislature upon the executive Government under the Salt Act 1882 for the purpose of meeting only sudden and extraordinary demands upon the public treasury which could not otherwise be provided for. The paltry advantage of getting a few lakhs of additional revenue during the current year was not a sufficient justification for such a departure.

5. Passing next to the *new taxation itself*, we find that the Hon'ble Mr. Westland in his speech of January 27 endeavoured to justify the decision of Government, to seek the requisite increase of revenues by augmenting the duties on salt rather than by any other measures or taxation. He said:—"The Government, in the beginning of 1886, appealed to the Legislature on the ground that *before resort was had to a tax which falls on the millions of the poorer classes, it was bound first to obtain a reasonable contribution from the more wealthy. But, that having been done we are now obliged to proceed one step further and adopt the measure from which we then were able to escape.*" (The italics are ours). With due deference we beg leave to demur to this description of the appeal to the Legislature made in January 1886, as also to the argument deduced from it in favour of the enhancement of the salt duties, as being dictated by considerations of *financial equity*. As Sir A. Colvin remarked at the time, the taxing legislation of that year was proposed and carried in the Legislative Council in no spirit of "apology" to the classes whom it concerned, but as a measure of strict "justice." The distribution of the public burdens, such as then existed, was pronounced both by your Lordship and by Sir A. Colvin as inequitable and indefensible. "The immunity of the middle and upper classes from their due share of the public burdens" was condemned by Sir A. Colvin in his speech of 4th January 1886 in introducing the License Tax Amendment Bill "as a grievous blot on our Indian Administration" and a "scandal of the greatest magnitude," when the poorest were called upon to pay heavily for the support of the Government, and the wealthier classes were exempted; and further your Lordship on the same occasion after endorsing Sir A. Colvin's view as to the injustice of the then existing distribution of public taxes remarked:—"It is then in the *name of justice* that we propose the imposition of this tax, and we

feel assured that every fair and right-thinking man in this country, no matter how his private interest may be affected by our action, will recognise that no other course was open to us." Thus, then, was the Income Tax of 1886 laid upon the upper and middle classes who had till then enjoyed almost complete immunity from public taxation. Far from being, therefore, a special measure of taxation exacting a special contribution from any particular class or classes over and above their due share, it was admittedly one, but by no means the final, step towards the rectification of an unjust anomaly in the then existing apportionment of public taxation as between the different classes of the community,—an anomaly first created by the taxing legislation of 1877-78 when incomes from trades as low as Rs. 200 per annum were taxed and permanent incomes from salaries were exempted, an anomaly admitted to be such not only by the administration which was responsible for it, but even by the succeeding administration and the removal of which ought to have been accomplished long before 1886. It will be thus seen that the tardy removal of that anomaly and the additional revenue it brought in, so far from justifying the imposition of any additional burdens on the over-taxed masses, would, but for the foreign policy pursued on the north-east frontier, have enabled the Government to grant additional relief to the masses by a further reduction of the duty on Salt. Be that, however, as it may, it was nowhere suggested in the debate on the License Tax Amendment Bill, that the new contribution demanded under it from the classes, till then exempt from all share of public burdens, was either "reasonable" or adequate, as compared with what was exacted from the other classes in the country.

6. Such being the status established by the legislation of 1886 in respect of the distribution of the public burdens, we humbly beg to submit that the new measure of enhancement of the salt duties, which your Lordship's Government has adopted to meet the financial necessities of the hour, far from carrying on a step further the work of rectification of inequalities in that distribution, begun in 1886, has the directly opposite effect of throwing it back, and adding unfairly to the burdens of those who already pay more than they should towards the expenses of the Government, and we express our regret that the claims of those, whom Sir A. Colvin rightly described in the debate above referred to as "the struggling, silent masses," have failed, in respect of the new measures of taxation, to receive their proper share of attention and consideration at the hands of your Lordship's Government. Under these circumstances we feel it to be our imperative duty to represent to your Lordship in Council that the recently enhanced

salt taxation is, even from the point of view of financial equity, an extremely unfair measure making a large and unjust addition to the already heavy contributions of the poorer classes, to the comparative exemption and relief of the higher and more wealthy.

7. But what is more serious to the classes affected by it, and aggravates its obnoxiousness, is the fact that the new taxation imposed under the notification of the 19th January last marks what we must reluctantly describe as a grievous departure from the policy of levying on a prime-necessary of life as salt a low rate of duty and raising revenues by stimulating instead of restricting its consumption, pursued with such beneficial results ever since its introduction by Sir John Strachey in 1877-78, and once more restores a system which had prevailed till 1877-78 and was condemned and abandoned as a failure in that year, namely, that of levying high duties on a restricted consumption. We cannot conceal from your Lordship's Government the very serious misgivings with which we contemplate the probable working of this retrograde measure as regards the consumption, amongst the millions of the poorer classes, of this absolute necessary of life. The anticipation of the Hon'ble Mr. Westland that it will not check consumption appears to us to be too sanguine to be realised, and it is besides based on an incorrect assumption. The basis of annual averages of consumption and its increase takes no note of local differences and of varying conditions of supply and demand which determine the *net result* of each year, while it places too much reliance on the assumed tendency of consumption to maintain with but slight variations its supposed "normal" level and rate of increase, independently of the results of duty levied, and on the effect of improved communications and "the generally improved condition of the people" to counteract any restrictive tendency of the present enhancement of the salt duties. Moreover, the acting Finance Minister's forecast is, we beg to point out, in direct conflict with the prediction made by Sir A. Colvin as regards the operation of such a measure in his speech on the License Tax Amendment Bill 1883. While, discussing alternative plans of taxation, Sir A. Colvin observed:—"For example we might have replaced, in part or in whole, the reduction of the duty on salt which was made by the preceding Government, but to have done this would, in the first place, have been to increase the burdens of the poorer classes of the community; it would have checked the consumption of salt which has risen from 24,498,000 maunds in the period from 1st March 1881 to January 31st 1883 to 27,792,000 maunds in the period from 1st March 1884 to 31st January 1885." The anticipations of the Honorable Mr. Westland are thus in direct conflict with the views of his predecessor, and, what is more to the point, are not borne out by the experience of the last

17 years. The figures quoted by Sir A. Colvin clearly prove that the consumption increased in three years, from the date of the lowering of the duty by Lord Ripon's Government, by 3,274,000 *maunds* or 263,520,000 lbs, thus giving one additional pound of salt per head of the population over that consumed previous to the reduction of the duty in 1882. The figures for the period subsequent to 31st January 1885 to the end of last year, when duly examined, would show that the increased consumption of salt, as the result of the reduction of the duty, has been fairly maintained with some slight variations incidental to the peculiar conditions of this trade as a state monopoly.

8. The consumption of such an absolute necessary of life and such an article of varied general use and so cheap of manufacture as salt can have practically no normal limit. The quantity of consumption of any produce is but the resultant of the economic equation of demand and supply, varying with the variations of both and exceeding the limits of neither. The conditions of this equation in the case of salt in this country, as established under the British salt administration, are however different from normal economic conditions which exist in respect to all other commodities generally with the single exception of intoxicating drugs. Our supply of salt, depending on the one hand on local manufacture which is strictly a Government monopoly and is worked as such, and on the other on foreign imports brought at nominal cost, is not determined by, and does not follow, demand. The factor of supply is the only determining factor, and it restricts, instead of being responsive to, demand. Unlimited supply being postulated, consumption follows demand, and demand is determined, that is, restricted or stimulated, by rates of duty alone. The net consumption of the country therefore from year to year cannot be taken as a test, as the acting Finance Minister has done, by which to measure the effect of high and low rates of duty. An examination of the figures of the consumption of salt during a period of 17 years (1870-71 to 1886-87,) with special reference to the operation of these two factors, and an analysis of the results disclosed by such careful examination will, we respectfully submit, show how consumption in actual fact varies from year to year with variations in the rates of duty levied, which determine the price of salt, and the extent of market supply which determine its abundance or otherwise; or, in other words, as Sir J. Strachey said in his Financial Statement for 1877-78:—“*When salt is cheap and abundant, the consumption is much larger than when it is dear and when the supply is restricted.*”

9. During these 17 years, two opposite fiscal systems have been tried. During the first seven years (1870-71 to 1876-77) the system followed was that which holds good only in the case of intoxicating drugs, namely, that of levying “high duties on a restricted consump-

tion." The results were (1) *stationary, even declining, consumption, and almost inelastic revenues?* The demand was everywhere kept down by high duties, and consequently high prices and a very low level of consumption prevailed. In North India, with a population of upwards of 95 millions, the consumption was not only at a stand-still but showed an actual decline of 12 per cent. Nor were the annual increase in the other provinces, except in Bombay, by any means proportionate even to increase of population. The revenue fared no better, showing an increase of only 4 per cent in 7 years.

10. In 1877-78 in view of these results of the "system of high duties," Lord Lytton's Government under the advice of Sir J. Strachey abandoned it, and inaugurated a new one, which continued in force till the recent action of the Government of India, namely that of "levying a low rate of duty on unrestricted consumption." The change of system was carried out, at its first tentative stage, only in North India and Bengal where the duties were reduced from Rs. 3 and Rs. 3-4 to Rs. 2-8. In Bombay and Madras, however, they were increased. Within the local limits of its operation this change from a system of high duties on a restricted consumption to one of low duties on unrestricted consumption was productive of the most satisfactory results. The demand rapidly expanded under the stimulus of the fiscal relief, and where the supply was adequate, there was a commensurate expansion of consumption. In North India, where for 7 long years it had shown no tendency to rise, it increased 50 per cent in 5 years, having advanced from 4,563,000 *maunds* to 6,838,000 *maunds*. In Bengal the increase of consumption was not in proportion to the reduction of the duty, owing mainly to the insufficiency of supply. Financially also, the partial adoption of this change of system was no less successful, the gross revenue showing an increase of 14.5 per cent in 5 years as against 4 per cent of the previous period of 7 years.

11. Encouraged by these results, before them, of the new departure in the salt policy adopted in 1877-78, the Government of Lord Ripon carried it a step further. The new system was extended to all India; and the duties were reduced all round to a uniform low rate of Rs. 2 per *maund* in 1862. The fiscal relief under the reduction measure was great and general, and it was justly expected that it would be followed by a commensurate increase of consumption; but the results have unfortunately fallen a good deal short of the expectation, and this is due to the action of the other factor in the problem of consumption, *variable extent of supply*. Demand rose every where, but supply was more or less unequal to it. In the first three years of the period (1882-83 to 1884-85) the conditions were better than in

the last two years (1885-86 and 1886-87), and increase of consumption proportionately higher. In the three years, Bengal shows an increase of 14 per cent as against 8.4 per cent during the previous 5 years. Madras exhibits a still better increase, 23 per cent in 3 years against the decrease of 2 per cent during the previous five years which was due to the enhancement of the duties in 1878-79—an increase all the more remarkable when it is remembered that consumption of salt in that Province had been absolutely at a stand-still, even with a tendency to occasional decline, during the 14 years previous (1868-69 to 1882-83,) which can only be ascribed to the fiscal relief granted under the reduction measure of 1882. But, on the other hand, in these three years North India and Bombay show, owing mainly to short supplies, somewhat meagre results as compared with what they might have been otherwise. In the next two years we have some small decrease of consumption in most of the Provinces, except Madras, which also showed but a slight increase. The results for the whole period were (1) consumption increasing on the whole but not in proportion to the reduction of duty (Bengal 7 per cent, North India 2 per cent, Madras 10 per cent, Bombay 23 per cent,) and (2) financially the revenues rose from £ 6,177,785 to £ 6,538,600 or 5 per cent in five years against 14.5 per cent during the period of the previous five years.

12. These results certainly are meagre; not to say unsatisfactory, but it would not be, in our humble opinion, reasonable to lay them all to the account of the reduction measure of 1882. Diminished imports and declining local manufacture (as in Bengal in 1885-86 and 1886-87), the failure of supply from the Government salt works, exhausted stocks, unusual wastages (as in Bombay last year); insufficient local supplies under this new excise system as in the Madras Presidency,—these have been among the leading features of the salt-supply during this period of 5 years from 1882-83 on the one hand, while on the other hand we have a rise of demand everywhere and complaints of inadequate supply, even from Madras, where consumption rose higher than elsewhere. Under these circumstances, we submit, there is little cause for surprise at the meagre results of the period in respect of consumption which, being due to *inadequacy* of supply, afford no index whatever regarding the potential capability of the great fiscal reform, first introduced by Lord Lytton's Government and subsequently developed by Lord Ripon's Government, to stimulate increased consumption, provided that some effective steps are taken to increase the supply commensurate with the growing demand.

13. It is noteworthy that the leading feature of the period (1883-

87) is the admitted fact, of *insufficiency of supply* in the market as measured by *demand*. The effect of the fiscal relief is everywhere apparent in a rapid expansion of demand; and the fact of insufficient supply is attested by admitted failures or short yield at the works and complaints regarding such. A restricted supply in the matter of a necessary of life is a serious economic evil, and while it entails needless loss on the treasury it is peculiarly unfortunate to the people where the Government monopoly is so badly administered as to deprive the people of what they stand in so great need of. The restricted supply in Bombay was admittedly the result of (a) the ill-advised suppression of local minor works, (b) the refusal to permit the opening of new salt works on the ground of difficulty of supervision, (c) the concentration of working areas without sufficient regard to climatic conditions, &c. &c. This evil of restricted supplies did not present itself in a striking manner during the first period of 7 years from 1870-71 to 1876-77, when high duties everywhere kept down the demand for salt, though, according to Sir J. Strachey, it was not wholly absent as in North India (vide Financial Statement for 1877-78). But during the second period, beginning with Sir J. Strachey's measure of 1877-78, when the duties were lowered in North India and Bengal and demand grew, it began to be felt. In Bengal the increase of consumption was not quite commensurate with the relief, mainly because of the shortness of supply. During the third period of 1882-83 to 1886-87, when that policy was further developed by Lord Ripon's Government, and it resulted in a most satisfactory increase of demand, this evil of *under supply* was brought out more prominently than before. Thus with almost every forward step in the expansion of demand, the shortness of supply manifested itself as an actual fact, and accounts for the absence of commensurate increase in consumption and consequently in revenues. It is our belief that throughout this period of 17 years the results, both in respect of consumption and revenue, would have been more satisfactory under a better working of the state monopoly of production. Here clearly there was room for reform and improvement, and Government would easily have secured the increase of revenue they stand in need of by removing the artificial causes which have hitherto interfered with adequate supply. The better working of the sources of supply, the opening of a larger number of improved private works, and local markets better supplied under an extended system of depots might probably have enabled Government to realize a larger revenue without adding to the burdens of the people, while it would have duly met the growing demand for more salt, and thus enabled the people to obtain an ample supply of a comparatively cheap material commensurate with their needs. It seems a matter almost of certainty that increased consumption

would have brought to the treasury at least one half the increase that it is now sought to secure by enhancing the salt duties.

14. Under these circumstances we beg to point out that instead of carrying a step further the work, begun by Lord Lytton and continued by Lord Rippon, and effecting a reform in the management of the salt works under state supervision with a view to secure an extended supply to meet an expanding demand and thereby improving the chances of increase of salt revenue, an attempt is now made, under the present measure of enhanced salt duty, to recede from the policy of low duties under which alone such expansion of demand has been possible, and to return to the old discredited and discarded system of "high duties on restricted consumption," which was in force during the first period (1870-71 to 1876-77); and we apprehend that the measure may bring in its train the evils of that system, namely, *declining consumption* and *inelastic, even falling, revenue*, and may in the end prove worse than a failure. The enhancement of duties under the Notification of 19th January may lead, as similar measures have done in the past, to a diminution in the demand by putting it out of the power of the poorest classes to buy more salt, and consequently to a diminution in the consumption of this prime necessary of life, and though the measure might yield some increased revenue at the start, it will eventually introduce the element of inelasticity and perhaps even decay in the salt revenue. The enhancement of duty is thus not only unjust as an adjustment on equitable principles of taxation on the different classes, but is impolitic also, in that it will check consumption and ultimately cause a loss of revenue.

15. But fiscal considerations of falling or inelastic revenues apart, the apprehension justified by the experience of the past 17 years, that the present measure of salt duty enhancement is certain to have a restrictive effect on consumption of a prime necessary of life, invests it with a most serious aspect, compared with which mere financial considerations lose much of their value. In its restrictive operation the measure will affect principally those classes whose incomes are insufficient or barely sufficient for their necessary expenditure; for it is they who are likely to consume less salt when it is dear. Taking 40 millions, according to Sir W. Hunter's calculation as the number of those who "pass through life on insufficient food," and adding another 40 millions from the lower-middle classes as the number of those who have to curtail their expenditure on necessities with every rise in their prices, we get a total of 80 millions, or one-third of the total population of India, upon whom this enhancement of the salt duties will fall with a crushing pressure. This total consumption, by these eighty millions of people, at the rate of 10.2 lbs. per head per year is about 10 million *mancois*, and if the consumption of

the country under the operation of the measure should fall, as Sir A Colvin prophesied in 1886, to the level of what it was at the time of the reduction of duty in 1882, in the next 5 years the quantity will be reduced by nearly 3 million *maunds*, and it is the 80 millions, and not the upper and upper-middle or middle classes of European and Native society, who will have to go with 3 lbs less of salt per head per annum. To these 80 millions of the poorer classes, a diminished supply of salt must mean positive privation, severe hardship and even positive suffering, if we accept the opinion of eminent representatives of the medical profession, that a diminished consumption of salt is one of the principal causes of several forms and species of loathsome disease. The higher duty will delay cheap improvement in agriculture, the better rearing of cattle, and many other similar industries where salt is largely used. It is to this side of the working of such a measure that we beg to request the particular attention of your Lordship's Government. The question becomes one of common humanity and justice, and we entreat your Lordship in Council to consider whether a fiscal measure, howsoever dictated by the hardest financial necessities, can in any way be defensible, when it is eminently calculated to inflict such undeserved privation, hardship and suffering on the poorest and most helpless millions of the country.

16. My Lord, this Memorial would be incomplete if we did not briefly refer to the fact that the action taken by your Lordship's Government in the taxing Notification of 19th January last received a kind of *post facto* sanction from the Legislature during the course of the debate on the motion by the Hon'ble Mr. Westland for leave to introduce the Petroleum Bill. Your Lordship on behalf of Government acknowledged in suitable terms of grateful feelings the expression of approval and support thus extended by the Legislature to the said measure; and it is our great misfortune, that with all our sincere desire to extend a similar support to your Lordship's Government on all occasions, we find ourselves unable even to congratulate your Lordship upon the said expression of approval and support by the Legislature because it has been based upon principles which, as will have been seen from the observations recorded in the foregoing paragraphs of this memorial, are opposed to those, which in 1882 led the Government of your Lordship's predecessor to pursue an opposite policy in the interests of "the struggling, silent masses". We crave special permission to observe that, with all due respect to the Honourable Members of your Lordship's Legislative Council, we find ourselves unable to endorse the spirit of the criticism which seemed to doubt the wisdom and justice of the great relief measure of 1882, and which seemed to assume that no apology was needed to the country for the enhanced duty on salt,

as though it was the most convenient financial expedient available to Government for tiding over any difficulties without causing the smallest hardship to any one, and least of all to the "struggling, silent masses." This spirit of criticism, when contrasted with the expression by your Lordship of your regret for the cruel necessity which imposed upon you the painful duty of enhancing the tax on salt, shows how the additional Members of the Supreme Legislative Council failed more or less to grasp the real importance of the fiscal measure in question and also to faithfully and adequately reflect the opinion of the country on that measure; while one Honourable Member went the length of assuring the Government of India that "we (the Council) would not complain if our Finance Minister tampered with the salt duty" to any extent provided he reduced the court fees, and remitted the export duty on rice, and subsequently the Income Tax also! This circumstance of the additional Members of the Supreme Legislative Council having failed to accurately and faithfully represent the opinion of the country on this very important question furnishes a very strong argument, if any additional argument were needed, in favour of expanding and reforming the Legislative Councils, as under the existing system it is not possible to always secure an adequate and faithful representation of the wants and wishes of the country. We would request your Lordship's attention to the following extract from the speech in which your predecessor warmly supported the great relief measure of 1852, as containing in our humble opinion a suitable reply to all criticism of the character referred to above.

"And now I will pass on to a consideration of the arrangements proposed with respect to the salt tax. I can really add very little to what has fallen from my hon'ble friend Major Baring with respect to that matter. I confess that I am a very strong advocate of this portion of the Budget. I think that the large reduction we propose in the salt tax is very desirable, both upon general grounds and upon financial grounds. My hon'ble friend Major Baring has dealt with the financial portion of the question, and I can add nothing to what he has said in that respect; but I desire to express the difficulty which I feel in adopting the view which has been put forward by some of my hon'ble friends in the course of this discussion, that this tax upon salt—which is a tax upon a necessary of life: which is a tax of many hundred per cent upon the natural price of the article: which is paid, as I believe I am justified in saying for or on behalf of every person in this country, of all the many millions gathered under the sceptre of our Queen-Empress—is not a tax which is felt by those who pay it: is not a tax which it is desirable to reduce apart from the financial considerations which lead to its reduction, in order to confer a benefit upon the great mass of the population of this country. My hon'ble friend Raja Siva Prasad has stated his opinion that this salt duty is felt by the people, that it does press upon them, and that they will obtain considerable relief by the reduction now proposed. I confess that I find it very difficult to suppose that that is not the case, and that a tax of this kind, paid by men whose annual income is as low, or nearly as low, as the figure mentioned

by my hon'ble friend Major Baring, does not press heavily upon those who are least able to contribute to the necessities of the Government.

"I know that it has been sometimes argued, in favour of the reduction of this tax, that no man can consume more than a certain amount of salt, and that therefore, the tax presses most unequally upon the poor as well as the rich. That is an argument which in India may, I admit, be pressed too far, because, as we all know from the habits and the charity of the people of this country, the wealthier classes have always a very large number of persons depending upon them, and the salt tax they pay is not a tax upon what they consume themselves only, but also upon the salt consumed by the large number of human beings dependent upon them for their existence. Nevertheless, when every allowance is made for that consideration, I am at a loss to understand how it can be argued that this tax is a peculiarly equitable tax: because, however great the number of dependants a rich man may have, it is quite impossible that the amount of salt duty he pays can bear to his revenues anything like the same proportion which the amount of duty paid by one of those poor payats described by my hon'ble friend, bears to his small and miserable income.

"My hon'ble friend Mr. Inglis remarked that we should not repeal the salt duty, but equalise it. 'Take off,' he said 'the differential duty in Bengal.' That would have been in many respects a good thing to do, if we had done nothing else. If, however, we had taken off the differential duty on sea-borne salt in Bengal, and left the salt duty as it was in other parts of India, there would have been plenty of people to tell us that we had taken off the duty for the benefit of the Cheshire manufactures. That is exactly the style of argument which would have been used, and it would undoubtedly have been true as regards the effect of the repeal of the duty on sea-borne salt, though not as regards the intention of the Government.

"Then there is another point which presses with me very much in respect to this salt tax, and that is, the effect it has on agriculture. We all know that the consumption of salt is very necessary for cattle, and in the papers to which my hon'ble friend Major Baring referred, and very remarkable papers they are, in connection with this subject—namely, the reports from Rajputana with respect to the result of the recent salt arrangements in that part of the world—particular attention is drawn to the fact that in many cases, while the consumption of salt by the people themselves is not diminished, the amount of salt given to the cattle has diminished greatly. It is, no doubt, contrary to public policy to maintain at a high rate a tax which has a practical tendency to discourage and interfere with the progress and advancement of agriculture. Then, again, it must be borne in mind that, as my hon'ble friend Major Baring said, this tax, when lowered in other parts of India a few years ago, was raised in Bombay and Madras, and the quotation he has made from a very able newspaper on the Bombay side shows that the people of that part of the world have not forgotten that fact, and that they are of opinion that the tax raised against them has pressed upon them heavily, and that they will undoubtedly rejoice in a reduction which will bring down the tax nearly to what it was before it was raised a few years ago.

"Now, it seems to me that, with respect to this salt tax we are in this position. If the salt tax does not press upon the people—if it is a tax which they do not feel at all and do not object to pay, then it does form, without doubt, the best possible financial resource you can have, and the lower you can bring it down, the

greater is the security to the people of India against other forms of taxation. If on the other hand, the salt tax does press upon the poorer classes of the country then surely it is only right and just that the Government should give those—the poorest classes—a share of the prosperity which the country is enjoying at the present time, even although it may at some future period of financial difficulty and disaster be necessary to re-impose the duty temporarily, in order that we may recoup ourselves for the loss which such a condition of affairs would impose upon us. But, then, my hon'ble friend says that all experience shows that this reduction does not reach the people. I can really add nothing to what my hon'ble friend Mr. Baring said upon that subject. I cannot say what may be the experience of this country. I can only say that the experience of all other countries is precisely the other way, and I am altogether unconvinced that large reduction of taxations will not ultimately reach the consumer, and will not be found here, as everywhere, to benefit the consumer at large. With respect to that, I may say that it is the intention of the Government to use every effort in their power to make known as widely as possible this reduction of the salt duty. We propose to address Local Governments on the subject, with a view to their taking measures to make the reduction everywhere known to the actual masses of the people themselves, and I would also ask the aid of the Vernacular Press in regard to that matter, and beg them to make the reduction as widely known as possible among their readers in every part of the land."

In December 1884 when Lord Ripon replied collectively to the numerous addresses presented to him in the Town Hall at Bombay his Lordship referred to the success of that fiscal measure and expressed a hope that at no distant date the Government of India would be enabled to reduce the duty on salt still further. He said:—

"Gentlemen, I rejoice to observe that in many of your addresses you have spoken with gratitude of the reduction of the salt duty. (Cheers) There have been those who have pretended that that reduction has conferred no benefit upon the country; but hard dry facts are there to contradict that statement, because the revenue from salt is rapidly growing, and as it grows it shows that the consumption must be increasing, and that there must be more of that valuable commodity at the disposal of the poor. I look forward at no distant day to the time when the salt duty will have fully recouped itself—(cheers)—and then it will be in the power of my noble friend and successor to consider the propriety of a further reduction."

To show how heavily the duty on salt presses upon the poor masses, it would not be out of place to refer briefly here to the real requirements of the country in this respect. To say nothing of the requirements of agriculture, including those of the cattle, the population of India (250,000,000) would require over 31,000,000 *maunds* for human consumption alone, at the rate of 10.2 lbs per head per annum; while the actual consumption, even under the great relief measure of 1882, did not much exceed 27,000,000 *maunds*, including the salt consumed for agricultural requirements. These figures show almost conclusively how the conditions of the salt administration in the country have been preventing an adequate consumption of that neces-

nary of life by throwing artificial barriers in the way of the normal development of its consumption. The figures are eloquent enough to tell their own tale, and we refrain from further commenting upon them.

17. On behalf of these millions of our poorest brethren, therefore, we beg respectfully to approach your Lordship's Government with this humble but earnest appeal for reconsideration of the decision as to this enhancement of the salt-duties to which effect was given under the notification of 19th January last. If the measure had been brought before the legislature and discussed along with the general Budget, the attention of Government would have been drawn to the considerations set forth above, and doubtless, as in the case of the Petroleum Bill, means suggested of realising a larger revenue from salt without adding to the burdens of the poor by stimulating consumption. The opportunity has been denied to the people of this country, and we accordingly pray that your Lordship's Government will be pleased to remit this fresh taxation as a measure of relief to those who are entitled to special consideration. We submit this appeal on the three grounds above set forth, namely,

(a). That from the point of view of financial equity, in respect of distribution of public burdens, this measure of enhancement of salt-duties is unfair to the classes who already pay more than their fair contribution towards the expenses of Government ;

(b), That it will be productive of the serious economical evils of a diminished consumption of a necessary of life and will eventually turn out financially unprofitable ; and

(c). That in its restrictive operation on consumption it will inflict severe privation and even suffering on the millions of the poorer classes.

18. Hoping that your Lordship's Government will be pleased to accord to this, our humble prayer, and to the claims of the millions of our "struggling silent masses" in the country, a generous consideration, we beg to remain, my Lord,

Your Lordship's most obedient and humble servants

GOPALRAO HARI DESHMUKH,

Chairman of the Public Meeting.

No. 2240.

Government of India.

DEPARTMENT OF FINANCE AND COMMERCE.

Simla the 30th April 1888.

To,

The Chairman of the

Sarvajanik Sabha, Poona.

Sir,

I am directed to acknowledge the receipt of your letter No. 34 dated the 21st March 1888, to the address of the Home Department, forwarding a Memorial adopted in public meeting on the recent enhancement of the salt duty,

2. I am directed to say that the Memorial will be laid before His Excellency the Governor General in Council.

I have the honour to be,

Sir

Your most Obedient Servant,

J. E. O'CONNOR,

Assistant Secretary to the
Government of India.

RAJA SIR T. MADHAVA RAO ON THE LAW OF RESTITUTION OF CONJUGAL RIGHTS.

The reply of Raja Sir T. Madhava Rao to the recent circular of the Government of India, inviting the opinions of leading Native gentlemen of all classes and creeds on the proposal of the Bombay Government to amend the Civil Procedure Code so as to abolish the existing penalty of imprisonment for refusing to obey the decree of a competent tribunal for restitution of conjugal rights and thus to bring the Indian law on the subject in full accord with the English law as recently amended, has been placed at our disposal, and we gladly make room for it in the full belief that the readers of the *Journal* will like to have different views on the subject placed before them so that they may form their own judgment with regard to the desirability or otherwise of the proposed amendment. In our number for October last we published a paper on the subject by a well-known Sanskrit scholar on this side of India who, as will have been seen, supports the proposed amendment with some modifications. In the interests of free discussion we felt it our duty to supplement that paper by some observations of our own; and we shall also avail ourselves of the present opportunity to record a few more observations on the subject under discussion. With these preliminary observations we give below the full text of Raja Sir T. Madhava Rao's paper :—

Madras 22nd October 1887.

FROM,

RAJA SIR T. MADAVA ROW K. C. S. I.

TO,

THE HON'BLE H. E. STOKES,

Ag. Chief Secretary to Government, *Madras.*

SIR,

I have the honour to acknowledge your communication No. 1427 Judicial, dated the 4th July 1887 on the subject of certain proposed legislative action concerning cases involving conjugal rights.

2. I beg briefly to state my views as the result of careful consideration and consultation.

3. The Hindus are the most conservative of all civilized peoples.

4. Of all matters, they are the most sensitive in the matter of marriage.

5. The interests of peace and order require that Government should not interfere in this matter unless *at the request of the people themselves*, who know their social institutions infinitely better than an alien Government can know.

6. Government is wise in recognizing and giving effect to marriages according to customs of pre-historic antiquity.

7. Marriages take effect themselves, owing to the continuous and combined action of religious, social and political influences.

8. The least wish on the part of the Government to weaken these influences is only too likely to be misunderstood or misconstrued and to cause discontent on the part of the people.

9. Even the suspicion of such a wish must alarm the people.

10. In these circumstances, I deem it my duty both to the Government and to the people to earnest-

ly recommend the postponement of the measures under reference to a future and more advanced generation, as the postponement by the English people of the question of marriage with the deceased wife's sister.

11. The philosopher may be impatient of the delay thus necessitated, but not the practical administrator.

12. In regard to marriage two things are absolutely necessary for social peace, security and happiness.

First. The court of justice should make *just decrees* (just according to the peace of the people.)

Secondly. The court should have all the powers necessary to enforce its decrees

13. The latter condition is manifestly as vital as the former.

14. It is to this latter condition that the main question under reference relates.

15. The question is, what powers should the court have to enforce a decree ordering a woman to live with her husband. The answer of the community concerned will be, that the court should have the power to employ, at its discretion, all the means possible for the end in view, namely to persuade or coerce the woman to live with her husband.

16. The possible means are:—

(a) Admonishing the woman personally.

(b) Giving her time to cool, to think, and to consult.

(c) Attaching her property to pay fine, damages, compensation which may be eventually awarded.

(d) Making her over to the husband or directing the husband to take charge of her directly or through parents and relations.

(e) Simple imprisonment for a short period.

17. This plurality in the means to be employed is unavoidable because of the great number and variety of possible cases to be provided for. One

INDEPENDENT SECTION

medicine cannot answer for all diseases, nor one punishment for all offences.

18. The procedure prescribed must be efficacious both to cure and to prevent.

19. I will now offer a few remarks upon each item of the foregoing category.

(a) Admonishing the woman personally.

Suitable admonition addressed by the Judge to the woman herself will generally succeed in inducing the woman to submit to the decree. The Judge's words will carry greater weight with her than those of persons who might have put her up in the suit. The very idea of being liable to be so admonished will have its deterrent effect.

(b) Giving her time to cool, to think, and to consult.

After the admonition, the Judge may give her two or three months to reflect and come to a conclusion. Generally this will have the desired effect. During the interval, the parents, friends and relations and even the husband will have the opportunity to explain matters to her and to bring about submission to the decree or a compromise with her husband, especially when she is informed of the other means which the Judge has in reserve to be brought to bear on her.

(c) Attachment of her property.

When this step is seriously taken, any objection on the part of the woman will probably disappear if there be any property to attach. On the other hand, if there is little or no property this step will be inefficacious except that it brings her in sight of more serious steps, a circumstance which will not be barren of benefit. A disadvantage attendant upon this part of the procedure is, that it is so easy to conceal or do away with property in the shape of jewellery or money, which is usually the case. Fraudulent disposal will, however, result in imprisonment. Yet it will be

often difficult to prove the fact, and more difficult to recover the property.

(d) Making her over to the husband or directing the husband to take charge of her directly or through parents or relations.

Instances there may often be in which this step may be even a positive relief to the woman, because it may be the means of honourably disentangling her from the toils of a number of intriguers. For example the parents or brothers of the woman may have quarrelled with her husband, and on that account, bound her to refuse to go to him.

Moreover, she might think that the husband, who takes charge of her by the order of the Judge, will thereafter treat her all the more considerately.

Again it is a procedure which is the most congenial to the community concerned, and it has the sanction of immemorial usage observed through successive dominations up to the latest. It is also the most natural, the simplest and the most intelligible procedure and in perfect accord with the Hindu law.

(e) Simple imprisonment for a short period.

This may be for *one or more days*, each day being reckoned from sunrise to sunset in order to prevent detention of the woman during night. The place of confinement may be a suitable room in the Civil Jail or in the female reformatory or even in the court house. The friends and relatives of the woman may be associated with the guard. Arranged in this way, the imprisonment may be even for one day only, divested of all grossness compared with the imprisonment to which all the women of every land and nation are liable and which they actually undergo under the Criminal law. There could be little objection to the imprisonment thus proposed. It would be useful as an easy test of *bona fide* determination of the woman as distinguished from a mere freak or whim or a temporary impulse of passion.

N. B.—The Judge will dispense with even the short imprisonment if the husband does not want it. Such imprisonment will operate more by its presence in the procedure than by its actual use.

Note.—It might possibly be asked why not altogether dispense with this mild form of short imprisonment. It would be something like asking why not altogether dispense with the balance wheel which restrains and regulates clockwork or with the weights on the safety-valve of a boiler.

Such is the *ensemble* of the means which the Judge may use at his discretion for the enforcement of his decree.

He will of course prefer the milder to the more rigorous means. In short, he will adjust his choice to the requirements of each case in reference to the object in view.

Explanations.

20. We must not hastily generalise from the solitary case of Rakhmabai and expect many cases of the sort. The Legislature is bound to be guided by average facts and not by exceptional ones.

21. The cases will actually be surprisingly few.

22. The very few cases that may occur are sure to find solution under the procedure sketched above—the solution being either submission to the decree or a compromise between husband and wife.

23. A total elimination of imprisonment from the procedure would greatly weaken the hands of the judge. He would consequently be known to be unable to enforce his decree in the large number of cases in which the woman has no property.

24. The public alarm and sense of insecurity will be great indeed, it being well known that millions of women in India have no property of their own. Even a contingent possibility is enough to give rise to general alarm. The poor who form the majority will be alarmed because they cannot lose their wives without great misery. The rich who are the most

influential will be alarmed because they cannot lose their wives without great disgrace.

25. The marriage tie which has been and ought to be strong in India would become very brittle. While it need not be of cast iron strength it ought not to be made so weak as to break at the slightest strain. Under the procedure sketched above, it will be of fair strength but could be broken by a little sacrifice on the part of the woman concerned, that is to say, by her undergoing the short and innocuous imprisonment mentioned, which she could not shrink from if she should really feel that her happiness would be destroyed by joining her husband.

26. It would be very regrettable indeed if the vast Hindu population of India should come to think that Government desires to weaken the marriage tie, so as to put it in the power of any woman, with little or no property, to break it—to break it at any time or stage of her married life and under whatever system she had been married, minor or adult, consensual or non-consensual, whether the marriage has been consummated or otherwise, whether the woman has borne children or not.

27. Under such an impression, it may be feared that it will become difficult to maintain peace and order.

28. Cases calculated to cause popular excitement might arise in all parts of an extensive and thickly populated continent. Here it may be the wife of a Zamindar with a number of followers, or of a Sowcar with a number of dependants, or of a Sirdar with a number of turbulent retainers. There it may be the wife of a Sepoy with comrades bearing arms: in a third place, it may be of a Mahomedan Fakir, or it may be the wife of an influential Bramhin priest, or it may be that of an excitable Bhil, or of a jealous Rajaput, or that of a warlike Sikh, or of a manly Kunbi or of a labourer on a coffee, or tea or indigo

Every case of the sort may lead to factious combinations and factious fights.

29. Apart from all this, the important fact must not be overlooked, that the women of India are entirely dependant for livelihood on the men, and that the more the women are separated from the men the more will they be exposed to the evils of starvation, prostitution, infanticide, disease, misery and even personal violence at the hands of the injured men.

30. Such evils are happily singularly rare in India, and nothing should be rashly done which may have a tendency, proximate or remote, to generate them. On the contrary, far-sighted benevolence and statesmanship ought, by all means, to maintain those long evolved social adjustments which secure the food, clothing and shelter of one half of the vast population by the other half, and which also beautifully subserve the rearing of children, and all the more imperative is the duty especially at a time when manufacturing industries are gone, food is leaving the country in enormous quantities, and the means of subsistence are being extraordinarily pressed upon.

31. Such consequences as above mentioned may not be sufficiently realised even by many of the educated members of the Hindu community because they have not had sufficient political experience or responsibility. They form but a drop in the ocean. A few of them may possibly express a languid assent—an assent which they have only to communicate to their wives to excite their disgust and indignation—to the measures proposed by the Government, but the assent must be with a good deal of mental reserve the depth of which Government must be unable to gauge.

Few of them, I fear, approve the measure with the earnestness of conviction.

32. If the Government think at all, that those measures will find favour with the female part of the Hindu community, no greater mistake can be com-

mitted. The fact is, any loosening of the marriage bond would, if possible, be more repugnant to the Hindu *women* than the Hindu *men*.

In whose interest then is the marriage tie to be loosened ?

33. On occasions of trouble arising out of the matter, men and women, young and old, rich and poor, the conservative and influential priesthood of all classes, will probably be against the Government, while it is difficult to say who will be in favour of it, except a few students of abstract Sociology in advance of the general community by several centuries.

32. It may be doubted, whether even the wife, allowed or encouraged to separate from the husband, will be on the side of the Government, for she must after all be in a miserable plight—condemned, excoriated and reviled by her fellow-men and women, without any one to marry her and to afford her food, raiment and shelter.

35. It would be absurd to make Indian law in respect of marriages follow English law, the marital sentiments of the two communities being so very different and of such different degrees of solidification. If on this point, a Hindu's opinion do not carry sufficient weight, note what Jeremy Bentham says in the following passages :—

“In transplanting a law from one country to another the same law verbally is not the same law really, when the sensibility of the two people is essentially different. A certain law in Europe produces the happiness of families ; transplanted into Asia, it would become the scourge of society. Marriage in Europe and the East is not a contract of the same kind ; if it were thought to subject it to the same rules, it would evidently cause unhappiness to all the parties interested.” (*Vol I. p. 33.*)

Herbert Spencer also gives serious warnings on the subject.

36. I strongly deprecate experimental legislation in regard to marriages. If you *must* make experiments do not make them all over India at one and the same time, but make them on a smaller and safer scale.

37. Above all make the people happy according to *their* idea of happiness and not according to *yours*.

38. If you insist upon liberating Rakhmabai from the marriage tie do it as an act of special dispensation just as you remit even capital punishment as an act of special mercy. Bad as this course would be, it would be far less mischievous than the proposed abolition of the political sanction.

39. In conclusion, it may be useful to give the following summary of the objections which may be taken to the proposed abolition of imprisonment.

Hindu marriages are connected with religion. Any interference with such marriages amounts to an interference with religion.

The Hindus strongly dislike interference with their religion, law and custom. The measures under reference will be so disliked.

The Queen's proclamation of 1858 will be insisted upon.

There is no necessity for the proposed legislation. Rakhmabai's case is no justification. Foreigners are incompetent to deal with such matters. The Hindus desire no such legislation. On the contrary they deprecate it.

For innumerable generations things have gone on fairly. A certain social settlement or equilibrium has been established.

It should not be meddled with, making the wife over to the husband has been the ancient custom. It has continued to be observed after British advent in India.

Imprisonment was substituted without the knowledge and consent of the people.

The proposal to abolish both the ancient custom and its modern substitute amounts to the abolition of the political sanction of marriage.

English marital laws are not applicable to India. The proposed legislation, is repugnant to Hindu feelings and sentiments. It loosens the marriage tie. It must cause general alarm.

Excitement and disturbances may arise. The dissociated women will be exposed to violence at the hands of the injured men.

Secessions will be made, attempted or threatened for exactions and other sinister purposes.

A painful sense of marital insecurity will prevail.

For the many evils arising there will be no compensating benefit because the conduct of the people generally will continue the same as ever.

The *female part* of the Hindu community dislike the proposed legislation even more than the *male part*.

For the measure under reference education has not sufficiently advanced among the men, much less among women.

Regard being had to the present internal and external state of India it would not be good policy to carry out the proposed legislation.

Divorce, X

40. I beg here to offer a few observations on the question of divorce which forms a part of the reference.

It may be noted that divorce is far less necessary for the Hindu than for the European community. The reasons will be found stated in the paper marked A and appended to this. Applications for divorce by Hindus would be extremely few and far between. Divorces cannot be altogether refused but they must be very sparingly granted. The pre-requisite for granting a divorce may be, that the procedure sketched above has been exhausted on the woman concerned without success; or that the woman concerned has

satisfactorily proved that her happiness would be destroyed unless a divorce is granted. The divorce should be granted in conformity with Hindu law or with the customary law of the caste concerned. A divorce by mutual consent may be preferable. Divorces should be difficult especially where monogamous marriages are concerned. As for details, in regard to children, property & the long established caste customs will be the best guide, because they must be the outcome of very long experience. Any modification of those customs must be limited to the imperative demands of general equity. The opinion of a Panchayat will be useful to the Judge and will serve as a buffer between the court and the people.

Social reform.

41. I don't deny the necessity of social reform in the Hindu community. I also recognize the fact that the legislature will have to lend its aid in carrying out social reform, but I think that social reform should be initiated by the community which is most concerned and which is also best informed. I further think that the legislature should as heretofore abstain from all interference until its aid is asked for by a respectable number of respectable Hindus.

A.

Memo. X

The fact is that judicial separation and divorces are far less necessary in the Hindu community than in the European community. X There are more chances of discord between husband and wife in the latter than in the former community. This arises from the fact that marriages in the European community are between parties more differing from each other than in the Hindu community. An Englishman may marry a woman of other countries than England—of France, of Germany, of Canada, and so forth. On the other hand, a Hindu habitually marries only a Hindu. In

the English community a Protestant marries a Catholic; in the Hindu community a member of a given sect marries in the same sect. In the Hindu community the husband and wife speak the same language, profess the same creed, belong to the same profession, are of similar manners and customs, are of similar modes of life in regard to food, dress and other social conditions. They are nearly of similar ages, are of similar mental peculiarities, abide in the same country and are therefore less separated from each other. Property being a source of discord, the European wife has a property of her own, while the Hindu wife has little or none of it. A European's wife can earn her livelihood better than the Hindu wife and is therefore less dependent on the husband than the other. From the effects of long evolution, the Hindu woman is more habitually obedient and patient of injuries. The husband finds it far more difficult to dispense with the services of his wife than the European. The European wife can marry a second time, whereas the Hindu woman seldom or never. Hindu social opinion against separation of husband and wife is much stronger than European social opinion. Marriage is more costly among Hindus than among Europeans; therefore a divorce causes a greater loss. Among Europeans the marriage is determined by young and inexperienced people under the impulse of misleading passion; among Hindus it is determined by older and more experienced parents under the guidance of calm judgment. The Hindu wife is more necessary for the Hindu husband for bringing up the children. Intemperance being a fertile cause of discord, the Hindus are remarkably temperate. The European marriage has resolved itself almost into a civil contract, whereas the Hindu marriage has a profound religious significance. The Hindu wife regards it as the greatest and most inexpiable of sins to desert her husband, a sin punishable after this life. Again, the European wife enjoys the society

of men other than her husband much more than the Hindu wife.

The foregoing essential differences need to be carefully considered by the legislature before applying English marriage law to the Hindu population.

Such are the deliberately recorded views on this recently much discussed question of so able and experienced an administrator as Raja Sir T. Madhava Rao. It will be readily admitted that the Raja has had a varied and almost unique experience as the chief Minister in three Native states (Travancore, Indore and Baroda,) and that, however much one may differ from his views, they are certainly entitled to very respectful consideration. What enhances in our opinion the value of the Raja's frank expression of his mature opinion is the fact that very few persons, if any, will question his genuine sympathy on behalf of Hindu social reform, although it has been the fashion now a days in certain quarters to set down as an anti-reformer a person who can not support the fads of a few amiably enthusiastic gentlemen who have persuaded themselves into the dual belief that real, genuine zeal for Hindu social reform is their exclusive monopoly, and that the Indian legislature has simply to give effect to their behests to bring about a sudden and magical regeneration of the so-called degenerate Hindu nation. We have not the slightest intention of disturbing the self-complacency of these *doctrinaires* reformers who are quite welcome to find what solace they can by airing their views; but it is to be hoped that the lessons—the unmistakable lessons—they have learnt during recent years will not be thrown away upon them in future. We believe that the revived controversy has taught us two lessons more especially, firstly that no movement in favour of Hindu social reform has the slightest chance of success which is based upon the recognition of some principles, foreign and non-Hindu in their

character, and which seeks to gradually and insidiously introduce such changes as will eventually make the Hindu society like the model and *beau ideal* of the promoters of the said movement, and secondly that a movement which ignores the existing condition of the Hindu society, and professes to be based upon the real or doubtful sanction to be derived from some obscure passages in the Vedas, can not possess the necessary elements of success, and can, therefore, be expected to bear no fruit. The social system of any given community is not what it is because it is sanctioned by its scriptures, but principally, if not wholly, owing to the fact that that system is actually by experience found, or is believed, to answer in a fairly adequate manner the purposes which such a system is intended to serve according to the requirements of the community. For instance, it is hardly reasonable to expect that because any particular system is found, or is believed, to have fairly succeeded in Europe, the same system is suitable to India, and that it must succeed here also. The passage from Jeremy Bentham which the Raja has reproduced in his letter, ought to carry conviction home to those who are usually in the habit of looking to the West for inspiration or approval in respect of their opinions on Indian social reform. And it is to be hoped that the lessons which we have endeavoured above to specially emphasize will not have been altogether thrown away upon those who want to crowd into half a dozen years the ordinary achievements of perhaps as many centuries.

We shall now turn to the immediate subject of Raja Sir T. Madhava Rao's paper. The procedure for the enforcement of a decree for restitution of conjugal rights appears to have undergone a marked change during the last twenty years. It would seem, as has been pointed out by the Raja, that after a decree had been passed, the wife used to be handed over to the husband bodily, and that she was per-

haps sent to jail if even, after her bodily transfer to the husband she bolted away from the lawful custody of her husband. The first process would appear to have been put a stop to by a decision of the Calcutta High Court as being opposed to the principles of the British procedure under similar circumstances. The decision in question was given on the 23rd July 1866 in the case of *Ameer Chand versus Chotan Beebee*. The appeal came before a divisional bench consisting of Messrs Justices W. S. Seton Karr and A. G. Macpherson, and on the two Judges disagreeing it was referred to a third Judge, Mr. Justice L. S. Jackson, who agreed with Mr. Macpherson in holding that the husband-plaintiff was not entitled to recover the bodily possession of his wife who, if she disobeyed the decree of the court for restitution of conjugal rights, might be sent to jail for her contumacy but who should not be bodily handed over to the husband-plaintiff as though she were "a horse or other brute animal." The judgments recorded by the three judges in this case may prove of interest to the reader at this stage, and we reproduce below the full text of those judgments. Mr. Seton-Karr, as the senior judge of the divisional bench, recorded his judgement as follows:—

I am of opinion that a suit of this nature, which may be termed one by a husband against his wife and others for the restitution of conjugal rights, will lie in the Civil Courts, and that it is not barred by the absence of the husband for many years at Hurdwar or other places in Upper India. The cause of action would be the refusal of the wife to cohabit with, or return to, the husband.

But it is argued by the pleader for the appellant that the order of the Courts should have simply been one for damages. The Courts, it is said, are not competent to order the wife to return to her husband, or, at any rate, they cannot adjudge to the husband corporeal possession of his wife, as if she were a chattel, nor enforce their decree in his fashion.

Cases of this kind do not appear to have been very numerous in our Courts. Still at page 42 of Macpherson's Civil Code for 1860, it is said that a claim to the *personal custody* of a woman, on the ground

that she is the wife of the complainant, is cognizable by the Civil Courts. Cases are quoted in support of this position, and at page 37 of the decision of the Agra Sudder Court for 1855, the majority of the Court ruled that such a suit would lie, and that a Civil Court could enforce such a claim. At page 166 of Macpherson's Code it is also stated that, in suits by a husband against a wife and others in order to oblige his wife to *return to cohabit with him*, the refusal is held to be the cause of action.

It is said, too, that decrees for the restitution of conjugal rights brought in the Courts in England would be enforced, not by the delivery of the person of the defendant, but by ordering the defendant into custody, as for contempt of Court, in case of refusal to cohabit (see Shelford on the Law of Marriage and Divorce, page 576.) I have great doubts, however, whether we ought to apply these rulings to this kind of cases in India, or whether there is anything to prevent our Courts decreeing to the husband the actual possession of the wife, making her over to him. There does not appear to be any settled law or practice against this course, and the decisions quoted seem to me to favor it. We are bound to administer the law in a manner suited to the people and country, especially if the case be not distinctly provided for. Section 200 of the Civil Code of Procedure seems not to have anticipated such a case. A wife can hardly be termed a specific "movable" of which "the delivery can be made to the party to whom it shall have been adjudged." Nor, again, do I think that the provision for imprisonment of the party against whom the decree is made, and for attaching his property, ought, or was intended, to apply in such a case. Surely it would be a harder course to imprison a reluctant wife than to deliver her to her husband who wishes to cohabit. And to tell a husband, and a husband of the class before us, that he could "attach his wife's property," in order to get her to live with him, would probably be no remedy at all.

On the whole, I do not feel inclined to interfere with, or add anything to, the decree of the Lower Court, which is not shown to me to be illegal. I would adjudge to the husband the possession of his wife, and would allow the decree to be enforced by his taking possession of her. What course should be followed if the wife break away from her husband, I do not think we are at all called on to state at this stage of the litigation, nor to anticipate any such proceeding.

In this view, I would dismiss the appeal with costs, and make no change in the order of the Courts.

His colleague in the divisional bench, Mr. Mac-

pherson, took the opposite view and recorded his judgment as follows :—

The appellant in this case contends, and, in my opinion, rightly contends, that a suit will not lie by a husband to recover possession of the person of his wife. But I have no doubt that a suit will lie by a husband, in the nature of a suit for the restitution of conjugal rights, for a declaration that he is entitled to his marital rights, and for an order that the wife do return to him and live with him. Such an order is an order "for the performance of a particular act" within the meaning of Section 200 of Act VIII of 1859, and if the wife refuses to obey it, the decree may be enforced, as that Section provides, by the imprisonment of the wife or by attachment of her property, or by both imprisonment and attachment.

It is said, and probably with truth, that orders for the personal delivery of the wife to the husband have been made both by this Court and by the late Sudder Court. But I can find no authority for the making of any such decree; for, unless the case falls under Section 200 in the way in which I think it does, it is not provided for by the Code at all. Section 200 certainly does not warrant the making the wife over in person to the husband.

The decree of the Lower Court restraining the defendant who is the mother of the wife, from preventing in any way the return of the latter to her husband, is quite proper. But I think the decree, so far as it concerns the wife and so far as it goes beyond a simple order that the wife shall return to her husband and live with him, should be modified. The plaintiff must be left to such remedy as he may have under Section 200 of Act VIII of 1859, if the wife should refuse to obey the order.

Mr. Seton-Karr thereupon made the following order for referring the case to a third Judge, as he did not feel quite sure that Sec. 200 of the old Civil Procedure Code (now Sec. 260 of the new Civil Procedure Code) would not justify the Court in decreeing the delivery of the wife to the husband. He wrote :—

I am not positive that, after all, Section 200 may not warrant the delivery of the wife to the husband, or may not empower the husband to take possession of the wife, by the words "for the performance of a particular act." But the case is one of nicety and difficulty, and I should wish it to go a third Judge to say whether the order of the Lower Court should be interfered with, and if so, in

what way. The order of the first Court, with which the Judge does not interfere, is, that the plaintiff is to take his wife out of his mother-in-law's house, and the latter is not to interfere.

The third Judge, Mr. Jackson, then recorded the following judgment, supporting as we have already stated above the view taken by Mr. Macpherson. He wrote :—

This is a case referred for the opinion of a third Judge under the procedure previous to the Charter of 29th December last.

The suit was brought by a husband against his wife and others, the parties being Hindoos, to obtain his conjugal rights. The plaintiff obtained the decrees of both Courts below, and the learned Judges, in hearing the special appeal, have confirmed the decrees in substance; but they differ on the point of law, what precisely should be the relief granted to the husband,—Mr. Justice Seton-Karr being of opinion that bodily possession of the wife may and ought to be delivered to the husband; Mr. Justice Macpherson holding that the decree ought to be merely declaratory, to be enforced in case of disobedience by attachment. I am of the same opinion as Mr. Justice Macpherson.

A wife cannot be looked upon as property, movable or immovable, which passively undergoes transfer from one person to another. If she could be so dealt with, it would have to be determined whether she was movable or immovable, and some curious questions of limitation might arise; and if the wife were property, she could not, obviously, be a party to the suit, as she is in this case, and always must be in suits of this nature. And, further, it seems to me repugnant to the principles of civilized society, whether European or British Ladian, that an adult human being, wife or otherwise, should be delivered over as a horse or other brute animal might be.

In truth, it seems to me that the function of the Court in a suit of this nature must be simply to determine, as between the husband and the wife, whether he is or is not entitled to his marital rights. If the decree of the Court be in his favour, the wife, as a party to that suit, is bound to yield obedience to the decree, and if she refuses to do so, may be dealt with according to law. And in like manner, any other persons whose conduct may have entitled the husband to include them as defendants in the suit, will be bound to comply with the decree, and may possibly be liable to pay damages to the aggrieved husband.

There are three cases bearing on the point, cited in the argument before me. Two were from the North-West Provinces.

In the first of these cases, although the suit is designated in one part of the report as a suit "to recover possession of the person of his wife," the question really tried by the Court was "whether, under the Hindoo Law, the appellant should be compelled to cohabit with her husband, who has taken another wife." On this point, which is not before me, the majority of the Court decided in the affirmative (Mr. Coverley Jackson dissenting.)

The second case, from the reports of 1865, was also a suit "for the recovery of conjugal rights," and the Sudder Ameen decreed "that the wife be delivered to the husband, "with the nose-ring which he presented to her." This decree was reversed by the Zillah Judge, but restored on special appeal by the Judges of the Sudder Court. If this is to be considered as a ruling by the Sudder Court at Agra, that a wife may be delivered bodily, with her nose-ring, to her husband, I should respectfully decline to follow it. But, in truth, in this, as in the preceding case, there was no argument at all on that point, the only question discussed being whether a *second* marriage, in breach of the first nuptial contract with the plaintiff, could be any impediment to his asserting his conjugal rights. The Sudder Court finally held that the second marriage was invalid, and the plaintiff entitled to his decree.

The third case cited was from the decisions of our own Court (3 Weekly Reporter, p. 193). In that case, which appears to be a decision of Steer and Phear, J. J., there were two husbands, each setting up a valid marriage. That of the plaintiff was affirmed. Towards the end of the judgment, I find it stated that one objection made to the suit was, that it would not lie, "because there is no provision" of law how a decree for possession of a "wife is to be enforced." The answer to this was easy; the Court, however, say, "but it is as easy to deliver over a wife to "her husband as any other property to "which he is entitled."

This, I think, is a mere observation of the Judges, and not a deliberate ruling that a wife is to be so delivered. Indeed, one of the learned Judges who tried that case,—Mr. Justice Phear,—informs me that the remark found its way into the judgment, as far as he is concerned, from pure inadvertence.

I concur, therefore, with Mr. Justice Macpherson in ordering that the decree of the Court below be so far modified as to make it a declaration that the husband is entitled to conjugal rights, and that the wife, defendant, be ordered to return to his protection.

It may be stated here that in this case the court of the first instance (the Principal Sadar Ameen of the district of Patna) gave the decree in favour

of the husband-plaintiff, and ruled that the plaintiff was entitled to recover the bodily possession of his wife. This was on the 20th April 1865, and it was confirmed in appeal on the 28th August 1865 by the first appellate court (the District Judge of Patna). And it was against such a decree that the wife-defendant preferred a special appeal to the Calcutta High Court with the result already recorded. It would thus seem that until 1865 the Civil Courts in British India—to say nothing of the practice in Native States—fully recognized the Native custom of handing over bodily a recalcitrant wife to her husband, and that the *English* method was substituted in its place by *English* judges without consulting Native opinion. It may be stated here that even now in those cases which do not come under the cognizance of the constituted Civil Courts, but which are disposed of by the caste Panchayats, a similar procedure is generally followed with great advantage. Mr. Seton-Karr wrote:—“We are bound to administer the law in a manner suited to the people and country, especially if the case be not distinctly provided for.” Surely it would be a harder course to imprison a reluctant wife than to deliver her to her husband who wishes to cohabit. And to tell a husband, and a husband of the class before us, that he could ‘attach his wife’s property,’ in order to get her to live with him, would probably be no remedy at all.” And it may be added that nothing is more absurd than to change the Indian law in reference to any subject, not because the Indian sentiment prevalent for the time being demands it, but because the proposed change would be in harmony with the altered English law on the subject! There was probably good reason why the penalty of imprisonment for refusal to obey the decree for restitution of conjugal rights was abolished in England, and this measure may perhaps prove of the greatest advantage to the United Kingdom,—nay, in course of time the natives

of India themselves may perhaps wish to adopt the new reform when they are satisfied of its propriety and utility. We for our part should not be sorry if even the the suit for restitution of conjugal rights is abolished tomorrow. But that is no reason why it should be *forced* upon India before she herself desires it. We may here be permitted to refer to two subjects of a somewhat analogous character, which ought in our opinion to clearly prove the propriety and justice of our contention that no reform whatever, whether political, social or religious, should be forced upon India before she asks for it; for if a reform is ever to be popular and successful, it must have the popular sentiment arrayed in favour of, and not against, it. It, therefore, follows that the requisite change in the popular sentiment with reference to any particular reform must precede legislative action, and it would be quite competent and legitimate for a believer in any particular reform to endeavour to educate popular opinion towards such an end. But it can not be competent for him to urge that legislative action ought to precede the process of popular education. These propositions are true in all countries and at all times, and the history of many a movement places this truth beyond all doubt.

Assuming that Rakhmabai's case is a hard one, its hardship sinks into insignificance before that of an English case which occurred twenty years or more before the English law on the subject of restitution of conjugal rights was altered and the penalty of imprisonment was abolished in 1884. This English case was referred to by the late Sir M. Melvill in one of his judgments. In his judgment in the case of Ardesar Jehangir Framji *versus* Avabai, in which the plaintiff sought to send the defendant to prison under the provisions of Sec. 200 of the old Civil Procedure Code after he had once got her imprisoned for one month under Sec. 36 of the Parsi Marriage and Divorce Act, the learned Judge said:—

“The penalty provided in Section 36 of the Parsi Marriage and Divorce Act appears to be of the same nature, but it differs from the English process, in as much as a definite term is fixed for its duration. Under the English process the duration of imprisonment to which an obstinately recusant wife might be subjected is unlimited, and in the case of *Barlee v Barlee*, to which I have already alluded, the wife was actually confined, until, as it is stated, she became a lunatic. The framers of the Parsi Marriage and Divorce Act may well have recoiled before such a precedent, and may reasonably have considered that it was not desirable to subject a wife even to imprisonment for so long a period as two years to which she would be liable under the Code of Civil Procedure.” It would thus seem that even such a painful result as that which followed the persecution of the defendant by her husband in the case referred to in Mr. Melvill’s judgment, was not deemed a sufficient excuse by the British legislature to alter the law on the subject; and yet foreign and non-Hindu champions of Hindu social reform are amazed that the Hindu community refuse to go into hysterics over *Rakhamabai’s* case! It would be interesting to know if the actual experience thus gained of the actual extent to which the said English process against an obstinately recusant wife was liable to be abused, gave rise to any popular indignation, and if it took over twenty years or a quarter of a century to educate English public opinion to such an extent as to lead the legislature to wipe out the blot. Let those, who profess their inability to understand the so-called perversity of the Hindu community in opposing the proposed repeal of the penalty of imprisonment, take a due note of the forementioned fact, and remember that if it took a quarter of a century to awaken the British conscience to the enormity of the penalty to which an obstinately recusant wife rendered herself liable, it is simply idle to expect that the Hindu

community should be prepared to forthwith endorse the views of half a dozen or at the best a dozen gentlemen in the Bombay Presidency who have raised the present agitation in connection with Rakhumbai's case,—a case which ninety nine people out of every hundred might fairly refuse to regard as a hard case, and which, even assuming it to be a hard case, sinks into absolute insignificance when compared with the English case cited by Mr. Melvill in his judgment. There is another point which deserves a passing notice. Under Section 200 of the old Code of Civil Procedure the penalty of imprisonment to which an obstinately recusant wife rendered herself liable was of two years' duration, while under Section 260 of the present Code the term has been reduced to one fourth of what it used to be. It would, however, be interesting to know whether the English process underwent any variations between the date of the occurrence of the case referred to so pointedly by Mr. Melvill in his judgment and 1884 when the penalty of imprisonment in such cases was altogether done away with, and also whether if there were any variations proposed and adopted by the legislature,—whether on such occasions the total abolition of the penalty was advocated by anybody; and if such a measure was advocated, on what grounds it was successfully objected to.

But it might be urged that one community ought to profit by the experiences of another. Whatever may be the theoretical value of such a precept, the history of the world—of the civilized world also—shows that in practice communities are not disposed to take advantage of one another's experiences, but that they wait until their own experience or rather conviction prompts them to action. We shall illustrate our meaning by an example. In the United States of America there is no process like the suit for restitution of conjugal rights: and according to the notions of the Americans such a process is regarded as a sign of barbarism. And although in

point of nationality, religion, manners and customs both the English and the Americans resemble one another so closely as they do, yet the parent nationality has to this day refused to wipe out this blot, this remnant of barbarism,—the suit for restitution of conjugal rights—from its judicial system. The following extract from Mr. Melvill's judgment already referred to above may be read with interest as bearing on this question:—

The suit for the restitution of conjugal rights is one which commends itself to all minds, and has not found a place in the judicial system of all nations. Closely as the Americans have in general followed the English law, they have deliberately excluded from their system the suit for the restitution of conjugal rights. "Over England," says an American writer (Bishop on Marriage and Divorce, 4th ed., vol. i., p. 30) with national grandiloquence—"Over England, but not over this country, walks still that spawn of a dark age whose mission it was to keep unconjugal sinners in the strait performance of holy matrimonial duties, termed the suit for the restitution of conjugal rights." The Scotch enjoin "adherence," but it does not appear that they enforce a reunion against the wife or against the husband, when hateful to either. The Code Napoleon, which governs the greater part of Europe, has no process for compelling the cohabitation of discordant couples, or for constraining them, as Blackstone sarcastically remarks, "to come together again if either party be wretched enough to desire it contrary to the inclination of the other." I take these remarks from Mr. Macqueen's work on the law of marriage and divorce (pp. 314—315)—"No French lawyer," he says, "ever proposed the rude expedient of a prison." (although the French law reprobates matrimonial severance more strenuously than the English law does) "nor would it be just to say that any English lawyer deliberately recommended a thing so palpably tyrannical and futile." He arrives at the conclusion that even in England there is now no legal process that can prevent desertion or compel cohabitation. In this he seems to be mistaken; for there can be no doubt that the Court for Divorce and Matrimonial causes has the same powers which the Court of Chancery formerly exercised on the requisition of the Ecclesiastical Courts:

and in the case of *Cherry v. Cherry* (d) a writ of attachment was actually granted (though not executed) against the respondent who refused to return to her husband. But, however this may be, it is certain that even in England, where suits of this description have always been allowed, the action of the courts in enforcing their decrees has been very hesitating and uncertain. By the Canon law, from which the suit for the restitution of conjugal rights was derived, the court could compel cohabitation in every sense of the term. Before the Reformation, however, the courts were generally content to enforce their decrees by spiritual reprehension and excommunication; means which would commend themselves to a large class of the natives of this country, and, if they could be applied, would perhaps have more efficacy than any other remedy. When the Ecclesiastical Courts lost much of their authority, they had to invoke the aid of the Court of Chancery; and upon a *significavit* from the Ecclesiastical Court that a party was in contempt, the Court of Chancery would proceed to enforce obedience by attachment and sequestration. But the paucity of reported cases shows how seldom this power was exercised, and I can only find one case—*Barlee v. Barlee* (e)—in which severity against a recusant wife was carried to an extreme.

Nothing is further from our mind than to find fault with the English people and their legislature for their still retaining the suit for restitution of conjugal rights in its judicial system. All we desire to lay stress on is that it is not quite reasonable that a community, so very dissimilar from that whose example it is expected to follow, should be blamed in the way, the Hindus are now being blamed, by a class of perfervid enthusiasts for its reluctance and inability to slavishly imitate the example set by the other. As will have been seen from the judgments recorded by the three Judges of the Calcutta High Court in the case of *Ameer Chond versus Chotan Beebee* the penalty of imprisonment was substituted for the preliminary process, in force up to that time, of adjudging to the husband the corporeal possession of his recusant wife,—in short the preliminary process was done away with altogether,—because it was

opposed, not to the Hindu practice, but to the English practice under similar circumstances. And even then the penalty of imprisonment was made the primary process in such cases, because it was in conformity with the English practice. And now that the English legislature has seen fit to abolish that process, we too must do it, or be prepared to be called names! The Government of India in its circular calling for opinions on the proposed amendment of Sec 260 of the Civil Procedure Code characterizes the suit for restitution of conjugal rights as a useful process, mainly because it is, we fancy, still retained in the English judicial system; but in case the English legislature should abolish it, tomorrow, we shall be asked to do the same!! What we strongly deprecate and object to is not any particular reform, but the principles which underlie a process of enforcing reform like the one described above. If the prevailing Hindu or rather Indian sentiment be in favour of abolishing even the suit for restitution of conjugal rights as being barbarous, let it so be abolished by all means, even though England may still retain it, as being a useful institution.

It may therefore be taken for granted that the Indian sentiment is against the proposed abolition of the penalty of imprisonment for such marital offences. We shall not be surprised to find some of the members of the Rakhmabai Defence Committee itself opposed to the total abolition of the penalty. But it is worthy of consideration, (a) whether the duration of the penalty, which under the old Code was for two years and is now for six months, should not be reduced still further, and (b) whether the power of enforcing a decree for restitution of conjugal rights by imprisonment or by attachment of property or by both, which is now vested in the judgment-creditor, should continue to rest in him, or whether it should be vested in the Court. As regards the first point

we are inclined to think that the duration of the penalty should be reduced from six months to one month as in section 36 of the Parsi Marriage and Divorce Act. As we take it, the object of providing such a penalty is to test the genuineness or otherwise of the plea set up by the judgment-debtor, who usually in such cases is the wife, that she has entertained such a moral loathing for her husband that she would much rather undergo any hardship than cohabit with him, and this object can as well be fulfilled by her undergoing imprisonment for one month as well as for a longer period; and so far as we can see, no other object is served by the penalty. The Parsi case which Mr. Melvill decided in 1871 by refusing to commit the wife-defendant to jail for two years, after she had undergone a month's imprisonment under the special Act, was rightly decided by the learned Judge; because by undergoing the previous penalty she clearly demonstrated the earnestness and genuineness of her plea that according to her view her happiness would be compromised or even wrecked by her living and cohabiting with her husband. But it might be said that such an object as this could be secured by other means than confining the wife-defendant to jail even for a month. Rightly or wrongly the Indian feeling on the subject at present would seem to doubt the efficacy of other expedients. It must be also remembered that the Indian sentiment regarding the sacred character of marital obligations is so strong that some concession must be made to it, especially when we see such concession is already made in other directions. We have only to refer to the penalty—five years rigorous imprisonment—which a person on conviction is liable to undergo for committing adultery with a married woman—an offence which the English law regards only as a civil offence—and the peculiarity of the Indian sentiment, as opposed to the Western sentiment, on

the subject becomes at once strikingly apparent. And it is no wonder that that sentiment demands some adequate sacrifice on the part of the woman who desires to desert or has deserted her husband by refusing to cohabit with him.

As regards the second point, namely, whether the power now by law vested in the judgment-creditor of enforcing the decree for restitution of conjugal rights against the judgment-debtor by a coercive process should be continued, or whether it should be transferred to the discretion of the court, we are inclined to think that the said discretion should vest in the court, and not in the judgment-creditor. Cases may arise in which, though the husband-plaintiff may be entitled to obtain a decree for restitution of conjugal rights against his wife, still his previous conduct may be such as to dis-entitle him to much consideration being shown to him, and also as to make it cruel to enforce *at his instance* such a decree against her by any coercive process whatever, while at the same time her previous conduct may be such as to entitle her to the utmost indulgence that the court can show. That we are not drawing upon our imagination in conceiving such cases, can be well seen from the proceedings in an appeal case in the Calcutta High Court. In this case, Hurry Das Ghose *versus* Jogendronundini Dasi, the plaintiff sued his wife for restitution of conjugal rights. The facts of this case are very interesting and instructive, and are as follows :—

These were cross-suits : one for restitution of conjugal rights brought by one Hurry Das Ghose against his wife Jogendronundini Dasso, and the other a suit for maintenance by the latter. The parties, who are Hindus, were married in Calcutta in December 1868, and, up to the month of January 1876, lived together chiefly in the husband's house and sometimes in the house of his father. It appeared from the evidence of the wife, that, some time prior to the month of January 1876 the husband had given way to intemperate habits, and that, while in a state of intoxication, he

abused and beat his wife, and on two occasions had attempted her life. It was further proved that he had on several occasions brought prostitutes into the outer apartments. It appeared, on the wife's cross-examination, that the husband's violence was usually consequent on her reproaching him for leading such a dissolute life. In January 1876, the wife, in consequence of ill-treatment, left her husband's house and went to reside with her mother. While there the parties became reconciled: the husband visited the wife continually, sometimes staying five or six days together, and cohabitation was resumed. During this time the wife used frequently to urge her husband to give her money and to settle some of his property upon her as *stridhan*. In the month of May 1877 the husband went to visit his wife. He was then in a state of intoxication. She said to him:—"You are squandering your money; set apart some money in my name, that it may be my *stridhan*, and that no one else may have control over it." He replied, "As a woman, you ought not to have any money," at the same time giving her a slap on the face. He then left the house and never returned. Some time after this, he desired his wife to come and live with him at his father's house, promising, at the same time, that he would treat her properly. She refused to go, though her mother and brother advised her to accede to her husband's request.

The court of the first instance (Mr. Justice Wilson) decided the case in favour of the plaintiff, and the defendant accordingly appealed to the Calcutta High Court with the result that the decree of the lower court was confirmed, though substantially modified in one important particular. The appeal was decided by the Chief Justice Sir Richard Garth and Mr. Justice Poutifex, who delivered the following interesting and elaborate judgment:—

We are of opinion that the decree of the Court below should be confirmed. Speaking only for myself, I confess I think it very probable that, if we only had to consider the comfort and happiness of the parties concerned, the best way of disposing of the case would be to dismiss both suits. But the parties have taken their own course; they have insisted upon going

to the expense of a trial. The case has been decided by the Court below, and we have only to consider whether that decision is right.

Now, although we entertain no doubt, that, as a matter of law, a suit for restitution of conjugal rights may be maintained by a Hindu in this country, we are not at all prepared to say, that the same state of circumstances which would justify such a suit, or which would be an answer to such a suit, in the case of a European, would be equally so in the case of a Hindu. The habits and customs of the native community, especially as regards the marriage state, are so different from ours, that we think in such a matter as a suit for the restitution of conjugal rights, the Hindu and the European cannot always be fairly judged by the same rules.

We are bound to say, however, that, in this particular case, the conduct of the husband was such, both as regards adultery and cruelty, as in our opinion to justify the wife at one time in seeking her mother's protection, and if nothing had afterwards occurred, which amounted to condonation of the husband's offence, we are not prepared to say that he would have been entitled to sue her for the restitution of his conjugal rights.

He appears to have lived a very profligate life; he was not only in the habit of consorting openly with prostitutes, but he seems to have insulted his wife by introducing one of them on several occasions into her private apartments. He indulged habitually in wine and spirits (not perhaps to the extent which his wife would lead us to believe,) but at any rate, so as to be very constantly in a state of intoxication, and when he was in this condition, he illtreated and threatened his wife with knives and other weapons, in such a way as to induce very natural apprehensions on her part for her own personal safety.

Under these circumstances, she left his house, and went to live with her mother under the protection of her own family. Here her husband visited her, and through the wise and proper mediation of her own relations (her mother and brother) a reconciliation to all appearance took place. The husband, on the occasion of these visits, slept and cohabited with his wife in the usual way, and, so far as appears, with her full and free consent.

On one occasion he stayed with her for several days, and the result of this intercourse was that she became with child.

It appears to us that this conduct of the wife unexplained is certainly very cogent evidence that she had condoned his previous conduct. We think that, if in this state of things he had requested her to return to his house and she had refused to do so, he would have been entitled to bring a suit against her for the restitution of his conjugal rights.

It has been urged upon us strongly on behalf of the wife, that the fact of her thus cohabiting with him at her mother's house, must be attributed, not to any desire for reconciliation, but rather to a sense of duty, and to the obligations under which a Hindu wife is placed, to submit herself to her husband's wishes and authority, and we have been referred to a class of cases in England, of which *D'Aguilar v. D'Aguilar* (1) and *Curtis v. Curtis* (2) are a type, where it is undoubtedly said by high judicial authority, that condonation on the part of the wife must, in many cases, not be presumed from the mere fact of her continuing to cohabit with her husband after infidelity or cruelty on his part, because a virtuous and self-denying woman will often, for the sake of her children, or for the peace or reputation of her family, submit to live and even sleep with her husband as a matter of duty, against her own inclinations, and without any intention of condoning his offence. No doubt, there is much force in this argument, and if, in this instance, we could see that the cohabitation and apparent reconciliation between husband and wife were the result of actual or moral force or compulsion, we might take a different view of the case.

But here, as it seems to us, the wife was to all intents and purposes a free agent; she was under her mother's roof, and the protection of her mother and brother. There was no reason why, if she had so pleased, her husband might not have been excluded from access to her altogether. There was no difficulty about her child, because she had the child under her own charge, and no threats or intimidation appear to have been used by the husband, either to compel compliance with his wishes, or to take away the child from her, in case she refused to consort with him.

We cannot, therefore, accede to the contention of the appellant's counsel, that any force, either actual or moral, was used

to coerce her free-will, and that being so, we are disposed to put the same construction upon her conduct as we should upon that of a European lady under similar circumstances and to say that a reconciliation did in fact take place, and that she did so far condone his offence, as to restore him to his former conjugal rights and position.

The only remaining question is, whether the slap on the face, which he afterwards gave her on one occasion, was such an act of cruelty and ill-usage as to neutralize the effect of the condonation and to justify her in treating the reconciliation as if it had never taken place.

Mr. Bonnerjee was, no doubt, quite right in saying, that condonation, however complete it may be, in the sense of restoring the husband to his former privileges; is so far conditional—see *Durant v. Durant* (1) *Curtis v. Curtis* (2)—that it depends upon the offence of the husband not being repeated; and in the case of cruelty, we quite think that a much smaller measure of offence would be sufficient to neutralize the condonation than would have justified the wife in the first instance in separating herself from her husband. But then we consider that the act or acts of cruelty must be of such a nature as to give the wife just reason to suppose that the husband is about to renew his former course of conduct, and consequently to entertain well-founded apprehensions for her personal safety.

Now we cannot put so serious a construction upon what occurred in this case. The slap on the face was given with the open hand, at a time when the husband was under the influence of drink, and in a moment of irritation, when his wife was worrying him for money—a subject which seems to have been a very frequent cause of discord between them. The brother, certainly says, that he heard his sister cry out, and on coming into the room he saw the traces of tears upon her face, but considering the state of temporary excitement under which the husband was labouring, we think it would be taking too serious a view of the circumstances to say that the blow was sufficient to neutralize the effect of the condonation. If the wife had only exercised, as she should have done, a little good sense and discretion, she would have known that it was not a prudent thing to introduce irritating topics at such a time; and it is to be hoped, that when she returns to her husband's

house, which we think it our duty to require her to do, she may learn so to regulate her own conduct, and to deal patiently and judiciously with her husband's frailties, as to secure her own happiness and comfort.

There seems reason to suppose, that she is under some mistake as to the character of the woman who is living in Lokenath's house. From the affidavit which has been read to us, it appears that this woman is an old nurse and dependant of the family, who has lived there for many years. But we think it right, after what has occurred to secure the defendant a home untainted by the presence of any persons of bad character; and we, therefore, propose so far to modify the decree of the lower Court as to make it a condition that the house which the husband provides shall be in every respect fit for the reception of a virtuous and respectable wife.

As regards the costs, the Advocate-General has very properly offered on behalf of his client to waive his right to them in both Courts; but much as we approve of the spirit in which that offer is made, we think that we ought only to act upon it, conditionally upon the defendant submitting herself to the decree of the Court in all obedience and good faith. If she does so, she will have to pay no costs. If she does not, she must pay the costs of both Courts on scale No. 2. Either party will be at liberty to apply to the lower Court in the event of the terms of the decree not being fairly and properly carried out.

It will be seen that too much stress was laid upon the fact that the defendant, while under her mother's roof, resumed cohabitation with her husband and thereby condoned all his past offences; for we are told in the foregoing judgment that "if nothing had afterwards occurred (*i. e.* subsequent to the defendant's joining her mother,) which amounted to condonation of the husband's offence, we are not prepared to say that he should have been entitled to sue for the restitution of his conjugal rights." The learned Judges at the outset stated:—"The habits and customs of the native community, especially as regards the marriage state, are so different from ours, that we think in such a matter as a suit for the restitution of conjugal rights, the Hindu and the

European can not always be fairly judged by the same rules." And yet in this case they judged the defendant "by the same rules" by which they would have judged a European lady in a similar situation. It is not our purpose on the present occasion to criticize the judgment, which with, of course, the material modification introduced by the appellate court we fully approve of. It is quite probable that a virtuous and respectable wife, like the defendant in the Calcutta case referred to above, must have submitted herself in all obedience to the decree of the appellate court; but suppose that she was unable to comply with it. The question then arises, Is such a lady-defendant to be sent to jail or to be deprived of her property, if any, at the sweet will and mercy of the husband-plaintiff? Section 230 of the Civil Procedure Code vests that power absolutely in the judgment-creditor, viz, the power of choosing his own method of enforcing the decree, the court being powerless to interfere so long as the decree-holder does not apply to have his decree enforced in both the ways mentioned in Section 260. It is heart-rending to have to think that an obstinately recusant wife, like the defendant in the Bombay case, and a virtuous, respectable and obedient lady, like the defendant in the Calcutta case, should under the law, as it stands at present, be liable to be dealt with in the same way and that too at the sweet will and mercy of the husband-plaintiff. Whether a woman like the defendant in the Bombay case should or should not be sent to jail, we shall not undertake to say; but all we contend for is that it should not be in the power of a husband like the plaintiff in the Calcutta case to send at his sweet pleasure to jail a virtuous and respectable wife like the defendant in that case or even to deprive her of her property, if any, without the court having some discretion left to judge each case on its own individual merits. It is one thing for the court to decide a case on broad grounds of justice and ex-

pediency in favour of a husband-plaintiff whose profligate and unmanly conduct had compelled his virtuous and respectable wife to leave his protection, and to direct her to return to him, but it is quite another thing to send such a lady to jail for even an hour or to deprive her of her property at the sweet pleasure of her husband and without the court possessing the power to use its best discretion. While, therefore, we would retain the penalty of imprisonment of the reduced maximum duration, we would at the same time amend Section 230 of the Civil Procedure Code and deprive the judgment-creditor of the power he holds of coercing the judgment-debtor. We may point out here that the ordinary money-lender has already been deprived of this power over his debtors, although we pronounce no opinion on the propriety or otherwise of the action recently taken in this respect by the Supreme Legislative Council. All we desire to point out is that, the ordinary money-lenders having been deprived of their power, in this respect, judgment creditors in this particular class of cases ought surely to be deprived of it.

We pass on next to the consideration of the second subject suggested in the Government of India's circular of last year. The system of divorce is practically unknown to the *written* Hindu Law. It is but natural that all the religious systems, whether in the West or the East, should deprecate divorce of two persons of the opposite sex once united in the holy bonds of matrimony. But whatever the theory, in practice divorce is not altogether unknown among the Hindus although it may be that, as observed by Raja Sir T. Madhava Rao in his letter to the Madras Government, divorce is less frequently resorted to among the people of the East than among the people of the West. Speaking about the Bombay Presidency alone, about which we possess some direct information, we may say that, except among the Brahmin and semi-Brahmin sections of the Hindu

community among whom alone there can be no divorce, the process for obtaining a divorce, prevalent among all other sections of that community, is so easy that the people of the West might envy them the facility and ease with which marriage can be and is dissolved. Readers of Marathi newspapers are perhaps quite familiar with the notices through means of which a discontented or perhaps neglected woman from among these sections of the community conveys an intimation to her husband of her intention to re-marry in the event of his failure to comply with some specified conditions mentioned therein within certain specified time. Nothing is more common than to come across a couple of hundred such notices in any given week, and it may fairly be concluded that they afford a fair index of the ease and facility with which the marriage tie is dissolved without the intervention of the civil court. Such women on their remarriage and their new husbands doubtless run the risk of being prosecuted and sentenced, under the criminal law of the country, for bigamy and for committing adultery with a married woman respectively, because the criminal law of the country, as administered by British judges, takes no cognizance whatever of the custom of the caste—nay more, regards the said custom as opposed to public morality and endeavours to put it down. A case of this kind occurred more than twenty years ago in the Surat district of this Presidency. It was a case in which the husband of Bai Rupa prosecuted her for bigamy in having during his life time and without his consent married Karsan Goja, this new husband having been at the same time prosecuted for committing adultery with a married woman, Bai Rupa. The defence both of Bai Rupa and Karsan Goga was that in doing what they had done they had followed a well-known caste-custom, which allows to a woman the option of marrying another man during the life-time of her husband and without his consent or even that of the caste-Pan-

chayat, provided only that she returns to him any dowry or other property that she may have received from him. The Sessions Judge of Surat rejected this defence as being founded upon an immoral custom and sentenced Bai Rupa and Karsan Goja to 15 and 6 months rigorous imprisonment respectively. Against this conviction and sentence both the accused appealed to the Bombay High Court. In their petitions to the Bombay High Court the accused mainly relied upon the caste custom. Bai Rupa stated in her petition:—“My caste, that of Koli, is one in which *natra* marriages are allowed. It is customary in my caste to marry a second husband, if one disagrees with one's husband.” Karsan Goja in his petition stated:—“In our caste of Koli no one acts up to the *Shastras*, and it is customary for a woman to contract *natra* with another man during the life-time of her husband and without his consent.” The High Court accordingly formulated the following issues and requested the Sessions Judge of Surat to reply to them after further inquiry and after such further evidence as might be necessary. The said issues were as follows:—

1. Is it permitted to a woman in the Talapda Koli caste for any and what reasons, to leave the husband to whom she has been first married, and to contract a second marriage (*nâtrâ*) with another man in his life-time and without his consent?

2. Is the permission of the caste necessary as a preliminary to such a contract of second marriage (*nâtrâ*), or is such permission ever given subsequently to the contract; and if so, what is the mode in which it is given, and what is the effect which, when given, it is considered in the caste to have?

3. Quote any instances which may have occurred in the caste, within your own experience, in which a woman has contracted a second marriage in the life-time of her first husband and without

* Karsan Goja was besides fined Rs. 100 commutable to 4 months rigorous imprisonment.

his consent; and mention the position which such a woman has occupied in the caste since such second marriage.

The Sessions Judge of Surat replied to these issues as follows:—

1. "My finding on the first question is that it is proved by the depositions of the witnesses recorded that it is permitted to a woman in the Talapda Koli caste to leave the husband to whom she has been first married, and to contract a second marriage (nātrā) with another man in his life-time and without his consent.

2. "My finding on the second question is that the permission of the caste is not necessary as a preliminary to such a contract of second marriage (nātrā); that permission is sometimes given or withheld subsequently to the contract, i. e., on the complaint of the first husband; if she restore to him any property she may have acquired by her first marriage, she does not lose her position in the caste.

3. "My finding on the third question is that the instances quoted support the view contained in the two preceding questions."

And notwithstanding this evidence in favour of the accused, the Bombay High Court upheld the convictions and only reduced the punishment awarded to Karsan Goja and Bai Rupa to three months' and one month's rigorous imprisonment respectively, on the ground that, though the particular custom set up in defence by both the accused had been proved, it was opposed to the spirit of the Hindu Law.

This case was finally decided by the Bombay High Court on the 22nd April 1864, and the reason why we have briefly entered into the leading features of this remarkable case is that in our opinion it has an important bearing upon the second question formulated in the Government of India's circular of last year, namely, the desirability of the legislature providing some process for effecting divorce. To dream of introducing the system of divorces among those sections of the Hindu community to whom the very idea is revolting is simply absurd; while to sub-

stitute an elaborate process for a very simple one which now prevails among those sections which resort to it whenever occasion arises would be not only superfluous but mischievous also. Does any one suppose for a moment that the punishment finally awarded to Bai Rupa and Karsan Goja has during the last twenty years produced any deterrent effect on the particular community concerned or on any other community more or less similarly circumstanced, although the punishment was avowedly awarded in the interests of the so-called public morality, and not in those of the public morality as understood and recognized by the Talapda Koli caste? He would be a bold man who can answer this question in the affirmative. The simple fact that the punishment awarded to Bai Rupa was reduced from 15 months' rigorous imprisonment to one month's, and that the punishment awarded to Karsan Goja was reduced from six months' rigorous imprisonment and a fine of Rs. 100, commutable to four months' rigorous imprisonment, to three months' rigorous imprisonment, clearly shows how the strong evidence as regards the existence of the particular custom compelled the High Court to respect the said custom by inflicting upon both the accused a lighter punishment than that awarded by the Sessions Court. Properly speaking both the accused should, after the clear proof regarding the existence of the custom, have been discharged. And our whole contention is that if the British Judges in India duly respected the customs of the various sections of the Hindu community, there would be no necessity whatever for any elaborate divorce law being enacted. The various sections of the Hindu community introduced from time to time, as their own requirements rendered necessary, suitable modifications of the general Hindu law, and these modifications, having now become long established customs, ought to be regarded, so far as the particular sections of the community are con-

cerned, as their written law. And if this only be done, the state need not concern itself at all any further about enacting an elaborate divorce law for these classes.

X To sum up, our recommendations on the proposals formulated by the Government of India in their circular of last year are :—

(a) That the time has not yet come for altogether abolishing the penalty of imprisonment in cases for restitution of conjugal rights.

(b) That the maximum term of imprisonment to which those who disobey the decree of a competent judicial tribunal in such cases might be liable should be one month only, and that the provision of the general law on this subject should be assimilated to the corresponding provision (Sec. 36) in the Parsi Marriage and Divorce Act.

(c) That the judgment creditor in such cases should not have the power, at present vested in him by Sec. 230 of the Civil Procedure Code, of selecting his own method of enforcing the decree, but that the Court should have the power and discretion of refusing to enforce the decree in the particular way asked for, if in its opinion it was unduly harsh. In short the procedure in this respect should be assimilated to the procedure recently sanctioned by the Legislature in the case of enforcing money decrees.

X (d) That it is not at all necessary to have any divorce law enacted, provided only that the long-established customs of the different sections of the Hindu community in this direction are duly respected. X

THE BURMAH DEFICIT AND THE ENHANCEMENT OF THE SALT DUTIES.

Contrary to all expectations the new year has opened badly for the country. Financially speaking, the outlook is sad and depressing, and there is little in the horizon that we can see which is likely to relieve the gloom. After all the exhausting efforts and heavy sacrifices of the last decade of famine and distress, of war and war-scares, of conquests and annexation, we are as yet as far as ever from a prospect of rest, relief, and assured peace. While the political horizon is not yet clearing, and even discovers now and then a threatening cloud, we find ourselves in the midst of a financial crisis of unprecedented severity, which seems likely to strain to the uttermost our feeble resources, add to the burdens of the suffering millions of the land, and place us permanently at a disadvantage in the industrial competition of the world. What, however, adds to the anxieties of the situation is that there is not discernible at head quarters a proper appreciation of its nature and gravity, and consequently there is no serious inclination to make a resolute effort to grapple with it in a firm and bold manner. Mr. Westland is a good Controller-General of Finance, and a very capable accountant, but what we want at such a time as this in our Finance Minister is not departmental skill or mere administrative ability, but a statesmanlike grasp of the position of the country as a whole and of its present as well as permanent wants and resources. Lord Dufferin is a noble ruler with correct sympathies and views, but finance is not one of his Lordship's

strong points, and further he has not displayed sufficient strength of character to enable him to rise superior to the service influences by which he is surrounded, and which a Ripon or a Northbrook alone could at times overcome. Altogether, we feel hard times are coming, and there is no proper directive skill at the helm to guide the vessel of the state aright, through the shoals of narrow and jealous departmentalism on the one hand, and a misguided and crude empiricism too prone to experimentalize, on the other, and we may be pardoned if under the circumstances we, with the rest of the country, vainly sigh for a year or two of a Gladstone or a Goschen at the head of affairs in this country to put the house in order. The worst of it is, that the crisis of bankruptcy, which now confronts us, is principally attributable to the adoption a few years ago, against the almost unanimous protest of the country, of a policy of aggression in regard to Upper Burma. The war with that country may or may not have been necessary, but annexation certainly was an unwise and wanton adventure. Lord Dufferin the other day tried to vindicate the action of Government in this respect, but no vindication can justify the policy of saddling India with the entire expenses of this undesired alien accession of territory beyond her natural border. While loudly boasting that the whole enterprise was undertaken principally to defend the interests of English commerce and English expansion against French aggression, the Government of India had not the courage to call upon the English Government to follow the noble precedent set by the Gladstone cabinet in reference to the last Afghan war. We are aware, no useful end would be gained by entering, at the present moment, into a discussion of the justice or wisdom of this aggressive policy - and if we refer to it *en passant* here, we do so only to emphasize the fact of the responsibility of England and the Imperial Government for the embarrassment in which we now find ourselves.

Burmah, it is now admitted, has proved the White Elephant of Lord Dufferin's administration. The voice of the Rangoon Chamber of Commerce is now discreetly silent; the English commercial bodies too maintain a like attitude of prudent reserve. But the people of India cannot sit silent under the strain put upon their resources. They have to undertake the unpleasant duty of finding the requisite money to pay the piper. The scales have at last fallen from even official eyes. "I confess," said Sir J. Gorst in the House of Commons in September last (vide *London Times'* report of his speech) "that financially Upper Burmah has been so far a *disappointment*;" and again, "It is only candid that I should state that the financial result of the annexation of Burmah has been to throw on the revenues of India a heavier charge than was expected." "The estimate is that there will be a deficit in Burmah of £1,775,500 which may mount up to £2,170,560." The Honourable Mr. Westland, with equal frankness, in his speech on Friday the 28th January in the Viceregal Council, puts the "special expenditure, of which except in the item of military expenditure in Burmah, no reduction can be expected for two or three years" at £1,780,000.

The cost of the Burmese White Elephant is thus close on two millions a year. This addition to our expenditure is, however, not our sole difficulty. The budget estimates of Sir A. Colvin have turned out woefully wrong on either side of the account. The revenues show a serious deterioration, while expenditure is growing fast and cannot be arrested. It is impossible to stop or change the horses while crossing the stream. The work of aggression once begun must be got through on both sides of the frontier and that too, within the shortest possible time. The fat years, Mr. Westland tells us, "are gone;" and gone seemingly for ever, and "lean" years, Heaven knows how lean, "are coming on. And like prudent

men of business, it behoves us to be wise in time and provide, while yet we can, for another rainy day." Mr. Westland is apparently not a financial purist, and therefore estimates the present deficit at only 1½ millions. If he had been free to state the whole truth, he would have set down the deficit at 4 millions nearly, including "a working surplus of 2 millions for Famine Insurance and for the accidental outgoings of a large Empire.

But even a deficit of nearly 2 millions, low as is the estimate, is a very serious affair for a poor country like India. Optimist writers in the Press assure us that the Government of Lord Dufferin need not be appalled by this crisis. The course adopted by Government, however, is that of working along the line of *least resistance*. They dare not touch the import duties because of the *British* clamour it would raise; they dare not ask the English Government to bear part of the expenditure incurred to keep forward English interests; they will not reduce expenditure lest the services rebel; they therefore come down upon the silent millions who cannot speak, and levy a poll tax of 2 annas per-head by raising the duty 400 per cent upon the cost of manufacturing salt! In the exercise of the powers vested in it under the Salt Act of 1882, Section 7, Government has thought fit by a Notification in the *Gazette of India Extraordinary* "to raise the duty on salt from Ra. 2 to Rs. 2-8 in continental India and from 3 annas to Rs. 1 in Burmah," making thereby a sudden permanent addition at a moment's notice of nearly two crores to its annual revenue.

The deficit is thus met, and the way discovered of meeting it, whatever else may be said of it, has the merit of bold adventure; it may be a leap in the dark. The money required is found with the minimum risk of effective opposition, and the present difficulty is got over. The Government has its path cleared in a charmingly noise-less way, and now can

enjoy smooth sailing till it chances again to descry another and a possibly bigger rock a-head, which will then mean a shipwreck.

Viceroy and Secretaries of State come and go—the bubbles of their ephemeral reputation burst in vanity; but not so with the toiling millions of the land. They are constitutionally speechless, but none the less will they resent the injustice and hardships that are thus sought to inflict upon them. For the wanton luxury of a forward policy of aggressive war and needless and unjust annexation indulged in by their irresponsible rulers, they find all on a sudden, on the morrow of the Jubilee year of Her Majesty's reign, that they are made to suffer and that too in respect of a prime necessary of life. By a stroke of policy, as unjust as it is timid, the brunt of the crisis is made to fall with a heavy pressure on the weak and weakened shoulders of the poor masses in the country, who toil and toil from dawn to dark, and yet have to be content for part of the year with one meal a day, and who generally go through life on insufficient food.

The deficit is a hard and unpleasant fact which admits of no denial. Equally undeniable is the embarrassment which is its result to the financial arrangements of the year. The necessity imposed upon the Executive Government of filling up the gap and restoring the financial balance is obvious. There is no difference of opinion on this point between Government and the public. The real practical issue is as to the means of meeting the abnormal deficit. Native public opinion at any rate holds that the wise resolution, announced by Sir A. Colvin in his financial statement of March last year to the effect that, "in view of the causes which have led to an increase of expenditure and of the other considerations which present themselves in connection with the financial situation, it is not the intention of Government to add materially to existing taxation" should not have been departed from, and that the excess expenditure should have been

met by recourse to measures less objectionable. It might, for instance, have been met by the adoption of one or other of the following alternatives :—

1. By a vigorous enforcement of economies in various items of what may be called optional expenditure as distinguished from "obligatory," as was done at the time of the Afghan war,—economies intended to be temporary only for meeting temporary extra charges such as the present Burmah expenditure avowedly is, (vide Mr. Westland's speech); secondly, by effecting permanent economies in several of the directions suggested by the Finance Committee; and thirdly by curtailing the Military expenditure as far as practicable in accordance with the recommendations of the Army Commission and other high authorities; or if this was not practicable by reducing the strength of the European and Native armies to the standard of 1884-85, as the causes which furnished a plausible justification for the increase had by reason of the Boundary settlement ceased to be operative.

2. If such economies were not possible, or if in the opinion of Government they were not adequate to meet the present deficit, the precedents laid down by the Government on previous occasions should have been followed of asking the British Exchequer either for a rateable contribution or a loan of the necessary amount without interest repayable in small instalments; and such a course would have been more than justifiable under the circumstances under which this country has been placed in a position of such embarrassment, and would have made the British taxpayer bear in however small a degree the cost of the forward policy.

(3) Even if this resource was not available, a loan of a temporary character to be paid off by short period terminable annuities might have

been tried, and the usual extraordinary P. W. loan either added to or suspended for the period. This expedient has the high sanction of such eminent authorities as Mr. Gladstone, Mr. Childers, Sir S. Northcote and Mr. Goschen who have adopted it in reference to English finance with signal advantage. Irresponsible criticism regards such loans as timid and not heroic remedies, but India must be content with timid measures of relief, and cannot afford to be heroic.

(4) Lastly, if none of these courses appeared feasible or expedient, and fresh taxation were deemed to be the only means available, the Income Tax Act might have been literally extended, so to speak, and large agricultural incomes in permanently settled provinces, exempted in 1836 for special reasons, might have been assessed to the income tax,—a measure which in Bengal and North West Provinces, Oudh and Madras, would have, according to our rough calculation, brought into the treasury no less a sum than 40 to 50 lacs. The re-imposition of the cotton duties, taken off on the express ground that the condition of the national Finances permitted their removal, was another measure which it was perfectly open to Government to adopt on the old plan, or better still a general *ad valorem* Registration duty of one or two percent on exports and imports might have been tried as a temporary measure.

With such a choice of ways and means of tiding over the difficulty at its command, it was, to our mind, a deplorable mistake that Government should have considered itself justified in adopting the very worst policy imaginable for the purpose, and putting the burden on those least able to bear it. After making the fullest allowance for the difficult position in which Government is placed, as well as for the political exigencies of the party in power in England to

which the Government of India can not even with the best intentions shut its eyes, we maintain that this further taxing of the poor man's salt so as to make it by 25 p. c. dearer was an unwarrantable proceeding, while the rich man's coffee and sugar and tea go scot-free, and the pockets of the rich Zamindars of Bengal and N. W. and Oudé and Madras and of the rich tea-planters and coffee-growers of Assam and Chittagong are allowed to remain untouched.

The Salt Notification of January 19th last, marked so unusual a departure from the traditions of the financial bureau at Calcutta that it was generally expected that some explanation of it would be vouchsafed to the public. That anticipation has been fulfilled. Mr. Westland seized the first opportunity, though of course not bound to do so, of referring to it in his speech in the Legislative Council in the course of the discussion on the taxing Bills before it. The debate, as well as the explanation, will be memorable even in the annals of our Legislature. Were it not for its tragic seriousness, we for ourselves should be disposed to characterise the whole proceeding as a curious comic performance. Mr. Westland came forward, with a set formal speech, fortifying himself with carefully culled-out but partial extracts from Major Baring's speech of four years ago delivered on the occasion of the reduction of the salt duty from Rs. 2-8 to Rs. 2, and stating the conditions under which that measure was adopted. Mr. Westland pursued his way straight on, looking neither to the left nor to the right of the line in regard to the salt taxation policy, which he believed had been chalked out for him with a true prophetic vision by Sir E. Baring. Of course there is the usual expression of regret at the suffering the enhancement of the salt duty *may possibly* cause to the poorer classes. But the hard necessities of the situation leave Government no other alternative. The Honourable Peary Mohan Mookerjee next

rose to speak as a *selected* representative of the people of India. While admitting that he was taken by surprise, and had no time for the examination of the question, he subscribed to the soundness and sufficiency of the Finance Minister's plea, and volunteered an expression of warm approval on the part of himself and his countrymen of the Government measure. The Honourable Mr. Steel then rose, and as an exponent of a powerful section of the Anglo-Indian community of Calcutta, he defended the enhancement policy, and blamed the Government for being so apologetic in respect of a duty so light in its incidence. Such a duty as two annas per head per annum cannot, in the opinion of a representative of English Commerce, possibly press very hard on any section of the population, and with such an elastic resource in its hands, he told Government that it could well afford to take off the "intolerable" rice duty, and the still more "intolerable" income tax! The Bombay member spoke next, and though himself a large employer of labour, he was apparently overawed in the august presence of His Excellency the Viceroy and his colleagues, and forgot himself and fell in with the stream. Lastly the Viceroy addressed the Council. In a becoming solemn tone he accepted the approving voice of the Native members as the voice of "intelligent public opinion," expressed his grateful acknowledgment of the support thus given by them to the Government in its present difficulty; and concluded by expressing his deep regret that cruel necessity should have thus imposed on his Government this disagreeable duty of adding to the burdens of the poor.

Thus was played out this solemn farce of legislation which makes the hard lot of the suffering masses in this country harder still. The harmony of the proceeding was charming enough; but that not a single word of protest on behalf of the helpless poor should have been put in, that not a single member should have had courage enough to stand up

in his place to suggest any other alternative, that the poor Ryot's salt should have been allowed to be made dearer by a fiat of the Executive without a word of demur in the Legislative Chamber—these are some of the features of the debate in the Viceregal Council which will make it ever memorable. We cannot trust ourselves to describe the whole proceeding in its true colour; and so we shall content ourselves by saying that the debate was discreditable to the Legislative Chamber which, sitting as the guardian of the nation's sacred interests, showed no respect for its own independence, and was afraid to speak out against the executive Government; that it was more discreditable to the native members who ought to have known their duty better; and that, above all, it was most discreditable to the system which permits of such trifling on the part of an irresponsible Government with the actualities of a hard position. In fact, this debate supplies to our mind one argument the more in support of the demand of the National Congresses of Bombay, Calcutta, and Madras, for the reconstitution of the Legislative Council on an elective basis.

To return from this digression. The Salt Notification was perfectly legal under the present Salt Act, and we do not for a moment challenge the *legal* propriety of the action which the Government has taken in thus using the powers entrusted to it by the Legislature as an easy escape from the financial embarrassments which its own policy has brought on. We freely concede that Government is perfectly within its rights thus far, and would have been within its rights, even if it had so chosen, and raised the salt duty to the full maximum of Rs. 3 per maund allowed under the Act, instead of only to Rs. 2-8-0. The action of the Government appears to us to be open to condemnation on much higher and stronger grounds than those of technical propriety or legality. Before proceeding to state these grounds, we cannot help observing that the grant of such a tremendous reserve of

taxing powers to the executive administration is a blunder of the gravest seriousness, and, from a constitutional point of view, it is in conflict with the spirit, if not with the letter, of the Indian Councils Act of 1861.

Section 7 of the Indian Salt Act 1882 runs as follows:—

“The Governor-General in Council may from time to time by rules consistent with this Act

(a) “Impose a duty, not exceeding Rs. 3 per maund of 82½ pounds avordupois, on salt manufactured in, or imported into, any part of British India;

(b) Reduce or remit any duty so imposed, and reimpose any duty so reduced or remitted.

(c) Fix the minimum price at which salt excavated, manufactured or sold by or on behalf of the Government of India shall be sold.”

This Section, of the Salt Act, as it at present stands, raises two distinct questions, one of financial policy, and the other of constitutional law. We shall take the latter issue first.

The year in which the salt duty was reduced to Rs. 2 all round to the relief of the poorer classes was also the year in which this Salt Act was passed i. e. 1882. Thus, looking to the empowering 7th Section, we find that while, on the one hand, the Executive Government decides, in the exercise of its discretion to levy the duty at only Rs. 2 per maund, the Legislature, far from adopting a like schedule of duty leviable under the new Act, fixes the maximum amount of duty at Rs. 3, or one rupee more than the rate adopted or deemed necessary by the Executive Government. This is equivalent to conferring upon the Executive Government of the day an extensive and enormous *reserve of taxing power, under a legislative enactment*, by which it can at its own will and pleasure at a moment's notice add to its current revenues no less a sum than full

3½ crores without further application to the Legislature for sanction to that addition. It amounts to giving an enormous vote of credit in perpetuity, in advance and by way of provision by anticipation for an emergency that has not arisen, or may not arise,—a vote which, in constitutionally governed countries, is granted to the Executive only on special appeal and under special circumstances, and for a temporary or exceptionable purpose only. The bestowal of such taxing powers in *reserve and in advance* on the Executive administration by the Legislature is tantamount in effect to parting with its powers of control and supervision, which it enjoys as a legislative authority under the Indian Councils Act of 1861,—to the extent to which the reserve may be drawn upon and used. And the question of constitutional law which such a legislative enactment suggests, is how far the Indian Legislature, which is itself a subordinate legislative body, deriving its powers by delegation and trust from a superior legislature, is justified in surrendering, without necessity or sufficient cause, any portion of those powers, in contravention of the plain intentions of a statute passed by that superior legislature, legalizing the existence of the subordinate authority. Our view is that it cannot be justified in adopting any such course which tends to diminish its powers, to derogate from its authority, or to weaken its position, and that it is not at least *morally* open to it to efface or abolish itself by its own voluntary surrender. It is a point, however, of constitutional law on which rather than seek to dogmatise, we would invite the opinion of publicists and jurists. But whatever lawyers might say on the point, there can be no doubt that in no constitutionally governed country, i. e. in no country where a separate legislative and executive authority is constituted by law, such reserve powers of discretionary taxation are in fact ever conferred on the executive authority by the Legislature. Such powers are only conferred when

there are subordinate municipal or local bodies and corporations invested with the power to tax. In their case the Legislature fixes maximum rates and permits the subordinate bodies to exercise their discretionary powers of taxation within those limits. In the case of the Executive Government, there is no such discretion left, and it is always deemed to be an essential safeguard of legislative independence that all alterations in burdens financial should be made after consulting it. In India especially, the Executive has always an assured majority in the Legislature, and there is therefore no advantage in the way of political expediency in thus encouraging a tendency to avoid as far as possible reference to the legislature for its sanction before national taxation is enhanced.

We are aware that it might be plausibly argued on the other side that the Government of India is so peculiarly situated that it ought always to have large reserve powers of raising money for purposes of government. Those who urge this view forget, however, the fact that the Government of India has these large powers already in a variety of ways—(1) It has at its command and free disposal large *cash balances* in its treasuries on which to draw at its discretion. There is no statutory rule as to the level at which these balances must be maintained, or the limit to which they may be depleted to meet extra expenditure, and in the absence of such a statutory rule, these cash balances show large fluctuations from year to year. In 1872-73 the closing balances amounted to nearly 25 crores, while this year they are expected to fall so low as nearly 11 crores. Having regard to the magnitude of the transactions at the public treasuries (aggregating upwards of £ 200,000,000), to the vast extent of the territories administered by the Government of India, and to the unequal distribution of the revenues of the year, and remembering also the liability of the Government of India to sudden demands upon its treasury for war,

famine, and other public necessities, and the scanty resources of the Indian money market, Lord Northbrook's Government determined in the closing year of his administration that it was only prudent to provide for balances at the end of the year, aggregating to £ 13,500,000 for ordinary purposes (vide Sir J. Strachey's Financial Statement for 1877-78). The variations in the closing balances from year to year above and below the *normal* level of 13½ millions fixed by Lord Northbrook's Government in 1876 amounts to no less than 11-318 millions above the line in 1872-3 and 2-4 millions below the line this year. Certainly these are large variations dependent solely on the will of the Executive Government, and leave a dangerous margin of ready resource in hard cash in its hands, on which to fall back in times of pressure, and escape the necessity of an appeal to the Legislature for fresh taxing powers. The whole world also knows in what manner the Government of Lord Lytton made use of this reserve at the crisis of the Afghan war, when England was on the eve of a general election, and the fortunes of the Beaconsfield Ministry, whose nominee he was, were trembling in the balance.

(2.) Moreover, the Secretary of State for India has always in reserve enormous powers of borrowing granted to him by Parliament. The total authorised borrowing powers up to date amount to a formidable figure of 86 millions out of which, the net borrowings already cover a total of 73 millions, and the Secretary of State has still in his hands *unused* powers to borrow over 13 millions,—a reserve of fiscal resource which can enable easily any autocratically minded Secretary of State, and through him the Indian Government, to defy the control of the Legislature and public opinion.

(3.) The Government has had throughout the period a net working surplus, varying from 3 to 5 millions, of revenue over *ordinary* expenditure, to meet, on the high doctrine of Sir J. Strachey's finance,

extraordinary and sudden calls on the treasury. We shall refer on another occasion to the financial and economic bearings of this objectionable practice of keeping on hand large surpluses in the name of financial solvency on the high and heroic Strachey doctrine of a "working surplus". It is enough to point out that, besides having the effect of maintaining the taxation of the country at an abnormal level, scarcely compatible with the steady advance of its industries and commerce, and highly prejudicial to the interests of the labouring population, these surpluses have proved at least during the last decade a most convenient reserve in the hands of the executive Government on which to draw in time of pressure, without being under the necessity of making an appeal to the Legislature except when it chose. During the 12 years from 1875-76 to 1886-87 Government has paid out of these surpluses alone 40 millions for extraordinary charges as under:—

Wars—Afghan, Egyptian, Burma	...	...	...	...	...	15½
Frontier Railways	...	...	...	...	...	8
Famine relief	...	...	...	...	...	9
Famine insurance	...	...	...	...	...	8

40½

That Government has been able to meet such an enormous amount of excess extraordinary expenditure with only occasional and convenient appeals to the Legislature, is a fact which too plainly shows what a dangerous power these surpluses can prove in the hands of an administration inclined to act in defiance of the control of the Legislature. With such vast powers at its command, the Executive Government in this country ought not surely to stand in need of a reserve power of taxation like that vested in it by the Salt Act. The Salt Notification of the 19th January last only serves to bring out in alarming relief, and to emphasize this constitutional danger which is involved in such a legislative provision, as

that contained in section 7 of the Salt Act, The danger is as yet at its beginning, and while it has not yet struck deep roots, it behoves us, we think, to resist it and seek its removal in time; for, as Mr. Gladstone truly remarked in his speech on Mr. Goschen's Budget last year in the House of Commons, "in finance, above all other matters, *it is the beginnings of evil that are insidious.*" With these remarks on the constitutional question suggested by the 7th section of the Salt Act on which the present salt notification is based; we proceed to consider the financial question which is involved in this action of Government.

Financially speaking, the action of Government has been justified on the sole ground that as the Government of India must, like all other Governments, have a resource of taxation in the nature of a reserve power, sufficiently prompt and productive to enable it to meet great and sudden emergencies, the salt tax in India is such a reserve, and, as the emergency had arisen, the Government of India was, financially speaking, justified in using its powers to raise this duty. We question in the first place the soundness of the position that the Government of India needs a reserve of taxing power. - The position and authority of an Indian Finance Minister are so very much stronger than those of the English Chancellor of the Exchequer, his duties and responsibilities are comparatively so light, while the enormous resources of borrowing powers in reserve, and cash balances, and surplus revenues are so great in the hands of Government, which moreover always commands an assured majority in the legislative body, that a reserve of taxing power is not so necessary in India as in England. But granting that such reserve power is necessary, it does not follow that the salt duty is best adapted for this purpose. A fiscal reserve must, in our opinion fulfil the following among other conditions;—

1stly. That, whatever it is, the tax, chosen as

such a reserve, must not be opposed to the fundamental principles of economic science;

2ndly. That the tax must be capable of direct certain, and immediate expansion, in times of need and pressure, without inflicting in the process the evil of violent disturbance, or derangement of the commerce and industries of the nation; and

3rdly. That the expansion of such a tax, whenever necessary, must involve the *minimum* of hardships and sufferings to the vast majority of the population.

Now if we are right in holding that no tax which fails to fulfil any of these primary conditions can be selected to serve as a *fiscal* reserve, it is clear that a tax on a prime necessary of life, and involving so much misery to the millions of the poorer classes, as this anomalous salt monopoly tax which exists in India, pressing upon the people like a Poll-tax, falling lightly on the rich, and oppressively heavy on the poor, must be peremptorily excluded from the category of taxes fairly eligible for this purpose. Our salt tax no doubt satisfies to some extent the second condition above laid down, but political justice and economy alike put a ban upon it as being a tax upon a necessary of life, and experience supplies but too painful a proof of the cruel hardships and sufferings it is capable of inflicting on numerous classes of the population, whose earnings suffice but hardly for their daily wants, and who know not from year's end to year's end the *luxury of a full good meal*. The incidence of such a tax, as represented in figured percentages, is no measure of the crushing pressure with which it falls on a vast number of poor people.

Financially, therefore, both the assumptions, on which the Government action in the matter of this enhancement has been justified, appear to us invalid in the extreme. And here we conclude these rather lengthy observations on the policy of such legislation

as is involved in section 7 of the Salt Act, which we venture to condemn in the strongest terms on the grounds stated above, as constitutionally fraught with serious danger, and financially bad, violating every received principle of political economy and finance, and which can emanate only from a Legislature, weak or unmindful of its own proper duties and dignity.

To pass on now to the Notification of the 17th January last issued on the strength of this section of the Salt Act. The Notification seems to be objectionable both in manner and matter, and further, it comes upon the nation as a painful surprise and a severe disappointment.

That Government possesses a large resource of taxing power in reserve, which it might at any moment turn to account under the provisions of the Salt Act of 1882, is a circumstance of which those who have watched the course of recent fiscal legislation are perfectly cognizant. The general impression, however, has always been, that such a reserve is primarily intended, in its aim and purpose, to be drawn upon only in times of extreme pressure and embarrassment as the last fiscal resource *after*, and *not before*, all other financial expedients have been tried, and that too, as a strictly *temporary* and exceptional measure. The distinct assurances of Sir Evelyn Baring and of Sir Auckland Colvin on this point, and the imposition of the Income Tax two years ago in place of the enhancement of the salt duties under this section of the Salt Act, though the latter course was at that time pressed on Government from more than one quarter, both these circumstances have tended to confirm this general impression and popular belief. Under these circumstances, it is only natural that the country should have been surprised and alarmed at the course which Government has seen fit to adopt in using that reserve as the *first*, instead of as the *last*, financial expedient, not for meeting extraordinary de-

mands, but for balancing ordinary expenditure without the excuse or justification of a sudden and pressing emergency which could not be otherwise tided over. The taxing Notification, coming thus when least expected, and without any apparent necessity, has the appearance of a precipitate, if not also a desperate, measure of panic which a great crisis of unprecedented magnitude alone could justify, and which, in the absence of any such justification, has only the bad grace of being an index of embarrassed and mismanaged finance. The circumstances of the present situation, embarrassing though they undoubtedly are, do not supply sufficient justification for such action, and it appears to us that the Executive Government has laid itself justly open to the charge of having shirked its plain and honest duty in the matter, and found a way of escape from its difficulties, which considerations of financial justice should have led it to avoid, and which with courage and firmness it could have easily avoided.

Besides, this announcement of fresh taxation comes upon the country as a surprise sprung upon it, in the teeth of the strong assurances to the contrary vouchsafed to it last year by Sir A. Colvin out here, and by Sir J. Gorst in England. In March last, while the country was in the midst of the Jubilee festivities, Sir A. Colvin gave it a most welcome assurance on the part of Government that "in view of the causes which have led to an increase of expenditure, and to the other considerations which present themselves in connection with the financial situation, *it is not the intention of the Government to add to existing taxation,*" (the italics are ours) adding that "the Government is of opinion that it would be undesirable to seek to meet the deficit at present arising from the causes (i.e. war and exchange) by the imposition of further burdens." Later on, in September last, Sir J. Gorst, when he made his financial statement as usual in the House of Commons, con-

firmed this assurance of Sir A. Colvin in yet stronger language. Referring to the cost of the frontier defence works, which are held to be a charge upon Revenue, according to the principle of Indian finance, the Under-Secretary of State for India said, "no one desires that extra taxation should be placed upon the people of India," and that "*the Secretary of State has no intention of urging the Government of India to impose any extra taxation.*"

These assurances were most gratefully and loyally accepted by the public in this country, and the hope was entertained, on the strength of these assurances, that there would be no fresh taxation this year. The speeches of His Excellency the Viceroy at Benares and Peshawar, assuring the country of returning peace and prosperity, added strength to this hope.

But this just expectation of the Jubilee year of Her Majesty's reign received a rude and sudden shock, when Mr. Westland, the acting Finance Minister, made the announcement of the new taxation, as if by way of response to the loyal demonstrations of the Jubilee year, and showed no hesitation in laying his hands on the pockets of those least able to bear the exaction, while letting off rich Zamindars and his rich friends, the tea-planters.

Taking this Notification, however, as it stands, we shall now proceed to examine briefly the correctness and adequacy of the Government's explanation of this new taxing measure? The Hon'ble Mr. Westland in his speech on the Petroleum Bill attempted to demonstrate the necessity for fresh taxation. Adopting as his point of departure Sir A. Colvin's Financial Statement of March last, which showed a Budget equilibrium of income and expenditure, he summarised the financial position of the Empire at the present moment thus :—

The changes that have taken place in our financial position between 1884-5 and the Budget statement of 1887-8 are as below.

	£ = Rs. 10.
Army charges have increased by ...	980,000
We are spending on frontier works.	200,000
Upper Burma is costing us in.—	
Civil and Marine charges	1,100,000
Military and Civil works	486,000
Military operations ...	720,000
	<hr/>
	2,300,000
Deduct Revenue ...	520,000
	<hr/>
	1,780,000
Exchange adds to our accounts ...	1,790,000
	<hr/>

Total new demands £ 4,750,000

These demands we have met as follows.

- | | |
|---|-----------|
| (1) We have obtained by the im-
position of the Income Tax | 900,000 |
| (2) And by other improvements of
revenue. | 960,000 |
| (3) We have stopped for the time
being the appropriation to
Famine Insurance of reve-
nue amounting to | 1,450,000 |
| And to Railway construction
of revenue amounting to ... | 260,000 |
| (4) We have diminished the amount
of revenue assigned to Pro-
vincial Governments, thereby
causing a reduction of the
Public Works expenditure by | 500,000 |
| (5) We have also secured by small
savings | 180,000 |
| (6) And finally we have absorbed
the prescribed surplus of ... | 500,000 |

Total...£ 4,750,000

This, then, was the financial position at the time of the Budget estimates of 1887-88. The further

deterioration since then in our position which we have to face is made up of:—

Loss by exchange... ..	720,000
Railway Revenue less by ...	400,000
Opium Revenue less by ...	300,000

Total deterioration £ 1,420,000

Such is the picture of the financial position drawn by Mr. Westland, namely, $4\frac{1}{2}$ crores of annual taxation appropriated under one plea or another from the wretched income of an unhappy impoverished population, to purposes of war and conquest, and swallowed up in the short space of three years, and still leaving behind the awful gap of $1\frac{1}{2}$ crores! About $1\frac{1}{2}$ crores more of revenue are wanted to cover the deficit, and that too to just cover it temporarily, without making any provision for Famine Insurance and Frontier defences, and without leaving any working surplus, or safeguarding us against a further possible fall-off in our revenues *e. g.* under opium! The Burmese promenade and the Penjdeh scare have brought us to this pass. What, if other and bigger Burmias or Penjdeshs were to come on! Thibet is already threatened, our soldiers are guarding its steep heights to force the Lama to allow an opening to British traders. Siam has been negotiated with, and delimitation is going on in Afghanistan, while in Europe war is threatened at any moment, and nations are armed to the teeth. No wonder the prospect is not at all cheering, and the wearied Viceroy seeks rest in early retirement.

The Burmese deficit is 175 lacs, and how does the Hon'ble W. Westland meet it? In his speech, he first discusses several possible ways of meeting it. He begins with *economies*. On this question we regret to observe that he is very unfair to his critics, and places the point at issue in a partial and misleading light. After having distinguished between what he calls optional increase of expenditure, as opposed

to compulsory additions over which Government has no control, and having shown that the increase in optional expenditure had been during the last ten years 2 crores, he says—"Of course we might have refused to allow even this amount of increase. We might have refused to open new Courts of justice where the increase of population or of business demanded it. We might have refused to increase the Police expenditure which is still, in the opinion of many authorities, at a figure, dangerously low, and run the risk of breeding insecurity to life and property. We might have stopped the increase of schools and of hospitals and of roads. We might have shut our eyes to events in Central Asia, and refused the increases of political and Military expenditure forced upon us by the approach of a great civilized power on our N. W. frontier. In short, we might have refused to discharge the duties and responsibilities of a civilized Government, either with respect to our own subjects, or to the nations which lie beyond our frontier. And those who think we should have observed this attitude are, to this limited extent, right in pointing to our increase of expenditure as evidence of want of financial control. With such people I do not desire to argue, and the Legislative Council is not the place where such arguments are called for."

We beg to meet with a direct negative the whole of this indictment of the critics of public expenditure, namely, the European Chambers of Commerce and the Native Associations, and, last but not least, the writers in the Indian Press, who have suggested possible and practical economies in the expenditure of the state. As far as Civil expenditure is concerned, no representative exponent of public opinion has ever, as far as we know, asked Government to cut down the number of schools and hospitals and Courts of Justice, and reduce in other directions *really useful* and *necessary* expenditure. As far as native public opinion goes, we may point in support of our contention to the Resolution

passed by the three successive National Congresses held in Bombay, Calcutta, and Madras in the last three years, which contain demands for various administrative reforms, involving more or less an increased outlay of public money, such as, the separation of Judicial and Magisterial functions, Technical Schools and Colleges, Military Colleges, &c. When the Finance Committee was appointed in the early part of 1886, and it appeared likely that Government had under contemplation reductions of such useful and necessary expenditure, we ourselves protested in the pages of this Journal in the strongest terms against such reductions. What the exponents of public opinion have all along been insisting on, and with consistency, is that Government should curtail what experience and prudence alike point to as *useless* and *needless*, and *mischievous* expenditure of public money,—*useless* such as the construction of *palatial* buildings, *needless* such as the expenses of the exodus to the hills, and the employment of *costly* European agency in places where *cheaper* Native agency of equal or even greater capacity is available, and unnecessary additions to the Army and home charges, and *mischievous* such as money spent on the “scientific rectification of the Frontier,” in pleasant “Military promenades” into other people’s territory, interesting philanthropic enterprises taken up in the name of cosmopolitan humanity and civilization,—all good and proper objects in themselves, but in which India has no lot or part. These were the directions in which economy was suggested. With the usual *nonchalance* of official routine, Mr. Westland evaded giving any reply to this criticism, and repeated for a hundredth time the well-known and worn-out platitude that efficiency and progress cannot be sacrificed on the altar of false economy. Similarly in regard to military expenditure Mr. Westland stated in a very unfair manner the issue between the Government and its critics. No one asked Government to *shut its eyes to*

the vast political changes that are taking place in Central Asia and neglect available defences. On the contrary, public opinion, both Indian and Anglo-Indian, is unanimous in patriotically recognising the necessity which those changes in Central Asian politics have imposed upon the Government of this country for strengthening its internal and frontier defences. The real point at issue is, whether the policy of increasing the strength of the European and native armies which Government has at present adopted, and seems apparently bent on carrying out regardless of cost, is the *best* from a political and Military point of view, and the most *economical* from the strictly financial point of view. Native public opinion is emphatic in its declaration on this question. It contends, and justly too, that the present Military organization of the country is not what it ought to be, and can easily be made to be, for the money so lavishly spent upon it, and that we should be infinitely stronger as a Military nation, and with less expenditure of money too, if only that organization were to be improved and reformed on the lines and in the direction which past Military experience, as well as political justice and national safety, alike suggest. Frontier Railways, Military roads, scientific naval and harbour defence works, at whatever cost and on whatever scale constructed,—are but a subsidiary adjunct and help of the true national defences and cannot supply their place. The one source of Military weakness of this country at present is, as we said last year, the wrong military policy of Government founded on distrust and suspicion which, while it neglects to utilize the military instincts of the warlike races of the Deccan and the N. W. Provinces and the Panjaub, and to enlist, in the cause of national defence, the active co-operation of the higher and upper classes in the country by opening out higher careers for their military ambition, seeks to augment the numerical strength of the European forces. A local Euro-

pean army with smaller numbers would be a source of strength far more real than any additions to the short-service men sent out from England, who will always be liable to recall in any great emergency. The foreign mercenary forces will be still less available for purposes of defence. The necessity for increased military preparedness in the face of the Russian advance is nowhere denied, but what the country urges is, that the present Military policy, heedless of consequences, should give way to a policy of trust and confidence; that the Arms Act should not be maintained and administered in its present severity, so as to allow only a handful of men to possess arms in a country with 500,000 towns and villages, and with a population larger than that of the five principal states in Europe; and that there should be, in addition to the local European and native armies, a large reserve force consisting of the armies of the Native states which could easily be made really effective for the national defence. While these reforms do not engage the attention of Government, the very first essential conditions of effective military national preparedness are wanting, and the vast sums Government is spending on objects and schemes which can bring us but little real strength—are simply thrown away. Quiet independently of the question of the numbers and constitution of our Armies, Military expenditure in other directions also admits of considerable reduction without sacrifice of efficiency. The short service system for the European Army, local depots of effective reserves scattered all over England, separate presidential commands, foreign recruitment—these are some of the many features of our Army system which involve a large waste of public money, and which suggest so many ways in which economies might be carried out. But on all these points Mr. Westland was silent. We were coolly assured that no economies worth considering were at present possible, and that it is impossible for Government to look

in that direction for the ways and means of meeting the Burman deficit.

He then proceeded to consider the expediency of raising a special Eurymha loan to meet the charges which are admittedly of a temporary and special character only. But here he takes the high tone of a strict financial purist, and from the vantage ground of distributive justice, tells us:—"I don't think that on the most selfish reckoning of the account between ourselves and future years, such a policy could be justified." The reason assigned is significant, viz., "*It is only too likely that future years will have their own burdens to bear.*" We are a little too apt to talk of our own special burden and we should not too easily reckon on future years retrieving a position now lost." The Italics are ours, and we would ask the reader to ponder over the italicized portion. Has this any reference to possible eventualities on the N.E. Frontier? We will not undertake to hazard a reply. India and China are now conterminous Empires,—a fact which marks an important phase in the development of the Central Asian situation, scarcely less ominous than the contact with Russia on the North Western frontier. Government has far better means than the outside public of gauging the possible effects of this new extension of our borders upon the financial position of the country. The words above italicized in Mr. Westland's speech, read in this connection, seem to anticipate a contingency which demonstrates how our frontiers are actually weakened by the efforts made to strengthen them. Be that however as it may, in measuring the apportionment of burdens as between ourselves and future years, Mr. Westland conveniently forgets a too much good deal. He did not remember that on the P. Works (Productive) account alone we have advanced to our posterity during the last 13 years no less than 18 millions out of our own current revenues on Irrigation and Railway works, the advantages of which will

be reaped by them who come after us, while we pay their burdens. So again he did not refer to the fact that the "terminable Annuities" in purchase of Railways (East India, Bengal &c.) entail on our current revenues from year to year a charge *close on a million* for repayment of capital borrowed for the lines, besides interest charge, the effect of which, when the annuities shall all fall in, will be that these lines will become *unencumbered* property a source of wealth in the hands of future generations. These annuities are in our P. W. accounts as a charge on current revenue for which we do not get any return, and which we should be glad to see transferred to "Capital account." It is unjust that the present race of tax-payers should pay from year to year such enormous amounts in order that the tax-payers of 40 or 50 years hence may be free from the burden. Mr. Westland conveniently forgot all these facts and arguments, and announced his adhesion to the heroic principle of finance, viz, of "raising the whole of the resources within the year," for the year's needs. India is not, like England, a fit and proper field for such heroic finance; we must be satisfied with humble expedients. And it is a misfortune that the Government of India is disposed to make light of these expedients and ride on its own high hobbies.

There was a third alternative open, besides economies and loans. The Government of India might well have put in its claim for contribution from the English Treasury on the precedent accepted in the case of the last Afghan war but not a word fell from Mr. Westland's lips on this point. It was lightly assumed as beyond question that India should not only shed the blood of her sons for British expansion, but should also bear the charges of such expansion of British commerce.

After such discursive remarks and reasoning, Mr. Westland reached, by a process of elimination, the conclusion that extra taxation was the only financial

expedient left at the disposal of Government for the purpose of meeting the deficit. He stated it in these words. "It is not, without great reluctance and after serious consideration that the Government of India can proceed to measures of increase of taxation and so long as the position was such that it was possible it might be tided over without taxation, we refrained from a proposal which we would have had to justify more by our anticipation of what might happen to us, than by our knowledge of what had actually occurred."

Thus the Government felt compelled to meet the "demands of the year with the resources of the year." The Burmese war has been paid for out of the *current* revenues, the work of conquest and pacification which is nearing its completion will also have been paid for out of *current* taxation, and now the further work of "fitting out" the province with the appliances of civilization must also be paid for out of the taxes of the year.

The application of the principle of raising the "supplies within the year" to the finances of India has a history of its own which is in itself a very interesting study. Space does not permit us to go into the point here in any detail, but we may summarize the history of it thus :—

(1) During Lord Northbrook's Viceroyalty, it was decided that famine relief should be treated as a charge on current revenues.

(2) During Lord Lytton's Viceroyalty, it was next decided (a) that Famine Insurance should be also put down as an ordinary charge upon current revenues on the principle of providing in years of plenty for years of scarcity—for which purpose, special taxation was imposed in 1877-78; (b) that all expenditure on P. Works, ordinary or extraordinary, other than strictly *reproductive*, should be paid out of current taxation, and the distinction between ordinary

and extraordinary works, adopted in 1869-70 with a view to lighten the pressure on the finances was swept clean away; and (c) that wars should be paid for out of current income.

(3) During the present administration, it has now been decided that, over and above the foregoing items of extra charge, the cost of the developement of the newly conquered province of Upper Burmah should also be a charge on current Revenues. Thus since 1875, Famine Insurance, unproductive Extraordinary Public Works, wars of conquest, military fortifications, and lastly, the developement of conquered territories have all been charged to the annual revenues. This necessitates a very high margin of surplus taxation to meet such extraordinary demands, which properly are not a charge upon the resources of the year, seeing that they benefit posterity more than the present generation. This high margin of surplus taxation weakens the motives to economy, and renders an autocratic Government more absolute than ever in matters of finance, which constitute the main spring of all good and responsible Government. In a poor country like India, with its resources undeveloped, it is very desirable in the interests of good and cheap and responsible Government to fix the taxation of the year at the level required by the needs of the year, and to leave extraordinary charges, to be met out of borrowed money. The general objection to the policy of raising loans for such purposes may be obviated by arranging for the repayment of such loans by short term terminable annuities.

To return to Mr. Westland's explanatory speech. After having established to his own satisfaction the necessity for extra taxation, he proceeded to explain in what direction Government has decided to increase the taxation of the country. Without stopping to con-

sider any possible alternative schemes of taxation, he at once announced that it "was with the greatest reluctance that the Government finds itself obliged to have recourse to the salt duty." Later on in the course of his brief reply to the remarks of the Hon'ble Raja Peary Mohan Mukerji, Mr. Westland took occasion to refer to the *re-imposition of the import duties* as an alternative plan of taxation. The *non-possumus* attitude of the Government on this question was thus justified. "The observation which the last speaker has made tended rather to open out the question which I deliberately avoided taking up, namely, that of the import duties generally. It seems to me that whatever might have been the objection to the removal of the import duties at this time—and I know that a number of people, especially those connected with the commerce of the country, thought that the removal of the import duties was not called for, the fact of the import duties having gone renders it *practically* impossible for us to reimpose them." One may well ask where is the "practical impossibility" of levying these duties again? We had them before, and for a good many years too, and we let them go, only when we thought that we could safely do so. But now in the altered condition of our finances, we think, not even the free trade Resolution of the House of Commons passed in 1878, which fully recognized the fact that the abolition of the duties was to be carried out without prejudice to the finances of the country, can be pleaded as a bar in the way of our having them again. As it is, we very much regret the decision of the Government in the matter, and if Free Trade enthusiasm, or, rather the political anxiety to keep Manchester pleased, may have influenced the mind of Government in arriving at the conclusion, or if the belief may have prevailed that the imposition of import duties would check the expansion of an import trade without which export trade and railway receipts cannot expand, all we can say is that Government has

not taken the wisest course to carry out its object. The foreign trade of India and the spread of Manchester goods among the masses of our Indian population cannot expand by this new addition to their already heavy burdens which must *pro tanto* reduce their capacity for consumption of, and with it the effective demand for, imported cloth. Mr. Westland did not even hint at other forms of possible taxation, such as the inclusion of Zemindars and Talukadars and planters generally among those liable to the Income tax, and a tax on marriage expenses, both of which resources were available to Government and which, while they would have equalized the burden of additional taxation on all classes, would have brought in at least 75 lacs of Rupees to the Treasury.

Mr. Westland defended the decision of Government, arrived at as he tells us with the concurrence of Sir A. Colvin, in these words. "The Government in the beginning of 1886 appealed to the Legislature on the ground that before resort was had to a tax which falls on the millions of the poor classes, it was bound first to obtain a *reasonable contribution* from the more wealthy. But *that having been done*, we are now obliged to proceed one step further, and adopt the measure from which we were then able to escape."

To test the strength and validity of this defence for the enhancement of the salt duties, we must go back to the debate in the Viceregal Council on the License Tax Amendment Bill in January 1886.

Then, as now, money was sorely wanted, and for a similar purpose; then, as now, extra taxation was the financial expedient adopted, and for similar reasons, and the position of the Government was not then a whit less difficult than at the present hour. There was a striking parallelism, thus far, between the situation of today and that of 1886. In that year, as advised by Sir A. Colvin, Government took a correct and common-sense view of its duty, and had the courage to set up to it. It did not shrink from the obligation of justice

and duty to hold the balance, as far as it could, between the claims of the poorer many and of the richer few. It went to work in a straightforward manner. It rightly adopted as its sacred aim to diffuse and distribute burdens "with equal and impartial hand." Sir A. Colvin, when it was once decided to put on additional burdens, went into this question of the *distribution* of the existing taxation of the country, and the conclusion he arrived at after careful and anxious inquiry and examination was, that the higher and middle classes of the community did not bear their proper share of public burdens. In the course of his speech in the Council (January 4th 1886) he expressed his views on this matter thus:—

"There can, after all is said and done, be *no manner of doubt*, but that one great fact remains established; one great blot on our administration *not only still unremoved*, but *aggravated* by the course of events in recent years. It is this that, putting aside those who derive their income from land in the temporarily settled districts, the classes in this country who derive the *greatest* security and benefit from the British Government are those who contribute the *least* towards it." "Notoriously the mercantile and professional classes to whom this time of sun-shine (i. e. British rule) has brought such an abundant harvest, are *precisely* those who contribute *least* towards the support of the Government in the light of whose power they bask." "We are constantly assured," continued Sir Auckland, "for example by journalists in this country, that the limits of taxable resources have been reached. *Whatever may be the case with the poorer or the lower middle class, the upper classes, in spite of our friends the journalists, enjoy the greatest immunity from taxation.* If this was true before the abolition of import duties and the reduction of the salt duties, it is still more unanswerably true now." "The immunity of the middle and upper classes from their due share of the public

burdens is a grievous blot on our Indian Administration, which urgently calls for removal, and which, I believe, with patience, prudence, and the exercise of a little fortitude, must and will be removed. Efforts have indeed at various times been made to remedy this scandal, for scandal it is of the greatest magnitude when the poorest are called upon to pay heavily for the support of the Government, and the wealthier classes are exempted; but from one cause or another, the measure has never been carried out except for short and broken periods of time." So spoke Sir A. Colvin in 1886 on behalf of the Government of India. The question of the enhancement of the salt duties was pressed upon the Government at the time as an alternative plan of taxation to that proposed, but as head of the Indian Government, Lord Dufferin referred to it and expressed himself thus:—"The only alternative open to us was to re-enhance the salt tax; but though this would have been an indirect tax, and consequently not so unpopular as the one we are about to impose, its operation would have chiefly affected the poorer masses of the community. Now, I am very far from wishing to say that in the presence of any overwhelming necessity, such as that of a great war, or a great famine, it might not be necessary to raise the duties upon salt. It would be by such a measure alone that a great emergency of the kind could be met, and all minor considerations would have to be postponed to the imperative necessities of the hour, nay even something short of either of these calamities might justify us in resorting to it, but when the situation merely requires a comparatively slight addition to our current revenue, it is obvious that any honourable man who had to choose between taxing the most indigent classes who already contribute a considerable share of the public burdens, and taxing those classes, who, though in easier circumstances, scarcely contribute anything, it is to the latter alternative that he would resort."

In regard to the cry raised by Anglo-Indian

journalists and merchants that their incomes are already heavily taxed by the unfavourable exchange, Sir A. Colvin, while expressing sympathy with these complaints, observed:—"All this I know, as I have said, only too well. But I know equally well that we are of necessity compelled to turn to the taxpayer for fresh resources, and that if we do not look for them to the comparatively wealthy, we must turn to the positively poor, the choice lies between the classes who have or who can make for themselves a margin, and those who have no margin at all. It is our poor, over-taxed millions that an increase of the salt tax, or a reimposition of import duties, such as the Madras Chamber of Commerce have lately advocated, would fall. We are all, I am aware, concerned in the measures necessary for the safety of the too poor, but I may remind this Council that it is certainly not the middle or the upper class of the nation, or the Anglo-Indian merchant or official, who are least concerned. In the necessities of the time, in the interests of all classes of the community—in the present incidence of our Indian taxation, in the legitimate and necessary result of the financial policy pursued by our predecessors—in the admissions of those who oppose an income-tax—will be found the justification of the measure which I now have the honour to ask your Lordship to allow me to introduce." H. E. the President followed up this line of defence in still stronger terms:—"We look abroad and we see that the peasant pays his salt tax which, though it has been reduced, still supplies us with a yearly net revenue £. 6,000,000; that the land-owner pays his land-tax and his cesses; that the tradesman and the merchant pays his license-tax, but that the lawyer or doctor, the members of the other learned professions, the officers of Government, and other persons occupying an analogous station, and the gentleman at large, pay little or nothing. I look around this table and what do I see? There is not one of us who pays any really serious sum from his

income into the Imperial Exchequer." "Now, surely, this cannot be right, and to such an anomaly it is no answer to say that direct taxation is repugnant to oriental customs. *Justice is the inhabitant neither of the East or the West.* She admits no geographical limits to her supremacy, her throne is on high, and sooner or later, in spite of prejudice or custom, she never fails to vindicate her title to the respect and veneration of mankind. *It is then in the name of justice that we propose the imposition of this tax, and we feel assured that every fair and right-thinking man in this country, no matter how his private interests may be affected by our action, will recognize that no other course was open to us.*" (The *Realities* throughout are ours.)

These extracts from the speeches of Lord Dufferin and Sir A. Colvin delivered in the course of the debate in the Legislative Council in 1886 on the Income-tax Bill are somewhat long, but are necessary to show, in what spirit, for what reasons, and under what circumstances, the taxing legislation of that year was proposed and carried. By it additional revenue was no doubt raised, but the new tax imposed was not imposed in a spirit of "apology." It was not a special contribution by the richer classes over and above their share. The "immunity" from taxation of the "upper and upper middle classes" was (to use the strong language of Sir A. Colvin) a "notorious" fact, a "scandal," a "deep blot on our Indian Administration," which it was only right and proper that Government should make an effort to remove at the earliest opportunity. The public burdens were most unfairly and unequally distributed; the richer few who profited most by British administration, British justice, and British peace paid least, while the poorer millions—who profited least, paid most. This was certainly an "injustice" and an "anomaly" which had to be redressed, and the new taxation of 1886 was planned, proposed and carried as a measure of partial "justice," as H. E.

the Viceroy said, and to rectify to a small extent the unequal "incidence of Indian taxation", as Sir A. Colvin forcibly put it. The taxation of 1886 brought under contribution only those who were bound to bear their due share of public burdens, but who had till then, for one reason or another, been allowed to go comparatively scot-free. It was one step and one only in the direction of correcting the inequalities in the existing distribution of public taxes, and redressing the balance as between class and class, or rather between the "classes" in the cities and the "masses," in the country in respect of their contributions to the public Treasury. But nowhere in the debate in the Viceregal Council, or in the speeches of the Viceroy and the Finance Minister, was it suggested that the new contribution demanded from the "upper and middle-upper" classes was in any sense or degree, adequate and sufficient or proportionate to the burdens laid on the poorer classes. On the contrary, it was plain that the new measure of taxation (though it brought in the requisite funds into the treasury for the service of the year) did not go far enough towards an equitable readjustment of public taxation. It left *untouched* the incomes of the Bengal Zamindars and the Assam tea-planters. It was never claimed for the new Income-tax that it made the wealthier classes pay *as much as they ought to do* towards the expenses of Government. The unequal and anomalous distribution of public burdens, which Lord Dufferin condemned in the strongest terms in 1886, was thus only partially redressed and rectified, and the fact remained that even after the taxation of 1886, the "classes" paid less, and the "masses" more, than their due share.

With these facts and declarations before us, we must ask the Honorable Mr. Westland's pardon if we respectfully decline to concur in his view that, by the legislation of 1886, a "reasonable contribution" was levied from the wealthier classes, and that Government had no alternative but to tax the masses in their

turn. This view, besides being opposed to the declarations of Government, was inconsistent with facts.

"Equality of sacrifice," the very first condition of just and equitable finance, was far from being established by the Income Tax of 1886. Under these circumstances, when a new burden had to be imposed, it was obviously the duty of Government to seize the opportunity presented by the financial necessities of the hour, to carry on the work of rectifying the anomalous distribution of public taxes, and to take a further and forward step with firmness and courage, and to bring under as full contribution, as the public requirements necessitate, the classes who still did not pay their just quota towards the support of the administration, before turning to those who already paid more than they in common fairness should be called on to pay. But Mr. Westland affected to conveniently forget all these declarations of his predecessor and by a curious shuffling of the cards, he led the Viceroy to share with him his view. He based the vindication of the action of Government in raising the salt duties by the Notification of 19th January last on the broad ground of equity in the words, already quoted. "The Government in the beginning of 1886 appealed to the Legislature on the ground that before resort was had to a tax which falls on the millions of the poorer classes, it was bound first to obtain a *reasonable contribution* from the more wealthy. But that having been done, we are now obliged to go one step further, and adopt the measure from which we then were able to escape".

The legislation of 1886 no doubt exacted a "contribution" from the wealthier classes, but no one before Mr. Westland, as far as we are aware, ever claimed for that legislation that the contribution so levied was either *adequate* or *reasonable*. The exemption of agricultural incomes in permanently settled provinces from assessment to the in-

come-tax was a feature of that legislation by which one important class of the "more wealthy" was notoriously exempted from the "reasonable contribution". In the face of this fact, we cannot admit the force or reasonableness of Mr. Westland's plea for laying on the "millions of the poorer classes," instead of on the "more wealthy," the fresh burden that Government under his advice resolved to impose to meet the Burman deficit. Taking our stand on the Government's own declarations in 1886, we feel justified in condemning the course it has seen fit to take in enhancing the salt duties by its Notification of 19th January last.

But even granting, for the sake of argument, all that Mr. Westland claims for the legislation of 1886, and allowing that the tax then imposed had for its result a complete readjustment of national burdens on a most equitable basis as between the richer and the poorer classes of the community, we are still unable to bring ourselves to recognise the equity or morality of a policy which, when a fresh burden has to be imposed, and when the choice lies between those who "have or can make for themselves a margin" and those "who have no margin at all," enhances the burdens of the helpless, poorer millions to the exemption of the more wealthy.

Thus, then, after all that has been said and can be said, the plain fact remains in its bare nakedness—that, by its new policy Government has simply undone its declarations, has taken a most serious step towards aggravating those inequalities and unjust anomalies in the distribution of public burdens which, it so strongly condemned, only two years ago, and which it was its "sacred duty" in the Finance Department to seek to rectify.

This fact alone appears to us to be a just and sufficient ground for addressing an earnest appeal to the Government of Lord Dufferin to reconsider their decision in the matter of this salt-taxation; and we

base the appeal on the plea of justice, which, as his Lordship so eloquently declared in 1886, "is an inhabitant neither of the East nor of the West," and on those noble maxims of financial equity on which Mr. Gladstone has always insisted in all his utterances on the question, namely, that public taxation should be equally and impartially distributed, and should be so devised as not to press too heavily on the springs of industry, or on the scanty resources of the poorer classes.

But we have still stronger grounds to urge for the appeal which we so earnestly address to the Government of India to re-consider its action in the matter of this salt Notification. The salt tax, as it exists and operates in this country, involves *privation* and *positive suffering* to millions of our poorer population, and suggests a question of extreme and terrible seriousness which transcends all considerations of financial ethics or fiscal convenience. The tax is admittedly "a tax on a prime-necessary of life", and falls with crushing pressure on the very classes on whom no such burden should ever fall and who are least able to bear it. In spite of all that was said by the official and non-official members of the Supreme Legislative Council at the Council meeting as to its falling with no "appreciable pressure" or severity on the poorer classes, we declare our strongest conviction that the salt tax, in the form in which it exists with us and in the way in which it works, is the *worst* and the most *barbarous* impost that has been inflicted upon this country by the heartless devices of financial ingenuity, and is a *darker and deeper blot* than any on our present system of taxation. We cannot reconcile ourselves,—so strong is our conviction on this point— from any considerations of financial necessity or fiscal convenience, to its being maintained as a permanent feature of the fiscal system of the country, and we shall never be satisfied until it is completely removed, banished and consigned to the limbo where all misera-

ble, melancholy financial expedients must go one of these days. It "encroaches" on what the late John Stuart Mill declared "should be left untaxed, *the incomes barely sufficient for the litful existence,*" and has the effect of diminishing the consumption, amongst the poorer classes, of an article which is, as a necessary of life, in importance, next only to air and water. The policy, therefore, which led Government to tax heavily this important article of healthy subsistence, violates the first principles not only of political economy, which is after all of secondary importance, but violates *justice and humanity*, and to the extent to which the consumption is restricted brings down upon its authors, whoever they may be, a terrible load of responsibility for the *suffering* which is its result to thousands and thousands of the poor. It is surely no reply to the violation of principle to say that the financial necessities of the hour cannot be more conveniently met by any other means. It must prove cold comfort to the suffering millions to be told that "it is *with the greatest reluctance*" that Government has had recourse to such a cruel and inhuman measure of taxation.

It must be remembered further, that the administration of the salt revenue, based in fact, though not in name, on the principles which regulate the development of Abkari Revenue, makes the article a strict Government monopoly. As such monopoly, the production of salt is restricted in a manner to keep up the supply scanty enough to just meet the demand. Salt was scarce enough and dear enough in all conscience before; but who can doubt, that this enhancement of the salt duties by 25 percent will make it dearer and scarcer, and will restrict consumption.

But, here also, Mr. Westland is not afraid of joining issue with his critics, and, in anticipation of such criticism, hurls in their face another of his startling and reckless paradoxes framed to suit the convenience and purposes of the moment.

In giving a forecast of the fiscal operation of this new taxing measure he begins by quoting statistics for the 16 years ending 1886-7, showing the consumption of salt and the duty paid on it, and thus concludes his remarks:—"It may be noted with reference to these figures that, reckoning upon the averages above shown, we may divide the whole into two periods. During the earlier of these which preceded the reduction of duties in 1882 the rate of increase of consumption averaged annually 2·2 percent while since the reduction of duty, the annual increase has averaged to 2·7 percent. The figures show also that the extra duty of eight annas may be expected to bring in an extra revenue of Rs. 1,60,00,000 and considering the improvement in all means of communication and the generally improved condition of the people, *we may reasonably hope that the burden of a duty of Rs. 2-8 will not now have any effect in restricting the rate at which the consumption is increasing.*"

We may hope so, too, with Mr. Westland. But facts are stronger than fiction, even the fiction god-fathered by an Indian Finance Minister, and no self-complaisant optimism can minimize their force or upset their logic. The hope expressed by Mr. Westland, that the present enhancement of the salt duty from Rs. 2 to Rs. 2-8 will have no restrictive effect on the rate of consumption, is a delusive hope, and the statistical forecast of the operation of the new measure, on which it is made to rest, is misleading in the extreme. Mr. Westland's view appears to be that, taking the two periods *before* and *after* the late reduction of duty carried out in 1882 by Lord Ripon's Government, the annual rates of increase of consumption, as they average over a number of years, do not show any large or important differences on either side. During the earlier of these two periods during which the duty ranged from Rs. 3 to Rs. 2-8 the rate of annual increase in the consumption of salt averaged annually 2·2 percent, while since

the measure of 1882-83 it has not increased in any perceptible proportion by reason of the relief given by the reduction of the duty. The increase has been only 5 percent or 5 per thousand on the averaged rate of the earlier period,—an increase more than sufficiently accounted for by increased facilities of communication and by the growing improvement in the condition of the people. It is, therefore, evident, that Major Baring's salt-duty reduction, while it has entailed a considerable loss of revenue on the treasury, has failed to give any commensurate relief to the salt-consuming population. On the whole, the consumption of the country has a normal level and a normal rate of increase, which are but little affected by salt taxation, and if this has been the experience of the last 18 years, *ceteris paribus*, the present enhancement of the salt duties can have no effect one way or another on that consumption, and will bring a secure additional revenue of Rs. 1,60,00,000 into the treasury.

Such is, as we understand it, Mr. Westland's argument. By way of supplementing it, we may quote the following from a "Statement exhibiting the moral and material progress and condition of India during the year 1885-86" (p. 339):—"Eighteen years previously in 1868-9, the first year for which the returns are given in their present form, the quantity of salt excised amounted to 22,733,359 maunds. The quantity which entered into consumption, therefore, increased in the period by 37.3 per cent being at an average rate of a little over two per cent yearly. The population may be taken as increasing at the rate of about one per cent yearly, so that the consumption of salt increases but slowly at the rate of about one per cent per year." Now as a set-off against these authorities, we shall appeal to the authority of Sir A. Colvin, who in his speech on the Income Tax Bill of 1886 observed:—"We might have replaced, in part

or in whole, the reduction of the duty on salt which was made by the preceding Government; but to have done this would, in the first place, have been to increase the burdens of the poorest classes of the community. *It would have checked the consumption of salt which has risen from 24,489,000 maunds in the period from 1st March 1881 to January 31st 1882, to 27,792,000 maunds from 1st March 1884 to 31st January 1885.*" Authority can thus be met by counter authority. The question, however, must be settled otherwise than by a mere appeal to the testimony of two Finance Ministers. We must appeal to past experience and the recorded declarations of Government. As far as we are aware, no one has, before Mr. Westland, even contested the tendency of such enhancement to restrict consumption. For years together both the Bombay and Madras Governments strenuously resisted the proposals of the Government of India for the enhancement of these duties in their provinces on this very ground. On this very ground again the equalization of the salt duties was justified and carried out in 1878. Moreover it was on this very ground that Major Baring rested the defence of the reduction carried out in Lord Ripon's time. We have space here only for a few quotations. To begin, in 1868 March 14 Mr. Massey in his financial statement, said, "we have been assured by the Governments of Madras and Bombay that the tendency of increased salt duties would be to diminish consumption." Sir T. Pyroft, speaking for Madras, said in his evidence before the Parliamentary Finance Committee, "with the view of equalizing the duty in the two Presidencies of Bengal and Madras the Government of India made several proposals to increase the duty on Madras salt, but these proposals have always met with strong opposition from the Government of Madras" (vide the Hon'ble R. B. Ranade's Revenue Manual P. 164). Mr. Pedder, speaking as a witness for Bombay before the same Parliamentary Committee, stated that "the

salt duty in Bombay might be raised to Rs. 2, but that if raised beyond that limit it would check consumption." Sir J. Strachey, speaking as the Finance Minister of Lord Lytton's Government in 1877, observed in his financial statement, "a comparison between the average consumption of salt per head in different parts of India proves incontestibly that where salt is *cheap* and abundant, the consumption is much *larger* than where it is *dear* and when the supply is restricted," and "there can be no doubt that, in the interests of revenue, the best system would be that under which we should levy throughout India a low rate of duty on unrestricted consumption." Major Baring made a still more emphatic declaration in 1882-83, as to the effects of enhanced salt duties and in his Financial Statement for 1883-84, after describing in detail the results of his salt reforms of the year previous, he observed there could be no doubt a very considerable portion of this increase (i. e. no less than 160,300 maunds) was "*due to the reduction in the duty.*" Sir A. Colvin in his Financial Statement for 1884-85 after noting a satisfactory increase of revenue owing to increased consumption consequent on the reduction of duty, remarked that "it may be fairly assumed in presence of so constant and large an increase that the consumption of salt will yield a progressively increasing revenue for some time to come," and he held out the hope that "should a *further reduction* of duty be hereafter made, it may be met as promptly and satisfactorily by a corresponding *expansion* in the demand." In his last year's Financial Statement Sir A. Colvin wrote thus:—"The check in the consumption of salt which was pointed out in the Financial Statement last year has proved to be, as was at the time surmised, temporary. The total increase in the period of 4 years from the year 1882, when the salt duty was lowered, has been for the 11 months from 1st March to 31st January from 26,101,000 in 1882-83 to 28,772,000

maunds in 1886-87, that is, an increase of 2,671,000 maunds."

It is needless to multiply quotations, but it may be observed that the whole fiscal policy in connection with the salt duties in its later developments has proceeded on the assumption that a reduction in the rates tends invariably to bring about a large and steadily progressive expansion in the consumption, and this assumption of successive financiers has been more than verified by the actual results achieved during the last 20 years. Mr. Westland's anticipation, therefore, that the enhancement of duty by 25 p. c. will not interfere with the normal progressive increase of consumption, which in his opinion goes on independently of rates of duty imposed, not only runs counter to the opinions of all authorities on the subject, but is inconsistent also with the irresistible testimony of actual facts.

But we are prepared to go further and meet Mr. Westland on his own chosen ground of figured results. He is probably no respecter of authority, and would only accept the guidance of hard reason and logic as shown by dry progress. In his speech he gives us figures for 16 years only from 1871-72, but we have available statistics for 19 years beginning with 1868-69. We choose that year as our point of departure, as it furnishes a convenient stand-point from which to judge of the results of the fiscal policy of reducing the salt duties since it received its first development at the hands of Lord Mayo's Government. Before we proceed to give these figures and the conclusions they suggest to our mind, we have two observations to make on the statistical basis of Mr. Westland's arguments. (1) In the first place this basis is supplied by average rates of annual increase struck on the totals of consumption extending over a period of years. These latter totals of consumption, however, represent only the *net* results

reached year after year, being affected by the varied action of a variety of causes. Some of these causes counteract the operation of others, and when any two of them neutralize each other, the sum total of the action is *nil* and is lost in the total result. When we have to trace the effects of any one of these causes, it is absolutely unsafe and illogical to base our argument on the net resultant of all the numerous causes put together and as summed up in the final figured results. *Rate of duty, cost of transport, extent of supply in relation to demand, increase of population, negotiations with native states*—these and several minor causes enter into this problem of salt consumption, and their operation is not always uniform or in mutual accord. For instance, the effects of enhanced duties may be counteracted by the increased facilities of communication (vide Lord Lytton's speech on the salt income of 1878-79); so also the operation of a reduction of duties may be entirely nullified by a failure or deficiency of supply, as in North India in 1884-85, or in Bengal in the last 5 years. The rate of salt duty has no doubt a very important effect on the total consumption, but it is not the *sole* cause which determines the final result, and its operation has to be judged in relation to other causes simultaneously at work. (2) Secondly, Mr. Westland's argument seems to make no allowance for differences in the food and regimen of the people of the different provinces of the Empire, which differences are so enormous as to vitiate the reasoning founded on the total for the country as a whole, independently of local variations.

With these remarks we give below a table showing the state of salt consumption during the last 19 years in Bengal, Northern India, Madras and Bombay, the figures being taken from "statistical tables for British India 1883" for the first 14 years

and from Sir A. Colvin's financial statement of last year for the remaining 5, and we also supplement the table by brief explanatory remarks on each of these Provinces. Sind and Burma are left out as we have not sufficient information with regard to those parts of the Empire. .

TABLE showing the consumption of Salt in 19 years from 1868-69 to 1886-87 in Bengal, Northern India, Madras and Bombay in thousands of maunds [000 omitted.]

Years.	Bengal (69 million population.)			Northern India* (popu- lation 97 million.)			Madras (31 million.)			Bombay (21 million excluding Sind.)		
	Rate of duty	Consumption in maunds	Increase + Decrease -	Rate of duty.	Consumption in maunds.	Increase + Decrease -	Rate of Duty.	Consumption in maunds.	Increase + Decrease -	Rate of Duty.	Consumption in maunds.	Increase + Decrease -
1868-69	6-6	7,289	...	6-0	5,036	...	3-4	6,693	...	3-0	3,713	...
1869-70	...	7,735	+ 446	...	5,319	+ 283	...	6,373	- 320	3-7	3,218	- 495
1870-71	...	8,033	+ 298	...	5,100	- 219	4-0	6,271	- 102	...	3,625	+ 407
1871-72	...	7,853	- 180	...	4,257	- 849	...	6,502	+ 231	...	3,501	- 124
1872-73	...	8,132	+ 279	...	4,511	+ 256	...	6,390	- 112	...	3,681	+ 180
1873-74	...	7,912	- 220	...	4,489	- 22	...	6,436	+ 46	...	3,927	+ 246
1874-75	...	8,198	+ 286	...	4,431	- 58	4-4	6,539	+ 103	...	3,870	- 57
1875-76	...	7,914	- 284	...	4,449	+ 18	...	6,554	+ 15	...	4,110	+ 241
1876-77	...	8,112	+ 198	...	4,582	+ 133	...	6,402	- 152	...	4,268	+ 157
1877-78	6-0 5-8	8,512	+ 400	...	4,563	+ 81	...	6,321	- 81	...	4,283	+ 15
1878-79	5-8	8,461	- 51	5-0	5,448	+ 885	5-0	5,975	- 346	5-0	4,559	+ 276
1879-80	...	9,057	+ 596	...	6,307	+ 859	...	6,215	+ 240	...	4,764	+ 205
1880-81	...	8,697	- 360	...	5,999	- 308	...	6,362	+ 147	...	4,674	- 90
1881-82	...	9,221	+ 524	...	6,836	+ 836	...	6,207	- 155	...	4,730	+ 56

For 11 months only from
March 1st to January 31st.

1882-83	4-0	8,723	+ 516	4-0	6,112	- 66	4-0	6,405	+801	4-0	4,695	+334
1883-84	...	8,850	+ 127	...	6,459	+ 347	...	6,800	+395	...	4,789	+94
1884-85	...	9,398	+ 548	...	6,581	+ 122	...	6,789	- 11	...	4,810	+21
1885-86	...	9,382	- 16	...	4,996	- 1,585	...	6,965	+176	...	6,282	+1,472
1886-87	...	9,374	- 8	...	6,213	+ 1,217	...	7,097	+132	...	5,878	-404

†as compar-
ed with fi-
gures for 11
months only

• Northern India—

	Population.	
Panjab... ..	22 millions.	} = pop. = 97 million.
Central Provinces	11 "	
N. W. P. & Oude	45 "	
Rajputana	10 "	
Central India ...	9 "	

† These increases and decreases for 1882-83 are compared with the figures for 11 months of the previous year 1881-82.

EXPLANATORY REMARKS ON THE FOREGOING TABLE.

Bengal.—The first three years (1868-69 to 1870-71) show an increase of 744,000 maunds. The cause is unknown.

The next six years (1871-72 to 1876-77) exhibit a net increase of 79,000 maunds which, looking to the period and to the vast population of the Province, is simply nominal. Assuming the annual increase of population on a total of, say, 65 millions at one per cent to be about 650,000, and taking 10 lbs of salt as average consumption per head, we should have expected on this account alone nearly 80,000 maunds per year which in six years would have reached a total of 480,000 maunds. The rate of duty remained the same, namely, 6s. 6d., and the supply, as far as ascertainable, did not fail, as Madras salt was available in any quantity at the same price as the imported salt. The stationary consumption during this period can be accounted for only on one supposition, namely, that the rate of duty in force was too high to allow the people to keep up their consumption even at the level of the first year of the period, considering increase of numbers. Mr. Westland's normal rate of progressive increase does not appear here.

The period of the following 5 years begins well. In 1877, the duty was reduced from Rs. 3-4 to Rs. 3 in the Lower Provinces and in the Upper from Rs. 3 to Rs. 2-12. Shortly after a further reduction was made of two annas in Lower and of 4 annas in the Upper Provinces. The effect of reduction of duties was immediately apparent in the increased consumption of the year which rose from 81,72,000 to 85,72,000, an increase of 400,000 maunds which nearly brought up the consumption to the level of increase of population. In the next 4 years of the

period, the increase was from 85,72,000 to 93,21,000, i. e. 749,000 maunds. Allowing for increase of population at 86,000 maunds per year and deducting on that account 344,000 maunds we have a net increase of 405,000 which represents an expansion of consumption, consequent on reduction of duty levied on salt.

The next period of 5 years, for which figures are for 11 months only, has a net increase of 651,000 maunds only; the period opens with a further reduction of duty from 5s 8d to 4s which afforded greater relief than in the previous period, and yet, the increase, allowing for increased population, is about 267,000—a meagre progress of consumption, much too below the level of the previous years. The following are the figures on this point taken from the Administration of the Lower Provinces of Bengal for 1881-82 to 1885-86.

Year.	Salt imported	Locally manufactured.	Consumption.
1881-82	90,04,000	4,76,000	91,61,000
1882-83	84,46,000	2,88,000	85,26,000
1883-84	64,63,000	6,38,000	94,64,000
1884-85	96,24,000	4,26,000	1,04,09,000
1885-86	89,54,000	4,47,000	99,12,000

“It will be seen from the above,” says the Report, “that the immediate result of the reduction of duty was a decrease both in importation and in local manufacture, while the quantity passed into consumption showed a small increase of 1 per cent.” In the following year (1883-84) there was a rise in imports, as well as in local manufacture, but the rise was due to “slow trade and low freights” in the one case, and to

favorable weather in the other. An attempt was made in 1883-84 to establish a trade in Sardinian salt from the Mediterranean ports, but it was abandoned in the following year. (page 88). Mr. O'Connor in his review of the trade of India for 1882-83 remarks thus on this point. "The reduction of duty . . . did not have the effect of giving any impetus to the import trade during the year, for the quantity imported, far from increasing, decreased by more than 5½ per cent. Salt like coal is an article the imports of which depend to a great extent on the condition of the freight market, ships only taking salt in default of other cargo offering and as being only a degree better than coming out in ballast." (page 39). Again in his review of trade for 1886-87 Mr. O'Connor thus further explains the point—"When there is an active export trade from India as there was last year, there is always a large import of coal and salt, these articles being brought in place of sand, stone, or water ballast by ships coming to India for cargo than to Europe. The only noticeable feature of the year was an import of 2,325 tons from Aden where an Italian company has commenced extensive salt works under agreement with Government.

Local manufacture has nearly died out, being now only 4 p. c. of what is consumed in the Provinces,—a result which is due to the "vigorous" working of the Government salt monopoly. Madras salt, which formerly under a lighter duty supplied the wants of the Province a good deal, is not allowed a differential drawback of duty on entering its markets, for which reason this source of supply to Bengal is now almost closed. The Province thus has to depend almost solely on *foreign supplies*, but these foreign supplies have not shown any tendency, salt coming out as ballast and not as an article of commerce, to adjust themselves to the demand. The imports show variations, independent of the requirements of the markets, as

Years.	Tons imported.
1875-76	365,000
1876-77	298,776
1877-78	254,231
1878-79	274,180
1879-80	352,238
1880-81	373,316
1881-82	377,224
1882-83	338,065
1883-84	383,090
1884-85	412,809
1885-86	363,068
1886-87	417,442

marginally noted. Thus, the supply goes its own way, and the demand for it has to adjust itself to that supply; or in other words, the people are not allowed to grow this salt; the other Provinces can not supply them with the necessary quantity on account of "equalisation of duties;" the foreign supplies depend on bad trade and low freight; so that even if they can afford to buy more salt and want it, they must go without it for the plain reason that no supply comes from any source, land or sea.

The meagre increase, therefore, during the period of 5 years from 1882-83 to 1886-87 we attribute to short supplies being incommensurate with the growing demand, for which Government alone is answerable. One day, Aden may develop into a flourishing depot of supply under the fostering care of Government, but as it is, the 69 millions of Bengal have to go without sufficient salt, though they are able and willing to pay for it even at the present rate of duty—a fact which shows how fiscal relief in the shape of reduction of duty may be neutralised by perverse and blind severity of fiscal administration, and which also marks the morality of the whole procedure. Local industry stamped out, Cheshire supplies inadequate to the growing demand, Bengal has now to look up to Aden, and to Heaven, for an adequate supply of the *prima necessary of Life*!!! Can blind, unfeeling, autocratic perversity go further!

Northern India:—The first three years of this period show an almost stationary state of consumption, the increase in 1869-70 being balanced by a corres-

ponding decrease in the following year. In 1871-72, we have to record a violent and painful change. The rate of duty, continuing unchanged (6s.) there was a fall in consumption from 5,100,000 to 4,251,000, a decrease of 849,000 maunds in one year. It was due to a rise in price and a diminished supply consequent on the establishment of the British system of salt manufacture and administration at Sambhar Lake, the lease of works at which had been obtained from the states of Jaypoor and Jodhapoor in the year previous 1870. In 1872-73, there was a partial recovery, the consumption rising to 4,511,000 maunds; and then from that year to 1877-78 for a period of full 6 years, there was absolutely no advance worth noting. The state of things was even worse here than during the corresponding period in Bengal, the consumption continued perfectly stationary with even occasional decreases. The level established in 1872-73 was the level determined by the new condition of things established, which was below that of 1862-70 by full 808,000 maunds; and even this low level during the next 5 years showed absolutely no sign of a rise, increase of population, improvement in means of communication &c., all notwithstanding; and the causes were—(1) high prices, and (2) short supplies. There was no change in the rate of duty. The rise in price was due to the introduction of a new system of manufacture under state supervision—the cost of manufacture alone having increased over two-fold. On the point of short supplies we need only refer to the main feature of the British salt administration. An essential to the maintenance of a monopoly, a vigorous control of local manufacture had to be secured involving the suppression of minor salt works, isolated and out of the way and difficult to supervise, and the concentration, for effective control, of working areas. The variation of weather as influencing production not being considered and provided for, and Nature thus defied, the supply of salt from Government salt works

often failed and was never equal to the demand during the period, the importation from outside owing to difficulties of transport not making up for the deficiency, the people had to suffer the hardships of what Sir J. Strachey called in 1877 a "salt famine." His remarks may be quoted here,—“The great object at which the Government ought to aim is to give to the people throughout India the means of obtaining, with the least possible inconvenience and at the cheapest rate consistent with financial necessities, a supply of salt, the quantity of which shall be limited only by the capacity of the people for consumption. Although much has been done during the last 6 or 7 years towards this object, we are still far from its attainment. * * * I have a very strong belief that *more than a hundred millions of people fail to obtain a full supply of salt.* Therefore it was that I have some time asserted that there was a *salt famine* in Northern India, meaning thereby not only that *salt was dear, but that sufficient salt could not be provided.*” (Financial Statement for 1877-78.) Thus, then during this period of 6 years from 1872-73 to 1877-78. *high duties and low supplies* combined to keep down, below the level of 1869-70 by full 808,000 maunds, the consumption of a hundred millions of people. The high rate of duty accounts for the high prices ruling during the period, and the Government monopoly for the shortness of supplies. •

We next come to 1878-79 when the duty was lowered to 5s. The effect of the relief was apparent that very year, the consumption rising from 4,563,000 to 5,443,000, *i. e.* by 885,000 and thus re-attaining the level of 1869-70, the year previous to the leasing over of the Sambhar Lake works by the British Government. The relief was general and influenced consumption during the next 4 years, so that, from 1878-79 to 1881-82, the increase was from 4,563,000 to 6,836,000 maunds, or 2,273,000, a rise of full 50 p. c. in five years or 10 p. c. per annum in consequence of

(1) the *lowering of the duty*, resulting in reduced prices, and (2) *increased facilities of communication* resulting in the cheapening of transport and in the further reduction of prices. The improvement in consumption may be divided half and half between the two causes thus co-working to the same end, and demonstrates, in opposition to Mr. Westland's theory of a normal progressive increase, the truth of a plain law of Political Economy that the cheaper the article, the greater is its consumption.

Lastly, we reach the latest period of 5 years from 1882-83 to 1886-87, the figures available for comparison being for 11 months only. We begin with a further step taken in 1882-83 towards the cheapening of salt by reduction of the duty from 5s. to 4s. In the first year, the figures show a decrease of 1.07 p. c. which is only apparent and is thus explained by Major Baring in his Financial Statement for 1883-84. "This is mainly Sambhar Lake salt which supplies Northern India. The territorial area heretofore supplied from this source has been much restricted. * * * Bombay salt from the West and Cheshire salt from the East have both pushed their way into the territory heretofore supplied mainly from the Sambhar Lake. Under these circumstances the fact that there has been only a decrease of 1.07 p. c. on the salt sold by the Inland Custom Department shows that the people within the more limited area, now supplied by that Department, have increased their consumption." The next year 1883-84 shows a rise in consumption of 347,000 over the previous year, which, in view of the above explanation of Major Baring, is a most satisfactory rise of over 5 p. c. mainly due to the reduction of the duty. The year following exhibits a small increase of 122,000 maunds, i.e. 2 p. c., and the year next to that brings us face to face with a frightful fall of 15,85,000 or 25 p. c. "The falling off in 1885-86 in Northern India," we read in the Material and Moral Condition of India Report 1885-86, page 39, "was owing to unfavourable

weather at the Sambhar Lake during the manufacturing season." Sir A. Colvin explained it thus:—"This decrease is due to the same cause, viz, the raising of the price of salt at Sambhar Lake from 2½ annas to 8 annas in order to prevent exhaustion of the stock in hand. The stock in hand was very low owing to an unfavorable season for manufacture in 1884-85." There were large imports from Bombay, but they too were inadequate; and we read in the Bombay Administration Report for 1886-87 at page 162:—"The abnormal sales of Baragra salt, consequent on the partial failure of the Sambhar Lake supply in Northern India, had so far depleted stocks that at the beginning of the year the total balance on hand did not amount to more than some 17 laos of maunds," and further "the temporary increased demand, however, for Baragra salt for the N. W. Provinces, Punjab and Cude continued more or less throughout the year, and the stocks at Kharaghoda would have been completely exhausted before the monsoon was over, *had not issues for a time been confined to the Presidency proper.*" Cheshire salt imports were unfortunately lower than usual in that year by 363,088 tons. Thus, then, in spite of the reduction of the duty carried out in 1882-83, here was an awful fall of full 25 p. c., almost marking the year as a year of *salt famine*, owing to no other cause than a failure of supply. Bombay had no adequate supplies to send, Cheshire imports were worse than usual, Sambhar Lake lamentably failed, the result being that 100 millions of people had to submit to the privation and suffering consequent on an insufficient supply of a prime necessary of life, for which the Government system of monopoly, concentration of manufacture, equalisation of duties &c., was solely responsible. The last year of the period under review exhibits, however, a most gratifying recovery, the rise being fully upto the level of 1883.

Madras:—The whole period, here, from 1863-69 to 1881-82 is marked by general increases of duty car-

ried out in the teeth of the strongest remonstrances of the Local Government. The duty was at the start 3s. 4½d., was increased in 1870-71 to 4s., in 1874-75 to 4s. 4½d. and to 5s. in 1877-78, the very year of famine, all increases effected in the sacred name of the "equalisation of salt duties" reform. A glance at the figures suffices to show how the consumption has generally fallen with occasional variations from 6,693,000 to 6,207,000 during this period of dreary 14 years. The fall-off amounted to 486,000 maunds or about 34,000 a year to which may be added a further fall of 40,000 maunds for annual increase of population, the total rising to 74,000 a year or 1,036,000 maunds in these 14 years! In a province with great natural advantages for the manufacture of the article such a fall-off in the people's consumption, continued over a long series of 14 years, is something appalling. The supply does not fail and need not fail. The people have plenty of it at their door and have no fear of a salt-famine ever ensuing. The full effect of enhanced duties, therefore, is here apparent. There is no failure of supply, but the people cannot buy as much salt as they want because of the high duty; and Mr. Westland's ingenuity must be sorely exercised to explain so awkward a fact away. It is impossible for us to realize the terrible significance of such a long period of 14 years, rolling by with a positive reduction in the people's consumption of such a prime necessary of life to the enormous amount of 1,036,000 maunds. We can only say the sufferings of "the silent struggling masses" must have been severe during the period, and for these sufferings Government bears the sole and direct responsibility, having chosen to follow a wrong, "criminal" policy of levying "high duties on a restricted consumption."

The year 1882-83 dawned upon the Presidency as a happy new year. The high duties which had been the cause of so much untold, unrecorded suffering amongst the poorer classes, were swept away under the Ripon regime, and the effect was electric. In

the very first year, the consumption rose at a bound by 801,000 maunds i. e. 13 p. c. over that of the previous year, and in the next 4 years the increase was fairly maintained. The net increase in the 5 years was 14,93,000 maunds or 25 p. c. nearly—a phenomenon analogous to that which occurred in the period of 5 years from 1878-79 to 1881-82 in Northern India when a similar relief was given there.

Here we see, how the reductions of duty operate in respect of artificially restricted consumption of an important article of life. As long as the article is dearer than the people can afford to pay for, the consumption must go down, and under freer conditions it rapidly advances.

Here, then, also, Mr. Westland's theory of a normal progressive increase finds no support whatever.

Bombay:—The figures for the first 14 years no doubt lend some support to Mr. Westland's theory of a progressive normal increase of consumption; for in spite of gradual enhancement of duties we kept on, during the whole period, eating more and more salt. But here Sir John Strachey's explanation of this phenomenon seems to us to be most in agreement with facts and experience. "The fact appears to be," he says (vide his *Finance and P. W. of India* page 233) "that when in consequence of the abundance of supply and lowness of price, the people of a country have become accustomed to consume a considerable quantity of salt per head, a small increase in the cost of salt will have a very slight effect in altering their habits and diminishing the quantity which they consume, and will interfere little with the growth of consumption following increased population and extended cheap Railway transport." Thus, we were able, unlike our unfortunate brethren of Madras, to tide over the period of a retractive taxation with the *vis inertiae of habit*.

A brighter day of relief came with the Ripon regime. The duty was lowered to 4s. as in the other provinces of India, and our consumption with fluctuations has increased in the 5 years from 4,695,000 to 5,878,000 i. e. 1,183,000 or about 20 p. c., Mr. Westland's theory of a normal rate of 2 p. c. notwithstanding.

Here, we close this brief review of the results of the salt policy during the last 19 years. We have gone into the whole question at such detailed length with a view to supply an unanswerable refutation, on the silent, incontestable testimony of facts and figures, to Mr. Westland's theory of a "normal level" of consumption, and a "normal rate of progressive increase" in it at, say, 2·2 p. c. per annum, uninfluenced by variations in the rates of duty levied. This theory has already passed into a "pious" dogma of the Salt Administration, for it is on this theory that Mr. Westland founds his forecast of the operation of the present measure of the salt duty enhancement. The figures we have put together above in the table, however, disclose the existence of no such "normal level of consumption" or of "normal rate of increase"—both of which seem to have been evolved by the Salt Department out of its inner consciousness alone. These figures only go to establish the simple truth of a simple economic principle, which Mr. Westland, in his eagerness to defend a bad piece of taxation, seeks in vain to overthrow, and which, in the words of Sir J. Strachey, is no other than that "*where salt is cheap and abundant, the consumption is much larger than where it is dear and where the supply is restricted.*" They prove, in opposition to Mr. Westland's theory of "normal consumption" and its increase, independent of duties raised, that changes in the rates of duty on the side of reduction or enhancement unless when their action is counteracted by other causes such as variations in supply or in cost of transport &c., are invariably followed by changes in consumption, increa-

ses following reductions of duty, and decreases following enhancement of duty.

Mr. Westland's anticipation, therefore, that the present enhancement of the salt duties will have no restrictive effect on consumption, appears to us, in the absence of counteracting causes, to be opposed to the irrefragable evidence of recorded facts and figures — recorded in the very Department of Finance and Commerce over which he now presides. No one would more rejoice than ourselves to see it realized; but the results of past experience, as summarised in our foregoing review, decisively point to little short of a moral certainty that this enhancement of the salt duty will check consumption and result before long in a considerable diminution of it, and that Sir A Colvin's prediction as to the probable effect of such a measure made in 1886 (vide his speech on the Income Tax Bill) will be fulfilled. Circumstances, no doubt, may be conceived, in which the results of such a measure would not be so bad, and its general operation so disastrous. If, for instance, unrestricted production, yielding an unlimited supply and at the lowest cost, rapid improvement of communications, connecting sources of supply with areas of consumption, cheapening the price of the commodity to the consumer, steady, advancing improvement in the condition of the poorer classes, so as to leave them a larger and larger margin of income for their necessary expenditure,—if such and other conditions existed with us, we can understand how the action of such an enhancement of duty on a necessary of life would not be much felt, and, even if felt, would result in no positive suffering. But none of these conditions at present exist; the production is a strict Government monopoly, and our supply is necessarily restricted, cost of manufacture is always high varying from 5 to 8 annas per maund of salt, while under private management it does not exceed 3 annas, railway and road construction with our poor resources must be slow, but above all, the

condition of the masses in the country, in spite of official doctrines to the contrary, is going from bad to worse owing to a variety of causes, not the least of which is the heavy taxation of the State maintained for meeting the unproductive expenditure at so high a level as 4 or 5 millions a year which greatly interferes with the growth of the wage fund and the rise of wages. Under these circumstances, we see no counteracting cause to minimise the effect of this enhancement of salt duties, and we greatly fear that a diminution of consumption will follow its enforcement as a necessary consequence. It is this moral certainty of such a result following that supplies us with our second ground for the appeal we submit to Government to revise its action in the matter.

Financially speaking, we have endeavoured to show, that the salt duty enhancement means an inequitable addition to the burdens of the poorer classes while the richer escape, and tends to aggravate the inequalities in the distribution of public taxation as between the two, which, as Mr. Gladstone insists, is the first duty of Government in the Department of Finance to rectify and to remove. But the certainty of the results in respect of the consumption of this necessary of life which must follow such an addition so inequitable in itself, raises the question from the level of Financial equity to that of Political justice and humanity, and invests it with a practical seriousness which no statesman and no financier who understands his duty can afford to ignore. A diminished consumption of a prime necessary of life such as salt is, must mean positive privation and positive hardship of the severest kind to hundreds of thousands of our poorer householders. Besides this, the medical faculty is coming to the conclusion that a diminished supply of this necessary life is injurious to healthful existence, and leads, among other causes, to several loathsome forms of disease; and competent observers

already believe that some of these loathsome diseases are on the increase in India, probably owing to this circumstance. We will not exaggerate this point, but if there be any such certain connection, as is believed to exist, between the growth of these diseases and a diminished consumption of salt, which the experience of the last 19 years only too plainly shows to be the *invariable accompaniment of a high range of salt duties*, the present enhancement cannot be sufficiently condemned, as it must involve *positive suffering*, to the poorer millions, besides privation and hardship. It is surely repugnant to all ideas of justice and political ethics that any action of the state, taken on whatever grounds, should tend to such a result. It is simply inconsistent with the purposes and objects for which Government at all exists and works, that it should inflict any such suffering on the subjects under its care, even under the strongest plea of necessity. What, then, are we to say of a mere fiscal measure of taxation, adopted by Government with its eyes open to the consequences, under no higher plea than that of financial difficulties, that directly tends to impose such a suffering on the already suffering millions of this country? It is this aspect of the question that we desire most to press on the mind of the Government of India. Even those, who consistently advocate and support this salt taxation in India, do so on one condition and one condition only, that such taxation should never go beyond the limit, at which it tends to check consumption. Even the Duke of Argyll's Despatch of 1869 makes this important reservation. The present enhancement of the salt duties, in spite of all that Mr. Westland says as to its being perfectly innocuous, goes beyond that limit and is certain to restrict consumption, and cannot be defended on any imaginary theory of a normal consumption and a normal rate of increase invented by the Salt Department for its own convenience. Further if such enhancement of salt taxation *connotes* privation, hardship and suffering to

the poorer classes, let us for a moment consider what, to use a logical term, it *denotes*. The question of decrease and increase of consumption concerns only the lower and poorer classes of the population. It is not the upper ten thousand, like Sir Dinshaw Manikjee Petit and Raja Peary Mohan Mookerji, nor even the middle hundred thousand, who cut down their year's bill for salt, because it is dearer by a few annas or rupees a maund, or add to it when it is cheaper, but it is the lower millions, like Ramjee bin Rawaji that curtail it, those who cannot earn enough on which to live and with which to buy their necessaries of life. The suffering of those classes, who cannot get enough of salt to eat from year to year, may be imagined rather than described. It is to these classes that we refer, when we speak of the crushing pressure and crushing incidence of the salt impost, and those who make light of this pressure and this incidence, and tell His Excellency, the Viceroy and his Colleagues at the Council Board in the Council Hall of the Empire, that it is little felt or complained of by the masses in the country, evidently speak of what they do not know or care to know. Sir Dinsha might have easily known the fact from any one of his thousand and more employees if he had only taken the trouble to inquire. We will again appeal to figures. Dr. Hunter wrote thus in 1880:—"Two-fifths of the people of British India enjoy a prosperity unknown under Native rule, other two-fifths earn a fair but diminishing subsistence, but the remaining one fifth or 40 millions go through life on insufficient food." Adding figures for the Native States, according to Dr. Hunter, we have 100 millions in good and prosperous circumstances, the next 100 in a fairly prosperous condition which is, however, gradually decaying; but the last 50 millions starving and "going through life on insufficient food." Applying these figures to salt consumption and taking salt consumption to be about 10lbs per head per annum, we obtain the following result:—

1st Class	100,000,000	at 10lbs=	about	12,500,000,	maunds per year
2nd	"	"	"	12,500,000,	Do.
3rd	"	50,000,000	at 10lbs=	"	6,250,000,
					Do.

Total	250,000,000	Total Salt	} 31,250,000 per year
		consumption	

The figure for salt consumption last year is 31,633,000 maunds (vide Mr. Westland's figures).

Now the consumption of the first 100 millions may be taken to be perfectly *safe*, whatever the salt duty and its variations; that of the next 100 millions also *safe* upto a certain point, capable of maintaining itself as long as the price of salt does not pass a certain limit, so that for ordinary purposes and in considering the effect of ordinary variation in the salt duty, the consumption of these two classes, numbering 200 millions, may be assumed to be safe against the risk of a fall-off. But not so, the consumption of the lower 50 millions on which even the slightest variation in the salt duty tells in a perceptible degree. They require about $6\frac{1}{2}$ million maunds for their annual consumption, and the decreases and increases of salt consumption which follow changes in the duty levied are decreases and increases in the consumption of these classes. It is these classes that are the first to suffer, when an enhancement takes place, and it is these that feel relief when a reduction follows. When the duties are, however, abnormally raised and the price of salt goes up very high owing to this and other causes, the consumption of the middle 100 millions also shows a fall-off, and these classes too suffer. Abnormal variations in the salt duties, like the one under notice, may, therefore, be taken to affect one way or the other the consumption of the lowest 50 and, say, $\frac{1}{2}$ or 33 millions of the middle class making a total of 83 millions; and we may say, without fear of contradiction, that the present enhancement of the salt duties will check the consumption of these 83 millions of our poorer classes more or less. This total consumption at 10lbs per head per annum is

10,000,000 maunds a year, and if the result of the present taxation should be a diminution to the extent, say, of one million maunds, it follows, that it is the consumption of these 83 millions (33 of the middle and 50 of the lowest) which would decrease by one pound a year per head. But our anticipation is even worse; the general consumption of the country during the last 5 years since the reduction of the duties in 1882 has risen from 28,720,000 to 31,633,000, that is, an increase of 2,913,000 or nearly 3 millions; and if this level should be lost and the consumption should fall down in the next 5 years to the level of what it was before the reduction of the duty in 1882, the fall-off might be so much as 3 millions and even more, and the suffering of the 83 millions of our poorer population may be measured by a fall in the consumption per head of full 3lbs or $\frac{1}{3}$ of the average or even more. If past experience shows any thing, it is the moral certainty of such a result following the practical operation of the present salt measure. And the injustice of any thing like this amount of suffering and hardship to be inflicted upon these 83 and more millions of Her Majesty's most loyal subjects in India by this measure of taxation, becomes simply revolting when it is considered that this taxation is to be imposed and the resultant suffering to be inflicted for the purpose of raising money to cover a Burman deficit and to pay the cost of a costly "enterprise" undertaken in the name of "Commerce," and "Civilization" in an outlying province of the British Empire.

It is on these grounds, namely, (1) the *financial inequitableness* of this salt-duties enhancement, as throwing unjust burdens on the classes that already pay more than their just share, and (2) the *demonstrable tendency* of such a measure in India to give check to the general consumption of that necessary of life, involving *misery and suffering* of a severe kind to the millions of the poorer population, that we base our appeal to the Government of Lord Dufferin to revoke

this obnoxious notification of 19th January and devise other ways and means of raising the additional revenue that is wanted. In submitting this appeal, we are speaking in the name of the 83 and more millions of our poorer brethren who must be the first sufferers by it, and we feel confident that our appeal will not fall on unsympathetic ears. Lord Dufferin is a statesman of large views and generous sympathies, and his eminent colleagues in the Government of India, not even excluding Mr. Westland, the misguided author of a bad measure, have sincere sympathy with the suffering poor and have no unfeeling hearts like that of the Hon'ble Mr. Steel, and we earnestly entreat them, on behalf of our suffering 83 millions, to read the lessons of previous history, to listen to the warning voice of experience and observation, to realise to themselves what a diminished supply of this prime necessary of life must mean to the poorer millions of the land, to measure the responsibility that must lie on the shoulders of Government for the suffering which must result, and then consider whether it would not be more in accordance with the obligations of honour and the dictates of duty to revise their decision in this matter of salt taxation and cancel the ill-starred Notification of 19th January last.

A withdrawal of such a measure in deference to the voice of justice and humanity would ever be regarded as an honour and a credit to the Government that has the courage to do it, but it would be peculiarly a most graceful act of beneficent justice if Lord Dufferin, on the eve of his laying down his high trust, would be pleased to listen to our prayer, which we believe, is also the prayer of the entire nation, and give relief to the poorer masses in the country from the unjust addition to their burdens and its concomitant hardship and suffering. The enforcement of the salt Notification of the 19th January in disregard of the national prayer for its recall would only be remembered in the annals of the country as a high-handed

act of autocratic power against the wishes of the helpless and speechless millions of the land. But we are confident, we are not appealing in vain. Lord Dufferin has the large heart of a statesman and a true benefactor of the people, and we are sure, he will not leave our shores without calling back the ill-advised Notification to which he had undoubtedly set his hand under wrong and misleading advice.

But those, who like ourselves urge the withdrawal of this measure, are bound to show other ways and means less objectionable, of raising the additional revenue that is necessary; for the deficit must be covered, the Burman expenditure must be provided for. There is now no escape from this necessity. Enforcement of economy is of course the first suggestion that every body makes, but if Mr. Westland thinks, as he tells us that he does, that that is not the direction in which Government for the present can look for the means of tiding over the financial difficulty, we are strongly in favour of a Burman loan being raised to meet the special expenditure that must be incurred in Burma "for 2 or 3 years more," the loan, in justice to future years, to be repayable in short term-terminable annuities. If borrowing be considered inadvisable, we will go in straight for extension of the Income Tax to Agricultural incomes exempted from assessment to it under the Act of 1886, and if that again should prove inadequate for the purpose, for enhancement of that tax, to follow its extension.