



WRITTEN STATEMENT
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HINDU LAW COMMITTEE
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WRITTEN STATEMENTS SUBMITTED TO THE HINDU LAW COMMITTEE

VOLUME I

I. BOMBAY.

1. The Bombay Presidency Social Reform Association.

General observations.—The Explanatory Statement says that one of the objects of the Committee is to evolve a uniform Code of Hindu Law which will apply to all Hindus wherever residing in India. The Association has all along urged that the time has arrived when the different schools of Hindu Law that prevail in the different parts of India should be abolished and that there should be one law for all Hindus irrespective of the part of the country where they reside. The Association is therefore glad to note that in framing the Hindu Code the Committee have kept this point in view.

Paragraph 4 of the Explanatory Statement further states that the object of the Committee was to evolve a uniform Code of Hindu Law by blending together the most progressive elements in the various schools of law which at present prevail in different parts of the country. None interested in the subject of Hindu Law Reform is likely to have any objection to this object. When however one considers the details one finds that the Committee has unfortunately not adhered to this policy of blending together the most progressive elements in the different schools of Hindu Law. The Association would refer to only one example, namely, females coming into the family by marriage. Under the present law, a female on her marriage passes into her husband's family and acquires the *gotra* of that family. The Bombay School of Hindu Law, relying on this principle, has recognized the right of such females to inherit in their capacity as widows of a *gotra* *sapinda* and this right has been enjoyed by them over seventy years. The Committee has, in defining the word *agnate*, excluded females coming into the family by marriage from falling within the term 'agnate'. Not only that but by a later clause such females have been specifically excluded from acquiring any right of inheritance in their husbands' family. The view taken by the Committee in this respect is opposed to Hindu sentiment cherished for centuries. It further constitutes a retrograde step, at least so far as the Bombay School of Hindu Law is concerned. The Association hopes that in achieving uniformity the Committee would see that long-cherished sentiments of the Hindu Society or rights already acquired are not lightly interfered with.

PART I—PRELIMINARY.

Clause 2.—Sub-clause (2) defines 'Hindu'. The proposed definition is more comprehensive than the one contained in the original Bill. The illustrations help to bring out clearly the scope of the definition.

Clause 3.—This clause was necessary to remove doubts which might have arisen if the provisions of the prevailing Hindu Law and usage inconsistent with the provisions of this Code were not specifically superseded.

Clause 5.—Definition clause: Sub-clause (a) which defines 'Agnate' is defective inasmuch as it would exclude a female coming into a family by marriage. According to Hindu Law a girl upon marriage is deemed to be reborn in the family of her husband and changes her *gotra*. Both usage and the inclusion in the *Mitakshara* of the wife as a *Sagotra Sapinda* have given her the *gotra* of her husband in all forms of marriage. Courts have also held that a wife passes into her husband's family and *gotra*, without distinguishing between the forms of marriage. See 7 I.A. 212, 231, I.L.R. 33 Bom. 669, Mayne, page 133. It is difficult to understand why when females born in the family are to be included in the term 'Agnate', females coming into the family by marriage should be excluded. This exclusion would result in depriving the females in the Bombay Province of the right that they have long enjoyed as heirs in their capacity of *Sagotra Sapinda*. There is no reason for this and it is therefore urged that the definition of the term 'Agnate' should be amended accordingly. Even in the compact series of heirs, mother and grandmother are included though they are not born in the family and come into the family by marriage. The definition of 'Agnate' excluding females coming into the family by marriage is opposed to law, usage and sentiments of Hindus in Western India. It may further be noted

that the proposed definition is opposed to the *Mitakshara* II, V, 1, 3, 5 and the decision of the Privy Council in 7 I.A. 212 at pages 231, 234 to 236.

PART II—INTESTATE SUCCESSION.

Clause 2 (1) (b).—This sub-clause contains the definition of the word 'heritable property'. While expressing its opinion on this part of the Code as amended by the Joint Select Committee, the Association had urged that the property which a son or any other male heir would get under the provisions of this part of the Hindu Code should be his separate and absolute property and that it should under no circumstances become joint family property passing by survivorship to the other members of the Coparcenary. The Association is glad to find that the Committee has accepted that suggestion in Part III-A of the Code. As a consequence thereof the change proposed in the definition is necessary and the Association is in favour of it.

Clause 2 (3) (b) (i).—This clause states that in the case of a *dattaka* son, the natural tie is severed and is replaced by the tie created by the adoption. This statement is not quite accurate. (See Mayne on Hindu Law and usage 10th Edition, paragraph 194, page 263.) The tie of blood with its attendant disabilities is never destroyed. The Association would therefore suggest that this aspect of the question should be clearly brought out in this clause, though provision has been made in Part VI, Clause 13—Proviso (b) so far as marriage is concerned.

Clause 5.—In this clause, classes I and II of the Joint Select Committee's Bill have been regrouped in three classes. New class I consists of heirs mentioned specifically in *Yajnavalkya's* text and usually known as the compact series of heirs. New class II consists of descendants of the intestate up to the third generation and new class III consists of other descendants of the father. The former classification followed a more logical scheme. It included in class I the widow and the descendants of the deceased, in class II mother, father and the descendants of the father of the deceased and so on. The result of the re-arrangement would be that persons who are nearer to the deceased are postponed to the parents, brothers and their sons. Even in the compact series of heirs, the order of succession is based on the principle that the line of descent from the owner has to be exhausted first and then resort is to be had to the parents and their line of descent. Adopting also the test of natural love and affection, the persons in the line of descent from the deceased owner ought to be preferred to parents, brothers and brothers' sons. The Association feels that the classification contained in the original Bill which was further accepted by the Joint Select Committee should be retained.

Class I—Enumerated heirs, entry.—The Bill as originally drafted by the Hindu Law Committee had included the widow of a predeceased son among the simultaneous heirs who formed entry (1) in class I. Later on, when the Bill was circulated for eliciting public opinion, she was dropped from the list of simultaneous heirs. When the Bill came out of the Joint Select Committee she was again included among the simultaneous heirs. The Joint Select Committee had also included under that entry 'parents if dependant on the deceased'. The present draft has omitted both the additions made by the Joint Select Committee. While expressing its opinion on the Bill as amended by the Joint Select Committee the Association had opposed the inclusion of parents among the simultaneous heirs for reasons given in that opinion. The Association is therefore glad to find that in the present draft 'parents, if dependant on the deceased' are not included in the list of simultaneous heirs.

The Association however is not in favour of the omission of 'a widow of a predeceased son' from the list of simultaneous heirs. The notes on the clauses state that the omission is due to the objection taken by some critics as leading to excessive fragmentation. The Association is unable to accept that reasoning and considers the exclusion of a widow of a predeceased son as unjustifiable. She is the surviving half of her husband and as such she must be allowed to step into the place which her husband would have occupied if he were alive when the succession

opened. The objection on the ground of excessive fragmentation has no substance in it. Had her husband been alive, he would have taken a share and that would not have been objected to on the ground of excessive fragmentation. Why then should the objection be considered reasonable only when instead of the son, his widow is to be recognized as an heir in his place? To deprive the widow of a predeceased son of the share is to penalize her for her misfortune. Had her husband died after the succession had opened, his share would have gone to his widow by succession and it would not have then been objected to on the ground of excessive fragmentation. It would be relevant to mention here that when some years back the Government of Bombay had proposed a legislation for preventing fragmentation of land into uneconomic holdings, the proposal was stoutly opposed by the public.

It should further be noted that clause 12 which follows later on makes the provisions of the Partition Act applicable to cases where the person inheriting is a woman who has passed by marriage into a family other than that of the intestate. If the application of the said provisions were extended to the case of a widow of a predeceased son, the apprehended excessive fragmentation would be adequately prevented.

The Association would therefore urge that the widow of a predeceased son should be included among the simultaneous heirs.

Clause IV, entry (8), Clause V, entry (6) and Clause VI, entry (6).—At the time of expressing its opinion on the Bill as amended by the Joint Select Committee the Association had complained that sons of father's sister, father's father's sister, and mother's sister were recognized as heirs while the mothers themselves were excluded. The Association is therefore glad to find that father's sister, father's father's sister and mother's sister have been recognized as heirs in the present draft code and have been assigned places immediately before their sons.

Clause 7.—Part III-A lays down that a son would cease to have any right by birth in the ancestral property in the hands of the father. The property would come into his hands as separate property and there is no reason now to make any distinction between an undivided son and a divided son. Moreover in case the father desires to disinherit his divided son, it is open to him to make a will to that effect.

Clause 8 (4).—This clause should be amended and the words 'and shall not by reason of her marriage be entitled to inherit as an agnate of her husband's agnate or a cognate of his cognates' should be deleted. The reasons for this suggestion have already been given above while dealing with the definition of the term 'agnate.'

Clause 10.—This clause lays down the heirs who would succeed in the absence of any cognate capable of inheriting. There is no necessity to lay down any such rule. In ancient times when testamentary disposition was probably unknown there might have been some justification for such a provision. It is open to the last owner now to make a testamentary disposition regarding his property. Moreover, in modern times it is difficult to ascertain who would come under the terms 'Acharya,' 'Shishya' and 'Sabrahmachari.' The Association therefore suggests that this clause should be dropped.

Clause 12.—The Association had, in its reply to question No. 14 from questionnaire I issued by the Hindu Law Committee, suggested that the male heirs should be given the option to pay to the female heirs the money value for the share that she would be entitled to get on inheritance. The Association was therefore glad to find the Joint Select Committee held the view that the male heir should be given the legal option to purchase from the female heir, on her deciding to dispose of it, any immovable property inherited by her along with the male heir. While expressing its opinion on the Hindu Intestate Succession Bill as amended by the Joint Select Committee, the Association had suggested that a provision to that effect should be inserted in the Bill in question. The scheme of intestate succession as laid down by Part II of the Code is being opposed on the ground of extreme fragmentation of the estate on account of the recognition of a number of simultaneous heirs. A provision on the lines proposed in this clause would sufficiently meet that objection. The Association therefore is in favour of the principle underlying this clause.

The clause as drafted is restricted in its application to cases of female heirs who, before or after the devolution

of inheritance, have passed by marriage into a family other than that of the intestate. The Association would suggest that the application of the provisions of the Partition Act, 1893, should not be so restricted but the application should be extended to the cases of all female heirs.

Stridhan.

Clause 13.—This clause deals with the rights of women over *Stridhan* and its application has been restricted to *Stridhan* acquired after the commencement of the Code. Such restriction is necessary as otherwise rights already vested would be prejudicially affected.

Clause 14, sub-clause (a).—The explanations to sub-clause (a) would be unnecessary in view of the fact that this Code seeks to make a Hindu marriage strictly monogamous. There would hereafter be no chance of their being another widow or co-widow. If the explanation is intended only to cover cases occurring during the transitional period, the Association feels that it will have to be so amended as to bring out that intention clearly and specifically.

Sub-clause (b).—Under entry (1) sons and daughters are placed on the same footing. There is therefore no reason for giving any preference to the children of the daughter over those of the son. The Association considers that it is just and reasonable that all the grandchildren should come together and is therefore in favour of the change made by the Hindu Law Committee in the Bill as amended by the Joint Select Committee. It has to be noted that so far as distribution among the grandchildren is concerned sub-clause (c) makes the necessary provision to secure the female grandchild a larger share as the property to be distributed is the *Stridhan*.

General provisions.

Clause 16.—The clause in the original Bill did not specify the time when the estate was to vest in the subsequently born child: It was therefore necessary to insert a provision making it clear as to when the inheritance would vest in such a case. Having regard to the fact that Hindus consider a child in the womb as a child in existence, the addition made in this clause is both just and reasonable.

Clause 17.—The Association has always held the view that the caste of the parties to a marriage ought not to make any difference in the rights accruing to the parties to the marriage or their descendants. The Association had, in its replies to the questionnaire issued by the Hindu Law Committee, stated that the time had arrived when no differentiation should be made in respect of the rights of succession on the basis of the caste of parties to the marriage and that where there is a valid marriage the rights of succession should be determined irrespective of any restriction based on caste. The Association is therefore glad to notice that the said view has been embodied in this clause and consequently wholeheartedly supports the same.

Clause 19.—In its replies to the questionnaires issued by the Hindu Law Committee, the Association had advocated that unchastity should not be considered as a disqualification in the case of a woman in matters of succession. The Committee had in the course of its report observed that that was a subject on which Hindu opinion was extremely sensitive and had suggested a compromise on which clause 18 of the original Bill was based. The Association had accepted those provisions as they were a great advance on the present position under the Hindu Law in that matter. The Association therefore welcomed the deletion of the first clause of the proviso by the Joint Select Committee. Inasmuch as this clause is the same as the one in the Bill as amended by the Joint Select Committee, the Association accepts it as a further advance in the direction advocated by the Association.

Clause 21.—This clause recognizes the disqualification of the descendants of a convert in matters of inheritance. The clause however does not disqualify the convert himself from inheriting to his unconverted relations. It is no doubt true that this clause is in agreement with the decision of the Privy Council. From the report of the Joint Select Committee it will be found that ten out of the eighteen members of that committee were of the opinion that the renunciation of the Hindu religion should be a bar to inherit under Hindu Law. There is also a strong feeling in the Hindu community that apostasy should be a disqualification for inheritance. The Association feels that this feeling of the community should be respected and this

clause should be so amended as to disqualify even the convert himself from acquiring any rights of inheritance in the property of his unconverted Hindu relatives. Such an amendment is not likely to work any hardship on the convert, because if the person to whose property inheritance opens were of the opinion that apostasy should not be a disqualification, he can make a testamentary disposition and make a provision for the apostate.

Clause 25.—The addition made in this clause was necessary to safeguard the interests of those who had any rights against the property going to the Crown by escheat. The Association is in favour of the clause as amended.

PART III-A.

I. Scope and operation of Parts II and III.

Clause 1.—This clause deals with the question of the devolution of interest in joint family property. In reply to question 15 in the questionnaire issued by the Hindu Law Committee, the Association had stated that there were no words in the Hindu Women's Rights to Property Act, 1937, by which the widow, acquiring a share in the joint family property of her deceased husband by virtue of the provisions of that Act, could be deemed to have become a coparcener and that it was therefore natural to conclude that the coparcenary, so far as the branch of the deceased coparcener was concerned, had come to an end. The provisions contained in this clause only recognize that position in clear terms. There should therefore be no objection to this clause.

Clause 2.—This clause is intended to cut down the rights that sons acquired by birth in the joint family property. Under the provisions contained in Part II of the Code, a widow and a daughter would acquire an absolute right over the property inherited by them, while, but for this clause, the property inherited by a son, would have been subject to the rights acquired by his son on birth. While expressing its opinion on the Hindu Intestate Succession Bill (Part II of the Code) as amended by the Joint Select Committee, the Association had stated that the property which a son would get from his father might as between him and his sons and grandsons be joint family property and that consequently the power of a disposal would be restricted. The Association had then suggested that a provision laying down that the property that a son or any other heir would get under Part II of the Code, was his absolute and separate property should be added.

Further this right acquired by sons, grandson, etc., on birth has worked a great hardship on the Hindu community inasmuch as it had rendered it impossible for a person to undertake any venture or successfully carry on trade as no bank would be prepared to advance him money on the security of the family property.

As the application of this clause is restricted to cases of devolution after the commencement of the Code, the rights already vested on birth have been sufficiently protected.

The Association is therefore in favour of this clause.

II. Maintenance.

Clause 4.—This clause deals with the question of right to maintenance of certain dependants out of the estate of the deceased. One can understand a dependant, who has not obtained by testamentary or intestate succession any share in the estate of the deceased, being provided with maintenance out of the estate of the deceased. It would however be unreasonable to make provision for the maintenance in the case of a dependant who has obtained a share but the share so obtained is considered inadequate for his or her maintenance. It is difficult to understand why the other heirs who succeed to the property of the deceased should be made to pay for the maintenance of such a dependant. The question would naturally arise in the case of an unmarried daughter. Under the part dealing with the law of intestate succession, she has for the first time been recognized as an heir to her father. After she thus gets a share, all her rights against the estate of her father ought to come to an end. The provision contained in this clause is likely to cause a serious hardship to the other heirs, especially because under clause 1 of this part the expression 'maintenance' is to cover, in the case of

an unmarried daughter, the reasonable expenses of and incidental to her marriage. The proviso seems to be unnecessary.

Clause 5—Sub-clause (vi).—The law on the question whether a widowed daughter has a legal right to be maintained by heirs of her father out of his estate is yet unsettled. There is a difference of opinion on the point between the Bombay and the Calcutta High Courts. This clause would tend to remove the doubt that exists at present relating to that question. It is however difficult to understand whether such a provision as is contained in this clause is at all necessary in view of the fact that a daughter, whether she is unmarried, married or widowed, has now been included among the simultaneous heirs under clause 5 of Part II of the Code.

Sub-clause (vii).—This sub-clause deals with the case of widowed daughter-in-law. Under the Hindu Women's Rights to Property Act, 1937, she was for the first time recognized as an heir to her father-in-law along with her mother-in-law and brother-in-law. It has already been shown while dealing with the part relating to the question of intestate succession, that a widowed daughter-in-law, being the surviving half of her husband, ought to be recognized as one of the simultaneous heirs to her father-in-law.

Sub-clause (viii).—Under the present law, according to Dayabhag school, the right of an illegitimate son to maintenance ceases on his attaining majority, while according to the Mitakshara school it extends up to his death. To allow the right to exist even when the illegitimate son has attained majority and is in a position to earn for himself, has worked a great hardship on the heirs of the putative father of such a son. It is therefore just and reasonable that the right of an illegitimate son to maintenance out of the estate of his putative father should be confined to the period of his minority.

Sub-clause (ix).—There is no provision in Hindu Law for the maintenance of illegitimate daughters. They were compelled to take resort to section 488 of the Code of Criminal Procedure, 1898. An order passed against a person under section 488 of the Criminal Procedure Code, 1898, would not be binding on the heirs of that person. It is therefore desirable to include her specifically among the dependants entitled to maintenance. As this sub-clause restricts her right to maintenance only so long as she remains unmarried, the Association considers there would be no objection to such a provision as is contained in this sub-clause.

Sub-clause (x)—Permanent concubine.—The Association is against recognizing concubines as entitled to maintenance, as concubinage is not recognized as a ground for inheritance or maintenance under any other system of civilized law. Such recognition would also encourage the breach of the spirit of monogamous marriage contemplated by the Code.

Clause 6.—This clause only states the law as it exists to-day and there can be no objection to it. It is good that instead of fixing the maximum amount awardable as maintenance, this clause leaves the question of the quantum to the discretion of the Court.

The proviso to this clause deals with the question of marriage expenses admissible in respect of an unmarried legitimate daughter. Under Part II, a daughter is now to be an heir along with the sons and consequently there is no necessity to insert any provision in respect of the expenses for her marriage.

Clause 8.—Under this clause, debts of every description would have a priority over the claim for maintenance. If that is to be so, there ought to be some restriction on the powers of the person liable to maintenance. Under the Hindu Law, a Hindu cannot so dispose of his property by will as to affect the rights of maintenance to which a person is entitled under the Hindu Law. A similar restriction should be inserted in respect of the debts to be incurred by him.

Clause 9.—The property coming to the heirs would become their separate property and they can deal with it at their pleasure. It is therefore desirable to make the maintenance of the dependants a statutory charge on the estate taken by them. This clause as it stands would enable the heirs to defeat the claims of the maintenance holder and should therefore be dropped.

PART IV—MARRIAGE AND DIVORCE.

Chapter I.—Celebration of marriage.

Introductory.

Clause 1.—Sub-clause (a) (1) gives the definition of the term 'sapinda relationship'. The definition restricts the sapindaship to the fifth generation in the line of ascent through the mother and the seventh in the line of ascent through the father. The Association feels that there is no reason for the continuation of this difference and the same degree of ascent, namely, five, should be laid down both through the father and the mother. This would tend to simplify the matter.

There is a section of Hindus holding advanced views who want the sapindaship to extend only three degrees. This is not desirable. In this connexion, the Association would invite attention to the proviso to section 2 of the Special Marriage Act, 1872, which also prohibits marriages between persons connected within five degrees.

Sub-clause (b).—This deals with 'the degrees of relationship prohibited by this chapter.' The proposed definition is no doubt an improvement on the definition contained in the original Bill. The addition of the words 'or the children of two brothers' would prohibit marriages between first cousins on the paternal side. It is true that marriages between a person and his maternal uncle's daughter are recognized as valid by custom. The Association is in favour of the legislation laying down specifically the prohibited degrees within which marriages cannot take place.

Sacramental marriages.

Clause 3.—This enumerates the requisites of a sacramental marriage. While expressing its opinion on the Bill as introduced in the Indian Legislative Assembly, the Association had expressed its opinion against clauses (b) and (c) and had suggested that they be dropped altogether. The Association has all along been in favour of inter-caste marriages both *Anuloma* and *Pratiloma*. The Association also feels that the restriction based on the sameness of *Gotra* and *Pravara* ought to be abolished. The clause as it now stands accords with these views of the Association. Sub-clause (a) contemplates the validity of a widow remarriage in the sacramental form as it lays down that neither party must have a spouse living at the time of the marriage. The Association therefore urges that the disabilities imposed by the Hindu Widows' Remarriage Act (XV of 1856) should be removed and the Act repealed. If it is considered necessary to retain that Act, it should be suitably amended (hereto annexed is a copy of the Bill drafted by the Association to amend the Hindu Widows' Remarriage Act, 1856). The question whether a lunatic or an idiot can enter into a valid sacramental marriage is not free from doubt and sub-clause (b) would remove all doubts on the point. The Association has been urging for a legislation enforcing strict monogamy among Hindus and sub-clause (a) achieves that object. The Association wholeheartedly supports the clause as now drafted. It is unnecessary to mention that the Association is not in favour of the alternative clauses which are the same as in the original Bill. The Association suggests the addition of an explanation at the end of this clause to the following effect:—

Explanation.—The provisions of the Child Marriage Restraint Act (XIX of 1929) shall continue to be applicable to sacramental marriages under this section.

Clause 4.—This clause gives the ceremonies required for a valid sacramental marriage. The word 'Hindu' has been defined in clause 2, (2) of Part I as including Buddhists, Sikhs and Jains. The ceremonies among all these classes are not the same. The clause as now drafted would allow the parties to the marriages to follow such method of solemnizing the marriage as is customary to either of the parties to the marriage. The Association is in favour of the clause as it stands and not the alternative clause. The Association would however urge that a specific mention should be made of the Anand form of marriage which prevails among the Sikhs. Since the enactment of the Anand Marriage Act (VII of 1909) it has ceased to be 'customary ceremonies' and has been in recent years resorted to for facilitating polygamous marriages.

Clause 5.—The Association is in favour of this clause and not the alternative clause.

Clause 6.—It is absolutely necessary to make some provision for the purpose of facilitating proof of sacramental marriage. Under the Hindu Law as at present administered, there is no such provision. Realizing this necessity, this Association had in 1939 approached the municipalities in the Province of Bombay to frame by-laws for compulsory registration of marriages just in the same way as the registration of births and deaths. The response from the municipalities was not at all encouraging. The proposed provision for optional registration of sacramental marriage is therefore a step in the right direction and the Association wholeheartedly supports it.

Civil marriage.

Clause 7.—The clause as it now stands is certainly an improvement on the clauses in the original Bill. The provision contained in sub-clause (2) is essential. Sub-clause (4) is likely to create a fresh anomaly, namely, that though during the period of three years from the completion of the eighteenth year to the completion of the twenty-first year, a person would not be subject to any guardianship in respect of his person or property, unless a guardian is appointed by the court, he or she would still require to be subject to guardianship in respect of marriage. The sub-clause will have to be so amended as to avoid this anomaly. The Association would suggest that instead of the words 'twenty-first year' the words 'eighteenth year' should be substituted. If this suggestion is accepted, the sub-clause will have to be so amended as to restrict its application to the case of the female party to the marriages only, in view of sub-clause (3) which prescribes the age-limit for the male party, as at 18 years.

Clause 9.—This clause adopts the wording of section 4 of the Special Marriage Act, 1872, with one verbal change. In place of the word 'solemnized' used in section 4 of the Special Marriage Act, the word 'contracted' is used in this clause. It is difficult to understand the reason for this change. The Association is of the opinion that the word 'solemnized' should be substituted in place of the word 'contracted.'

It is no doubt true that ever since 1872 the notice of an intended marriage if given by one of the parties to the marriage was considered sufficient. There is reason to believe that the provision as it stands is liable to be abused. The Association would therefore suggest that the notice under this clause must be given by both the parties. If this suggestion is accepted, corresponding change will be necessary in the form of the notice given in the Third Schedule.

The form of notice given in the Third Schedule does not require the parties to the intended marriage to state their exact age at the time of the notice. It thus becomes impossible for the Registrar to know whether the consent of the guardian as required by sub-clause (4) of clause 7 is necessary or not. In this connexion the Association would invite the attention of the Committee to the observations of Rankin, C.J. in *Basana Sen v. Aghore Nath Sen*, I.L.B. 56 Cal. 628. The form of the notice should therefore be so amended as to require the parties giving notice to state their exact age at the time.

Clause 10.—This clause requires the Registrar, on receipt of a notice under clause 9, to file the same and enter a true copy of the same in the notice book. If a reference be made to clause 18 (2), one would find that in case of registration of sacramental marriages as civil marriages, the Registrar is required to give a public notice of the application for registration of marriage with a view to facilitate persons objecting to the said marriage to put in their objections within the time allowed. The Association has been pressing for a similar facility in respect of marriages solemnized under the Special Marriage Act, 1872, and would therefore suggest that provision be made in this clause requiring the Registrar to give a public notice of the intended marriage.

Clause 14.—It is difficult to understand the reason why in this clause the word 'contracted' has been substituted for the word 'solemnized' which occurs in the corresponding section of the Special Marriage Act, 1872. The Association is of the opinion that the word 'solemnized' should be retained.

For the reasons given above while dealing with clause 9, the form of the declaration to be made by the parties require them to give their exact age at the time of making the declaration. Similarly the words 'eighteenth year'

should be substituted in place of the word 'twenty-first year.' Corresponding changes will have to be made in the form of the declaration given in the Fourth Schedule.

Clause 15.—This clause follows the wording of section 11 of the Special Marriage Act, 1872. In this clause also the words 'solemnised' and 'solemnisation' occurring in section 11 of the Special Marriage Act have been omitted and the words 'contracted' and 'contracting' substituted instead. This change is unnecessary and the words 'solemnised' and 'solemnisation' should be retained. This is necessary in view of the fact that the idea of marriage being a contract is not much relished by a large section of the Hindu Community. Similar changes will have to be made in, clauses 16 and 17.

Clause 18.—The Association considers the provisions contained in this clause as being quite salutary and such as should meet the approval of the society in general.

General provision:

Clause 23—Sub-clause (b).—If the suggestion made above while dealing with clause 7, is accepted, for the words 'twenty-first year' occurring in this clause the words 'eighteenth year' will have to be substituted. After entry (4) additional entry "(4A) the sister, subject to the same rules of preference as in entry (4) above" be added.

Chapter II.—Consequences of marriage including duties of husband and wife.

Clause 26.—Duties of husband and wife. The proviso to this clause is of great importance as under the Hindu Law a wife's first duty to her husband is to submit herself obediently to his authority and to remain under his roof and protection. Judicial decisions have now laid down that she would be justified in leaving his house, and would be entitled to separate maintenance from him, if he kept a concubine in his house, or habitually treated her with such cruelty as to endanger her personal safety. There can be no objection to items (a) and (b) as they contain the law as interpreted by the Indian Courts. Item (c) is also recognised by Courts as a valid ground for the wife to live separate from her husband and claim maintenance. The wording of this item however is rather vague. It would be better to adopt the following wording: 'if he is guilty of such cruelty as would endanger her life, limb or health, bodily or mental, or a reasonable apprehension of it.' The wording is taken from *Julias v. Julias* (A.I.R. 1932 Oudh., 231). It may be mentioned here that the Baroda Hindu Code has also defined cruelty in the same way. The wording of item (d) is rather defective. A husband may desert a wife without her consent or against her wish but he may at the same time have justifiable or reasonable cause for doing so. It would also be necessary to lay down a certain period during which the wife is deserted or neglected. It may be that a husband deserts his wife in a fit of anger or through misunderstanding and it is but natural that there should be some scope for *locus penitentiae*. The necessity of such *locus penitentiae* has been recognised by the Courts so far. See *Bai Jivi v. Narsing Laludhai* (I.L.R. 51 Bom. at page 341). This item (d) should therefore be so amended as to read as follows: 'if he is guilty of desertion, that is to say, of abandoning her without reasonable cause for more than one year.' Sub-clause (f) should be amended by adding the words 'other than conversion to a non-Hindu religion by the wife' after the word 'cause.'

Clause 28.—This clause deals with the question of consideration for consenting to marriage and is intended to check the dowry evil to some extent. In this connection it would be interesting to note that the late Pandit Golap Chandra Sarkar Shastri had made a similar suggestion in his book on Hindu Law. He observed: 'The bridegroom's price, which according to recent practice originating in the moral and religious degradation of the so-called educated man, is extorted by the bridegroom's party from the bride's father, must on similar and stronger grounds of equity be considered the bride's streedhan and the recipient must be held to be a trustee for her.' According to the view of the late Pandit Golap Chandra Sarkar, this clause only gives statutory recognition to what was really an equitable principle. The Association however feels that if the dowry evil is to be checked it should be done directly and not indirectly as is sought to be done by this clause.

Chapter III.—Nullity and dissolution of marriage.

Clause 29—Sub-clause (1).—This clause enumerates the grounds on which any one of the parties to a marriage can obtain through Court a declaration that their marriage was null and void. The application of this clause is restricted only to marriages celebrated after the commencement of the Code. It is difficult to understand why it should be so restricted. The Association would suggest that this restriction should be removed.

There can be no objection to grounds (i) and (ii). With regard to ground (iii) the Association, as has been stated above, is not in favour of marriage between near relatives and would, therefore suggest that the reference to custom permitting sacramental marriage between *Sapinda* relations should be omitted from this ground. With regard to ground (iv) the Association would suggest that the words 'and at the time of institution of the suit' should be added at the end. This is necessary because there may arise cases in which a person may be a lunatic or idiot at the time of the marriage but later on he might get over the malady and become quite sane. In this connection reference may be made to ground (b) in section 32 of the Parsi Marriage and Divorce Act (Act III of 1936).

The Association considers that it would be desirable to prescribe a special period of limitation for a suit under this clause. In this connection attention of the Committee is invited to the proviso to ground (b) in section 32 of the Parsi Marriage and Divorce Act (Act III of 1936).

Sub-clause (2).—This clause lays down that a petition for a declaration about the nullity of marriage on the ground that the consent of one of the parties or his or her guardian was obtained by force or fraud lies to the High Court only. It is difficult to understand why a difference should be made in respect of this ground when on grounds mentioned in sub-clause (i) the petition would lie either to the District Court or the High Court. A petition to the High Court would be more expensive and the distance might also cause a hardship to the applicant. The Association would suggest that petition on this ground also should lie either to the District Court or to the High Court. This can be achieved by adding the ground contained in this clause as ground (vi) to sub-clause (i).

Sub-clause (4).—The Association is in favour of the provisions contained in this sub-clause.

Clause 30.—The Association has always held the view that while legislating for the enforcement of strict monogamy among Hindus, provision must at the same time be made for divorce. The Association is therefore glad to find that the Committee has accepted that view and has inserted a provision in the Code for dissolution of marriage. The Association also agrees with the view of the Committee that any ground for divorce which may be made available to a husband should be made equally available to the wife.

Sub-clause (1).—Restricts the application of this clause only to marriage celebrated after the commencement of the Code. The Association is not in favour of this restriction and would suggest that it should apply to all marriages whether celebrated before or after the commencement of the Code.

With regard to the grounds on which a decree for dissolution of marriage can be obtained, the Association is in favour of the grounds mentioned in this clause but would like to state that the period of seven years mentioned in grounds (c) and (e) be reduced to five. The Association would further suggest that the following additional ground be added to this sub-clause:—

(i) that the other party has not been heard of as being alive within the period of seven years by those persons who would have naturally heard of him?

The Association considers that this ground is quite in conformity with the principle that the Committee has placed before itself in prescribing the grounds on which dissolution of marriage could be obtained.

Clause 31.—This clause lays down that the provisions of the Indian Divorce Act would apply to petitions under clauses 29 and 30. The said Act was primarily intended for the Christian Community. Though enlightened Hindu opinion has considerably advanced and favours the introduction of divorce among Hindus, there is still a Section among Hindus who would strongly oppose a legislation permitting divorce amongst Hindus. The fact that the procedure laid down in the case of Christians is

sought to be prescribed in case of Hindus also would be taken advantage of by this Section in carrying on their agitation against the Codo or at least this chapter. The late Mr. Srinivasa Ayyangar in his draft Bill (The Hindu Marriage Bill) had by clauses 4, 5 and 6 made provision for these matters and had not relied on the provisions of the Indian Divorce Act. This Association also had in the Bill drafted by it included specific provisions on these questions. (A copy of the said Bill is enclosed herewith.) The Association would therefore suggest that provisions dealing with procedure and other consequential matters should be specifically inserted in the Codo itself.

PART V—MINORITY AND GUARDIANSHIP.

The Association considers that there is nothing in this part so far as it stands which can be objected to. It is however considered necessary to insert an additional provision dealing with the question of a change of religion by the natural guardian. The late Sir Dinshah Mulla has dealt with this question in paragraphs 525 and 526 of his book 'Principles of Hindu Law' (9th Edition). If the continuation of the guardianship is detrimental to the interests of the minor by reason of the change of religion by the natural guardian it should be open to the Court to consider the question of the desirability of appointing any other person as guardian, notwithstanding the existence of the natural guardian.

With regard to clause 4, the Association would suggest that the words 'unless it be in the interests of the minor to make such appointment' should be added at the end.

PART VI—ADOPTION.

Recent decisions of the Judicial Committee have placed the law relating to adoption, especially under the Bombay School of Hindu Law, in quite an unsettled condition. It is further necessary to have uniformity of law in all the Provinces of India. No branch of Hindu Law needed codification more than the law of adoption.

Clause 1.—The only kind of secondary son recognised throughout India is the adopted son. The 'Kritima Son' is recognised in the Mithila country only. The Dwyamushayana adoption, though recognised in Bombay and United Provinces, is not now very common. Illatom adoption prevails only among the Reddi and Kamma castes in the Madras Presidency. There should therefore be no objection to recognise only that kind of secondary son which is common in all the Provinces and to reject those which are peculiar only to some parts of India. This would tend to simplify the law.

Clause 3.—This clause deals with the question of the adoption of daughters. The main idea underlying adoption is the continuance of the line of the adopter. There is no chance of continuity of the line of the adopter if the person to be adopted were a daughter. She on her marriage would become a member of her husband's family and the children born to her would continue the line of the husband and not that of the person adopting her. Thus the adoption of a daughter is opposed to the very idea underlying the adoption. The case where daughter is generally adopted is the adoption by dancing girls. Here too, according to Bombay and Calcutta High Courts the adoption of a daughter by a dancing girl being opposed to morality and public policy is not recognized. The Madras High Court recognises such an adoption to be valid only where it is not for the purpose of prostitution. The only way to set at rest this controversy is to prohibit the adoption of a daughter as is sought to be done by this clause.

Clause 4.—This clause deals with the conditions of a valid adoption and there is no objection to any of the sub-clauses to this clause. The omission of the performance of the Datta Homam from those conditions would at first sight appear strange and objectionable. The decisions as regards the necessity of the Datta Homam are not uniform and the best course is to omit all references to the performance of the Homam. The clause would not prevent those persons who feel the necessity of a Datta Homam for the validity of an adoption, from performing one for the satisfaction of their conscience.

Clause 5.—According to Hindu Law, a person who is a minor under the Indian Majority Act, can adopt or authorize his widow to adopt when he has attained the age of discretion. It is very difficult to determine whether a

particular person has or has not attained that age. The Privy Council had expressed the view that the age of 15 or 16 should be regarded as the age of discretion. It is therefore necessary to lay down the exact age when a person can make a valid adoption. What that age should be is a matter for consideration. Under the Indian Majority Act a person who is under the age of 18 years is incapable of entering into any contract which would in law be binding upon him. An adoption in effect amounts to a potential transfer of interest in the property of the person adopting. It would be desirable to have a uniformity in law and instead of 15 years the words eighteen years should be substituted wherever they occur in this section.

Clauses 6 and 7.—There appear to be no objection to these clauses as they stand.

Clause 8—Sub-clause (d).—This clause deals with the question of renouncing the right to adopt. There is nothing in this section or anywhere else as to the manner in which the right to adopt is to be renounced. Inasmuch as the authority to adopt given by the husband otherwise than by a will is required to be under an instrument registered under the Indian Registration Act, the renouncing of the right should also be under an instrument registered under the Indian Registration Act. Otherwise the question would depend on oral evidence and litigation would invariably ensue with all its undesirable uncertainties and consequences.

Clause 12—Sub-clause (4).—It is difficult to understand why a differentiation should be made between a father giving a boy in adoption and a mother in respect of their age. In the case of both, the same age, namely, 18 years should be prescribed.

Clause 13.—With regard to (i) and (ii) there could be no objection to the provisions contained therein. Nor could there be any objection to (vi). As to the age of the boy to be adopted there is a great divergence of views. Though the original text of Saunaka lays down that the boy to be adopted must bear the reflection of a son, cases have occurred where married persons with children have been given in adoption. A restriction as to the age under these circumstances would tend to bring the law more in conformity with the text of Saunaka. On the other hand under Mayukh Chapter IV 5, section 19, there is no restriction as to the age and marriage is no disqualification. In Bombay there is uniform practice for nearly 70 years recognized by judicial decisions: *Sec. 8 B.H.C. R.A.C.J. 67.* Amongst Jains a married man can be adopted: *Sec. 37 I.A. 93, I.L.R. 29 All. 495.* The adoption of a married man is rare and does not in practice occur often. Deviation from custom and law in Western India does not appear to be necessary. Clauses III, IV and V may be dropped. Clause IV is not at all necessary. Though the Privy Council has laid down that the object and notice of adoption is spiritual, the Hindu Community now regards it as a secular act. Poor men have souls to save but only rich people indulge in adoption. From a practical point of view a boy of tender years is a dark horse whose future is uncertain and unknown. A boy of advanced age whose Upanayana ceremony is performed or even a married man of merit, character, experience and intelligence is perhaps more preferable. The author of Mayukh, Nilkanth, and his father are in favour of such adoption. If the desire for uniformity is overriding, the words 'except in Bombay, Punjab and Jain Community' may be added after the word 'married' in sub-clause (iii) of clause 13. On the whole sub-clauses (iii), (iv) and (v) might be dropped and it might be provided that the person to be adopted must not be older than the person adopting.

Clause 14.—The clause introduces a much desired change in the law of adoption under the present law, because of the interpretation placed on the text of Saunak by the Courts, daughter's son, sister's son and mother's sister's son though nearer from the point of view of natural love and affection could not be adopted. The clause should however be redrafted so as to read as follows:

"The adoption of a person shall not be invalid on the ground that he is [then should follow (i), (ii) and (iii)]"

Clause 15.—Inasmuch as the authority to adopt is made compulsorily registrable, the adoption itself should be evidenced by a document which would prove the giving and taking beyond doubt. Such document should be required to be attested by two witnesses and should be made compulsorily registrable. The objection that a

person on the point of death may not be able to call the Registrar in time is met by having the document attested by at least two witnesses and the document may be registered subsequently. If the document is made compulsorily registrable the dispensing with the performance of Datta Homa is understandable.

Clause 16.—Sub-clause (i) should come much earlier than here. The proper place for sub-clause (ii) would be just after the clause dealing with the question of an authority to adopt given by the husband. The explanation to sub-clause (i) would validate an adoption made while a son is in the womb and is subsequently born alive. Provision ought to be made to regulate the respective rights of such after born son and the adopted son. So also when a person adopts a son and subsequently marries, such wife shall be his step-mother according to clause 22, sub-clause (3). If however a son is born to such a subsequently married wife, provision ought to be made to regulate the rights of the adopted son and the subsequently born son or sons or daughter or daughters.

Clauses 17-18.—No remarks to offer.

Clause 19.—This clause is most important. As a result of the recent Privy Council decisions, adoptions are being made long after the death of the person to whom a son is adopted. Such adoptions have created a good deal of litigation and controversy about the vesting and divesting of the estate. It is absolutely necessary to put an end to the controversy and doubts by having a legislation laying down some period within which an adoption should be made if he were to divert the estate vested in somebody as is sought to be done by this clause. The period should be three years. A widow should be allowed sufficient time to reconcile herself to the position in which she is placed on the death of her husband. One year's period would be too short in that respect. Clause 19 (b) should be made more explicit and after the words 'so inherited' the words 'by the mother' should be added. If the impartible property is inherited by the mother from her father by custom or otherwise as the sole daughter, there should be no necessity for the adoption to be made within three years of the death of her husband.

Clauses 27-32.—It is no doubt true that even at present in most cases an adoption is followed by an adoption deed registered under the Indian Registration Act. Experience has however shown that, in spite of such registration, the fact of adoption is in many cases challenged by the person taking a son in adoption. The procedure sought to be prescribed under these clauses for registration of adoption is certainly a desirable change in the law and would, it is hoped, be an effective check on litigation relating to adoption. The procedure suggested in the Code is necessary and desirable to remove all doubts about the factum of adoption. According to clause 7 (1), authority to adopt is valid (i) under a registered deed and (2) by will. The deed of adoption if made might be made compulsorily registrable under the Indian Registration Act. This may be an additional method of removing any doubt as to the factum of adoption. This point has been specifically dealt with while dealing with clause 15 above.

Schedule.

Second Schedule.—The Arya Marriage Validation Act (XIX of 1937) was enacted to remove doubts about the validity of intermarriages between parties belonging to different castes or different subcastes. Under clause 3 of Chapter I in Part IV of the Code, such marriages would now be valid. It is therefore no longer necessary to continue the aforesaid Act on the statute book. Consequently an amendment should be made in this Schedule by adding the following:—

"1937 XIX The Arya Marriage The whole."
Validation Act, 1937.

ENCLOSURES.

(1)

A Bill to amend the Hindu Widows' Remarriage Act (XV of 1856).

Whereas it is expedient to amend the Hindu Widows' Remarriage Act XV of 1856; it is enacted as follows:—

1. (a) This Act may be called the Hindu Widows' Remarriage (Amendment) Act, 1937.

(b) This Act shall come into force from

2. Section 2 of the Hindu Widows' Remarriage Act be deleted.
3. (a) In section 3, the words "in the place of their mother" and the subsequent words beginning from "and making" and ending in "neither father nor mother" be deleted.

(b) In section 3, the following proviso be added at the end:—
"Provided, further, that the Court shall, before making the appointment, consider whether it is for the welfare of the minor that the mother who has remarried should be appointed a guardian, and in case of her conversion to any other faith, whether it is for the welfare of the minor that some other person should be appointed a guardian."

STATEMENT OF OBJECTS AND REASONS.

The Hindu Widows' Remarriage Act has been on the Statute Book for over 90 years without any attempt ever being made by the Legislature to amend the provisions thereof. Though the Act was only a permissive legislation, at the time of its enactment a strong opposition was led against it by those who were opposed to widows' remarriage. It was, therefore, but natural that some provisions had to be inserted in the Act to disarm opposition. These are the provisions contained in sections 2 and 3 of the Hindu Widows' Remarriage Act. Public opinion has much advanced since the enactment of the said Act, and a time has now arrived, when amendment in the right directions ought to be made.

2. So far back as October 1889, the General Secretary of the National Social Conference invited the Secretaries of the different Centres to suggest subjects for discussion at the Third Session of the National Social Conference to be held at Bombay on the 29th December 1889. The Madras Centre considered that, under the law followed by Civil Courts in British India, the position of a widow who led a bad life was in many respects better than that of a widow who remarried. The said Centre therefore suggested that one of the subjects to be discussed at the impending session of the Conference should be the desirability of asking Government to appoint a Commission to inquire and report upon the practical working of the Act legalizing the marriage of widows, and the suitability or otherwise of its provisions for the purpose of securing to the remarried widow and her husband the full enjoyment of their personal and civil rights as members of their respective families and castes. In the open Session of the Third Social Conference, Diwan Bahadur Raghunathrao moved the following resolution:—

"That experience of the last 25 years of the working of the Widow Marriage Act XV of 1856 has shown that the Act has failed in the following respects to secure to the widow and her second husband the full enjoyment of their personal and civil rights as members of their respective families and castes:—

(1) That the widow who takes advantage of the Act is made to forfeit the property which she inherits from her deceased husband.

(2) That the widow, if she is incontinent after such inheritance comes to her, does not forfeit such property and is therefore too often materially better off than if she remarries.

The conference is of opinion that the time has now arrived for an enquiry into the working of the Act with a view to suggest further improvements in the same so as to remedy the defects noted above."

3. The Social Reform Movement was then in its infancy, and some of those who attended the conference thought that a measure such as was proposed under the aforesaid resolution would raise new prejudices and sentiments to oppose the movement, and that it would be better that a widow should lose her property rather than that new sentiments and prejudices should go to swell the forces opposed to the cause of widow marriage. As a result the conference adopted a resolution to the following effect:—

"This conference is of opinion that the time has now arrived for an enquiry into the working of the Widow Marriage Act of 1856, with a view to suggest further improvements in the same so as to remedy its defects."

4. The same question came up for consideration at the Eleventh National Social Conference held at Amraoti on the 30th December 1897. At the said conference Prof. D. K. Karve, the pioneer in the cause of the amelioration of the condition of Hindu widows, moved a resolution which ran as follows:—

"That the experience of the last 40 years working of the Widow Marriage Act of 1856 has, in the opinion of the Conference, established the fact that the Act fails to secure to the remarried widow the full enjoyment of her rights in the following respects:—First, that such widow on remarriage forfeits her life interest in her husband's movable and immovable property for doing a lawful act when such forfeiture would not have resulted even if she had mis-conducted herself; secondly, that even in respect of Stridhan proper, over which her power of disposal is absolute, there is a general impression that she loses proprietary right over this kind of property in favour of her husband's relations, who otherwise could not have interfered with her free disposal of the same. In all these respects the law of 1856 has proved inoperative to protect her, and the conference is of opinion that steps should be taken by the social reform associations, who favour such reform, to adopt remedies to relax the stringency of caste usages and to secure reconsideration of principles of the Act with a view to remedy its defects."

The said resolution was carried by the conference unanimously.

5. It is regrettable that the different social reform associations in India do not appear to have taken any steps in the direction proposed by the aforesaid resolution. In 1925 a public meeting was held in Bombay under the auspices of the Bombay Presidency Social Reform Association to celebrate the anniversary of the late Pandit Ishwarohandra Vidyasaagar. At that meeting several speakers expressed their dissatisfaction with the existing law regarding the status of Hindu widows in this country. The Council of the Bombay Presidency Social Reform Association had, thereupon, appointed a committee consisting of Mr. S. S. Patkar (later on Hon'ble Mr. Justice Patkar), Rao Bahadur D. G. Padhye and Mr. B. G. Kher (now Hon'ble Mr. B. G. Kher, Prime Minister of Bombay) to consider the amendments necessary in the Hindu Widows' Remarriage Act of 1856. The late Mr. Justice Ranade had in one of his writings suggested that the widow's forfeiture of her husband's estate as a consequence of her second marriage should be done away with, and her life interest in her husband's inheritance should remain intact, whatever her choice of life must be. Relying upon that suggestion, the committee made a report

that unless the husband had expressly prohibited remarriage, the widow should not in consequence of her second marriage forfeit her life interest in her husband's inheritance. As regards the question of guardianship of her children the committee reported that she should on no account forfeit the same, because of her remarriage, unless the husband had appointed some other person as a guardian of the children.

6. The necessity of making the necessary amendments in the Hindu Widows' Remarriage Act of 1936 was again pressed by speakers at a meeting held under the auspices of the Bombay Presidency Social Reform Association on 35th July 1936. The Council of the Association appointed a committee to go into the question and to report what changes were necessary in the Act. The present Bill is based on the recommendations contained in the report of the said committee.

NOTE ON CLAUSES.

Clause 2.—This clause seeks the deletion of section 2 of the Hindu Widows' Remarriage Act. The said section effects a forfeiture of the rights of a Hindu widow remarrying, in the estate of her deceased husband. The foregoing statement would clearly show what the proposed change is intended for. If the section were allowed to stand as it is, it would result in an anomalous position, namely, "the one that treads in the path of immorality retains her life interest in her husband's property, while the other who is morally superior to her has to forfeit all that." When the original Act was being considered by the Legislative Council the insertion of this particular section was justified on the ground that the law gave the property to the widow not for her own benefit, but from the notion that her prayers and sacrifices and the employment of his wealth in religious and charitable acts, would be beneficial to her deceased husband in another state of existence. The notion which then necessitated the insertion of this section in the original Act has now disappeared and the amendment proposed would result in removing the anomaly. The text of Mann (Ch. IX, 191) also seems to indicate that by remarriage, when it is allowed, a widow is not divested of property inherited by her from her first husband.

Clause 3.—The 'motherly love,' that a widow mother would naturally feel towards her child, would not on remarriage necessarily disappear. Section 3 of the original Act makes it impossible for the Court to appoint a mother, who had remarried, as a guardian of her children by the deceased husband. The proposed amendment only gives discretion to the Court to appoint her a guardian of her children by the deceased husband, if the court considers that such an appointment would be for the welfare of the minor.

(2)

THE HINDU WIDOWS' REMARRIAGE ACT (XV OF 1936).

An Act to remove all legal obstacles to the marriages of Hindu widows.

Enacted.—Whereas it is known that, by the law as administered in the Civil Courts established in the territories in the possession and under the Government of the East India Company, Hindu widows with certain exceptions are held to be, by reason of their having been once married, incapable of contracting a second valid marriage, and the offspring of such widows by any second marriage are held to be illegitimate and incapable of inheriting property; and

Whereas many Hindus believe that this imputed legal incapacity, although it is in accordance with established custom, is not in accordance with a true interpretation of the precepts of their religion, and desire that the Civil Law administered by the Courts of Justice shall no longer prevent those Hindus who may be so minded from adopting a different custom, in accordance with the dictates of their own conscience; and

Whereas it is just to relieve all such Hindus from this legal incapacity of which they complain, and the removal of all legal obstacles to the marriage of Hindu widows will tend to the promotion of good morals and to the public welfare; it is enacted as follows:—

1. *Marriage of Hindu Widows legalized.*—No marriage contracted between Hindus shall be invalid, and the issue of no such marriage shall be illegitimate, by reason of the woman having been previously married or betrothed to another person who was dead at the time of such marriage, any custom and any interpretation of Hindu law to the contrary notwithstanding.

2. *Rights of widow in deceased husband's property to cease on her re-marriage.*—All rights and interests which any widow may have in her deceased husband's property by way of maintenance or by inheritance to her husband or to his legal successor, or by virtue of any will or testamentary disposition conferring upon her, without express permission to remarry, only a limited interest in such property, with no power of alienating the same, shall upon her remarriage cease and determine as if she had then died; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same.

3. *Guardianship of children of deceased husband on the remarriage of his widow.*—On the marriage of a Hindu widow, if neither the widow nor other person has been expressly constituted by the will or the testamentary disposition of the deceased husband, the guardian of his children, the father or paternal grandfather, or the mother or paternal grandmother, of the deceased husband, or any male relative of the deceased husband, may petition the highest Court, having original jurisdiction in civil cases in the place where the deceased husband was domiciled at the time of his death, for the appointment of some proper person to be guardian of the said children, and thereupon it shall be lawful for the said Court, if it shall think fit, to appoint such guardian, who when appointed, shall be entitled to have the care and custody of the said children, or of any of them, during their minority, in the place of their mother; and in making such appointment the Court shall be guided, as far as may be, by the laws and rules in force touching the guardianship of children who have neither father nor mother:

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

4. *Nothing in this Act to render any childless widow capable of inheriting.*—Nothing in this Act contained shall be construed to render any widow, who, at the time of the death of any person leaving any property, is a childless widow, capable of inheriting the whole or any share of such property, if before the passing of this Act, she would have been incapable of inheriting the same by reason of her being a childless widow.

5. *Saving of rights of widow marrying except as provided in sections 2 to 4.*—Except as in the three preceding sections is provided, a widow shall not by reason of her remarriage, forfeit any property, or any right to which she would otherwise be entitled; and every widow who has remarried shall have the same rights of inheritance as she would have had, had such marriage been her first marriage.

6. *Ceremonies constituting valid marriages to have same effect on widow's marriage.*—Whatever words spoken, ceremonies performed, or engagements made, on the marriage of a Hindu female who has not been previously married, are sufficient to constitute a valid marriage, shall have the same effect if spoken, performed or made on the marriage of a Hindu widow, and no marriage shall be declared invalid on the ground that such words, ceremonies, or engagements are inapplicable to the case of a widow.

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

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

Effect of such marriage proved.—And all marriages made contrary to the provisions of this section may be declared void by a Court of law; provided, that in any question regarding the validity of a marriage made contrary to the provisions of this section, such consent as is aforesaid shall be presumed until the contrary is proved, and that no such marriage shall be declared void after it has been consummated.

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

(3)

THE HINDU DIVORCE BILL.

Whereas it is just and expedient to provide by law for the right of divorce under certain circumstances among Hindus of all castes; it is hereby enacted as follows:—

1. *Short title, extent and commencement.*—(a) This Act may be called the Hindu Divorce Act, 1933.

(b) It extends to the whole of British India.

(c) This Act shall come into force on such date as it receives the assent of the Governor-General.

2. *Scope and application.*—Notwithstanding any rule of Hindu law or custom, contrary to or inconsistent with this Act, the provisions of this Act shall apply to all Hindus.

Explanation.—For the purpose of this Act, the word "Hindus" shall include Sikhs, Jains and Buddhists.

Suits for nullity of marriage.

3. *Lunacy or Idiocy.*—If a Hindu at the time of his or her marriage was a lunatic or an idiot, such marriage may, at the instance of his or her wife or husband, be declared null and void upon proof that the lunacy or idiocy existed at the time of the marriage and at the time of the institution of the suit.

4. *Impotency.*—A Hindu will also be entitled to a decree declaring his or her marriage with the defendant to be null and void upon proof that the defendant was impotent at the time of the marriage and at the time of the suit.

5. *Limitation.*—No Court shall entertain a suit under section 3 or 4 unless the same has been instituted within two years from the date on which the marriage in question was solemnized or, in the case of a minor within one year of attainment of majority under the Indian Majority Act.

Suits for dissolution of marriage.

6. *Grounds for dissolution.*—Any married Hindu may bring a suit for obtaining a decree of dissolution of marriage on any one or more of the following grounds:—

(a) that the defendant has, without reasonable cause, deserted the plaintiff for a continuous period of five years;

(b) that the defendant has not been heard of as being alive within the period of 7 years by those persons who would have naturally heard of him;

(c) that the defendant has changed his religion;

(d) that the defendant has been guilty of adultery;

Provided that divorce shall not be granted on this ground, if the suit has been filed more than two years after the plaintiff came to know of the fact;

(e) that the defendant has been guilty of such cruelty as would endanger the life or safety of the plaintiff; and

(f) that the defendant, if a husband, has any other woman as a concubine, or if a wife, is the concubine of another man.

Courts and procedure.

7. *Court in which suits to be brought.*—All suits under section 3, 4 or 6 of this Act shall be instituted in the principal Civil Court of

original jurisdiction of the District Court within the limits of whose jurisdiction the defendant resides or where the plaintiff and the defendant last resided together.

Explanation.—In the case of the Presidency Towns of Bombay, Calcutta and Madras, the principal Civil Court of original jurisdiction shall be the Original Side of the High Court or any other Civil Court which might be empowered in that behalf by the Provincial Government.

8. **Decree in certain suits.**—In any suit under section 3, 4 or 6 of this Act, whether defended or not, if the Court is satisfied that any of the grounds set forth in those sections for granting relief exist, that none of the grounds set forth for withholding relief exist and that—

(a) the act or omission set forth in the plaint has not been condoned;

(b) the husband and wife are not colluding together;

(c) the plaintiff has not connived at or been accessory to the said act or omission; and

(d) there is no other legal ground why relief should not be granted; then and in such case, but not otherwise, the Court shall decree such relief accordingly.

9. **Appeal.**—An appeal shall lie to the High Court of the Province from any decree or order passed under section 3, 4 or 6 of this Act.

10. **Procedure.**—The provisions of the Code of Civil Procedure, 1908, shall, as far as the same may be applicable, apply to proceedings in suits instituted under sections 3, 4 and 6 of this Act including proceedings in execution and orders subsequent to the decree and in appeal.

Custody of children and alimony.

11. (1) **Custody, etc., of minor children.**—(1) In any suit for dissolution of marriage under this Act, the Court may, from time to time during the pendency of such suit, pass such interim orders as it deems proper, with respect to (a) the custody, (b) maintenance and (c) education of the minor children of the marriage.

(2) At the time of passing the decree in any suit under this Act the Court may make such provision or order as it deems fit with respect to (a) the custody, (b) maintenance and (c) education of such children as are referred to in clause (1) of this section.

12. **Alimony pendente lite.**—In any suit under section 6 of this Act, if the wife shall not have an independent income sufficient for her support and the necessary expenses of the suit, the Court, on the application of the wife, may order the husband to pay her monthly during the pendency of the suit, such sum not exceeding one-fifth of her husband's net income as the Court, considering the circumstances of the parties, shall think reasonable.

13. **Permanent alimony.**—(1) The Court may, if it shall think fit at the time of passing any decree under this Act or subsequently thereto on application made to it for the purpose, order that the husband shall to the satisfaction of the Court secure to the wife, while she remains chaste and unmarried, such monthly payment of money for her maintenance and support, for a term not exceeding her life as, having regard to her own property, if any, her husband's ability and conduct of parties, shall be deemed just and reasonable, and for that purpose may require a proper instrument to be executed by all necessary parties.

(2) The Court, if satisfied that there is a change in the circumstances of either party at any time, may at the instance of either party vary, modify or rescind such order in such manner as the Court may deem just.

14. **Remarriage.**—It shall not be lawful for the parties whose marriage has been dissolved under a decree in a suit instituted under section 6 of this Act, to marry again till after the expiration of six months from the date of the decree or from the date of the appellate decree, if any appeal be preferred as provided for under section 9 of this Act.

15. **Power to make rules.**—The High Court shall make such rules under this Act as it may from time to time consider expedient and may from time to time alter and add to the same.

STATEMENT OF OBJECTS AND REASONS.

Students of Hindu Law texts would not dispute that Hindu Law did at one time recognize divorce and permitted it under certain circumstances. It is unnecessary to undertake a research into the causes that led to its falling into desuetude. Even at present divorce is permitted among some castes of Hindus by custom. Cases have occurred frequently in India among the Hindus, in which a married Hindu woman's life is made unbearable under circumstances brought about by her husband. Justice and equity demand such right of divorce being conceded to Hindu women. The present Bill however makes a divorce permissible at the instance of either the husband or the wife. The grounds for obtaining divorce are such as would be accepted as reasonable by all thinking persons. Inasmuch as the Bill is only permissive, it is hoped it would get the necessary support.

2. Diwan Bahadur V. V. Joshi, B.A., LL.B.

In spite of the anxiety expressed by the Committee to draw up an entire Hindu Code, the draft deals with ONLY A FEW OF THE MANY topics of Hindu Law and gives no clear picture of the entire frame work of the Code. The Committee appears to be labouring under the limitations placed on the Central Legislature by the Legislative lists; but these should not have weighed with the Committee at all. There are two courses open. The Central Government may move the Parliament to revise the Legislative lists so as to give the Central Legislature full jurisdiction to enact on all matters of personal law of the Hindus and, if properly presented, the argument will

surely carry weight and achieve success. The other course would be to enact suitable legislation in matters falling within its competence, leaving the other provisions to be implemented by the Provincial Legislature with such modifications as the special local conditions and public policy may demand. Now that the Committee is charged with the task of drafting an entire Hindu Code, it need not feel hampered by considerations about the future of the Code and its passage through the Legislatures either the Central or Provincial. The draft, in itself, presents piecemeal proposals and leaves out a good many topics that have immediate or ultimate bearing on the actual provisions of the draft. If the Committee formulates proposals regarding the matters included in the Central Legislative list and leaves out of consideration topics covered either by exclusive or concurrent Provincial Legislative List, the Provincial Legislatures will find themselves severely handicapped by the very fragmentary structure sanctioned by the Central Legislature and which they cannot change to make their laws complete, neat and workable. The Committee would be depriving the Provincial Legislatures of the opportunity of drawing a full picture and would, at the same time, leave no guidance regarding the topics the Provincial Legislatures will have to legislate upon. If the Committee draws a complete picture, the Provincial Legislatures will be in a position to appreciate and act upon the conclusions which should have the stamp of scholarship of the members of the Committee and the support of the jurists and the public from the length and breadth of India. They will be induced to adopt the conclusions readily and thus the ideal of uniform legislation will be quickly and effectively achieved. Therefore again I request the Committee to tackle every branch of Hindu Law and prepare a draft Code on a comprehensive and exhaustive basis so as to leave out no topic covered by the Hindu Law. I should draw the attention of the Committee to my earlier suggestions regarding the various topics which should be included and request the Committee to prepare a comprehensive code of Hindu Law so as to cover all topics whether falling within the competence of the Central Legislature or within that of the Provincial Legislature. The Central Legislature will proceed with only those parts which fall within its jurisdiction and keep the others to be implemented by the Provincial Legislature by appropriate legislation, and in this way the organic unity and all too essential uniformity of the Hindu Law can still be kept well preserved in spite of its possible vivisection by following the letter of the Legislative lists.

Another general remark, I should like to make, is that the Committee have touched only some of the aspects of those topics which fall within its competence and have left a good many details and principles untouched with the result that the draft makes a very poor impression and, I am afraid, it will be severely criticised for the simple reason of its inexhaustive nature.

The law of marriage should have been exhaustively dealt with meeting all the demands, made by the reformist and incorporating all that the jurist should expect to find. So also about the law of adoption. I don't understand why the law of gift, debts, religious endowments, Hindu charity, maths and benami transaction, clearly coming within the Legislative list, should not have been dealt with.

Before the final draft goes to the Legislature or to the public I should like to make a suggestion regarding the contents. General public and the members of the Legislature are not expected to be expert Hindu lawyers and as they know very little about the existing law and about the proposed addition they fall an easy prey to the theory of reactionaries and join in opposing the Bills. That has been my experience during all these years both in Baroda and as a member of the Hindu Law Committee and I make the suggestion in order to remove the serious drawback in the draft. Thereafter, every statement, rule or principle should be amplified by the authorities on which it rests and where the rule or principle is a departure from them or a new addition, by clear exposition of the reason which weighed in favour of their experience.

In illustration, take clause 29 (Chapter II—Nullity and dissolution of marriages).

Clause 29.—Either party at a marriage may present a petition to the District Court praying that his or her

marriage may be declared null and void on any of the following grounds—

(1) that the respondent was impotent at the time of the marriage and at the time of the presentation of the petition.

Note—Scholars are unanimous in their opinion that in ancient times divorce was allowed under Hindu Law under certain conditions (See Dr. Abhekar Position of Women in Hindu Civilisation, page 88. See Manu IX, 48; IX 79; IX 175-76; Atharva Veda IX 5, 27-28 Kautilya III, 4; Vashishta Dharma Sutra XVII 67; Parasara IV 24;) but because of the changed conditions and rigid moral Hindu Law divorce is only allowable if allowed by custom. Most of the castes have customary divorces and it is not desirable to extend the same benefits of divorce to those castes which do not have it by custom, the grounds and procedure are mostly regulated by caste organization which hardly observe any uniform practices or procedure and even these castes do require a statutory right to obtain divorce in place of or in addition to the arbitrary customary divorce.

23. (1) Impotency has been regarded as a ground of incompetency for marriage (See Yajnavalkya I, 55; Smritichandrika Samstaraikanda 211, 221; Parasara Madhviyam M.L.J. edition 64; Madan Parijata (See Vashishta cited in Ghose Hindu Law 350) S. Srinivasa Iyengar's opinion that such marriage is invalid (Mayne's Hindu Law, p. 130). Because of the practice of Niyoga, once prevalent but subsequently condemned the impotent man could have a son and such son was treated as natural son for the purpose of inheritance. The practice of Niyoga has become extinct and the possible reason of the rule for legalising the marriage with an impotent man has ceased to exist. But there appears to be some misunderstanding about the correct legal position, and we prefer to adopt the view of Mr. Srinivasa Iyengar "that this is a fraud on the policy of marriage institution" and hold that such marriages are invalid and liable to be dissolved. We prefer and adopt the reasoning in 48, Cal. W.N. 648 and propose that impotency should be a ground for dissolution of the marriage.

Unless you clearly state what the law was originally, how it was misinterpreted subsequently and what it should be in future, you can never hope to get support from the public. Even lawyers as a class have read little of the texts and are hardly well up in the historical development and they may not be able to grasp the principles stated and the utility of the changes proposed. No doubt that is taxing and laborious work but I hope it will be well repaid in disarming the opposition which is mostly based on ignorance of the actual textual law and based upon a tendency to resist all that touches personal law. The recent events have changed completely the indifferent mental attitude of the Hindu society and unless they are convinced that all that is put forward has sanction in the Dharmashastra they may look upon the legislation as weakening their social front to put it at the lowest. Therefore every word should be fully supported either by textual authority or the arguments which weighed with the Committee, and if that be done I am confident that the Hindu Code will have not only a smooth passage through the Legislatures but good reception everywhere.

My detailed comments are given as under:—

Clause 2 (1) Add "and to all those who were governed by the Hindu Law in all or any matters dealt with in this code if this code were not in force for these matters only."

2 (2) Drop the rest of the clause coming immediately after "Jaina religion" and beginning with "and if . . .". That some portions of Hindu Law, are made applicable to non-Hindus by way of custom would not make them Hindus. Can we call Kutchimemons and Khojas avowedly Mohammedan by religion Hindus simply because they are governed by Hindu Law in matters of succession—clause 2 (2) is defining the word Hindu and the definition should be logical.

5. Add the following definition:—

Death—Means physical as well as civil death as becoming a "sanyasi."

Widow—A woman whose husband is dead or is deemed as dead for the purposes of this Act.

Instance—The wife of a person who has become a sanyasi will be regarded as a widow and succeed to his property as such.

Son—Means and includes (1) son, (2) son's son and (3) son's son's son and also includes a dattaka son.

Take away all the definitions from Part II—Intestate Succession and put them under clause 5.

PART II—INTESTATE SUCCESSION.

Clause 7 (b).—I agree to the proposal.

Clause 9—Rule 4.—I agree.

PART III—TESTAMENTARY SUCCESSION.

I should like to have a complete legislation for the wills executed by the Hindus containing the provision regarding the valid bequests, the formalities of a valid will, the competence of the executor, the extent of the testamentary capacity, the kinds of properties which can be disposed of by will; and in drafting these provision one can, not only mould the law so as to carry out the Hindu sentiments and traditions but can bring the law up to date by examining the conflicting decisions. For instance, a Hindu knows what is meant by "religious purpose" (Dharma) or "public good" or "for the benefit of poor and helpless" and a bequest for these purposes should not be defeated as being too vague and uncertain as was done in 26 Indian Appeals 71; 14, Lahore 827; or for purposes which the executors may do for the benefit of the testator (14, Cal. 222, 14, Bom. 476). The testamentary competency requires to be raised and we should like to raise the age to the completion of the twenty-one years in spite of section 3 of the Indian Majority Act; for it looks quite odd to attribute to a young person of twenty a sound disposing mind. Over and above the separate or self-acquired property under the Mitakshara law, I should like to include coparcenary interest in the joint property as one falling within the list of the properties that can be disposed of by a will. A will by a coparcener of his undivided interest executed with the consent of the other coparceners is held valid (48, All. 313; 53, I.A. 123; 50, Bom. 558) on the theory of gift consented to by the other sharers; and since coparceners' right of survivorship has been practically defeated by the Deshmukh Act in so far as it brings in the widow of the coparcener in his place, there appears to be no fundamental objection now to include the coparcener's interest in the list of properties that can be disposed of by a will. Even if one would like to encourage the practice of executing wills, one surely will like to suggest some limitations on the testamentary capacity of the testator. We came across cases where undue advantage of a person, in his last sickness is taken and bequests are obtained by the strangers for the service they might have rendered in the last days and the widow, sons and daughters of the testator are deprived of the property. As a check these unfair bequests and as a matter of public policy, I suggest that a person should not be allowed to will away more than one-third of his property if he has got any of the heirs from amongst the simultaneous heirs group existing. I know of a case of an ex-Divan who has left all his property to his mistress and left nothing for his fourth wife, who with great difficulty could secure bare maintenance out of the very big property left by her husband. Such instances are by no means few. The Indian Succession Act has been modified from time to time and some of its provisions are made applicable to the wills executed by the Hindus, and therefore there is no neat and clear Act relating to Hindu wills. One has to refer the various provisions of the Succession Act, amendments made from time to time, the law of transfer, etc., and then a number of difficult points of interpretation. Therefore I suggest that the Hindu Law Committee should draw a comprehensive law regarding the testamentary succession as with the increasing tendency of executing wills, this branch of law is assuming much importance and it will but be proper to place the whole law in as neat and clear a form as possible.

PART III-A.

Clause 1.—Unless you decide at some other place that the interest of a coparcener can be disposed of by a valid will, you cannot lay down that it will devolve by testamentary succession. It is begging the question. After you lay down that such interest can be the subject of testamentary disposition, you need not lay down how it should devolve. In all testamentary dispositions, the property devolves according to the provisions made in the particular will.

I. Maintenance.

Clause 4.—Drop "or where . . . under this Part." I object to allowing maintenance to those who have already got a share of the inheritance, however small or meagre it may be. It is a sound principle of law that the relations will either get maintenance or share out of the property of the deceased and one who gets a share shall not

be entitled to any maintenance in addition to it. In that way those who get the larger share or for the matter of that who get a share will be deprived of its full use by being compelled to provide maintenance out of it in favour of another relative who has obtained a smaller share. Take concrete case. A man leaves behind him a widow, unmarried daughter and the estate is worth only Rs. 1,000. The widow will get Rs. 750 and the daughter will get Rs. 250. Neither the daughter nor the widow will be able to maintain themselves out of these shares unless they spend it outright. The widow (take it that she is a step-mother) will not be free to spend her share of Rs. 750 because it carries the liability of maintaining the daughter, and if we literally apply the implications of the clause (3) then the mother will have to spend even for the daughter's marriage expenses and presents, thus practically she will be denied the benefits of a share she gets under the provisions. It may appear rather harsh to put it bluntly, that whoever gets a share of the inheritance will not be entitled to any share but it would in majority of cases be more just and equitable. The quantum of the shares of the heirs is decided primarily on their natural requirements as provided for by the intestate and each of the heirs has to remain satisfied with that little or large portion he gets of the intestacy. The object of the codification is to discourage litigation by laying down simple rules and avoiding complications and conflicts as much as possible; and therefore I strongly urge on the Committee to stick boldly to this principle that he who gets a share shall not be entitled again to any maintenance out of the inheritance he has shared in.

Clause 4.—*Proviso*—*drop* it. This proviso clearly brings to light the great confusion that will follow in adjusting the conflicting claims, and deciding what was adequate and sufficient, when the standard of living varies from country to country and from individual to individual. The law of maintenance will be so complicated and difficult, that it will take away all credit for simplification elsewhere.

Clause 5.—(I, II) *add* "if dependent completely on the deceased son" after both (1) and (2). The object of providing maintenance is to see that helpless parents should not suffer in their old age. The duty of a son to maintain his parents is limited to maintaining "aged parents" (See Manu as cited in Mitakshara implying thereby that they are incapable of earning their livelihood and are dependent on the son). A man is bound to maintain his "aged parents," virtuous wife and wife and infant child as Manu implies that as regards his parents and offspring his liability is qualified, in the sense, that it arises only under certain circumstances, the old age of the parents and the minority of the children; while the duty to maintain infant child is unqualified. Just as he cannot be made to maintain his adult children, so also he should not be obliged to maintain parents who are in a position to earn, or are actually earning. And if the son, during his lifetime was not bound to maintain parents who were not dependent upon him or say who were not aged, one fails to understand how a new liability should be created against his heirs. To allow maintenance to parents irrespective of their status, earnings or property is going far beyond the necessity and depriving the heirs of the right of unrestricted enjoyment of the heritage. Nobody will wish that a pensioner, father or widowed mother who has already got the insurance money of her husband, should be given maintenance out of the meagre property of the deceased son, so as to do injustice to his widow and children but if the section is allowed to stand as it is, nothing will prevent the well-to-do parents from asking maintenance.

Clause 6 (a).—*Add* "and the wants and shares of the heirs entitled to succeed to the property of the deceased." This will give a clear idea of the property and its liability so that in allowing maintenance to the dependents, the interest and welfare of the sharers will be properly considered and protected.

(c) *Add* "and his present or future means of earning." This addition will hold out incentive to the dependents to earn as soon as they are able to do so. A widowed daughter-in-law, who has acquired university education, should not be given maintenance from the time she is able to earn her livelihood. Otherwise the dependents will be idle and the liability of maintenance will never diminish.

Clause 7.—*Drop* this. The provision is most unjust. The husband should not have the right to control the actions of his wife after his death, and deprive his widow the liberty she should enjoy on pain of forfeiting her maintenance. A wife's duty to remain under the protection and roof of her husband and the clause based as it appears to be on the cases in 13, Bom. 218, 15, Bom. 23, 20, Cal. 15, is not only reactionary in spirit but would appear contrary to the reasoning adopted in 12, Bengal L.R., 238, 3, Bom. 415, 6, T.A. 114; 8, Patna 840, 56, I.A. 182, 14, Bom. 490 and 29, Cal. 537 and unreasonable extension of the reasoning. The widow may like to stay with her father's relations in her days of helpless widowhood rather than staying in her husband's house with all his relations turned hostile.

Clause 8.—*Drop* "of every description" and insert after deceased right of maintenance should not be allowed to be defeated by debts which were not contracted for family necessity for we daily come across cases where the profligate man incurs debts avowedly for immoral purposes and deprives his dependants the right of maintenance. In order to put a check to this state of affairs and in order to secure a real and a secured right of maintenance some such provision is necessary.

Clause 9.—I am for creating a statutory charge for maintenance. Those who quarrel with the deceased and get the charge created either by agreement or by the decree of the Court are profited while their good dependants who relied on the good sense of the deceased stand open to suffer by the want of a statutory charge for maintenance.

The treatment of the topic of maintenance has left out of consideration these provisions which relate to the maintenance claimable from a person during his lifetime, for instance, the claim of maintenance in favour of aged parents, virtuous wife, minor children, avarudhastree and illegitimate children. This shows that the draft Code far from being exhaustive is purposely fragmentary and such piecemeal legislation has been very much criticised and the Committee has done the same thing which it has objected to so strongly in the report.

PART IV.—MARRIAGE AND DIVORCE.

Clause 1.—The theory of sapinda relationship requires to be scrutinised in the light of the modern biological researches and the repeated attempts made to restrict its implication to avoid absurd results and a clash with established customs in the different parts of the country. The biological sciences have not been able to demonstrate successfully even to day that interbreeding among the offspring of the common stock results in deterioration and one can hardly imagine that our forefathers laid down this rule of sapinda prohibition on any valid principle of eugenics at a time when they had hardly any means of investigating the biological problems on scientific basis. And it would be showing too much loyalty to our Shastrakars to stick to the rules which demonstrably had no scientific basis and giving them the credit they neither claimed nor deserved for scientific investigation. The question of sapinda relationship has been largely given a go-by in the intestate succession scheme and requires to be critically examined when applying it to marriages. The popular idea which is out to defend all what the Sastrakars have laid down supports the sapinda prohibition on the ground of morality by assuming that marriage between people of the same kind or particles of blood will be a marriage between brother and sister. But that way, all human beings are brothers and sisters as being born of the original one couple, and marriage in any case will be between brother and sister. If the theory of persistent existence of common blood particles up to the seventh degree of relationship is to be taken as self-evident, an assumption so preposterous in this scientific age, one can hardly understand why the prohibition should stop at an arbitrary rule of seventh degree and should not depend on the actual testing of the blood corpus of the two persons intending to marry. This rule of exogamy seems to have been adopted, in the opinion of some, scholars to avoid family jealousies and feuds by discouraging marital relations among people born in the same family and, in those primitive days; for the most part staying together or in the same village; and there is no cogent reason why this strict rule of prohibition should continue when the reason of the rule has ceased to exist. The Hindus, in the present state of the society, can afford

to be neither less nor more decent in their family relations than people all over the world and belonging to other religions. The rule of prohibited degrees of relationship in marriage are more or less based on the social security, family happiness and the rules of dowry framed in order to secure these. In these respects, the Hindu Law should be modernised and the Committee puts its final seal on the desirability of a just change, the social conscience may accept the decision on a point which has ceased to have any appeal to reason in face of the scientific investigations. It is to the labours and bold pronouncement of the scholars of Dharmashastra that the Gotra, Pravar have been accepted by the society as being of no significance; in the same way this sapinda relationship requires to be examined critically. "In actual practice" as remarked by Principal Gharpure (Hindu Law, Appendix C, page 527) "the number of degrees considered as prohibitive is not five and seven but only three and five on the mother's and father's side respectively which coincides with the rules laid down by Paitihasi and not accepted by Vijnaneswar; this may show that one need not go the whole length of what the Mitakshara has laid down. The exception of three gotras recognized under the Bengal School (74, C.L.J. 241-46, C.W.N. 20) shows that the original rule was not taken too literally nor as an absolute one. "In the early ages" as Mayne put it (Hindu Law, page 153) "the prohibitions against marriages within the gotra or within certain degrees of kinship which are now so familiar, were probably not firmly established," and if the people in the early ages could do without these prohibitions there is no reason why the moderners cannot do without them. In Western and Southern India marriages within the prohibited degrees are recognized by virtue of custom and nobody would suggest that these people have deteriorated physically or mentally and the absence of such demonstrable deterioration among such people gives direct lie to the claim of the rule as being based on the science of eugenics." The Baroda Government, after examining the expert opinions of scientists, doctors and scholars have finally accepted the rule of prohibited degrees of relationship which does not tally with the sapinda rule. The Baroda Hindu Code lays down that persons related to all ancestors and descendants and their widows or husbands and descendants up to three degrees or ancestors within the three degrees and their widows and husbands is a relationship within which a valid marriage cannot be contracted. Ancestors mean the ancestors on the mother's side as well as on the father's side and descendants include son and daughter born in the line; and I think that this rule is a good compromise between our sapinda theory and the westerner's prohibited degrees.

Clause 1—Explanation (ii).—Drop it. Illegitimate children are not given any status equal with the legitimate children and there is no justification for creating new disabilities controlling their marital relations. Illegitimate children are taken as not born out of a valid marriage and therefore the theory of sameness of blood particles should not be made applicable to them.

Clause 3 (b).—Drop this. In clause 3, I expect only such conditions the absence of which will never bring into existence anything called by the name of marriage, and for such defects which deprive the marriage even the name and the marriage should not be declared void. If a spouse is living the marriage will be no marriage at all and it is not necessary to get such marriage annulled. Idiocy and lunacy may come in clause 29 which may make the marriage voidable at the option of either party but if it is not set aside the relationship acquires all the status of a valid marriage.

By retaining (b) hardship will result in depriving the children of such marriage from inheritance; for it will be successfully argued that because of the lunacy there was an absolute obstacle to a valid marriage and the children are illegitimate therefore.

Clause 5.—Add "provided the bride on coming of age has ratified the marriage." If the marriage celebrated without obtaining the consent of the minor bride's guardian is to be validated, a thing in itself highly objectionable, then surely the minor bride at least should have, after attaining majority, the option of treating it as invalid if she feels that her interest had not been sufficiently looked after. The case may fall short of actual fraud or force ~~on the part of the minor's interest~~ may have been sacrificed completely as when she is married to an old man, and her

natural guardian could never have consented to this and therefore in order to avoid the very difficult situation the minor may find herself in and to put a check on all those who marry minor girls in spite of the consent of their guardians, and those who procure such marriages, the right of option at puberty should be given to the minor bride.

I prefer the new clause 3, 4, 5 to the old clause 3, 4, 5 in the Marriage Bill.

No comments to offer on clauses 6-22 inclusive.

Clause 23 (2).—Add "her or his continued absence for a considerable period" after by reason. Some such safeguard is necessary, otherwise other relatives will be encouraged to take advantage of the temporary absence of the guardian in marriage and marry the minor and cases are not wanting when widowed mother of a minor bride is sent away under some pretext and her minor daughter is given away in marriage by her uncles in a way never to be approved of by the mother.

Clause 24.—Drop "and the provisions of the Indian Penal Code, section 494-95" for these provisions will automatically apply not because the Hindu Code invites their application but because the marriage is declared void.

Chapter II.

Clause 26.—The whole clause requires to be recast. In a chapter for laying down provisions regarding "the duties of husband and wife" I should have expected a positive provision declaring the duties of husband and wife rather than husband's duty to maintain his wife as stated in the 26th clause. I should be permitted to put down the kind of provision. I should like to have:

26. The husband or the wife shall have the right to the society of the other party and a right to demand fulfilment of the conjugal right.

A wife is bound to stay with her husband and is entitled to be maintained by her husband, and will be allowed separate maintenance and residence from him under the following circumstances; then—(a) and other sub-clauses.

Clause 26 (a).—Drop "not contracted from her." Even supposing the husband has contracted the disease from his wife, the wife should not be penalised for that and be subjected to physical servitude which may banish all hope of cure. Doctors will be better judges of the wisdom of this proviso, and medical opinion should prevail. It appears that if she is segregated by being made to live separately, she has at least the hope of a cure. Many loathsome diseases are more inherited than acquired especially in the cases of women and this aspect takes away the idea, if any, of punishing the woman for having made her husband suffer from the disease which she may have inherited rather than acquired.

Clause 26 (b).—Drop it; put instead "if he is guilty of adultery" in these days of advanced moral notions, the rule adapted in 13, All. 125, 164, to say the least, is absurd. (b) as it stands gives the husband a passport to be debaucherous so long as he does not bring his mistress to stay in the house. The principle laid down in 34, Cal. 971, 1, Bom. 164, was good in old times but will appear absurd now.

Clause 26 (f).—Drop it, in marriage laws one hardly comes across such a sweeping clause. Besides injustice would result because of the differing ideas about justifiable cause, for even a very hard case may not be regarded as a justifiable cause. For instance, if the husband is addicted to drink or has since marriage become a lunatic or is in the habit of committing unnatural offences or has become a recluse, the wife should have the liberty to stay separate and demand maintenance either from him or out of his estate. I should like to add—

(f) If he is addicted to the use of intoxicants for more than three years and thereby is unable to fulfil the marital obligation.

(g) The parties have ceased to cohabit as husband and wife for more than three years on account of incompatibility of temperament.

(h) If he has become a lunatic after marriage and no hope of recovery exists after three years have passed.

(i) If he is in the habit of committing unnatural offences.

I expected that the Committee would draw a comprehensive law regarding the judicial separation even for the benefit of those unfortunate husbands who would wish to

get rid of the company of the wife under similar circumstances. Suppose a wife is suffering from loathsome disease, has embraced another religion, is guilty of cruelty in the sense that she is harassing her husband, or has since become a lunatic. She will insist on her staying under the same roof no matter how much disliked by the husband and he has no remedy under law. A good man may not like to take recourse to the ordinary method of physically throwing his wife on the street and beating her if she tries to enter, so much in practice in Hindu society, and cannot legally prohibit his wife from entering into his house. A husband, if he drives his wife forcibly or if he beats her, will make himself liable to punishment. Therefore I think the marriage law should contain just provisions to safeguard the interest and personal comfort of the parties, and the absence of provision for judicial separation of which the husband can take advantage is a serious defect requiring immediate correction.

Chapter III—Nullity and Dissolution of Marriage.

Clause 29.—Drop “celebrated after the commencement of this Code.” The defects such as lunacy, impotency, prohibited degrees, makes the marriage void, and I see no reason why this enabling provision should be only availed itself of by people who marry after the commencement of the Code. Lunacy and impotency according to the opinion of the late S. Srinivasa Ayyangar (Mayne page 151) are defects that make the marriage invalid and thus his opinion is supported by texts and case law. Section 38 I.A. 122, 38 Cal. 700, 1942 A.L.J. 197 for lunacy and 48 C.W.N. 689 for impotency. Does the Committee want to turn a deaf ear to all those hard cases and refuse them the remedy simply for the reason that the marriages were performed before the Code came into force. The clause will be liable to be looked upon as reactionary or at least showing weakness in not facing the actualities boldly.

Clause 29 (vi).—Add if either party was suffering from a loathsome disease or leprosy at the time of marriage and the fact was kept concealed;

Add (vii) either party was totally deaf, dumb, blind or converted to another religion;

(viii) if the wife at the time of marriage was pregnant from somebody other than the husband;

(ix) the marriage was brought about by force or fraud. Grounds from (vi)–(ix) are very valid ones and should be included.

Clause 29 (4).—I should suggest of “when a marriage is annulled on the ground of lunacy, impotency, idiocy or physical defect or disease or prohibited degree of relationship,” children, etc. I do understand the absurdity of declaring the child of an impotent father as his legitimate child and the absurdity of conferring legitimacy on children born out of marriage within prohibited degrees. But I want to eradicate this evil of illegitimacy and save these unfortunate children from a life-long degradation and privation from the rights of inheritance. When illegitimacy is disappearing all over the world under civil laws more or less inspired by the Russian Law, it will not be very unjust to try to limit the evil of illegitimacy only to those cases where the relation between man and woman is anything but legal. I mean that illegitimacy should be limited to children born of mistresses and concubines and should be completely eliminated from the family circle and social economy.

Clause 30.—Drop “celebrated after the commencement of this Code” the obvious reason being that unhappy marriages even though contracted before the Code should have some remedy. In old Hindu Law divorce was allowed at least “in case the husband was lost, dead, degraded, impotent or sanyasi and the concession was withdrawn for no justifiable reason,” and the provision for divorce should always hold claim to the revival of the ancient rule. Besides, the changing circumstances in which the Hindu society is placed to-day have affected the married wife in so far as new expectations have grown for worldly happiness and the consolation of securing bliss in the other world in exchange for all miseries and privations in this life which was available to the former generation has completely disappeared, and unhappy people are prepared to pay any price for securing release from the unfortunate wedlock. The existing matrimonial miseries should have remedy and relief by way of divorce.

Clause 30 (a).—Substitute “three years” instead of seven years. Medical opinion states that insanity if not cured within a period of three years is virtually incurable and the other party should not be compelled to wait unnecessarily for a longer period, i.e., seven years when the insanity has already settled down as a permanent factor. If strict monogamy is to be enforced, the way out of unhappy wedlock should be provided for immediately the aggrieved party wishes to take advantage.

(b) Drop “Not contracted from the petitioner.” Even if the petitioner may have been the cause, none the less the abhorrence and the danger of aggravation of the already incurable disease is unmitigated.

(c) Put “three years” instead of seven years. Indian Divorce Act makes the desertion for two years actionable (section 10), seven years is too long a period to wait for the return of the spouse who has abandoned the petitioner for more than two years.

(e) Drop, every word after disease. It is monstrous that the petitioner should be compelled to submit to daily contracting the venereal disease for a period of seven years. In the opinion of medical men immediate segregation is desirable for a complete cure and if the disease is allowed to prosper for seven years it will be incurable.

(f) Put “is guilty of adultery” after both husband and wife. Adultery is a serious crime robbing the marriage institution of all the sanctity and, in fairness, people should have the right to get rid of the spouse guilty of adultery. That a husband should have kept a concubine or that a wife should have been a concubine is too low an estimate of the moral values in married life. Even those castes from whom concubines and prostitutes are regularly recruited will look upon this clause as one embodying bad morals not to speak of the very violent reaction which this clause will evoke from the advanced section of the population for whom primarily the relief of divorce is being enacted.

Add (g) has become a recluse, or

Cases of this are abundantly to be found among the Jains who encourage renunciation of the world and preach that entering into the holy order is the highest goal. This may include cases of becoming a Sanyasi, or renouncing the world for any reason. This ground is mentioned in Smriti.

(h) Has disappeared for seven years.

Under the Indian Evidence Act, section 108, if a person is not heard of for more than seven years he is presumed to be dead, and in fairness the other party should be allowed to obtain divorce instead of taking the risk of second marriage and possible prosecution under section 494 of the Indian Penal Code.

(i) Has been guilty of cruelty which has caused or is likely to cause danger to life, limb or bodily or mental health or likely to give rise to a reasonable apprehension of such danger.

I wonder, why cruelty should not have been included, a ground so common and cogent.

(j) If the husband has become impotent permanently.

(k) If the husband is in the habit of committing unnatural offences.

(l) If the wife was pregnant at the time of marriage by a person other than the husband.

(m) Either party marries again during the existence of first marriage.

Here marries means goes through a form of marriage irrespective of its validity. See Parsi Divorce Act and interpretation of the word.

Clause 31.—I object to invoking the provisions of the Indian Divorce Act and should suggest that the Committee might well draft a neat law of Hindu divorce to avoid conflict of interpretation and decision. The Hindu Divorce Act can never be regarded as a part of the general law of divorce and therefore fit to be treated as such. I give below some of the points.

—It should not be compulsory to add adulterer as co-respondent. It will only break another home and encourage public scandal. My experience has been that a co-adulterer is never joined and adultery with unknown person is alleged to avoid embarrassing situation especially when the adultery is committed among near relatives. In India nobody thinks of suing for damages for adultery and the practice of joining the co-respondent in order to enable him to plead innocence and get out of the civil liability for damages need not be followed (section 11).

The procedure of passing (1) preliminary and (2) final decrees (section 14) is unmeaning when the petitioner is asking for dissolution of marriage for reasons which cannot be removed or condoned, for instance, impotency, insanity, disease, conversion and this is a great defect in the Indian Divorce Act. The provision of preliminary and final decrees should be limited to cases of cruelty, desertion, adultery, that is, only for those cases where people can condone the past sins and agree to stay together. Final decrees only prolongs the matter, delays another marriage and is mostly futile as a measure of reconciliation.

Section 24.—This is unmeaning if applied to Hindu society under the new Code. A woman has every right to dispose of her self-acquisitions without her being considered as unmarried.

The provision regarding the alimony requires to be redrafted. A wife who obtains divorce from her husband for no fault of hers should be entitled as of right to claim alimony from her husband during her life so long as she does not marry again. Nothing should be left to the discretion of the Court as laid down in section 37 of the Indian Divorce Act.

A substantive provision is necessary instead of the help of the section 57 of the Indian Divorce Act allowing second marriage by persons who have obtained a decree for nullity of marriage or a decree for the dissolution.

Clause 32.—Re-draft this clause as follows:—

Nothing contained in this chapter be deemed to affect—
(a) Any right conferred by any special enactment

or
(b) any right recognized by custom in addition to the provisions in the chapter, for obtaining dissolution of a sacramental marriage.

should be so drafted as to give the aggrieved parties a statutory right for dissolution in addition to the customary divorce, and relieve them from the tyranny of caste organizations. The customary divorces are more or less purchased and have come to be severely criticized (39 Bom. 535; 19 Bom. L.R. 156) and have been held void (2 Bom. 140; 10 Bom. H.C. 381) and it should be made clear that the statutory divorce is in addition to the customary one and the aggrieved party can obtain it as of right from a Court of Law. The clause as it stands may invite an argument that the customary divorces are untouched and these castes who have it are taken out of the pale of the provisions of this Code.

PART V.—MINORITY AND GUARDIANSHIP.

Clause 4.—Add "except on the proof of possibility of harm to minor's interest immediately or ultimately."

The karta of the family has very wide powers and can create debts and effect transfers for things spaciouly termed "family necessity" and ultimately the minor's interest suffers. An uncle or the karta of the joint family can spend huge sums of money for the marriage expenses of his daughters, can contract valid debts and effect binding transfers which may in the end wipe off the whole minor's interest, and instead of putting a check on this state of affairs the clause gives him a blank cheque. I wish the Court should have the power to examine the transactions and guard the minor's interest.

Clause 8.—Add after father "or mother" and drop the clause within the bracket. The reason is obvious, the mother is the next natural guardian and now regarded as fully competent to deal with her property; she should have the right to nominate the guardian of her minor children.

The clause within bracket should be dropped. The testator should be given the credit of having known the relations between his minor children and his brothers and cousins and form correct estimation about the way they will deal with minor's person and his property whether divided or undivided, and if he or she feels, that the minor's interest will be better safeguarded by appointing another guardian of the property I think none else, not even the Court should have any right to upset the arrangement so just and good.

Clause 8 (2).—Drop. Mother's statutory right to be the guardian immediately after the father should be respected unless she is found to be unfit to safeguard the interests of the minor.

PART VI.—ADOPTION.

Clause 1.—I am for retaining the Dwayamushayana form of adoption still prevalent in some parts of the

country and regarded as valid by the courts of law. If the institution of adoption is to be continued, and I see no reason why it should not be continued, the more convenient forms of such adoption should be retained. Under this form an only son can be adopted and he takes the credit of continuing both the families and combining in himself the ownership of properties belonging to two families. The Intestate Succession Bill has recognized the form in the definition of son.

Clause 5 (i) and (ii).—I am totally against allowing to minors the right to adopt. They are duped in acting on their judgment as they are not capable of forming any. By adoption a person creates immediate interest in the coparcenary and contingent interest in the intestacy, in favour of the adopted son and like all contracts there ought to be competency in order to give the adoption validity. It is absurd to allow adoption by a boy of fourteen years to stand as has been done in 44 Bom. L.R. 284 and the earlier cases.

Explanation.—Add "wife who has passed the limit of bearing a child." Because adoption gives equal rights to the adopted son with those of the natural son, the mother of such prospective natural son should have the right to object to any hasty adoption by her husband. I should so far go to make the consent of the wife, who is staying with her husband and has not obtained judicial separation, essential for a valid adoption, for her right of inheritance is affected by adoption.

Clause 12.—Drop proviso to clause (3). After the death of the father, if the mother thinks that the condition of the boy will improve or feels impressed by other considerations I think father's prohibition in the then existing circumstances should not be allowed to prevail in face of better and completely changed circumstances in such a way that the father would have readily consented if he were living.

Clause 14.—Add (iv) an orphan of over eighteen years and willing.

That the orphan brought up in a family as a natural son, cannot be adopted is a great injustice to the boy and great disappointment to all concerned. The adoption of orphan can be supported on the theory of Swayam Datta (self given).

Clause 22.—Drop "his predeceased wife," etc., and put instead "his wife subsequently married or in her absence his predeceased wife shall be deemed to be the stepmother."

This clause only helps to bring in the relations on mother's side in the scheme of inheritance and I should prefer to treat his subsequent wife as the mother of the adopted son rather to the predeceased one, whose face he has never seen and whose relative she has never met.

Clause 23.—Add (ix) the names of the relatives who would be his heirs.

This will give the order finality. Decree of validity of adoption is not a judgment in rem and will be liable to be set aside. It is not binding on the person not a party to the proceeding who inherits the property and in order to remove that danger and difficulty near relatives should also be heard.

3. The Bombay Bar Association.

We are glad to note that the Hindu Law Committee have prepared a comprehensive Code of Hindu Law, thus avoiding the evils of piecemeal legislation on the subject and giving the public so far as they could a complete picture of the Committee's proposals but we suggest that branches of Hindu Law other than those included in the proposed Code should also be codified. We have the following comments to make on the provisions of the draft Hindu Code.

Part I, clause 5 (e)—Full blood and half blood.—The definition of half-blood excludes "uterine" brothers and sisters. Exclusion seems to be deliberate and not through mere inadvertence, for "uterine" relations are mentioned in Part IV, Chapter I, clause 1. Explanation (1) and also see note thereto. Under the existing Hindu Law uterine brothers (except the illegitimate ones who do not count) do not come into the picture at all and there was no need for making any provision for them in the Code. But by allowing divorce in case of Hindu marriages, the position of uterine relations will have to be considered and their rights to inheritance to at least their mothers' (if not to that of other uterine relations) property properly ascertained and defined.

Part II, clause 1 (i)—Saving as to agricultural lands.—Unless and until the Central Legislature acquires the necessary powers to legislate for agricultural lands by obtaining the requisite amendment of the Government of India Act, 1935, there will not be uniformity in the Law of succession to agricultural and non-agricultural properties. We have, therefore, to repeat our suggestion, made on two previous occasions, and say that would be the only effective course to secure uniformity of legislation in the whole of India.

Part II, clause 2 (b)—“Heritable property”—The object of the authors of the Code is to abolish the acquisition of rights by survivorship and by birth in ancestral property. Even bearing this in mind, we are constrained to observe that the definition of heritable property would not be exhaustive during, what we may term, the transitional period, in cases where persons have acquired rights before the Code comes into operation. We would, in this connection, invite attention to the opinion expressed by us regarding Part III-A of the Code. In the light of the opinion expressed by us there we suggest certain additions which will have to be made in the definition as given in the Code to cover cases that would arise in the transitional period however short it may be. (The authors themselves have made provisions in other clauses of the Code which are meant for the transitional period only.) See, e.g. (to cite only a few) Part II, clause 2 (c), Part II, clause 3 proviso, Part II, clause 7 (b). We would suggest that the following proviso be added to clause (2) (b) :—

“Provided that in cases governed by the Mitakshara (including Mayukha) Law, at the time when this Code comes into operation—

- (i) Where a person is a member of a joint and undivided family owning joint family property and/or
- (ii) where sons, son's sons, and son's son's sons have acquired an interest by birth in the ancestral property (Apratibandha Daya).

It (heritable property) means and includes the share which a person would have got if the joint family property or ancestral property were partitioned, on the coming into operation of this Code or at such determinate time as may be fixed by the Code or by any notification issued thereunder.”

Part II, clause 5, class I (1)—“Simultaneous heirs.”—We object to the exclusion of the widowed daughter-in-law and her daughters from the class of simultaneous heirs. The principle of representation has long been recognized in Hindu Law. It should be provided that a share which a predeceased son or a predeceased son of a predeceased son would have taken if alive when the succession opens should go to his heirs as if he had died intestate in respect thereof.

Part II, clause 5, class I (3) and (4)—Preference of mother over father.—No case is made out for preferring mother to father. We suggest that the mother and the father should be put together in one entry, inheriting together. The same applies to mothers and fathers higher up in the ancestral line.

Part II, clause 7 (b).—In adopting what the authors call “the simplest rule” they have evidently overlooked the hardships and injustice it is bound to cause to the undivided sons. During the transitional period, the share of the undivided sons would be liable to be subject to pious obligations of the sons to pay their fathers' debts, as also to be diminished by subsequent births. The divided sons would be immune from both these liabilities, but on the contrary would in some cases benefit more by their earlier separation, e.g., a joint family consisting of a father and three sons owns Rs. 40,000; one of the sons separates and takes away his share of Rs. 10,000. The others continue to be joint. Subsequently, another son is born. At the father's death, each of the undivided sons would get Rs. 7,500 plus Rs. 1,375, i.e., Rs. 9,375 while the divided son would get in all Rs. 10,000 plus Rs. 1,375; a result which seems to be most inequitable.

Part II, clause 10—Heirs who are not related.—If there are no cognates entitled to succeed, we do not see why the property should not escheat to the Crown.

Part II, clause 11—“Rules for hermits.”—It is suggested that a proviso to the following effect be added to clause 11, viz., “Provided that such renunciation is evidenced by a writing signed by him.” We feel this addition necessary to avoid an enquiry by a court of law whether the

renunciation in question is one to which this clause applies or not.

Part II, clause 14 (a) and (b)—Order and mode of succession to stridhana.—We are not in favour of making a distinction between stridhana acquired by a woman by inheritance from her husband and stridhana acquired by her otherwise, nor in favour of different modes of succession to stridhana of these two different types as provided by sub-clauses (a) and (b). We are of opinion that one uniform mode of succession to stridhana of all types should be laid down. Again, we see no reason or justice in depriving the husband of the same rights in the property of his wife, as she has in his: We, therefore, suggest that in respect of succession to stridhana the husband and children should be simultaneous heirs. In our opinion the order of succession to all stridhana should be as follows :—

- (1) Husband, son and daughter,
- (2) Son's son, son's daughter, daughter's son, and daughter's daughter.
- (3) Father and mother.
- (4) Husband's heirs, etc., as in sub-clause (b) (6).
- (5) Mother's heirs, etc., as in sub-clause (b) (7).
- (6) Father's heirs, etc., as in sub-clause (b) (8).

Part II, clause 14 (c) (i) and (ii).—Now that the female is given a right of inheritance and can inherit both as a daughter and a wife, we see no reason why as a stridhana heir, she should get twice as much as a son. Strictly speaking, as we had on previous occasions suggested she should get half the share of a male. Even if that strictly logical position is not accepted, there can be no justification for allowing to the son half of what a daughter gets. Our suggestion therefore is that son and daughter (along with the husband) should take one share each. The same remarks hold good as regards sub-clause (c) (ii).

Part III-A-I.—By the two clauses formulated by the authors in this part, they have attempted to abolish the Mitakshara joint family and the principles of survivorship and accrual of right by birth, obtaining therein; and thereby bringing “the law in the Mitakshara jurisdictions into unison with Dayabhag Law.”

We are not quite sure that this uniformity is not secured at too high a price, involving as it does, especially in small joint family estates, excessive fragmentation, a result to be viewed with no small amount of concern.

But even assuming the laudability of the object, we doubt very much whether the authors have successfully achieved it by the provisions they have made.

The authors speak of “any interest in joint family property possessed by a male Hindu”. Now it is trite learning that the interest of a member of a joint family is a fluctuating interest and that only at a partition he becomes entitled to a definite share therein. There is no provision in the Code whereby the interest of a member of a joint family is separately ascertained. We would therefore suggest that the Code should provide that at some determinate time a notional partition should take place.

Part III-A-II—Maintenance.—The authors of the Code have dealt with the subject of maintenance in so far as it “arises from” intestate and testamentary succession. This maintenance not so arising is not dealt with, and for that we have to look to the old Hindu Law. This renders the position anomalous. Take for example, the case of a widowed daughter-in-law. If the father-in-law dies, his estate is subject to her claim for maintenance, but if he is alive there is no legal obligation on him to maintain her. Similarly widowed daughter and unmarried illegitimate daughter can look to their father's estate after his death for their maintenance but not to their father so long as he is alive.

In the case of a wife, her right to maintenance is only indirectly indicated in Part IV, Chapter II, clause 28, in the following words “provided that she shall be entitled to live separately without forfeiting the claim to maintenance from her husband in certain defined cases.”

We have therefore to suggest, as we have suggested in respect of agricultural lands that the Central Legislature should acquire the necessary power by requisite amendment of the Government of India Act, 1935, and should then fully deal with the topic of maintenance in all its aspects.

Part III-A-II, clause 4.—“Or when the share so obtained by a dependant is less than what would be

awarded to him or her by way of maintenance." We are at a loss to know how conceivably in any case what can be awarded by way of maintenance could be more than a person gets as his or her share in the property of the deceased. If the property is small both the share as well as the quantum of maintenance allowed are bound to be meagre. The proviso to this clause is also difficult to follow.

Part III-A-II, clause 5.—Widow, sons (including son's sons and son's son's sons), daughters (unmarried or widowed) come as simultaneous heirs and take their share in the property; how they can also claim a right of maintenance, it is difficult to understand.

Part III-A-II, clause 5 (x).—"Concubine." We would suggest the addition of the following words at the end "but was open and avowed."

Part IV, clauses 3-6.—We are of opinion that the alternatives firstly suggested should be adopted subject to the following amendment.

Part IV, clause 3 (c).—In the case of civil marriages a minor widow need not secure the consent of her guardian [see clause 7 (4)]. Why then should a similar proviso be not inserted in the case of sacramental marriages? A widow may be desirous of having her marriage performed as a sacramental marriage but if her guardian withholds his consent, she must necessarily have recourse to civil marriage. We therefore suggest, the addition of the following words at the end, viz., "Provided that no such consent shall be required in the case of a widow."

Part IV, clause 26.—The heading of this clause is "Duties of husband and wife." We find that in this clause only husband's duties are laid down; we suggest that the duties of the wife towards her husband should also be defined.

Part IV, clause 30 (a), (c) and (e).—We think that period of seven years provided in these sub-clauses is too long a period. We suggest that it should be three years.

Part IV, clause 30 (a).—The provision that the other party "has been continuously under the care and treatment" would place an unnecessarily heavy burden on the applicant.

Part IV, clause 30 (d).—We would suggest that for the sake of caution the following proviso be added to the above clause:—

"Provided that mere apostasy (ceasing to believe in any religion) will not afford any ground for divorce."

Part IV, clause 30 (f).—Drop the word "other" wherever it appears in this clause.

Part V, clause 6 (3).—"At the instance of any other person." It would be unfortunate that an unauthorized dealing with the property by the guardian should not be voidable at the instance of the minor also. We, therefore, suggest the following amendment, viz., "at the instance of the minor or any other person affected thereby."

Part VI, clause 10.—We are of opinion that the following proviso should be added:—

"Provided that adoption by a widow except with the express authority of her husband shall not be valid except only for religious purposes."

Part II, clause 19 (4) and the note thereto.—We doubt very much whether Central legislation can affect agricultural lands in this way.

4. The Bombay Advocates' Association.

My Association has carefully considered the provisions of the above draft Hindu Code.

My Association feels grateful that its suggestions made in my letters, dated 18th August 1942 and 17th April 1944, have been accepted by the Hindu Law Committee.

The draft Hindu Code as now published is a distinct improvement on the previous draft Bills. My Association however desires to offer some constructive suggestions for the amendment of the said draft as under:

Part II, clause 7.—This clause is silent about the pious obligation of a son to pay the debts of his deceased father. It therefore means that the pious obligation is not dispensed with. In view of the abolition of joint family property, survivorship and the daughter becoming an heir along with the son, it is just and fair that the son should be absolved from the pious obligation.

Clause 8 (3).—In counting the relationship from the intestate to the heir in terms of degrees of ascent or descent, the intestate should also be counted as under rule 3 of clause 9.

Clause 12.—This is redundant as even otherwise the provisions of the Partition Act of 1893 will apply.

Clause 13.—This clause does not pertain to the branch of intestate succession and hence it should be placed under Part III-A.

This clause gives to a Hindu woman certain rights over her stridhana acquired by her after the commencement of this Code. My Association thinks that this right should not be confined to the stridhana acquired after the commencement of this Code.

It is not clear whether the conferment of absolute right of disposal is subject to the usufruct of the husband of a married woman or not. This should be made clear.

This definition should be simplified and reference to the rights of a man over his property may be deleted.

Part III-A, clause 6 (g).—The words "or any other source" may be omitted. If a widow has obtained a share from her father's property the income derived therefrom should be taken into consideration while allowing her maintenance.

Part IV, clause 1 (b).—In describing prohibited relationship the degrees of lineal ascendant or descendant may be specified.

Clause 5.—My Association approves the alternative clause 6 in place of the proposed clause 5.

Clause 9.—The words "has resided" should be properly described as otherwise it will be a source of litigation and further this residence should be continuous. If a person resides in a hotel or lodging house, he should not be deemed to have resided within the meaning of this clause.

Clause 10.—Unrestricted right of inspection by any man of the marriage notice book is not desirable as unscrupulous persons might take advantage of it. The Registrar should have discretion to allow inspection or not to any applicant.

Clause 13.—A civil Court imposes compensation and not fine. My Association suggests that the word "compensation" be substituted for the word "fine." The said award for compensation should be made executable like a decree.

Clause 19.—Certified extracts from the marriage certificate book should be made admissible in evidence without further proof, as in the case of certified extract from adoption register (vide Part VI, clause 31).

Clause 29.—Clauses (ii) and (iii) should be omitted on the principle of *factum valet*.

Clause 30 (e).—Period of seven years is too long. On principles of hygiene, such a long stay should not be tolerated.

Part V, clause 3.—Some provision should be made on the line of clause 23 (2) in Part IV for appointment of another guardian in case of disability, etc.

Part VI, clause 5-(2) (a).—The words "or implied" may be deleted.

Clause 13 (1).—The restriction as to age should be abolished. On the other hand the adopter should be prohibited from adopting a person who is not less than 10 years younger than the adopter.

Clause 15 (2).—The datta homam should be made compulsory.

5. The Varnasram Swarajya Sangha, Bombay.

1. The Varnasram Swarajya Sangha objects to the very authority of the *Indian Legislature* as at present constituted to enact any Act purporting to be a Hindu Code because its elected representatives were elected nearly ten years ago and the majority of them have ceased to attend to its business for more than three years past on account of a major political difference with the Government of the day.

The said Sangha further objects to the constitution of the Hindu Law Committee inasmuch as it was constituted without due regard to the procedure laid down in the *Manu Smriti* as to the manner in which any changes in the existing law can be made, namely, the appointment of a Committee of the learned men well acquainted with the *Dharma Shashtra* and the customs of the country and declares that any Code of Hindu Law formed by such a Committee and sanctioned by such a Legislature will not be binding on the large majority of the religiously-minded Hindus whom this Sangha represents.

The Sangha also takes this opportunity to bring to the notice of Government through the Hindu Law Committee that the Sangha had a far better claim to select an adequate number of representatives for being co-opted in the Legislative Assembly and the Joint Select Committee to

which the Hindu Intestate Succession Bill had been referred, than the handful of westernized Hindu members of the All-India Women's Association which was allowed to nominate one member for that purpose and that it was an injustice to a large majority of the loyal subjects of His Majesty not to have been asked through this Sangh to nominate any representatives whatever for that purpose.

Lastly it suggests that if Government wishes that the Hindu Law should be codified and suitably amended and that the law thus enacted should be loyally accepted by the Hindu community as a whole, it should call upon this Sangh to nominate four of its members for being appointed as the members of the Hindu Law Committee, two of whom should be learned Sastris of the old school and the remaining two should be lawyers, well-acquainted as well with the original texts of the laws and their interpretation on orthodox lines as with modern development of the Hindu law up to date and should appoint such representatives as the additional members of the Hindu Law Committee.

2. Without prejudice to the above preliminary objection the following opinion of my association on the draft code is submitted for the consideration of the Committee.

3. *Part II. Clause 5—Class I.*—There is no justification or basis in the sacred law for including a widow and a daughter as heirs along with son, son's son, son's son's son and my association is opposed to the said innovation *inter alia* for the following reasons:—

(1) The male issues up to third generation of a dying person have an exclusive right to inherit the whole heritable property left by the deceased because they alone are under a legal obligation to pay the debts of the family, to maintain and marry their minor brothers and sisters, maintain disabled members of the family and widows, perform Shraddhas and other religious rites of deceased members of the family, while a widow and a daughter are free from such obligations so long as a male issue of the above class is living.

(2) Besides once a daughter is given in marriage she passes on to the gotra of her husband and ceases to have religious connection with her father's family; to have an obligation to bear any part of its responsibilities.

(3) It would therefore be highly unjust to reduce the rights of the male issue by allowing the widow and daughter to share the paternal estate with the male issue.

(4) Moreover there seems no solid reason why a special bias should have been shown in favour of females in preference to males while framing the law of *intestate succession* to the property of males. Thus a female is given a right of inheriting in a dual capacity, viz., to the estate of her husband and also that of her father and a double share in the property of the mother while the son is given a right of inheriting the estate left by his father and give only one-half share in the property of his mother even though the daughter may have passed into other families and may have legitimate children which must necessarily make them feel that they belong to families different from that of their mother's birth.

(5) The proposed innovation would seriously affect the wealth and prosperity of Hindu males and reduce them to poverty in a few generations. Thus the business and agricultural pursuits followed by Hindu males would be prevented from reaching a proper development and growth for want of financial support, and since the Hindus form the large majority of the agricultural and trading communities of India, the said innovation would lead to greater economic degeneration of the country as a whole than it is at present.

(6) The above innovation would also lead to a destruction of joint family property which was the means for the daily maintenance and support of several persons under one roof in a cheap manner and it would also lead to a disintegration of the joint family system and the solidarity of the Hindu community.

(7) Giving an absolutely unrestricted share to daughters in all cases with the sons would induce the sons-in-law of the deceased owner to instigate their wives to file suits in Courts of Law against their brothers claiming their separate shares therein and there would be a flood of litigation all over India which would further diminish the slender resources of the Hindus which would otherwise have been utilized towards the development of the country's industries and commerce.

(8) If a share is claimed against a brother by his unmarried sister from her father's property the brother would treat himself as freed from the obligation to protect her and give her in marriage to a suitable bridegroom. She would thus fall an easy prey to evil designing persons, be demoralized and be ultimately deprived of her property and thrown into the streets to lead a despicable life.

4. *Clause 6—Order of succession.*—The order is not based on any principle recognized in the Dharma Shastras and it has failed to take account of the well-known legal principle that rights and obligations go together. Thus for instance the person who takes the share in the property left by the deceased is under an obligation to perform the obsequies of the deceased. But under the proposed order of succession are included several male and female relations who are incapable of conferring any spiritual benefit to the manes of the deceased. The whole Order of succession therefore requires to be remodelled and redrafted on the basis of the ancient smritis and texts as interpreted by Vijnanesvara.

5. *Clause 13.*—The proposed change giving absolute right even to dispose of by a testament to a woman over all kinds of stridhan including even property inherited from her husband is revolutionary and radical and is in contravention of the texts of Dharma Shastras. Under *Manu's Text* a female was enjoined always to remain under the protection of some male person whether a father, a husband or a son. This text of Manu is followed by Yajñavalkya and it was in consideration of the spirit underlying it that the Mitakshara has provided that she shall not dispose of the immovable property inherited from her husband except in case of a strict legal necessity. There is therefore no justification in the Shastras for conferring on a Hindu widow the full right to dispose of property inherited from her husband. Besides, Hindu women being mostly illiterate, they would be incompetent to manage large properties without the assistance of some male relation. It is doubtful whether even those ladies who receive western education would be competent to do so, quite unaided by any male relation of hers. If absolute powers of alienation are granted to women indiscriminately, they are apt to fall into the clutches of a scheming relation or friend of the family and they would waste the property and fritter away the same in leading a life contrary to the high ideal of abstemious and pious living for the benefit of their husband's souls as recommended by the Shastras. It is also possible that ignorant and illiterate widows would easily fall a prey to some of the evil designing persons flocking round rich widows and they would be easily induced to part with their valuable property for a song. My Association therefore submits that provision having already been made in Hindu Law for the maintenance of widows there is no justification for giving absolute right of disposal to widows over inherited property.

6. *Clause 17.*—The proposed change giving rights to the surviving spouse and descendants of a marriage outside one's caste on a par with those of a marriage within caste is clearly meant to destroy the institution of caste and the purity of the Hindu Community and to encourage the class of Varnasankara marriages which is denounced by Manu and the ancient Rishis namely the Pratiloma marriages; they have foreseen that Pratiloma marriages would ultimately lead to a destruction of the whole community and nation. My Institution therefore is strongly opposed to the said proposed change.

7. *Clause 19.*—The proviso in this clause is in contravention of the precepts of the ancient sacred law according to which a widow is enjoined to lead a holy and pious life and it nullifies the provision in the main clause. A widow is disentitled to inherit her husband's property if she is leading an unchaste life. The committee should take due note of the fact that a husband may not for the sake of his own reputation be prepared to go to the length of proving in a Court of Law that his wife is unchaste and may not yet like that all his property should be inherited by her on his death. My Association therefore is opposed to this clause as it is calculated to support an immoral life on the part of widows.

PART III-A—TESTAMENTARY AND INTESTATE SUCCESSION.

8. *Clause 1.*—Joint family life is the normal state of every Hindu family and it is the best expedient for enabling several persons to live together under one roof so as to enable them to secure from the income of the joint family

property their daily maintenance and needs of life and also protection and strength. The joint family system though it might have been partly disintegrated in big cities is yet flourishing even to-day in villages in all its ancient purity. It would therefore be revolutionary to destroy that system as it would thereby increase the poverty of India and weaken the solidarity and strength of the Hindu Community. My Association is therefore strongly opposed to the proposed change.

9. *Clause 2*.—It is a universally accepted principle of jurisprudence in all civilized countries that a State stands for the preservation of vested rights of persons and not for confiscating the same by a mere stroke of the pen. The proposed clause directly denies the vested birth right of a grandson to the property inherited by his father from his grandfather. My association is therefore opposed to the proposed change.

PART IV—MARRIAGES AND DIVORCE.

10. *Clause 3 (a)*.—The object of a sacramental marriage being to discharge the debt that a man owes to his father and ancestors by begetting a male child to offer them Pitras, the new rule prohibiting a man from marrying a second wife in the lifetime of the first wife even in such exceptional cases as are mentioned in the Manu Smriti as for example where a man has no male issue by the first wife and she gives her consent or where she is suffering from an incurable disease or has been leading an unrighteous and immoral life, amount to a deprivation of an existing right recognized by the ancient law givers and immemorial custom, e.g., *Bṛihadaranyaka Upanishad IV* which speaks of *Yajnavalkya having two wives*. My Association therefore while agreeing to the general rule of monogamy insists that exceptions on the above line should be made to the proposed rule.

11. *Clause 6*.—My Association is opposed to sub-clauses (a) and (b) to clause 6 as the provisions thereof render nugatory the requisite conditions of a sacramental marriage laid down in the *Dharmaśāstras*, viz., that the parties should not belong to the same gotra or same pravara as provided in clause 3 (c) and that they should belong to the same caste as provided in clause 3 (b). The proposed innovation in the existing law is revolutionary, opposed to the sacred precepts of the ancient law based on *Srutis* of holy antiquity, and likely to encourage *Varnaśūnkara* marriages of all sorts, so as to mix the Aryan blood of high caste Hindus by an unrestrained mixture thereof with the blood of persons of inferior and low origin and following evil customs opposed to Aryan culture and civilization.

12. *Clause 24*.—The rule of monogamy though a good rule generally, is not an unmixed blessing in all cases and it would be nothing short of manifest injustice and cruelty to stamp as a criminal offence the practice of polygamy even in certain justifying and exceptional circumstances especially when it is recognised as valid by the *Dharmaśāstras*.

13. *Clause 23*.—My Association is opposed to the provision for the nullity of marriages and especially sub-clause (v) as being without any basis or support in the texts of the holy ancient Hindu Law. In any event polygamy being sanctioned by Manu under certain circumstances as pointed out above, the fact that the former husband or wife of either party is alive at the time of the fresh marriage should be no ground for the nullity of marriage.

14. *Clause 30*.—A sacramental marriage is not a civil contract but it creates a binding religious tie between the parties which lasts even after the death of either party. A sacramental marriage therefore can never be dissolved and Manu has expressly forbidden it (See *Manu Smriti 9-43*). He does however recognise a judicial separation of husband and wife in certain circumstances which does not mean divorce. My Association particularly takes exception to clause 30, sub-clause (e) as it would prevent all chances to the converted party of reverting to the old religion and thus lead to a weakening of the social solidarity of the Hindu Community.

6. Rao Bahadur P. C. Divanji, M.A., LL.M., Retired Judge, Advocate, Sa Gaeruz, Bombay.

Although I happen to be the Vice-President of the *Varnaśram Swarajya Sangha*, Bombay, on whose behalf its *Honorary Secretary* has submitted a statement of objections and I agree with most of its main features, I deem it

necessary to forward this statement of my personal views as one in touch with the administration of the Hindu Law as it now stands for the last 36 years, during 25 of which I was in the Bombay Provincial Judicial Service.

2. I believe the Committee will take this my statement of views in the spirit in which it has been drafted, namely, that of co-operation in the difficult task (i) of bringing within one compass the provisions of the Hindu Law now in force which have to be gathered from a variety of sources, and (ii) introducing such changes therein as would satisfy the requirements of the ever-growing class of the youths of both sexes educated on the western model and incorporate in the law such growing customs as are consistent with the fundamental principles of the law as now administered.

3. But while thus granting the necessity of codification and alterations, I believe it my duty to bring to the notice of the Committee, that it would have been more in keeping with the best traditions of Code-making not only in this country but even in the countries beyond the seas on the west, to have first codified the existing law as regards each Province, placed by its side the suggestions of the Committee for the desirable alterations therein and explained the reasons for such alterations. In fact that is the method advocated by Mr. B. K. Acharya, the learned author of "Codification in British India". Even the French Legislators of the Revolution days, were not prepared to make any drastic revolution in the Civil laws of their country. Adverting to it Sir Maurice Sheldon Amos, the learned author of the monograph on the "Code Napoleon" in the *Encyclopædia Britannica* says "Never has a work of legislation been more national in the exact sense of the word. Desired for centuries by the France of the *Ancient Regime* and demanded by the Cashiers of 1789, this Code of the Civil Laws Common to the whole Realm was promulgated by the constitution of 1791. . . . But the *Corps Législatif* had not the right of amendment; so it could not disturb the harmony of the scheme. . . . Those responsible for the scheme have in the main been very successful in their work; they have succeeded in fusing the two elements which they had to deal with, namely, ancient French laws (which are different in material particulars with different provinces) and that of the Revolution." The "Code Civil" which was the title ultimately adopted was looked upon by the other nations for nearly the whole of the 19th century as an ideal Code. The same author says: "Indeed, until the promulgation of the German Civil Code (August 24, 1836), the 'Code Napoleon' has been without a competitor as a model for law reformers throughout all parts of the world outside the British Empire and the United States. Of the 25 nations of the world which came into existence in the 19th century, almost all revised and codified their laws" and in most cases the model followed was that furnished by the "Code Napoleon". This Committee by trying to get public support for the draft prepared by it, which embodies many revolutionary changes, some likely to be detected only by a few even from amongst the experienced lawyers, has abjured the said sound principle acted upon in France and the 25 countries which looked upon its Code as a model.

4. Secondly, it was a principle rigidly adhered to by the Commissioners who drafted the said Code that "a link with the past within reason" must be maintained. That principle is not new to us for the Hindu jurists, who had introduced changes in the law of this land from the time of Brihaspati's recession of the Manu Smriti with a view to incorporate the customs which had grown up, had adopted it as their guiding principle throughout. The objections that follow will make it clear that this Committee has in certain cases gone too far away from that high ideal.

5. Thirdly, it will be apparent that the Committee by adhering to the date "1st day of January 1946" for the coming into force of the Code, seems to have decided to finish its work with too much haste than would be justified in a work of this nature. It should be borne in mind that even the French politicians of the Revolution days were not prepared to be hasty in drafting the Code, placing it before the Legislature and putting it into operation. They took 13 years to do so, because they did not desire to revolutionise the structure of their Society, though they had revolutionised the political constitution of their State, and wished to refrain as much as possible from offending the susceptibilities of the people whose civil rights were

likely to be affected by any changes that they would be making in their attempt towards nation-building. The German nation acted still more cautiously. "In 1874 (three years after the formation of the German Empire) preparation for general codification was commenced. After many revisions the German Civil Code came into force in 1800 (Op. Cit. page 964). Even in Great Britain the feminist movement had practically begun with the writings of John Stuart Mill (1806-73), particularly his work on *Liberty* published in 1859. However it was only in 1882 that the Women of England got legislative sanction for only a modicum of civil rights and it was not until they proved their usefulness in public life during World War I, that they got even a limited franchise by a Bill passed in 1918, the full equality of the rights to hold separate property only in 1925, and complete franchise in 1928.

6. Compared with their British sisters the Hindu women have no reason to be dissatisfied with their legal position because their right to take part in public religious and State functions and to hold separate property even in the married state has been recognized ever since the Sutra period at least (800 to 300 B.C.). The Vedic and Epic literatures too contain accounts of philosophical disputations held publicly in which learned daughters of Brahmans and Kshatriyas, like Gargi and Sulabha took a prominent part, of instructions in Adhyatma-vidya having been preferred to a share in wealth at a partition by women of that age like Maitreyi and of the recognition of the religious and philosophical merit of the poetic compositions of Aryan women like Vedavati and Vak. The Smriti and Ezegetical literatures contain evidence of the rights of a sonless widow, and of a brother's daughter to inherit their husband's and father's property respectively having been recognized by the Smriti writers, Katyayana, Brhaspati, Vrddha Manu, Brhad Visnu and Yajnavalkya, none of whom could have flourished later than 712 A.D. earlier than which Indian jurists could not have any knowledge of Islamic law of succession (see Vij. on Yaj. II, 135-136). Vijnaneswara's commentary on Yaj. II, 135-36 contains such a masterly and chivalrous advocacy of the rights of a widow and a daughter to inherit the property of deceased sonless husband and father respectively that even if the modern champions of women's rights like the indefatigable but inconscient Dr. Deshmukh had been living in the 11th century, they could not have improved upon it. And that was, be it remembered, about a century and half prior to the establishment of the first Musalman kingdom of the Ghoris at Delhi, prior to which the Muslim law could not have been known to the Hindu jurists. It is also a well-known fact that the Sutrakaras too recognized several other forms of marriage besides the Brahma and the Asura and that by the time the present redaction of the Manusmriti was compiled, their number had risen to 8. It is thus apparent that the charge laid against the ancient sages that they were conservative and harsh towards women, is false and based on either ignorance of their writings or misconstruction born of prejudice.

7. Such being my personal view I would not object to suitable changes being made in our law if and so far as the present circumstances justified us in doing so. I believe however that any changes to be made must be such as could be approved by the majority of the Hindus of the different provinces whose interests would be affected thereby, for it is a cardinal principle of social legislation that it must follow a general public demand. It cannot be averred by any honest reformers that there is such a demand for the kind of revolutionary changes involving the disruption of the Joint Hindu family, the extinction of the right by birth of a son, the recognition of even an Illegitimate son, the legalization of marriages between Sagotras and between persons of different Varnas even in the reverse order, the creation of facilities for persons of even the higher castes to claim divorce on slight grounds, the admission of widows, sons and daughters, whether married or unmarried as simultaneous heirs, of even several distant bandhus as heirs in preference to certain Sagotra Sapindas, the upholding of the right of even an unchaste widow as an heir unless her husband had in his lifetime proved her to be such in a Court of Law, and several others mentioned in the following statement of objections. Even as regards the extension of certain rights to women, the time is not, in my opinion, ripe for making it because the few Hindu

women who are the members of the All-India Women's Association do not constitute even one per cent of the total Hindu female population of India.

8. Even if we assume that there is such a justification for such drastic changes, there seems no reason why the Rau Committee should be in a hurry to get them made by the Legislature by the end of 1945. The heavens would not fall if the Bills before the legislature are withdrawn and the proposed Code is held over till the new constitution now under contemplation is drafted and sanctioned by the proper authority. Stray hard cases, if any, should not count when the fate of a whole community of 28 crores is concerned. On the contrary, it is particularly necessary that it should be so done because it is still uncertain whether there will or will not be a Federal Legislature under that constitution, and if it will be, whether it will have power to make laws of this nature, whether the provinces will or will not have the same extent and limitations as at present, and what will be the position of the Hindus residing in the Muslim majority provinces. Even if there is any justification for not waiting till then, the present Central Legislature is incompetent to pass it because it contains members who were elected nearly 10 years ago. Most of them have ceased to attend to its work because of a major political difference with the Government of the day and any acts which it would pass so far as succession to agricultural lands in the different provinces is concerned would have to be supplemented by legislation in all the respective provinces which may or may not be done as the experience in respect of the Deshmukh Act shows.

9. Moreover it seems to me strange that while on the one hand there is activity all round in this country, in England and even in America, in the Government and non-Government circles everywhere for taking adequate steps towards the consolidation of small agricultural holdings so that scientific methods of agriculture can be economically put into operation, this Code proposes to create conditions which must inevitably lead to further diminish the sizes of the holdings to such an extent as to make it uneconomical even to cultivate them by the time-worn crude method. I believe the Committee has not considered this deleterious effect of its proposal. The same remark holds good also in the case of the proposed extinction of the joint family system for while on the one hand there is a strong movement to weld the different communities into a single nation with common ideals and interests, this Code by a stroke of the pen proposes to destroy the commensality of interest existing for thousands of years between the sons of the same father. If uniformity is desired, Bengal should rather be brought under the Mitakshara Law rather than that the rest of India should be placed under the Dayabagha Law. Similarly, in the matter of the rights of the female heirs, Bombay is already liberal. The Act of 1929 has to some extent tried to bring the other Mitakshara Provinces in a line with it. But it does not yet go far enough to reach the Bombay level and Bengal is outside its scope. The better course, therefore, would be to so amend the said Act as to extend the rights of the Bombay female heirs in full to all the other provinces of India. I feel confident that if that is done, whatever dissatisfaction there may be amongst the educated women of the other provinces will cease to exist and that is surely a simpler remedy than the one now proposed. The women of Bombay have not and cannot have any grievances requiring any immediate legislative action. As regards the laws of marriage and divorce the existing settled law and the Special Marriage Act may be consolidated and embodied in a single Act. I would not object to such minor adjustments being made therein as may be justified by the exigencies of the moment as revealed by the representations to the principle above expounded, namely, that "a link with the past within reason" must be maintained. The laws of Minority and Guardianship and Adoption may be similarly digested and codified so as to simplify them but not so as to introduce any revolutionary changes.

10. If the above reasons for postponing the consideration of the draft now before the public or for eliminating from it its most objectionable features above pointed out and for placing in cold storage the Bill now before the Assembly do not appeal to the Rau Committee or to the Government of India, whoever is the deciding authority, I place before

the Committee the following views of mine as to the contents of the draft.

11. Although the draft before me professes to be a Code of the Hindu Law now in force, it leaves untouched many vital matters in respect of which we are still governed by the principles of Hindu Law. An enactment which purports to be a Code, must be all-comprehensive, and as free from defects as it can humanly be made.

These matters are —

(1) The rights of maintenance of the dependants of a living Hindu are nowhere defined except in the case of a wife. Section 488 of the Criminal Procedure Code is not enough for that purpose, because a Magistrate proceeds more on the ground of humanity than on the legal one. The important civil right to file a suit to set aside an order passed by a magistrate which now exists should not be so taken away.

(2) No provision is made for the payment of the debts of a deceased person before making a partition. Under clause 8 of Part III of the Code, the payment of the debts has priority over any claim for maintenance only not over that for the separation by partition of a share in the estate of the deceased.

(3) The Hindu Law of debts rests upon the slender foundation of a few texts and a rank overgrowth of many-a-time mutually-conflicting decisions of the Privy Council, which are interpreted differently by different High Courts. Uniformity in this branch of the law is highly desirable and can be secured by a simple additional part of this Code without raising any sort of opposition.

(4) Gifts in Hindu law are still governed except in the matter of procedure by the principles contained in some texts interpreted by judicial decisions and some statutes passed during the last thirty years. There seems no reason why they should not be codified simultaneously with the other parts of the law.

(5) The Hindu law of religious and charitable endowments also remains untouched. It cannot be denied that it has its own special features.

(6) Even though the right of a son by birth is extinguished, as the experience in Bengal shows, all the estates of deceased persons will not be partitioned immediately but the other male members of their families will continue to live jointly like many of the Mussalmans, Parsees and Christians at the present time. Although they may be tenants-in-common joint enjoyment, joint business with joint property, etc., will of themselves raise certain questions and therefore the law which purports to be a code must contain provisions which would facilitate their solution.

(7) There is a large number of decisions on the question of 'Alienations' made by limited owners. These should be reduced to the form of a digest containing a few simple rules and must form part of the Hindu Code.

(8) It appears to me that it is not the intention of the drafters of the Code to put an end to existing rights of sons already born before the Code comes into force. The joint family law of the Mitakshara schools will therefore continue in force so far as they are concerned. If this view is correct, the Code in order to be all-comprehensive must contain a part embodying consolidated provisions with respect thereto and the partition of their joint family property. A mere application of the Partition Act is not sufficient for that purpose.

(9) Although the powers of the natural guardians of minors may be generally curtailed as is done in the Code, some provision is absolutely necessary for enabling them to acknowledge on behalf of their Wards so as to bind their estates, the debts which the Wards are liable to put out of the estates coming into their hands either by inheritance or by survivorship, for, if the deceased person was a trader or an agriculturist and the only or principal source of the Ward's maintenance is income from the trade or agricultural produce, the guardian must continue the trade or agriculture, he must therefore be in a position to borrow for the necessary purposes in connexion therewith and that means credit which can be commanded only if the past debts, if any, are either paid up or kept alive by acknowledgment.

(10) I also find a great lacuna in the Code, so far as the Benami transactions are concerned. Subject to certain

provisions in the Transfer of Property Act they are at present governed by the principles of Hindu Law and each work on that law has a chapter devoted to it.

12. The above are the omissions of a general nature requiring particular attention which I find in the Draft Code. Besides them I have to offer remarks with reference to some of the specific provisions therein. They are contained in the accompanying schedule.

Schedule I.

Provision in the Code.	Objectionable feature thereof.
Part II—Intestate succession— Clause 2 (e).	The definition of "son" contained in this Clause is quite arbitrary and too wide because according to it, the term would extend after the commencement of the Code to even a Kritrima son (a son for a specific purpose) and an Ilatom son (who is no better than a Ghar-Jamai) who had been adopted before the commencement of the Code and any of them would be able to claim a share as an Auru-putra or Dattaka-putra, along with a widow and a daughter of the deceased Hindu.
Clauses 5 to 7	<ol style="list-style-type: none"> 1. The classification of the heirs seems to have been based, except in the cases of class I, on a mechanical principle fixed upon without regard to the provisions of Hindu Law now in force. 2. The simultaneous succession of even married daughters with widows and sons is apt to create discord, to lead to an increase in litigation, to break the solidarity of Hindu families, to render many agricultural holdings uneconomical and many residential houses liable to be sold off and emasculate the Hindu community on the whole from an economic standpoint. 3. There seems no reason why heirs Nos. 1 and 2; 3 and 4; 5 and 6; 7 and 8; in class II, who are equally removed from the deceased in the line of descent should not be permitted to inherit simultaneously in recognition of the principle of equality of sexes. 4. There seems no reason also why the position of step-relations has not been made clearer that it has been. The only references to half blood are contained in Part I, clause 5 (e) and Part II, clause 15. At no place is it stated that the relations specially mentioned in the order are those of full blood only. In the absence of such a provision a lawyer might argue plausibly that a step-brother or step-sister whom he represents is entitled to inherit simultaneously with a full brother or sister whom the deceased may have left behind along with his client. Whether he succeeds or not is a different question. The ambiguity is there and it is likely to be made use of in order to foment litigation. It therefore deserves to be cleared up by adding an explanation in clause 5. 5. Sisters in the provinces other than Bombay may feel thankful for the position given to them in class III but there in Bombay would have a grievance because whereas under the existing law they come in as heirs before many Gotraja Sapindas, they are under this Code postponed to many descendants who would only have come in as Bandhus and even a Gotraja Sapinda not specifically provided for, namely, a brother's son's son, for whose interposition at least there seems to be no justification whatsoever. 6. In fixing the orders in classes II, III, IV, V and VI male heirs seem to have been preferred to the female heirs except in the case of the descendants, parents and grandparents. It is not explained why it has been so done.
Clause 8 (4)	<ol style="list-style-type: none"> 1. It is most astounding to find a married girl being treated for the purpose of succession as continuing to be an agnate of the father and his relations. For doing so there is no basis in law. The value attached to the secular ceremony of adoption (See Part VI, Clause 18), seems quite out of proportion to that attached to even the sacramental form of marriage, let alone the civil. If the radical reformers want such a provision let them have it by confining the operation of this sub-clause to girls mentioned in the civil form only. There can be no compromise in a matter involving a fundamental principle of the Hindu social structure.

2. The extinction of the rights of widows of collaterals in Bombay after it has been enjoyed for over half a century is a flagrant violation of a civil right. If uniformity of law throughout India is desired at all, the extension of the right to the widows of collaterals in Bombay to those in the other provinces would be a step more in consonance with justice and equity.
- Clause 11 (2)** ... The provision in Yaj. II. 157 having been interpreted by Vai. to mean that not only a Sisyra of a Yati but also an Acharya of a Vanaprastha and a Dharmabhrataika-thirthin of a Brahmachari should be well-behaved, that kind of qualification must be mentioned in (a) and (c) as necessary for the accrual of the rights of inheritance therein provided for.
- Clause 14 (c) (1)** ... Since the definition of 'Stridhan' has been made very comprehensive, it is possible that a mother might leave son's debts as well as assets. If that is the case the son would get only one half of the share of a daughter out of their matrimony, the liability for the debts should fall proportionately on the daughters and sons. There seems to be no provision of that nature in the draft. One should therefore be inserted. There being none in respect of the debts of a father also a general clause covering both the cases of debts may be inserted among the general provisions. Women should also be debarred by a specific clause from disposing of immovable properties, if any, inherited from their husbands, by gift, inter vivos or by a will.
- Clause 17** ... This provision covers the case of Pratiloma marriage also though it is prohibited definitely as understood by all the High Courts. Girls who entered into such marriages should depend either upon an anti-nuptial agreement or a testamentary provision. This clause is particularly objectionable as it is likely to encourage Pratiloma marriages which should not be the policy of the Hindu law.
- Clause 19 proviso.** This proviso nullifies the effect of the rule in the clause. If it is laid down as a strict *vive que non* even in a 100 cases hardly one will be found where a Hindu husband may have gone to a Court of law to prove that his wife was unchaste. If allowed to stand, this proviso will encourage women to lead immoral lives with impunity.
- Part III.—Testamentary Succession.** As in the case of gifts, the law of procedure may be general but the substantive law is personal. The principles thereof as regards bequests must therefore be clearly defined in the Code. If there are any anomalies they must be cleared up.
- Part III.A.—Provisions common to Parts II and III, Clauses 1 and 2.** This clause by one stroke of the pen proposes to put an end to the right of the Hindus governed by the Mitakshara to take the joint family property by right of survivorship which is the necessary corollary of the equality of rights between a father and a son in the property acquired by a grandfather declared by Yaj. in II. 131 of his Smṛti. The reasons given in the marginal notes are not satisfactory. I would rather wish Bengal to be placed under the Mitakshara law.
- Clause 6 (f)** ... Past relations between the deceased and the dependant claiming maintenance from his estate should not except in the case of a concubine be considered while determining the amount of maintenance allowable to the dependant.
- Part IV.—Marriage and Divorce, clauses 1 (b) and 7 (b).**
1. The number of specific relations marriage between whom is prohibited is very small, under clause 1 (b) as it stands, children of the same grand-parents can marry. Prohibition should be up to the third degree on both sides.
 2. The sphere of selection becomes widened that it is even under the proviso 2 to Section 2 (4) of the Special Marriage Act, 1872 and no explanation is given for widening it.
 3. When these are considered together a sacramental marriage is reduced to a marriage in the contractual form on losing all its sanctity and on the conditions laid down therefor being rendered nugatory.
 4. Clauses 18 to 22 and the proviso to clause 29 (iii) should therefore be deleted.
 5. Along with the prohibition of the marriages between Sapindas those between Sagotras up to the descendants of the same grand-father on either side should be prohibited by law, custom or no custom, of recent (25 years) growth.
- Clause 3 to 6 (both parts) and 18 to 22 and 29 (iii) proviso.**
1. When these are considered together a sacramental marriage is reduced to a marriage in the contractual form on losing all its sanctity and on the conditions laid down therefor being rendered nugatory.
2. Clauses 18 to 22 and the proviso to clause 29 (iii) should therefore be deleted.
3. Along with the prohibition of the marriages between Sapindas those between Sagotras up to the descendants of the same grand-father on either side should be prohibited by law, custom or no custom, of recent (25 years) growth.
4. At present marriage between all Sagotras can be declared to be null and void. This limit as in objection No. 3, should continue to be declared such at the instance of any member of the caste to which the parties belong. Clause 29 should be amended accordingly.
5. If selection is to be made between the two sets of clauses 3 to 6, I would select the second but would limit the prohibited Sagotras to 3 degrees on either side from common ancestor.
- Clause 7 (4) proviso and 14 exception.** I see no reason why a minor widow should not require the consent of any of her parents who may be living or her elder brother if an adult; simply because she had married once, she did not cease to be an ascendant which she will have no power to think of all the pro and cons of the case. In the case of a minor widow who has inherited substantial property of an old husband dying soulless, the liberty left by this kind of provision is liable to be abused by others who have an eye on her property. Control over her of some elderly relation on the parental side is necessary till she attains majority.
- Clause 12 (3)** ... A marriage which is objected to may not take place because of an injunction from the Court but that would not prevent the parties from having access to each other and that would give scope for promiscuous intercourse. An effective provision should be inserted to prevent this, for otherwise the prohibition of marriage can have no meaning and purpose.
- Clause 23 (1) (8) Expln.** The test for the right of guardianship herein laid down is not sound. The explanation may be dropped. (1) (8) is enough.
- Clause 24** ... There are and will be several married Hindus having substantial property but no male issue. Adoption is a risky affair. A second marriage should in their case be allowed on certain conditions. Although a positive provision permitting polygamy may not be made, the purpose can be served by adding a proviso to this clause introducing an exception in the case of such persons if certain circumstances to be defined exist.
- Clause 25** ... The provision in this rule for conferring rule-making powers of the Provincial Governments is very widely and vaguely worded. The power should be (a) general, for carrying out generally the purposes underlying the chapter as a whole and (b) particular, as to specific purposes to be defined with reference to any of the previous changes therein.
- Clause 28** ... The Hindu or Vankada custom is pernicious though widely prevalent. It has been the cause of several suicides of poor parents and daughters of such parents. In view of that this provision seems to have been framed half-heartedly. It cannot check the people from following the custom. Many uneducated parents or youths cannot resist the temptation to claim a substantial dowry proportionate to the worth of the groom in the matrimonial communal market. I would therefore recommend the substitution of this clause by a stringent one making it an offence on the part of a bridegroom or his guardian to demand a bridegroom price as the consideration for consent. Voluntary payments cannot of course be prevented or detected if prohibited by law.
- Clause 29** ... This clause is open to several objections. They are:—
- (i) It omits to include in the clause of marriage to be declared null and void, a marriage between parties related in the third degree through a common ancestor. I would not insist on marriages between those who cannot trace their descent up to that limit being declared null and void.
 - (ii) There should be a time-limit within which action for such a purpose can be brought.
 - (iii) I see no reason why a District Court and a High Court are given concurrent jurisdiction in this matter. It will be enough if the decree of a District Court is required to be confirmed by the High Court as is already done by sub-clause (3).
- Clause 30** ... 1. I would particularly wish sacramental marriages especially if they are not registered to be excluded from the purview of the whole of this clause.

Ground (a) 2. Apart from that even in the case of the marriages performed in any other form, hasty in one of the spouses continuing for not less than 7 years and found to be incurable should not be one of the grounds for the other spouse to get the marriage dissolved because the divorced wife or husband would be without any relation to care for her or him and would thereupon have to go to a mental hospital. I believe that in such a case of a husband, a joint family and in such a case of a wife, liberty to the husband to marry again would be a blessing.

Ground (d) This clause is so worded that if a married woman is kidnapped by a Mussalman as happens many a time in Sind and North-West Frontier Provinces and forcibly converted to the Islamic Faith, her Hindu husband would be entitled to declare the marriage dissolved. Such a provision would, I fear, encourage forcible conversion or even acquiescence in conversion because the woman cannot be restored to her former status even if she desires.

Part V—Minority and Guardianship—Clause 6. A natural guardian's powers may be restricted as proposed but if his Ward's maintenance depends upon the income of an ancestral trade or agricultural lands, he should by an exception or a proviso, be left free to acknowledge past debts, if any, for on that would depend the Ward's credit which is a great asset.

Clause 10 read with clause 3. Instead of a positive legal enactment against the recognition of a *de facto* guardian in all cases, it would be better to restrict the power to act as such to a few more distant lineal and collateral ascendants than the parents in the absence of any of the natural guardians mentioned in clause 3. Another way to provide for a contingency in which these guardians are not living is to add a few more distant relations in the list of the natural guardians in clause 3. I see no objection to a paternal grandmother or a father's widowed sister living in her brother's house acting as the guardian of the property of her brother's son on the death of her brother, if the mother of the boy had died before his father.

Part VI—Adoption. On the whole I find this part is more satisfactory than any of the previous ones. Some of the departures from the existing law, e.g., the removal of the restrictions as to the adoption of a boy whose mother the adopting father could not have married, and of that as to the adoption of one's daughter's son or sister's son and mother's sister's son, are supported by reason and commonsense. I have, however, to take exception to a few clauses only and they are as follows.

Clause 5. This clause would enable a boy or a widow aged 15 years to make a valid adoption. As to that it is very uncommon for a boy of that tender age to decide to make an adoption. However, even, if stray cases are intended to be provided for, there seems no justification for placing the capacity to adopt a year earlier than the usual age of majority in Hindu law, as at present administered than the age at which a widow can give away her son in adoption.

Clauses 10, 19 and 25 (2). I am of opinion that a widowed mother should not have power to adopt a son, if besides her, there is either a daughter or daughter's son surviving the deceased because if she does so the adoption would have the effect of divesting a part of the estate vested in another heir. Even if she is given power to do so, it must be exercised within one year of the death of the deceased or before partition for otherwise complications and conflicts are likely to arise. If this suggestion is adopted, clauses 2 and 19 would have to be amended accordingly and clause 25 (2) deleted as unnecessary.

Schedule II.

Repeals. Lastly, if the suggestions made by me to make good the omissions which I have pointed out are acted upon I have to draw the attention of the Committee to the following enactments now in force and to suggest their examination with a view to see whether or not it is desirable to repeal

or amend any of them so as to be consistent with the existence on the statute book of a Code applicable to all the Hindus as defined in the Code, and whosoever residing in British India, as so amended. These enactments are:—

1 Hindu Transfers and Bequests Act, 1914 (Madras Act I of 1914).

2 Hindu Disposition of Property Act, 1916.

3 Hindu Transfers and Bequests Act, 1921 (Madras Act VIII of 1921).

4 Indian Limitation Amendment Act, 1927.

5 Child Marriage Restraint Act, 1928.

6 Hindu Gains of Learning Act, 1930.

7 Arya Marriage Validation Act, 1937.

7. All-India Hindu Women's Conference (M.S. Jankibai Joshi, Poona—President).

The Rau Committee has been apparently resuscitated and has presented a revised edition of draft Code in August last. In the explanatory note appended to the draft Code they say that they had prepared a draft on those topics of Hindu Law on which alone the Centre can legislate at present. Further on they say in paragraph 5 that the topics dealt with in the draft are all topics in which the Centre could legislate at present and the Hindu Code enactable by the Centre has necessarily to confine itself to them. They say that the very fact that they were in concurrent Legislative lists suggested that they were topics on which uniformity was *prima facie* desirable.

Probably for that reason that they have modified the preamble and stated therein "whereas it is expedient to amend and codify certain branches of Hindu Law" they have prepared a draft Code with respect to those branches. It was worthwhile to note that the original Bill as well as Joint Select Committee Bill were intended by the preamble to be parts of Hindu Law which was to be successively amended as a whole. That project to amend the whole Hindu Law in successive stages seems to be abandoned for the reason that the legislation with respect to the other branches cannot fall within the concurrent list; thus the Hindu society is faced with piece-meal legislation with respect to the other branches it cannot fall within the concurrent list; thus the Hindu society is faced with piece-meal legislation again.

Under the circumstances the desirable course would be to send those Bills which are before the Assembly along with the draft Code with a recommendation to codify and amend if necessary the Hindu Law in successive stages.

It is the humble suggestion that the view of the Committee that the Centre could legislate on the topics does not appear to be correct and the reasons are as follows.

None of these lists refer to personal laws of the Hindu, Buddhist, Jain and Sikh communities as being within the purview of either the Central list, the Provincial list, or the concurrent list, therefore it follows that these lists were not intended to affect the personal laws of the communities which were mixed with religious notion and, therefore, they can only fall within the general powers conferred by section 99 to make laws with respect to the whole or part of British India and in the case of a Province with respect to the Province.

Constitution distributing the power between the Centre and Provinces similar to ours is found to be enacted for the Dominions of Canada by the British North America Act, 1867/30-31, Victoria C. 3. Sections 91 and 92 of that Act provide lists for these matters, namely, matters falling within the Dominion list, matters falling within the Provincial list and supplemental powers to legislate for the whole are given by these two sections. The rule of interpreting the constitution with respect to those powers have been set out by the Privy Council in various cases. Rule No. 2 of those rules is in those terms:

"The general power of the Legislature of the Dominion is supplement to the power to legislate upon the subject expressly enumerated and must be strictly confined to such matters as are unquestionably of national importance and interest and must not touch on subjects assigned to the Provinces unless these matters have attained such dimension as to affect the Body Politic of the Dominion."

Taking, therefore, this rule as being the rule of interpretation for similar statute as the Government of India Act it would be worthwhile to examine the genesis of the enactment of the three schedules. In order to do this it would be necessary to refer to the report of the Joint Parliamentary Committee on the Indian Constitution Act. That report has been read and accepted even in the Courts as being the part of the constitution and basis of the constitution. Paragraphs 51 and 52 of that report deal with this matter. The principle of having list No. 3 (concurrent list) is discussed in Joint Parliamentary Committee in these paragraphs. In view of the experience obtained in India and elsewhere the Central Legislature should have a Legislative jurisdiction to enable it in some cases to secure uniformity in the main principles of laws throughout the country, in others to guide and encourage the Provincial efforts and others to provide remedies for mischiefs arising in the Province, but extending or liable to extend beyond the boundaries of such Province. By way of illustrating this they cite the great Indian Codes as illustrating the first, the second by such matters as labour legislation and of the third by legislation for the prevention and control of epidemic diseases, they did not think it desirable that the uniformity of law which the Indian Court provided should be destroyed or whittled away by the unco-ordinated action of the Provincial legislation. This is the one aspect. The second aspect was as local condition varies from the Province to Province it was necessary that the Provincial legislation should have power of adapting the general legislation of this kind to meet the particular circumstance of the Province. With this back ground showing the intention of the Legislature in enacting this concurrent list the items 6 and 7 of the list No. 3 in Schedule No. 7 will have to be interpreted. The items 6 and 7 of Part I are as follows :—

6. Marriage and divorce, infants, minors, adoption.

7. Wills, intestacy and succession save as regards agricultural land.

These items have to be examined and interpreted with the help of the principles quoted above. Now take marriage and divorce; marriage laws governing the seven main religions were not touched but the Special Marriage Act was a Code of marriage law with respect to the general population outside the seven religious communities so also the Indian Divorce Act. Take the next item, infants and minors. The Guardian and Ward Act of 1890 is the Code with respect to these matters. These matters are included in the concurrent list to enable the Provinces to adopt the law of the particular circumstances of each Province. Take item 7, wills, intestacy and succession. This obviously refers to the Indian Succession Act which is the uniform Code for persons not belonging to the communities governed by the personal laws so that except "Adoption" not a single item relates to personal law and therefore it is only the law of adoption that can be within the purview of the Centre.

As stated above the personal law is not referred to in express terms in any of the lists. The reliance placed on items 6 and 7 cannot as interpreted above, give powers to the Centre to legislate on these matters and the necessary consequence follows that these topics cannot be legislated for by the Centre, except under the general power given by section 99. It is not the uniformity that is desired but the destruction or whittling away the uniformity of the law laid down by the great Indian Codes.

There is one other point of view from which the question can be approached on the assumption that the items 6 and 7 can be so interpreted as to include the several topics on which the draft Code is prepared. The concurrent powers in these cases would be supplementary powers which can be used only in matters which have attained such dimensions as to affect the Body Politic of India.

After the introduction of the provincial autonomy the several Provinces are foreign countries *inter se*. This has been ruled by the Bombay High Court and the test apparently on which the proposition is based are (1) each Province has got law of its own, Public debt of its own, services of its own, Courts of its own. Such province can sue the other in Federal Court, the centre can sue the Province or the Province can sue the centre, so that each Province is a country by itself and foreign with respect to others and matters falling within the personal

law would be in the jurisdiction of each Province as being matters relating to the domicile. Now let us apply this test to the draft marriage Bill as drafted now. With a view to bring the uniformity in respect to the marriage law the committee is forced to say with respect to the new clause 3 of Sacramental Marriage as follows :—

"The most suitable course therefore, seems to be to embody in the general law only the most fundamental requirements while leaving the persons at liberty to follow other customary requirements in their practice if they so desired and analysis of the requirements to get at the fundamental would show the necessity for the bride and the bridegroom alone to exist and nothing further, so that to reduce the most important sacrament believed in by the majority of the Hindus, to suit the condition of minority community like Sikhs, Brahmans and other similar societies to a farce. This is the result of uniformity."

It is therefore, once again emphasized that these matters must be left to the Provinces and do not fall within the rule of interpretation discussed above as also with respect to the Canadian laws.

If unfortunately the Central Legislature passes the laws on these topics the Hindu community will have laws as follows :—

(1) The law on the topics enacted by the Centre as proposed by the draft Code.

(2) Original Hindu Law with respect to Joint Family Partition, Debt-Alienation, Religious Endowments, benami transaction until the Provinces enact the law.

(3) The laws with respect to succession of agricultural land. This can be enacted by the Provinces only.

(4) The laws copied from the British Indian laws in various Indian States.

These would form different laws which will govern the Hindu society if unfortunately the course is adopted.

We propose, therefore, that there should be no change of the personal law of the Hindu; to a territorial law but it should be kept as personal as it is and codification only as opposed to codification and amendment should be had on the basis of different schools. Once the law is codified on the basis of different schools the points of agreement and differences in various schools would be narrowed down and ground would be prepared for assimilating the whole Hindu law as a Federal law if when the Federation comes into existence in British and Indian India and these several statutes will form important steps towards a desirable end.

With these general remarks with respect to the powers of the legislation the other three points of general importance which are matters of general principles will be discussed first; out of these the principle of simultaneous succession has been discussed in my letter, dated the 20th March 1944. The other remaining points of discussion would be conferring the absolute interest on female heirs and removing the incompetency of woman owing to sex disqualification alone. The first point of conferring the absolute estate.—The Hindu Dharma Shashtra which includes Sociology as well considers family as the unit of society as opposed to the western idea of individual man, woman and child as each being a different unit. This latter view has given rise to extremes of capitalism on the one hand and socialism or communism on the other. Apparently, the Hindu thinkers took family as the group as it was united by ties of blood and affection as being the unit. As a result of this conception they have not accepted the rule of absolute power over property as a rule in any case. Even with respect to self-acquired property of a male see Vijaneshwar in commenting on verse No. 113 of II Chapter of the Yagnavalkya Smriti which is the view with respect to powers of male which Vijaneshwar propounds. With respect to this topic the Rau Committee's reasoning is as follows :—

"A distinction must be made between property on the one hand and dominion over or devolution of the property on the other, so that in their view the property of a woman, i.e., stridhan should be the property of a woman notwithstanding the degree of domination or power over the property or the course of devolution

of property. Therefore, everything that is obtained by woman is a stridhan. Vijnaneshwar does not impose any limitation on the estate because it is held by woman and therefore, it must be deemed that she has an absolute power. Then the third reason is that the perpetual tutelage of a woman is not incompatible with her accepting property and it has no bearing on property rights. According to all schools of Hindu law a woman has absolute power of disposal over certain kinds of stridhan and the committee express their opinion that the law has become complicated because we have departed from Vijnaneshwar and the solution is once more to be found in a resort to his ideas."

The Vijnaneshwar's interpretation of stridhan as including all kinds of property depends on the interpretation and connection on the word "Adhi" in the verse. It should be noted in this connection that the verse 143 as printed with Aparark commentary does not contain the word "Adhi" but the other edition referred to by Dara Singh also does not contain the word "Adhi".

The word "Adhi" as a grammatical rule should not come after Achivedhika in verse 143 after "Adhi" in verse 144 which is the last specific category of stridhan mentioned by Yagnavalkya. Dr. Altekar of Benares University in his book "Position of women in Hindu Civilization" at pages 264 and 265 refers to the effect of variation in the reading and he is inclined to prefer the reading of Aparark commentary as opposed to the other reading. Balambhatti, a commentary on Mitakshara refers to this reading and it says the absolute powers should be given to woman when there are no relations. Therefore, the first step in the reasoning of the Rau Committee depends on a disputed reading. It is mistaken in extending the connotation of the word Adhi which, it is submitted, should be interpreted *eju dem generis* and only include various categories mentioned and no further.

The Privy Council does not accept the wide interpretation put by Vijnaneshwar on the word Adhi. Besides the proposition that the property belonging to a woman should be absolute because no limitation is mentioned by Vijnaneshwar ignores the main principle laid down by Vijnaneshwar in commenting on verse 113. So even if we go back to Vijnaneshwar the committee's proposition would not be substantiated by the mere silence of Vijnaneshwar on the point. Dr. Altekar, to whose book the committee has also referred has also discussed the whole text law in his book and has come to the conclusion that absolute powers should not be conferred on a woman. The passage from Dr. Altekar's book on page 22 is given below.

It is however very doubtful whether Vijnaneshwar really intended to invest the widow with the right of disposal over the landed property included in her stridhan but acquired by inheritance or partitions. He was not prepared to concede even to the male manager of the joint family the full power to alienate the immovable property that he may have himself acquired. Could he then have even dreamt of investing woman with a right which he was not prepared to grant even to the male manager? His silence on the point may be simply due to the fact that the tacitly accepted general principle is that women are limited heirs, a principle which was approved even by Brihaspati the most well-known advocate of women's rights.

It is only Dayabag, Brihaspati, Katyayan that are in favour of absolute power to the widow but later writers like Mira Misra are not in favour and it is worthwhile to refer to Doctor Altekar's summary of the position in reply to the query whether widow's powers to be enlarged at page 321 and he says the disability is that her powers in this connection are not unrestricted. This is of course a disability from one point of view but also a protection from another. In the Punjab and Palestine, for instance, male peasants had unrestricted power of alienation. The result was that many of them sold away their valuable lands and become paupers, as they could not properly utilize or invest the sale-proceeds and Dr. Altekar proceeds :-

"We should not forget that 95 per cent of the widows are uneducated, inexperienced and altogether innocent of the provisions of the law; if they are given the rights to dispose of their landed property, many of them will be induced by interested parties to enter into unwise

transaction and he concludes that in the present circumstances it is not in the interest of the widows as a class that they should have unrestricted powers of alienation."

Mr. Justice Divatia is recently reported to have observed that the ladies owing to their illiteracy would not for some time to come be in a position to take advantage of the Bill and the Bill would not be of any advantage to them.

As stated in some of the paragraphs above in Hindu Law absolute power or domination over a property is an exception rather than a rule and it appears that in respect the continental law is the same. The continental law restricts the testamentary powers of every holder. Therefore, it cannot be said that the restrictions on a person's power of disposal are necessarily bad so that the doctrine of absolute estate being conferred ought not to be accepted by the legislation. Diwan Bahadur Brahma, a well-known lawyer of Nagpur, is of the same opinion and gives practically the same reasons, for his opinion in his tract on the Hindu intestate succession.

With these preliminary remarks I beg to submit the following remarks and suggestions from the Hindu Mahila Sabha on the Draft Hindu Code :-

Part I, clause 1 (3).—Instead of having the date of coming into force on 1st January 1946, I would suggest that the period should be five years after the whole Hindu Law passed.

2. Application of Code to Hindus :-

(2) In the second line after "Professing" add "either by birth or conversion."

Part I, clause 4.—After the end of this section the proviso shown there should be deleted.

Clause 5 (b).—In the third line the word "Law" after the word "Hindu" should be substituted by the word "Society".

After 5 (j) add new "(k) provided that the property inherited or obtained at a partition from her husband's family shall not be deemed 'Stridhan'.

Clause 7.—This should include the Caste Disabilities Removal Act of 1850 and the schedule corrected accordingly.

I do not understand why the Committee, the members of which are all Hindus, should have a soft corner for this Act. Out of 18 members of the select committee 12 were Hindus and out of this 11 Hindus insisted that this Act should go so far as the Hindu society is concerned. With all this protest before you the committee does not take into consideration this point. You have to prepare a good Code for the Hindus. I ask then, whether you are not supposed to protect the Hindu society. I place a concrete and practical example. Suppose 'A', a Hindu, has two children, one son and one daughter, the daughter is kidnapped by a Muhammadan and married after conversion; with the Code as it is proposed the daughter will claim the property of 'A' and will be a neighbour with her Muhammadan husband of A's on in the bungalow and in the landed property. I ask whether he would like the situation created in his family. Perhaps with the *Vi wa handhutwa* notions he may not have any objection. I ask the members of the Committee to find out the percentage of such high notioned people. It may be one in a lakh; if so why should you not look to the interest of the entire society?

Part II, clause 1 (iii).—After this add the following :-
to the joint family property.

Clause 2 (b).—The definition of "Heritable property" shown in the Joint Select Committee's report should be adopted.

Clause 5.—*Enumerated heirs*.—The unmarried daughter should be given a limited share in her father's estate. If she remains unmarried after her death and if married after her marriage, her share, which should be equal to that of her brother, should go to her father's family.

Similarly widowed daughter-in-law or grand daughter-in-law should be given limited estate equal to her husband's brother and after her death the estate should go to the husband's family.

The Hindu family should be taken as a unit and fragmentation of the property should, not be so as to allow any portion to go away to the other family, through daughters and widows.

Clause 7 (b).—At the end of the clause add the following:—

“Provided the undivided son has not already taken away his share from the ancestral estate.”

Clause 7 (d).—As already suggested each of the intestate's daughters shall take equal share with their brothers as “limited estate” until marriage or if unmarried, till death.

Clause 8 (4).—This should be deleted. As it is a woman should be agnate of her husband and cognate of his cognates.

Clause 21.—This is another instance how timidly you are against the Act of 1850. Why convert children? Why not convert himself? The convert himself should be disqualified from inheritance and the Caste Disability Removal Act, 1850, should be abrogated so far the Hindu society is concerned, i.e., it should not be applicable to Hindus.

Clause 25—Escheat.—In line 5 after the property omit the rest of the sentence and add the following:—

“As trustee for the benefit of the community to which the deceased belonged.”

Part III—Testamentary succession.—In line 3 after “Indian Succession Act, 1925” add the following:—
(Section 212 included.)

Part III-A.—This should be deleted and the law of the joint Hindu family property should be retained as it is at present.

Part III-A, Clause 6 (g).—In line 5 the last portion of sentence after the word “father” should be deleted as it is inconsistent with the clause (c) of the same section.

Part IV—Marriage and divorce.—With respect to this topic it must be said that the Hindu and religion are one and the same thing; they must be adopted as a whole or renounced as a whole; that if a man objects the Hindu Law of marriage he objects to an essential part of Hindu religion, ceases to be a Hindu and must be dealt with according to the laws which related to persons in such position.

It must also be seen that marriage is the foundation of the society, and is an institution to perpetuate the race and civilization, and any change suggested must be based on good reasons. In fact it was necessary for the committee to take into consideration the recent research in Eugenics carried on both in America and England which throw a considerable light on marriage problems which are put before the Hindu society by the draft.

Amongst the Hindus marriage is a sacrament and not a contract and to introduce the contractual mode of marriage is against the principles of the Hindu Law. The Committee has provided in clause 2 that there shall be two forms of marriage—(a) sacramental, (b) civil marriage.

The Committee's only reasons given for the inclusion of civil marriages in that clause was that it already existed though perhaps under a different name. It is well known that the form came into existence so far as Hindus were concerned after 1923 by the so-called Patel Bill and thus a very recent innovation brought about by a class of people detached from the current Hindu life and who had not the wish to declare that they were not Hindus. They wanted the change and they wanted to be still Hindus. This renovation ought not to be recognized as a marriage in Hindu Law when the Hindu Law is being codified.

“One might say, the Committee should have considered whether the recognition of a marriage based on contract was conducive to the interest of the society as a whole. Marriage based on contract was much in vogue in America and some authors on Eugenics have apparently disapproved that form as will be apparent from citation in the next paragraph.

“Mr. Nathon Fasten in his book “Principles of Genetics and Eugenics” has devoted Chapter 19 to Eugenics and human betterment. According to him the Eugenist is one of the firm conviction that there are numerous ways of bringing about improvements in human family which will lead gradually to the production of a finer and fitter race of people thereby ensuring a nobler civilization of the future. He says at page 344 while speaking about changed attitude to marriage that the majority of the young people contemplating marriage hardly give any

thought to its significance as an institution to perpetuate the race and civilization. He says further on in the same page after referring to statistics relating to marriage and divorce that the statement from statistics reveal that there is probably something wrong or something lacking in the fundamental preparation of our youths for marriage. A changed attitude is essential to bring about any real improvement. After all the family must be considered the primary basis of our social order and anything which tends to undermine it, is bound to leave its mark on the entire failure of civilization. These remarks referred to conditions in America and where there is liberty of marriage and conditions are apparent which the Eugenics want to improve and they want to do so by going back to the family as basis.

Messrs. Popenoe and Johnson developed the same line of thoughts in “Applied Eugenics”, Chapter 15. Remarks at page 261 regarding college educated women are very pertinent and might with reason be said to offer an explanation of the present demand of some few persons. It is therefore at least pertinent if not necessary to consider whether the civil marriage be recognized as a part of Hindu Law and in the proposed Code. I am, therefore, of opinion that the inclusion of the civil marriage should not be in the Draft Hindu Code.”

Sacramental marriage.—Clause 3 (c).—In the first line after the word “bride” add the word “bridegroom.”

Clause (3) (a).—“Neither party must have a spouse living at the time of marriage.”

Below this I would propose that the following proviso should be added:—

“Provided any person whose first wife is through illness or otherwise incapable of conjugal life may apply to the District Court for permission to remarry in spite of the above clause.”

Clause 4.—Ceremonies required.—In Part I, clause 2 (2), the meaning of the word “Hindu” is given definitely. I would, therefore, propose that the rites and ceremonies of marriage amongst Buddhists, Sikhs, Jains, Brahmos and Aryasamajists should be separately specified according to their respective accepted authorities.

At the end of clause 4 add the following:—

“When the language in which the rites are performed is not understood by either party those rites should be explained in the language understood by them.”

Alternative clauses should be for Hindu.—Clause 3 (a).—Add the following proviso below this:—

“Provided any person whose first wife is through illness or otherwise incapable of conjugal life may apply to the District Court for permission to remarry in spite of the above clauses.”

Clause 3 (c).—In the last line after the word ‘Pravara’ add the word ‘they must not be within the degrees of relationship prohibited by this chapter.’

Section 3 (d).—After the word ‘other’ in the second line add the following:—

“Unless the custom or usage governing such of them permits of a sacramental marriage between the two.”

Clause 7 (4)—Civil marriage.—The proviso at the end should be dropped.

Clause 18.—The registration of sacramental marriage should be made compulsory.

Clause 30.—In sub-clauses (a), (c) and (e) the period of seven years should be reduced to three years.

After the sub-clauses (f) add (g) as follows:—

(g) If a husband is impotent at the date of the institution of the suit and subsequent to the marriage.

Clause 31.—The Indian Divorce Act should be made applicable to marriage under sacramental form.

8. Mr. K. Natarajan, Editor, ‘Indian Social Reformer.’

There is a growing feeling among Hindu women of all classes and castes that their position under the Hindu Law is one of much hardship and humiliation. It is imperative that something should be done, and that immediately, to assure women that, whatever might have been the mistakes of the past, Hindu society is now determined that the position of women shall in all respects be one of absolute equality with men. I regard the Hindu Code drafted by The Rao Committee as embodying this assurance in the most binding and solemn fashion. Details here and there

may be changed but this fundamental purpose should be kept in view and the Bill should become law substantially as it is. The rejection of the Bill or its amendment so as to water down this principle, may, and in my opinion, will spell disaster and dissolution to Hindu society. Hindu Law has lagged much behind the march of opinion. The Bill in its main provisions merely brings the law in line with enlightened opinion and practice.

It has all along been my view that marriage law reform should take precedence of changes in the law relating to property. When all is said, the number and proportion of the population which has property to bequeath or inherit is very small. Marriage, on the other hand, affects nearly every woman in a society in which marriage is still nearly universal. In marriage the most important reform is monogamy. Monogamy, as the Committee has rightly pointed out, is the ideal of Hindu marriage. Polygamy was permitted under strict conditions which have fallen into disuse. Still the number of polygamous marriages among the population are few. Nevertheless the freedom or licence enjoyed by men to contract polygamous marriages, is a menace to marital happiness, which should be eliminated from the law. It degrades the sanctity of the marriage bond and is the cause of excruciating moral agony to innocent young women brought up in modern ideas.

The Special Marriage Act as amended by Dr. Gour is being taken advantage of by an increasing number of Hindus and, but for the incidents relating to succession attached on to it, unnecessarily in my opinion, it would be availed of by a very much larger number because of its monogamous principle. The Hindu community, with the exception of a few ultra-conservative and ultra-modern individuals, is strongly for monogamy.

9. President, Dharma Niraya Mandal, Lonavla.

At the outset I may remark that the Mandal over which I have the honour to preside is generally speaking in full agreement with the general tenor of the Code. In such a subject the difference of opinion is not an unexpected occurrence. In these circumstances the Mandal has been placing before your Committee the views as expressed at its conference (See infra) * held on the 30th of September 1944 at Poona.

The Mandal comprises several eminent men well versed in ancient Hindu scriptures and also those who are well acquainted with the actual administration of the Hindu Law in courts. For instance, Mahamahopadhyaya P. V. Kane is a practising High Court pleader, as also Mr. N. G. Chapekar who is a retired First-class Sub-Judge. Similarly, I may humbly state that I have studied all the ancient scriptures including Dharma Shastra. Our Secretary Mr. R. G. Kokje is an eminent Naiyayik who has obtained the degree of Tarkatirtha.

I state below the changes proposed by my Mandal :—

1. *Part I, clause 5 (j)*.—Read after the words "howsoever acquired", "whether by inheritance, except from the husband's family, or at a partition, except in the husband's family, or devise or in lieu of etc."

2. *Part II, clause 2 (b)*.—The illustration is not quite clear as to joint tenants. It appears that joint tenants means by gift or devise. If so the words should be added.

3. *Clause 1 (1)*.—Heirs under this clause should be widow, son, unmarried daughter and the persons mentioned therein plus widowed daughter-in-law and widowed grand-daughter-in-law.

4. *Part II, clause 5, class IV*.—Father's father and father's mother should be introduced after sister in Class III.

5. *Part II, clause 8, sub-clause (4)*.—We disapprove of this change. It strikes at the very root of our notions held for thousands of years that a woman passes by marriage into the gotra of her husband. No adequate reasons have been given why this fundamental change in the notions of the people has been made.

6. *Part II, clauses 10 and 11*.—These sections may altogether be omitted except as to the ascetic. In these days a man's preceptors as well as disciples may be innumerable. As regards section 11 we suggest the omission because there is no "vanaprastha" in those days and hardly any "naishtika brahmachari" in the old sense. As regards an ascetic it may remain.

As regards an ascetic's property acquired before renouncing the world, it should devolve according to clause 11 (1).

7. *Part II*.—The first illustration to clause 13 should be dropped in view of the amendment suggested to the word "stridhana" on Part I, clause 5 (j).

8. *Part II, clause 14 (a)* becomes superfluous in view of the definition of "stridhana" suggested by us and should be omitted.

9. *Part II, clause 21*.—A person who ceases to be a Hindu by conversion when the inheritance opens should not be entitled to succeed, i.e., the Caste Disabilities Removal Act, 1850, should be abolished.

10. *Part III-A, clauses 1 and 2*.—We are in agreement.

11. *Part III-A, clause 6 (1)*.—Distinctions, between sub-clauses (g) and (h), so far as taking into consideration the income from her own earnings, are unreasonable and inconsistent with sub-clause (e).

12. *Part IV, clause 1 (b)*.—After "two brothers" add the words "or two paternal first cousins."

13. *Part IV, clause 3*.—We approve the first alternative about sacramental marriage.

We suggest that in clause 3 (e) we should read "if the bride or bridegroom" for the words "if the bride."

14. *Part IV, clause 3 (a)*.—A proviso may be added to clause 3 (a), viz., (1) A man may marry another woman even if the first marriage is in force when the first wife has borne no child for ten years after the marriage, (2) or when she has been suffering from an incurable or loathsome disease for three years, or (3) when she is incapable of conjugal life.

15. *Part IV, clause 5*.—Add "or bridegroom's" after the word "bride's".

16. *Part IV*.—We disapprove of the alternative clauses in the brackets.

17. *Part IV, clause 11*.—The period for taking objection should be extended from fourteen days to one month.

18. *Part IV, clause 30*.—The period of seven years in sub-clauses (a), (c) and (e) should be reduced to either three or five years.

* Resolutions of the Conference referred to above.

- (1) It is necessary to have the Hindu Law codified.
- (2) While being codified, it is essential to make such amendments as would suit modern conditions.
- (3) The law when codified should be made applicable as far as possible to all the Hindus.
- (4) The Act should be brought into force not fragmentarily but in its entirety.
- (5) Piecemeal legislation is undesirable. The laws should not come into force until the entire Hindu Law finds a place in the Statute Book.
- (6) The date of the Act to come into force as given in the draft code should be wiped out. The date of operation may be mentioned only when the whole Hindu Law as at present in force is amended and codified.
- (7) Unmarried daughters should have a share along with sons in the property of their father when the latter dies intestate.
- (8) This share should be one-fourth of the share for each son.
- (9) The unmarried daughter should have an absolute right to the property thus inherited.
- (10) The Hindu widow should have an absolute right to the property inherited from her husband as widow, provided that she must not sell, mortgage, gift, or in any other way alienate the property save for legal necessity, when any of the following heirs to her husband are living, viz., daughter, son of a daughter, mother, father, brother, brother's son, paternal grandmother, grandfather, uncle and uncle's sons.
- (11) The sagotra and sapravara marriages performed according to Hindu rites, provided they do not transgress the sapinda degrees prescribed by shastras should be held lawful. The sapinda limits prescribed by the shastras are five on the mother's side and seven on the father's side.
- (12) No marriage between a Hindu man and a Hindu woman to whom Hindu Law applies should be held unlawful.

10. Sri Ram L. Gogtay, Sandhurst Buildings,
Sandhurst Road, Bombay.

Alterations are required in clauses 29 and 30 of Chapter III, Part IV, thereof.

During the past few years a certain class of husbands for some reason or the other disappointed with their first wives, have had increasing recourse to the remedy of second marriages. They did so because it has not been

possible for them to divorce their first wives with whom they had found life intolerable. It may be that many of such castaway first wives might have, in all earnestness, desired, for the sake of their own mental peace if not for anything else, to divorce their husbands and must have even prayed that the labours of your committee might provide a remedy for their ills. By divorcing their husbands they would not be reduced to penury. The younger of them would presumably marry again, and those who will not marry will receive alimony from their ex-husbands. But unfortunately your Code does not help them. To rescue such women from a miserable livelihood and to render them free to contract a second marriage if possible, I suggest that clause 29 should commence as follows:—

"(1) Either party to a marriage *whether celebrated before or after the commencement* grounds, namely". (Only three words italicised are added.)

If the above additions are made, I have no doubt whatever that such of the first wives as are able to stand on their own legs or have some self-respect left in them will take advantage of it and secure divorces.

Proceeding further, I find that just as your Committee have left the first wives in the lurch in section 29, they have done nothing to lessen the miseries of unhappy husbands by appropriate provisions in section 30. Having deliberated on the Code for a couple of years, it should not have been beyond your Committee's knowledge that the demand for divorce has been most persistently voiced by the educated women—it would be more appropriate to say half-educated women. Their education has been mostly gathered from cheap and sensational novels, in which woman has generally been raised to a high pedestal at which the mere male is supposed to worship. Novels are very rarely a true picture of life. And so when these half-educated women find, in actual life that their men in the struggle of life, have neither the leisure nor the money to keep them on the pedestal, they become dissatisfied with their husbands; the dissatisfaction of wives breeds dissatisfaction of the poor husbands who, in such cases, are not at all at fault; the marriages are soon on the rocks; yes, divorce not being allowed, for appearances they have to continue to live as husbands and wives hating and cursing each other. The number of children and the distances between their ages, can reveal the most accurate analysis of the condition of their marriages. But perhaps, your committee is not disposed to take such a broad view.

What have, therefore, been the remedies all this while at the disposal of such couples. I know of cases where the wives, some of them the most accomplished in the portals of the University have left their husbands, and are to-day living with other men, as if in a state of concubinage. Their husbands have been too liberal in that they have not sought to file suits against the paramours of their wives for adultery, though among the lower classes this is sufficient cause for murder. That shows that their attitude is favourable to a grant of instant divorce. I know of other cases where the husbands of cantankerous and otherwise undesirable wives have, for reasons either psychological or pathological, found it necessary to marry for the second time for the sake of preserving their sanity. And truth to tell their second marriages have been happy beyond measure. I know a still other set of cases where the husbands, hailing from the highest class of society, have embraced Islam merely to be able lawfully to marry for the second time. The second wife is also a Hindu converted to Islam for the purpose of the marriage. With the advent of the Hindu Sanghatan Movement, reconversion of Hinduism after contracting the second marriage has been possible. By such a subterfuge, the high regard your Committee pays in its observations about Hinduism is trampled under foot. Then there is the type of husband who for the sake of appearances and out of regard for Hinduism, do not follow any of the preceding media but maintain a mistress whom they accord the same consideration as to a wife. Still others desert their wives. Once it is established that the couple cannot make a success of their marriage, and have in fact been living separately, a divorce should be the natural course. In such cases a three years' period of separation ought to be enough punishment for either party. Still others find it convenient to take advantage of the comparatively easier Baroda Law and secure divorce there. Clause 30 does

not provide for any of these contingencies and therefore, I suggest the following modifications therein:—

(1) Clause 30 should commence "Either party to a marriage *whether celebrated before or after the commencement* other party" (Three words italicized are added.)

(2) In sub-clause (c) the word "seven" should be replaced by the word "three."

(3) Turn the full stop at the end of clause (h) into a semi-colon, add the word "or" after it and then add a new clause (g) reading "for any other cause deemed sufficient by a competent Court of law."

Under the last-mentioned modification the petitioner may present any ground whatsoever not covered by the clauses (a) to (h) to prove that the marriage had frustrated itself, that it cannot continue, and that it would be nothing but an act of cruelty to keep bound to each other in the eyes of the law only two persons who had in fact refused to be so bound up.

If the above suggestions are not accepted the only results that, to my mind, will accrue are—

(a) That more Hindus will embrace Islam. After the commencement of the Code such converts could not be reconverted to Hinduism because of the inability to secure lawful recognition to the second marriage; the very Hindu Code will be a good medium of securing the converts the Muhammadans require to achieve their political objective of Pakistan.

(b) That the Hindu males will find their way to concubines and prostitutes with all the miseries flowing from such which are, at all events, worse than the miseries of divorce or second marriage. Your Committee need not apprehend that easier divorce will disrupt the institution of marriage or Hinduism, because the payment of alimony to a divorced wife will act as the most powerful check on unrestricted divorces. Even in rich America, where divorces can be secured on the flimsiest of excuses, the bugbear of alimony has served to preserve many marriages, a fact your Committee will be able to ascertain by referring to the necessary literature on the subject. Easy and cheap divorce is bound to benefit both the women and the country. It will benefit women in that they will not merely become wiser but become increasingly self-supporting and thereby be an asset to the progress of the Nation. In Russia the cheapening of divorce eradicated prostitution altogether, if the statements of Russian spokesmen are to be believed. Prostitution in India, both public and clandestine, is already a problem. Perhaps it can be solved by rendering divorce easy and cheap as in Russia.

The law relating to marriage among the Hindus, based as it is on the ancient *srutis* and *smritis*, does not take into account the fact that occasionally a marriage may, by a series of occurrences and events over a period of years, be frustrated and may come to such a pass that separation if not divorce is the best way out in the interests of the peace of mind and health of the husband and or the wife of the frustrated marriage.

The *srutis* and the *smritis* did not visualize the foregoing state of affairs because they kept woman in a perpetual state of bondage under man where she had no alternative but to be subservient to him. Therefore, they enjoined that the wife shall live with her husband. Whatever her faults, and the degree of unhappiness she may cause to her husband, the husband was bound to live with her and maintain her; the only punishment to her being that she could not marry another man while her husband was living. Even though the husband was at liberty, as it were in the nature of a further punishment to the wife to marry another wife and thus treat the first wife as a discarded one. On the other hand the wife could stay away at the cost of the husband, if she could prove that by reason of the husband's misconduct, which seems to refer to adultery or that described under (b) below, or for other justifiable cause, which though not specifically defined appears to be any one of those embodied under (a) and (c) or (e) and (f) below, she is compelled to live apart from him. No convenience of this type is provided to the husband to compel his wife, even for justifiable cause, to live apart from him, though at his cost.

In the circumstances, the remedies open to a husband to compel his wife to live apart from him are—

(a) to contract a loathsome disease, which no husband in his senses will agree to do;

(b) to keep a concubine in the same place in which he and his wife live; which no decent husband will ever do which has really enabled wives to be more unpleasant to their husbands;

(c) to adopt such a measure of cruelty towards his wife as to render it unsafe for her to live with him; which in these days of prevention of cruelty even to animals, no educated husband will or has been able to do;

(d) to marry again so that the second marriage may give him legal right to stay apart from his previous unmarried wife; this most educated husbands do not like to do believing, as they have come to in the passage of time, in monogamy and by and large having practised it;

(e) to embrace Christianity; this does not help because the husband has to call his wife to embrace Christianity, which offer if accepted perpetrates the unhappiness escape from which was desired in embracing Christianity; and

(f) to embrace Islam, call upon his wife to do likewise, and then divorce her; which is the most effective remedy because Islam recognizes divorce which can be granted whether the wife embraces Islam or not. (If the wife does not embrace Islam the husband must always pay his wife a maintenance allowance so long, of course, as she is chaste.)

It is the object of Hindu Law, handed down as it is by the *śrutis* and the *smritis* and to-day found wanting in important aspects as evidenced by the labours of the Hindu Law Committee, to compel husbands whose wives have proved themselves unfit to be the wives enjoined by the Hindu Law to resort to remedies (a), (b), (c), (e) and (f) and even (d); assuredly it cannot be. The fact is that the Hindu Law never recognized an equality of status for woman with men, of which full evidence is available in the Chapter on "Maintenance." Nor did they foresee that the time would come when it would be unsocial and impolitic for husbands to marry a second wife as the only punishment provided against the first wife. In a state where women were very much below men, the law as laid down worked very well. But the undreamt of impossible having happened by now, the law finds no remedy in time with the times. That remedy should not have been any of those from among (a) to (f) given above, but, since divorce is not recognized, the remedy of judicial separation, which is willy nilly recognized by the Hindu Law in the shape of the decree for maintenance of the wife by the husband after the separation has become an accomplished fact. The law would appear to operate, therefore, in a negative process. If so, the negative process must admit of the positive process also. But because the positive process is not mentioned in the law in so many words, the husband should not be without a remedy. That remedy should be the one suggested by the commonsense of Courts who should decide a given case in their inherent right to administer justice. In doing so, the Court might call in the aid of such contemporary law as may be available in the country. It would indeed be poor distribution of justice for a Court to refuse to decide a given case merely on the ground that the law made no provision for it. The concept of the *śrutis* and the *smritis* at large could not have been so narrow.

11. Mr. K. M. Munshi, Advocate and Ex-Minister.

1. Until the representatives of the Hindu community in a properly constituted Central Legislature decide upon the lines of progress which the community should achieve, a comprehensive legislation overhauling the *smriti* law is not advisable. Such a step would lead to an increasing tendency to make patch-work amendments to the Code both in the Central and local legislatures and by rulers of Indian States. Unless therefore Hindu Law is made a federal subject, replacing the *smriti* tradition by a Code will lead to disintegration and destroy the very object for which the Code is intended.

2. (a) The draft Code goes against the basic principles of Mitakshara Law by abolishing survivorship and the right of joint ownership between father, son and grandson.

(b) It also alters the fundamental character of the Dayabhag law by giving a daughter half share of the son in addition to provision for maintenance up to marriage and marriage expenses.

(c) It changes the fundamental character of the Hindu marriage—

(i) by putting the "sacramental and contractual marriage on the same basis;

(ii) by removing the fundamental notion of the Hindu marriage whereby the wife becomes a *sagotra sapinda* in the husband's family. Sacramental marriage is wholly emptied of its spiritual content. To use a technical word, the Brahma marriage is converted into an Asura marriage as the wife is not absorbed into the husband's family.

In the result the Code revolutionises the Hindu conception of family life. This might appeal to the very small section of India whose outlook is coloured by the West, but it will destroy to a large extent the sentimental and religious background of the family life and weaken the cohesive forces of tradition thereby leading to the disintegration of the family life of millions. It will also offend the susceptibilities of a very large section of the community which consciously or unconsciously accepts the religious sentiments which underlie the *Smriti* Law.

I would, therefore, prefer either the Mitakshara Law or, if it comes to that, the Dayabhag Law being applied to the whole community in India with only just a few alterations which have become necessary by reason of modern conditions and the conflict of authority.

3. The Mitakshara doctrine of survivorship and joint ownership has built up family life for centuries in three-fourths of India. It has been found to possess a great stabilising value both socially and economically when the Hindu society has had to face sudden social and economic upheavals. There is no general demand for scrapping it. On the contrary, there is a strong volume of opinion in the country, which unfortunately is not as vocal as the small reformist section, that its disappearance will lead to social and economic disintegration.

The Mitakshara family has adjusted itself to modern conditions and has a distinct social and economic advantage over family systems under other law—

(1) In such a family the family tie is closer, and the family as a social unit is more compact and enduring.

(2) The family does not come in the way of a more gifted members making individual gains, but only imposes a social obligation towards less fortunate members of the family. This secures a kind of social insurance.

(3) For business purposes, a joint family has greater advantages than an individual or a partnership carrying on business inasmuch as—

(a) the managing members have a larger capital at their disposal to invest;

(b) there is a greater opportunity for training members, and a longer continuity of goodwill and custom;

(c) during the period when a business is built up persons pooling their skill and labour in a family business are more loyal to each other and the overhead expenditure of each individual is less compared to a partnership;

(d) a Mitakshara family has a longer tenure of economic well-being than in any other types of families;

(e) the acute bitterness which preceded a partition two generations ago has now given place to a greater readiness to partition the joint family property whenever there is friction.

4. (a) According to the draft Code a woman as a daughter gets half of her brother. In addition she gets marriage expenses up to one-fourth the share. She gets from her mother double that of her brother's share. As a wife she is entitled to a share equal to a son absolutely. A man on the other hand, as a son would get one share from the father, half share from the mother and nothing from the wife when there is a son or daughter. If the principle of equality is to be accepted it is but fair that if the wife inherits the husband's estate the husband should equally inherit to his wife as a simultaneous heir.

(b) There is no doubt an attempt made to distinguish between the estate of a woman acquired from her father and the estate she acquired from her husband as regards inheritance, but both the estates being absolute in her hands, she is sure to mix up the estate and the separate sets of heirs of her different kind of properties would only lead to a new source of litigation. This distinction should be abolished and the son and daughter should inherit with the husband equally.

(c) As the woman becomes the full owner of the property, in my opinion, the rights of uterine brothers should be clarified to obviate difficulties.

5. On the other hand the position of woman as accorded by Mitakshara can with a little change be made to suit modern conditions as well as Hindu sentiment—

(1) All property in the hands of a woman is stridhan. This is accepted by the draft Code.

(2) Simultaneously with the son, she gets one share equal to that of a son, as a mother or one share as wife when husband is alive.

(3) As unmarried daughter she gets one-fourth share of a son plus marriage expenses. This one-fourth share of an unmarried daughter may be extended to married daughter as well.

(4) As daughter she inherits her mother's stridhan, in many varieties, of which, in larger proportion to the son. The law may be simplified in this respect and uniform succession may be provided for all kinds of stridhan.

(5) As daughter-in-law she gets maintenance. Instead she may be given a limited estate in the share which the husband would have got.

(6) On marriage she becomes सगोत्र and सपिण्ड of her husband's family and she inherits as such in Bombay. In other provinces, निजिद्वयः सिद्धः, diotum is applied and as such they are not allowed to inherit, but this diotum may be abolished. If wife represents husband in his family in all cases, there will be no injustice to her.

(7) Certain exceptions to monogamy are recognized by Manu and Yajnavalkya. On such supersession by another wife, she got maintenance, and also by way of Adhivedanika as much as given to the new wife, or if she is already given stridhan then, the balance making her financial position equal to that of the new wife.

If monogamy is not to be strictly enforced, this rule of law must be embodied in the Code.

6. The doctrine of Avaruddha Stri is not suitable to modern conditions and should be abolished altogether.

7. In a deeply religious and largely illiterate community like that of Hindus, the weakening of the bond of sacramental marriage would lead to social and moral confusion. If the rights to divorce is made incidental to sacramental marriage as justified by smriti texts and the prohibition against Pratiloma marriage is removed, there is no need for a civil marriage. In order to provide for persons marrying Buddhists or Sikhs a provision has already been made under Part IV, Clause 4 by including customary rites in the sacramental marriage. Registration may be kept optional.

8. In cases where the party to the marriage has been divorced on account of lunacy, idiocy, or incurable diseases, maintenance should be provided for by the divorcing party if there is no other source of maintenance for the divorced. Yajnavalkya recognizes the liability to provide for a superseded wife.

9. The machinery of divorce provided by the English Law is very sensational as well as costly and would work against woman trying to secure divorce even in deserving cases. Under the procedure provided for by the Divorce Act a woman finds it more difficult to obtain divorce than a man. I would therefore propose a tribunal deciding with the aid of Hindu assessors as in the case of the Parsi Divorce Act.

10. The wife's position is helpless and in most cases she would be prevented from seeking redress in a court of Divorce as the machinery provided involves a litigation right up to the High Court. I would therefore prefer an interim procedure whereby a wife by merely making an application for divorce can have a right to stay apart from the husband for a period of say three months, the husband providing maintenance before the divorce petition is taken on record. In most cases, this interim provision will have a salutary effect on the relations between a wife and a husband.

11. As regards sonship it is necessary that the following changes should be made:—

(a) an orphan can be adopted;

(b) Putra Chehayaava doctrine, and Saunaka's diotum must be abolished.

This would mean the revival of Putrika Putra. But it is much better that a man wanting to adopt a son should adopt his daughter's son and sister's son rather than a stranger. This must be made clear in the Code.

12. All-India Women's Conference (Shrimathi Kamaladevi—President)

The All-India Women's Conference fully supports the fundamental principles underlying the draft Hindu Code. The Conference has for the last fifteen years agitated, among other legal reforms, for the codification and reform of Hindu Law, because its members and active workers realise the numerous handicaps women have to put up with under the existing law. The Conference has felt that modern conditions of life require radical modification of a law that was made to suit a very different structure of society and is very glad to note that the Hindu Law Committee has approached its task in this spirit.

We consider that a *uniform* code for all Hindus is a vital necessity, both as a step towards blending together the various schools of law and as a practical measure to suit the requirements of our times. In doing so we realise, however, that the present draft Code does not concern itself with succession to agricultural property: but we hope that this too may be brought into line with the Code under consideration with such modifications as may be necessary. Only then will there be a completely uniform law for all Hindus in the country. In particular we support (a) the principle of the daughter's right to a share in the father's property and the same right to be given to the son in the mother's "stridhan"; (b) the restoration of absolute right of inheritance to women; (c) the enforcement of monogamy; (d) inter-caste and sagotra marriages as permissible measures; and (e) the provisions for dissolution of marriage.

We would, however, bring up the following points for consideration by the Hindu Law Committee:—

We are of the opinion that the existing civil law should not be amended and should remain outside the purview of this Code. For the clauses relating to civil marriage in the Code while being an advance on the present system of Hindu Law, are not as progressive as those in the Special Marriage Act of 1872. Further, the existing civil law is a nucleus round which a common civil Code can in due course be built up for the whole of India.

Part I, clause 6 on page 3 be deleted.

Part II.—We, as a conference, are emphatically of the opinion that the law should not permit of any difference in regard to sex and should provide for complete legal equality between man and woman. We, therefore, invite the attention of the Hindu Law Committee to all branches of this principle and recommend in particular the following changes:—

(1) We are of the opinion that son and daughter should get an equal share instead of the daughter getting half a share of the son in the father's property. It is contended that the son has to shoulder the debts, if any, of the father and therefore his responsibility is likely to be greater. We would suggest that all debts should be liquidated *before* the property is divided, and thereafter equal shares given to the son and the daughter.

(2) All other classes of enumerated heirs be changed so as to fully incorporate the principle of sex equality.

(3) Stridhan ought to be now considered as *one* property, irrespective of whether it comes from the father or from the husband and divided equally between the son and the daughter. As the character of this property will thereby be changed, we would prefer the substitution of "women's property" for "stridhan."

(4) *Delete* clause 10: If there are no heirs, the property should revert to the State.

Part III (A).—In Chapter II it is stated that the unmarried daughter is entitled to the expense for her marriage besides food, clothing and residence. We would like her to be entitled to the expenses of her education as well. The law is not clear on that point.

Part IV—(1) Clause 1 (a).—We feel that sapinda relationship should be confined to the third generation on either side instead of to the fifth and seventh generations.

(2) We do not appreciate the reason for the distinction that is made between the children of two brothers and the children of two sisters, etc. We are of the opinion that, under the civil section of the provisions for marriage in the Code, the prohibition of marriage between the children of two brothers should be removed.

(3) Age should be made a condition for all valid marriages, since the Sarada Act does not effectively prevent child marriages.

(4) The alternative to clauses 3, 4 and 5 should be done away with altogether. We are strongly of the opinion that interests and sagotra marriages should at least be permissible.

(5) Regarding clause 6: Registration of marriages be made compulsory for sacramental marriages also.

(6) Clause 27 should be deleted.

(7) Divorce provisions should be extended to all marriages, irrespective of whether they were contracted before or after the Code comes into operation.

(8) Almost all the opinions received by us point out that in clause 30 (a), (c) and (e), the period of seven years is far too long. Three years should be substituted for seven years. In the old texts we find that in cases of deliberate desertion even when the offending party has been heard of, a period of three years was deemed sufficient. In these days of speedy communication, three years should be ample. In cases of infection, seven years exposes the petitioner to far too great a risk.

(9) It is not clear whether there is a provision for alimony on a dissolution of marriage being granted on the wife's petition. Such provision must be made, if it is not there already.

(10) In chapter II in clause 26 (a) should be added "if he has knowingly infected wife with venereal disease and has not taken proper steps to get himself cured."

(11) *Chapter III—Clause 29 (iv)*.—Very often people are married off during a lucid interval without the other party being aware of the defect. In such cases the other party ought to be able to dissolve the marriage within a reasonable time after being aware of the fact.

(12) *Chapter III*.—In clause 30 insert (g) "Where the husband forces the wife to lead an immoral life."

In Part VI of the Draft Code we would like to make the following suggestions:—

(1) *Clause 12 (2)*.—The father should not be able to give a boy in adoption without the mother's consent.

(2) The basis for adoption as stated in the Code should be extended to include adoption for the purposes of inheritance and other needs in addition to those of religion. We, therefore, urge that in respect to this right as well there should be complete equality between the sexes. Both a man or a woman may be permitted to adopt either a son and/or a daughter.

This memorandum faithfully reflects opinions received by our branches and members all over the country.

13. Bombay Branch of All-India Women's Conference.

The Bombay Branch of the All-India Women's Conference congratulates the Hindu Law Committee for preparing the draft Hindu Code which is definitely an improvement on the two Hindu Law Bills which are at present pending before the Central Legislature. The Code is, therefore, to be welcomed and supported. However, the Bombay Branch of the All-India Women's Conference would like to make the following few suggestions:—

(1) *Part I—Preliminary clause 6*.—Amendment of Act III of 1872—Repeal of the provisions of the Special Marriage Act is not desirable. According to our opinion the ultimate goal of our society should be to have a uniform

14. Representative Committee of Hindu ladies.

PART I—PRELIMINARY.

It is not likely that the Act will go through the legislature much before the end of 1945. At least about an year should be allowed after the Act is finally passed, to be understood before it becomes effective. We are, therefore, suggesting postponing the commencement of the Act from 1946 to 1947.

The mere fact that a person is brought up as a Hindu would be a very dangerous proposition to accept. It would be impossible to fix down what would be construed as sufficient to come under the phrase "brought up as a Hindu." Moreover, when a person converted to the Hindu faith is allowed to be regarded as a Hindu, there is no difficulty as the person who is brought up as a Hindu can, if he so minds, be easily converted to Hinduism.

Since we are objecting to the civil marriage being recognized as a form of Hindu marriage we are prepared to allow the present Special Marriage Act to remain outside the Hindu Law for these Hindus who may wish to resort to this Act for a civil marriage.

civil law as there is a uniform criminal law. The new codification would no doubt bring together the various schools of Hindu Law. But we feel that the Civil Marriage Act, the Indian Succession Act and the Indian Divorce Act should form the nucleus of the uniform civil law of the country, and should work side by side with the personal laws for the present. Any person belonging to any community should be allowed to be governed by them without denouncing his or her religion. That facility given to the Hindus, Jains, Buddhists and Sikhs by the provision introduced by Sir Hari Sing Gour is intended to be removed by the Draft Code, which we consider, is not a step in the right direction.

(2) The Code proposes that while the widow takes a share equal to the share of a son, a daughter is to take half of that share. Women claim that there should be no distinction between a boy and a girl in respect of succession to property which is subject to legislation by the Central Legislature.

(3) *Heirs who are not related*.—If there is no cognate entitled to succeed under clause 4, the property should go to the State earmarked for social purposes; so this clause is not necessary.

(4) *Stridhana*.—Just as the wife has a share in the husband's property, the husband should have a share in the wife's property. No distinction should be made in the share to a son and a daughter.

(5) *Maintenance*.—There should be provision for the educational expenses of an unmarried daughter as a part of her maintenance.

Marriage.—This Code is a distinct improvement on the Bill pending before the Central Legislature in connexion with the law relating to "Marriage". The Law of Succession concerns only a small percentage of the Hindu population. But the Law of Marriage concerns almost the whole population. When a modern legislature seeks to modify the personal law in a nature so deeply concerning human life as marriage, it can only do so on modern and rational considerations.

(6) The definition of sapinda should be more liberal, extending to three and five degrees and not five and seven as in the draft.

(7) Minimum age for marriage should be fixed in the sacramental marriage as in the civil marriage, eighteen for boy and sixteen for girl seem reasonable enough. But the breach of the law should be adequately punished. Sarada Act is not effective in preventing under-age marriage.

(8) Clause 27 should be deleted. Children of those marrying under the Special Marriage Act should be governed by the Indian Succession Act.

(9) *Dissolution of marriage*.—Seven years as laid down in clause 30 (c), Chapter III is not reasonable. It should be not more than five (5).

(10) No provision for alimony is made (as in the Indian Divorce Act).

(11) *Adoption*.—It is not proper that a son adopted purely for performing religious (Shradha, etc.) ceremonies should get a larger share than the daughter of the deceased himself.

Clause 1 (3).—The Act should come in force not from 1946 but from 1947.

Clause 2 (2), illustration (latter part).—The child referred to in this illustration should have adopted Hindu religion. For such a child to be a Hindu it is not enough that it should be brought up as a Hindu.

Clause 6 and the first schedule, fourth column, should be deleted.

PART II—INTESTATE SUCCESSION.

Now that under the new legislation the daughters would be getting considerable property by way of inheritance, including immovable properties it is considered desirable in their very interest as well as in the interests of their children that the restriction which at present applies in the case of ancestral property in the hands of the "Karta" of the joint family and restrictions which apply to what is known as a "Hindu Widow's Estate" should be made applicable in the case of immovable property inherited by a daughter from whatsoever source derived in favour of her children (i.e., sons and daughters). This will have a very desirable effect in ensuring that the mother should not arbitrarily prevent immovable property going to her own children.

We are suggesting this in order to prevent a non-Hindu from converting himself to Hinduism merely for the sake of getting property. It is proper that in such cases if the conversion is a recent one, i.e., say about a year before the inheritance falls in, and if after getting the inheritance the person re-converts himself out of Hinduism within five years, he should lose the property and in the meantime, restrictions should be imposed upon him not to alienate or transfer except for valuable consideration and that too with notice to the reversioners and securing the proceeds of the property.

The Mitakshara system of joint Hindu family prevails practically in the whole of India except in Bengal, i.e., more than 80 per cent of the Hindu population are governed by the Mitakshara. However, the most important distinguishing feature of the Mitakshara system is that a son gets an interest by birth in the joint family and the "Karta" of the joint family is not free to dispose of the ancestral property without legal necessity. Thus, the nucleus of the ancestral property is preserved for the family and particularly the minor members of the family are afforded a good provision and this factor would be absent if the Mitakshara system is abolished. The essential basis of the social structure of the Hindus is the joint family unit and we understand except in a few big cities the majority of Hindus still observe the joint family system. We therefore, are not in favour of abolishing the Mitakshara system. We are providing for a Hindu widow and adding for the daughter of co-parcener getting her due share in the joint family estate on the death of the husband and the father as the case may be just the same as at present, is given to the Hindu widow under the Deshmukh Act. This will be adequate.

In the list of dependants entitled to maintenance, we are providing for the addition of a husband or wife as the case may be who obtained a judicial separation or divorce on the ground of unsoundness of mind or suffering from virulent and incurable leprosy or venereal disease.

Now that the estate of a Hindu woman is going to be of considerable value by reason of her getting the share on inheritance it is but proper that just as the estate of a male Hindu is made liable for maintenance of dependants a similar provision for liability should be imposed on the estate of Hindu woman.

Clause 13.—In case the property is immovable, if at the time when a woman gets the property, she has a child or children living, provision should be made restraining her from alienating inter vivos or by will such property without sufficient and proper cause known as 'legal necessity' in the Hindu Law. Similar restriction should be imposed against alienation by a woman who at the time of inheriting the property had no children living but to whom a child or children have been born subsequently while such property is unalienated until such time as any child or children are living.

Clause 21.—Provision should be made prohibiting a person who has changed his religion and reverts to the Hindu fold for getting property from the estate of a Hindu and again going over to another religion till after a certain time limit after getting the property.

Part III-A—Clauses 1 and 2.—The system of joint and undivided Hindu family according to Mitakshara law which prevails amongst Hindus in all parts of the country except Bengal should continue but a widow should be allowed the rights which she gets under the Deshmukh Act. Similarly a daughter should also be given the share allotted to her as on intestate succession subject to the same rights and restrictions as of a widow under the Deshmukh Act.

Clause 5.—After (4) add "lunatic or deceased wife living separately or divorced."

After clause 5, add "5-A. Right of maintenance to the women's estate."—A provision should be made that the following relatives are entitled to maintenance out of a woman's estate:—Father, mother, father-in-law, mother-in-law, minor son, unmarried daughter, widowed daughter, widowed daughter-in-law, minor illegitimate son, illegitimate daughter, lunatic or diseased husband living separately or divorced.

PART IV—MARRIAGE AND DIVORCE.

Hindu marriage is by its very nature a sacrament and not merely a contract between the parties to the marriage. The Hindu marriage is an institution of its own and it would be offending against the spirit of Hinduism to incorporate a purely contractual civil marriage as one of the forms of Hindu marriage. We have suggested two forms of Hindu marriage (i) the present sacramental form recognized by the Hindu Law which requires parties to the marriage being of the same caste and both being Hindus (i.e., not even Jains, Sikhs or Buddhists). (ii) The other form suggested is also a sacramental marriage but, permitting of inter-marriages between Hindus, Jains, Sikhs and Buddhists, thus, meeting with the views of the reformed opinion.

Since both the forms of Hindu marriage proposed by us are sacramental, there will be no need to retain this clause.

Clause 2.—Omit.

This clause would encourage clandestine marriages between minors of young and immature age when they know that it somehow they manage to get married the minority and want of consent will not make their marriage illegal. The requirements of the consent of the guardian as one of the conditions of a proper legal marriage would be completely defeated if this clause 5 is allowed to stand and may result in a young minor of tender years getting married without realizing and understanding the seriousness of the marriage tie and the obligation. We therefore, suggest that this clause should be omitted.

Registration of Hindu marriages after the same are performed must be made compulsory as otherwise the very object of the suggestion will not be served, namely, to maintain a correct record of the Hindu marriages like the records of births and deaths.

These are the clauses relating to civil marriage which should be omitted in view of our opinion that civil marriage is not to be introduced as a form of Hindu marriage.

Same remarks apply as for the above.

This clause will have to be deleted and suitable provisions substituted in keeping with the registration being compulsory.

We are not in favour of such a wide rule-making power as there is likelihood of a conflict between the rules of different Provinces and frequent changes of rules may seriously affect the working of the provisions of the Hindu Code.

Whereas the heading speaks of duties of both husband and wife the section does not mention the duties of the wife. We therefore suggest the following provision to be incorporated as the duties of the wife. "The wife is bound to live with her husband and to submit herself to his authority." (See Mulla's Hindu Law, Sixth Edition, page 496, article 442.)

We do not see any justification for penalizing a party merely because the disease is contracted from the party. The very fact that the party is suffering from loathsome disease, etc., would be sufficient and repulsive enough for the other party staying away.

Such a general ground like any other justifiable clause would be very vague and leave room for its being misapplied and particularly when we find that all the possible justifiable clauses are already enumerated in sub-clauses (a) to (e).

A marriage between sapindas is repugnant to the Hindu mind and idea and this restriction should be preserved.

The same grounds apply for this suggestion as in the case of clause 5. In this case, the parties who have contracted an illegal marriage are at liberty, on coming of age, to have the proper legal marriage performed.

This clause would defeat the very principle of monogamy. It would not be proper to recognize the children of a prohibited second marriage on the same basis and give them the same right as of a legal, valid, monogamous marriage. Of course such children of the second prohibited marriage would be given a suitable maintenance. There is already provision in favour of such children.

The same grounds apply as in the case of clause 26 (a).

It is desirable that instead of merely referring to the whole of the Indian Divorce Act, suitable provisions therefrom as would properly apply for the purpose of working out the divorce provisions of the Hindu Code should be incorporated as a special schedule in the Hindu Code itself.

In clause 3 (d) delete the words "unless the custom—up to between the two."

After clause 3 (e) add "provided always in a *sanatan* form of marriage, in addition to the above requisites, if either party to the marriage is a member of any caste the other must belong to the same caste. "Caste" shall mean the four castes, viz., (i) Brahman, (ii) Kshatriya, (iii) Vaisya, (iv) Sudra.

Delete clause 4 and substitute alternative clause 4 on page 22. In the latter clause "The ceremonies essential for a Hindu marriage shall be." (Then continue clause 4 on page 22).

Clause 5.—Delete clause 2 and substitute "A Hindu marriage is a sacrament and the requisites for the same are as is hereinafter provided."

Clause 6.—Registration of marriages after celebration of marriage should be insisted upon to be made compulsory like registration of births and deaths.

Clauses 7 to 17. (Regarding civil marriage) to be omitted.

Clause 18.—Omit.

Clauses 19 to 22.—Omit.

Clause 25.—Omit.

Clause 26.—After duties of a husband provisions should be made enumerating the duty and obligations of a wife, viz. "The wife is bound to live with her husband and to submit herself to his authority."

Clause 26 (a).—Delete "not contracted from her."

Clause 26 (f).—Omit.

Clause 29 (1) (iii) should be amended by absolutely prohibiting marriages between sapindas.

Clause 29 (2).—In line 5 add "not" between "was" and "obtained" and delete "by force or fraud"; also delete the proviso.

Clause 29 (4).—Omit.

Clause 30 (b) (e).—Delete the words "not contracted from the petitioner."

Clause 31.—The necessary provisions of the Indian Divorce Act should be incorporated as an appendix in this Code.

PART V—MINORITY AND GUARDIANSHIP.

We are not in favour of this clause as it will not work for the benefit of the minor in actual practice. At present, responsible and well-intentioned relatives of a minor can be found willing to act as the *de facto* guardian of minors and charge actual necessary expenses for the upkeep, education and maintenance of the minor from the estate of the minor. If this power is taken away and a *de facto* guardian is to get himself first appointed guardian by the

court, we are afraid, there will be hardly any such relation of the minor who will undergo the bother of an application to the court for his appointment as guardian which will in most of the cases mean furnishing deposit or security to the court and undergo the bother of having to pass accounts before the court every year. In the result, the minor will be left without the care and protection of a relative and in practice it will not be satisfactory if the minor is to drift for himself, or to be at the mercy of an entire stranger or court officer as guardian. Even at present, a *de facto* guardian can, of course, be made to reimburse the minor's estate for improper expenditure.

PART VI.—ADOPTION.

We are not in favour of the age limit of fifteen years or any age-limit being put of the boy to be taken in adoption. The proposed age-limit of fifteen years would mean that the boy to be adopted will be always a minor and both sides, i.e., the party taking the boy in adoption and the party giving in adoption take considerable risks and in many cases it is also not in the interests of the minor boy that he should when a minor, be compelled to change his family, may be for the better or the worse. Similarly the restrictions that he should not have his upanayana ceremony performed and that he should never have married are also restrictions which are not in favour of the boy to be adopted and will work considerable restraint and risk to the parties concerned.

We feel that in a case whereby adoption, a son is being introduced into a family and he is being sent out by his natural family, the consent of the natural mother of the boy should be made compulsory where the father gives in adoption and where the father adopts the consent of the wife, if living, with the husband should also be made compulsory.

Clause 2.—Delete the word "to" in the proviso.

Clause 5 (1) explanation.—Delete the explanation and add after the words "a son in adoption" the following:—
"Provided that if his wife is living with him at the time, her consent to the adoption must be taken, and in case there are more than one wives living with the husband, the consent to be so taken shall be that of the seniormost wife. Provided also if the seniormost wife does not give her consent within one month of her being called upon in writing to do so the next wife in order of seniority shall be entitled to do so and so on down to the last wife."

Clause 12 (2).—Omit all the words after "father" and add "but if his wife is living with him at the time of her consent, etc." (take words as in above paragraph) and add "provided always that so long as the mother of the boy is alive the father shall not be entitled to give such boy in adoption, without her consent."

Clause 12 (4).—After "must have completed" omit, "in the case of the father" and add the words "or her" after the word "his" and omit the words "and in the case of the mother her sixteenth year."

Clause 13.—Omit clauses (iii), (iv) and (v).

Clause 13.—Add after (vi), a clause "the adoptive father should not be so related to the natural mother of the boy that the adoptive father could not have married her if she was unmarried:

Provided always that the above prohibition shall not apply in the case of a daughter's son."

Clause 14.—Delete.

Clause 16 (i) to (iii).—Omit the explanation.

Clause 19 (1).—Omit. [Note.—In intestate succession it should be provided that where a Hindu dies leaving self-acquired property, leaving widow or widows, daughter or daughters but no son the widow shall be entitled to reserve and keep with herself or in case of more than one widow with the seniormost a share equal to that of a son (as if the said deceased had left one son) for three years from the date of death of the said deceased and if within that period the widow or in case of more widows than one the seniormost failing her the next in seniority and so on till last widow do not adopt a son to the said deceased then the share so reserved shall be distributed amongst the heirs of the said deceased as at the time after death to the persons entitled to succeed to such deceased.]

Clause 22 (3) and (4) to be deleted.

15. The Bombay Presidency Women's Council.

The Council has a membership of about 800 ladies, 30 affiliated societies and two branches.

The Bombay Presidency Women's Council welcomes the draft Hindu Code as an attempt is made in it to evolve a uniform and progressive Code of law for all Hindus, and accepts the same with the amendments or alterations or additions, suggested as follows:—

(1) In Part I, clause 2 (iii-b) the words "if brought up as such" are not clear. We therefore suggest that it should be provided that the child should have adopted the Hindu religion after attaining majority and in the case of his minority, his natural guardian should make a declaration to that effect.

(2) In Part I, clause (b) we suggest that the Special Marriage Act. of 1872 be retained, without the amendments suggested in column 4 of the First Schedule annexed to the Bill.

(3) In Part II, Intestate Succession—In clause 5, sub-clause (1), instead of predeceased son's son, and predeceased son's son's son, substitute "the simultaneous heirs of the predeceased son's son and the heirs of the predeceased son's son who would get the share which the predeceased son or predeceased son's son would have obtained if he were living."

(4) In clause 10 the words "upon his preceptor (acharya)," be substituted by "upon the State for charitable purposes for the benefit of Hindu community", and the remaining lines following the word "acharya" be deleted.

(5) In clause 14 we suggest that no separate division of the stridhana property for the purpose of devolution be made as stated in the clause, but that it should devolve upon the heirs as mentioned in clauses (b) and (c) be deleted; and the sons should get half the share of the daughters in their mother's property.

Though we have accepted the recommendations of the Committee as a compromise, we feel that the sons and the daughters should get an equal share in their father's as well as mother's property.

(6) In Part III-A, Scope and Operation of Parts II and III, the subject-matter is still under consideration, and we shall submit our opinion on the same later on.

(7) In II, Maintenance, clause 3 (1) "education" be added.

(8) In Part IV, Marriage and Divorce, Chapter I, Celebration of marriage—In clause 3 (c), add "the man must have completed his eighteenth year and the woman her fourteenth year."

(9) In clause 3, alternative to clauses 3, 4 and 5, (a) (b), (c), (d), (e) be deleted altogether.

(10) In clause 6 (1), instead of the word "may," substitute "should"; and such registration should take place within a certain period after the celebration of the marriage; and sub-clauses (2) and (3) be deleted.

(11) In clause 18, we feel that the clause should be made effectual till the time the sacramental marriages are compulsorily registrable.

(12) Chapter II, Consequences of marriage—In clause 27, delete the words "or has contracted" and "or under the Special Marriage Act of 1872", as we think that it is not proper to disturb the rights of those who want to take advantage of that Act.

(13) Regarding clause dealing with civil marriage the opinion is divided.

Some of our affiliated societies are in favour of having a civil form of marriage included in Hindu Code, while some are not in favour. We shall submit the names of the societies later on.

(14) Chapter III, Nullity and dissolution of marriage—In clause 30 (c) "for a period of seven years" be substituted by the following words "for a period of five years."

(15) In clause 30 (e) "for a period of not less than seven years" be substituted by the words "for a period of not less than five years." In (f) after the words "any other concubines" add "if he leads a life of adulterous connections which is not condoned at or condoned"; add "(g) if he uses cruelty of a nature so as to endanger the life of his wife; (h) has renounced the world."

(16) With regard to the Law of Marriage and Divorce laid down in Part IV, we feel that no provision is made for alimony as it is done under the Indian Divorce Act. We suggest that due provision for alimony be made in the Code, which should cease on remarriage.

(17) Part V, Minority and guardianship—In clause 3-a the words "third year" be substituted by the words "seventh year."

(18) Part VI, Adoption—In clause 12 (2), the words "without any reference to her and notwithstanding her dissent," be substituted by the following words "With the consent of the wife; however, when the wife is living apart, the adoption may be without any reference to her or without her consent."

(19) In clause 5 No. (1), the words "fifteenth year" be substituted by the words "eighteenth year."

(20) In clause 12, No. (1), add the word "Jointly"; delete No. (2) and corresponding changes be made in clause (3) (a), (b) and (c).

1. Regarding Part III-A, Scope and operation of Parts II and III, a large majority of our members are in favour of the provisions in the Code.

However, we would like to mention that out of thirteen institutions affiliated to the Council who had been asked to submit their opinions on this point, nine replied, out of which five are in favour and four are against, while others are neutral.

2. Regarding Part III-A, II, Maintenance, clause 5, sub-clause (x), concubines—My council is against giving maintenance to concubines. Legal recognition of concubinage would encourage the breach of the spirit of monogamous marriage contemplated in the Code. Though under the existing law a concubine is entitled to maintenance, the danger when monogamy is enforced, will be greater. Because there will be no scope for a second marriage concubinage may become more frequent. Maintenance may be given to minor children as suggested in the Code.

3. Regarding Part IV, Marriage and Divorce, all excepting one or two members are in favour of having the civil marriage included in the Code.

Again I might mention that out of nine of our affiliated societies that have submitted their opinion on this point, five are in favour and three are against, one being neutral.

4. As regards clause (7), sub-clause (6) the definitions of persons within the prohibited degree as revised in the draft Code, there is no consistency. The position of the children of two brothers, two sisters or a brother and sister should be the same.

Regarding clause 30, Decrees for dissolution of marriage, I beg to submit a little alteration in our reply to the Code, dated 30th November 1944.

We have mentioned that "cruelty of a nature, so as to endanger the life of his wife" be a ground for dissolution of marriage. Instead please read "cruelty be a ground for dissolution of marriage." Further, we feel that the clause "change of religion" may be an easy way out for a party seeking divorce.

6. Lastly, when Mrs. Sulochana Modi (Vice-President) and myself appeared before the Committee to give oral evidence in Bombay on the 30th instant, the Committee had asked us a question why we wanted to retain the Special Marriage Act of 1872, without the amendments suggested in column 4 of the First Schedule annexed to the Code.

We stated in our answer that the property rights of all Hindu women would be curtailed if the Special Marriage Act be so amended, as the daughter is not given an equal share with the son in the Code.

We wish it were possible for all Hindus whether, Jains or Sikhs or Buddhists, to take advantage of the said Act without renouncing their religion.

The ultimate aim in drafting the new Code, or revising the law for any community in India should be to have a uniform law for the whole country. The said Act will be of a great help in achieving this goal.

We both feel that it is in the interest of women as well as the people of the whole country to retain the Special Marriage Act of 1872 as amended in 1923.

16. Mrs. Indirabai Deodhar, P. Y. C. Hindu Gymkhana Colony, Poona.

I am connected with various women's institutions (as President of the Maharashtra Mahila Mandal, Poona Centre, Vice-President, Maharashtra Branch, All-India Women's Conference, and President of this year's Maharashtra Provincial Women's Conference. I desire to suggest the following reforms in Hindu Law:

I am glad to note from the draft published by your Committee that you have taken a very progressive and advanced view regarding (1) rights of women to the father's property, (2) the nature of the right—absolute, (3) Sagotra, sapravara and inter-caste marriages, (4) enforcement of monogamy and provision for divorce in some cases:

I. I have, however, to recommend the claim of a widowed daughter-in-law or grand-daughter-in-law to the property of her father or grandfather-in-law. To be fair and just to her, she should get the share which would have gone to her husband. She identifies herself with the husband's family and as the daughter in your draft is assigned only a share, half that of the son, it is essential that she should be provided for in the husband's family as well. In case the widowed daughter-in-law is denied any share, I would suggest that a daughter should get equal with the son in her father's property.

II. The word 'stridhan' should be substituted by 'women's property' and that property should be divided equally between the son and daughter.

III. In Chapter II, the unmarried daughter is entitled to food, clothing, marriage expenses, etc. She must be provided with expenses for her education as well.

IV. The minimum age for girls at marriage must be 16 complete and 21 for boys for the validity of marriage.

V. Your Committee tolerates sacramental marriages even between sagotras, sapravaras and different castes, when such lapses occur. Instead of these half-hearted reforms, I would legalize such relation which should extend to three degrees on the mother's side and five on the father's.

VI. All marriages, sacramental or otherwise, should be registered.

VII. Divorce should be lawfully allowed to all marriages, even for those contracted before the Code comes into operation.

VIII. In the decree for dissolution of marriages, Chapter III, clause 30, the period of seven years is too long and should be changed to three years, which is adequate for the purpose.

IX. If a woman gets a divorce she should get maintenance from her former husband, unless she remarries.

X. In adoption, a man should not be able to give or adopt a son without the consent of his wife.

XI. The right of adoption should be extended to adoption for worldly purpose also—inheritance, etc. To maintain equality between the sexes, a daughter should be as much fit for adoption as a son.

17. The Bhagini Samaj.

The Bhagini Samaj congratulates the Hindu Law Committee for the able handling of the complicated matters and the very broad-minded view point in forming the new Code. However the Samaj wishes to point out a few issues which deserve reconsideration.

We enumerate below the points which deserve consideration according to our opinion:—

1. Repeal of the provisions of the Special Marriage Act is not desirable. According to our opinion the ultimate goal of our Society should be to have a uniform civil law as there is a uniform criminal law. The new codification would no doubt bring together the various schools of Hindu Law. But we feel that the Civil Marriage Act, the Indian Succession Act and the Indian Divorce Act should form the nucleus of the uniform civil law of the country, and should work side by side with the personal laws for the present. Any person belonging to any community should be allowed to be governed by them without denouncing his or her religion. The facility given to the Hindus, Jains, Buddhists and Sikhs by the provision introduced by Sir Harj Singh Gour is intended to be removed by the draft Hindu Code, which we consider is not a step in the right direction.

2. Sons and daughters should get an equal share in their father's as well as mother's property.

3. Just as the wife has a share in the husband's property, the husband should have a share in the wife's property.

4. No distinction should be made—as it would not be necessary if No. 2 is accepted—between stridhana and what she gets from other sources.

5. Innumerable heirs make things very complicated. The Succession Act is better, in that it lays down a broad principle.

6. Clause 10 in Part II is not necessary. The property should go to the State.

7. There should be provision for the educational expenses of an unmarried daughter as a part of her maintenance.

8. In the marriage law, the definition of sapinda should be more liberal extending to three and five degrees and not five and seven as in the draft.

9. Minimum age for marriage should be fixed in the sacramental marriage, as in the civil marriage. Eighteen for boys, and fourteen for girls seem reasonable enough. But the breach of the law should be adequately punished. Sarada Act is not effective in preventing under-age marriages.

10. Clause 27 should be deleted. Children of those marrying under the Special Marriage Act should be governed by the Indian Succession Act.

11. The definition of persons within the prohibited degree as revised in the draft Code is not consistent. If children of two brothers cannot marry, why should children of two sisters or those of a sister and of brother be allowed to marry?

12. Cruelty should be a valid cause for dissolution of marriage.

13. Seven years as laid down in clause 30 (c), chapter III, is not reasonable. It should be five years, if not less.

14. No provision for alimony is made.

15. It is not proper that a son adopted purely for performing religious (shradha, etc.) ceremonies should get a larger share than the daughter of the deceased himself.

Would an adoption for other purposes than religious be legal?

Adoption of a daughter on sentimental or other non-religious grounds should be permitted.

18. Gujarathi Hindu Stree Mandal.

The Mandal has a membership of about 3,500 ladies and one branch. The Gujarathi Hindu Stree Mandal welcomes the draft Code as an attempt is made in it to evolve a

uniform and progressive Code of law for all Hindus, and accepts the same with the amendments or alterations or additions, suggested as follows:—

Part I, clauses 2 (a) and (b).—The words "if brought up as such" are not clear. The Mandal would like to draw the attention of the Committee that the words being too wide, their meaning be made more definite and precise. The Mandal therefore suggest that it should be provided that the child should have adopted the Hindu religion after attaining majority and in case of his minority, his natural guardian should make a declaration to that effect.

Part I, clause 6.—We suggest that the Special Marriage Act of 1872 be retained, without the amendments suggested in column 4 of the first schedule annexed to the Bill.

Part II, class 5, clause 1, (1).—Instead of a predeceased son's son, and predeceased son's son substitute the (simultaneous) heirs of the predeceased son's son, and the (simultaneous) heirs of the predeceased son's son so that the said heirs would get the share which the predeceased son or predeceased son's son would have obtained if he were living.

Clause 10.—The words "upon his preceptor (Acharya)" be substituted by "upon the state for charitable purposes for the benefit of Hindu community" and the remaining lines following the words "Acharya" be deleted.

Clause 13.—We suggest that in case the property is immovable, if at the time when a woman gets the property, she has a child or children living, provision should be made restraining her from alienating *inter vivos* or by will such property without sufficient and proper cause known as legal necessity in the Hindu Law. Similar restriction should be imposed against the alienation by a woman who at the time of inheriting the property had no children but to whom a child or children have been born subsequently while such property is unalienated until such time as any child or children are living.

Clause 14.—Regarding the clause dealing with the order and mode of succession to stridhana, the opinion is divided. One opinion is that the clause as drafted should be retained and that the two divisions which are made as regards the devolution of stridhana property according as the property is inherited from her husband or is acquired otherwise should be maintained. The other opinion is that this division of the stridhana property should not be made as all property however acquired by a woman is considered by the Bill as stridhana property over which she has by clause 13 of Part II, complete power of disposal *inter vivos* or by will. Discrimination in the mode of succession to stridhana property should not be made because of her sex only and that it should devolve upon the heirs as mentioned in clauses (b) and (a) be deleted.

Clause 21.—This clause recognizes the disqualification of the descendants of a convert in matters of inheritance but does not disqualify the convert himself from inheriting to his unconverted relation. There is also a strong feeling in the Hindu community that apostasy should be a disqualification for inheritance. We feel that this feeling of the community should be respected and this clause should be amended as to disqualify even the convert himself from acquiring any right of inheritance.

Part III-A, clauses 1 and 2.—The opinion is divided. One opinion is that the clauses as drafted should be retained as they are. Instead of joint family system which is prevailing in Hindu Law at present, the principles laid down by Dayabhaga system should be substituted. The other opinion is that the peculiarity of the Mitakshara system, viz., survivorship and right by birth in ancestral property should be retained and clauses 1 and 2 should be redrafted accordingly. If necessary a right by birth may also be given to the daughter as in the case of a son.

Part III-A, II Maintenance, clause 3 (i) Education, be added.

Clause 4.—As regards this clause, we suggest that the right of maintenance out of the estate of a deceased person should not be confined to the estate of a deceased male Hindu only but should be extended also to the estate of a deceased female Hindu also.

Part IV, Marriage and divorce, clause 3 (c).—Add "the man must have completed his eighteenth year and the woman her fourteenth year."

Clause 5.—Alternative to clauses 3, 4 and 5, No. 2 (a), (b), (c), (d) be deleted altogether.

Clause 6 (c).—We suggest that the absence of the consent of the bridegroom's guardian should also be made one of the grounds for declaring the marriage as invalid.

Clause 6 (1).—Registration of sacramental marriages.—Instead of the word "may" substitute "shall"; and such registration should take place within a certain period after the celebration of the marriage; and sub-clauses (2) and (3) be deleted.

Clause 7. Civil marriage.—The Mandal feels that all the benefits which result from a civil marriage are under the Code made available for a sacramental marriage. Hence we would recommend that the provisions with regard to the civil marriages should be deleted.

Clause 18.—We feel that the clause should be made effectual till the time the sacramental marriages are compulsorily registrable.

Clause 27.—We suggest that the succession to the properties of the persons mentioned in this clause should be governed by the provisions of the Special Marriage Act, 1872, and not by the provisions of this Bill.

Clause 29 (i) (iv).—We would suggest that where a marriage is annulled on the ground stated in the clause the children of the marriage should only be entitled to maintenance.

Clause 30 (c).—Instead of "for a period of seven years" substitute "for a period of five years."

With regard to the law of marriage and divorce laid down in Part IV, we feel that no provision has been made for alimony as it is done under the Indian Divorce Act. We suggest that due provision for alimony be made in the Code, which should cease on remarriage.

Clause 30 (e).—We suggest that the words "for a period of not less than seven years" be substituted by the words "for a period of not less than five years." In (f) after the words "any other concubine" and "if he leads a life of adulterous connections which is not condoned"; and as (g) if he uses cruelty of a nature so as to endanger the life of his wife; (h) has renounced the world.

Part V, clause 3 (a).—We would suggest that the custody of a minor child should remain with the mother till the completion of his or her seven years. This is in view of the fact that a mother's care is necessary for the upbringing of the child till that age.

Clause 4.—We suggest that the words "unless it be in the interest of the minor to make such appointment" should be added at the end of the clause.

Clause 10.—We would suggest that the present law with regard to the *de facto* guardians and their rights and obligations should be retained.

Clause 5.—We would suggest that the right to take in and give in adoption must be exercised by the husband with the consent of his wife, provided that she is living with him. However when the wife is living apart the adoption may be made without any reference to her or without her consent.

Clause 5 (1).—The words "fifteenth year" be substituted by the words "eighteenth year."

Clause 12; No. (1).—Add the words "jointly"; delete No. (2) and corresponding change be made in clause 3 (a), (b) and (c).

Clause 13.—We suggest that the conditions (i) and (vi) alone be retained and the rest be abrogated.

19. Arya Mahila Samaj, Bombay (Joint Honorary Secretary—Mrs. Leelabai Phadke).

GENERAL OBSERVATIONS.

The Arya Mahila Samaj welcomes the Draft Hindu Code as it has in a great measure attempted to remove the hardships, to which the Hindu females have been subjected to, so long. The Samaj also appreciates the object of the Hindu Law Committee to evolve a uniform law for all Hindus, irrespective of the part of the country they reside in. The object of the Committee as stated in the Explanatory note attached to the Draft Hindu Code, is to blend together the most progressive elements in the various schools of law, which at present prevail in different parts of the country. When, however, one examines the provisions of the Code, one is inclined to believe that in achieving uniformity, the Committee has put forward proposals which in effect takes away the rights which females enjoyed for over seventy years under the Bombay School of Hindu Law. The Bombay school has been known for its liberal

interpretation of its texts in favour of the females and the Committee should have adhered to the Bombay view when it was in advance of the other schools of Hindu Law.

The Arya Mahila Samaj, speaking generally is in favour of the principles underlying the Draft Hindu Code and subject to what is stated hereafter, supports the Code.

PART I—PRELIMINARY.

Clause 5.—Sub-clause (a) defines the word "agnate." The definition as drafted will exclude females coming into the family by marriage from falling under the term "agnate." According to Hindu Law and Hindu sentiment a girl upon her marriage is deemed to be reborn in the family of her husband and changes her *gotra*. This would be the case irrespective of the form of marriage adopted in any particular case. While the definition contained in this clause permits females born in the family and on marriage going out of it to come under the term "agnate"—though in fact such females have changed their *gotra*—females coming into the family by marriage and consequently adopting the *gotra* of the family of their husbands, will not be considered to be "agnates" in the family of their husbands. This is revolting to the Hindu sentiment cherished for centuries. The proposed change would have an adverse effect on the rights that females have enjoyed in matters of succession under the Bombay School of Hindu Law. The Samaj therefore urges that the definition of the word "agnate" be so amended as to bring within its scope, females coming into the family by marriage.

PART II—INTESTATE SUCCESSION.

Clause 5, class I, entry 1.—Under the Bombay School of Hindu Law, a son's widow, prior to the passing of the Hindu Women's Rights to Property Act, 1937, could only come in the order of succession, as a widow of a *sagotra sapinda*. She was thus postponed to distant relations and had to look up to them even for her maintenance. Justice was, therefore, for the first time done to her, when the Hindu Women's Rights to Property Act, 1937, recognized her as an heir to her father-in-law, along with her mother-in-law and the brother-in-law. This was quite in conformity with the Hindu sentiment, that husband and wife form one entity and that on the death of the husband, the widow becomes the surviving half of her husband. It is not long since her rightful place was recognized in law and a change ought not to have been made in the position created by the Hindu Women's Rights to Property Act, 1937.

The marginal note to this law states that the inclusion of the widow of a predeceased son among the "simultaneous heirs" was objected to by some critics as leading to excessive fragmentation. The Arya Mahila Samaj respectfully submits that there is no substance in this objection. If the son had been alive at the time of his father's death, he would have got a share and that would not have been objected to on the ground that there would be excessive fragmentation. Taking the matter further, if the son, who was alive at the time the succession opened, had died soon thereafter, his widow would have been entitled to claim as his heir the share that would have come to her husband, if he were alive. Then too the objection on the ground of excessive fragmentation would not have been entertained or advanced by anybody. Why should it then be considered a valid and sufficient ground only when the son's widow is to be recognized as one of the simultaneous heirs? The Arya Mahila Samaj feels that the exclusion of a son's widow from the category of simultaneous heirs, is unjustifiable and therefore urges that she should be included among the simultaneous heirs.

The Samaj would like to point out that if the application of clause 12 dealing with the question of the application of the provision of the Partition Act, 1893, was not restricted to the cases of females who pass out of the family of the intestate by marriage, but were extended to the cases of all female heirs, the objection on the ground of excessive fragmentation would be sufficiently met.

Clause 10, Heirs who are not related.—When the *Smriti* came to be written, the state of society was quite different from what it is to-day. In those times testamentary disposition was probably unknown and it was natural that a provision on the lines of the provision contained in this clause was considered necessary. In modern times it is difficult to ascertain who would come under the terms, "Acharya", "Sishya" and "Sa-bruhmachari." The

Samaj would, therefore, urge the deletion of this clause. It would under the circumstances contemplated by this clause be open to the person concerning to make a testamentary disposition of his property. If at all it is considered necessary to have a provision for the contingency contemplated in this clause, all the words coming after the words "shall devolve upon" should be deleted, and the words "upon the State for charitable purposes, for the benefit of the Hindu community" be inserted at the place.

Clause 21, Convert's descendants disqualified.—This clause imposes upon the descendants of a convert, unless they be Hindus at the time the succession opens, a disqualification on the ground of apostasy. It, however, imposes no such disqualification upon the convert himself. The Hindu opinion as evidenced by the dissenting minutes appended to the Joint Select Committee's report is clearly in favour of making conversion for making a disqualification for inheritance. There is also a strong feeling in the Hindu community in favour of that view. The Samaj would, therefore, suggest that this clause be so amended as to disqualify even the convert himself from acquiring any right of inheritance in the property of his unconverted Hindu relatives. Such a change would not work any great hardship on the convert as the person to whom the inheritance is to be traced can make, a will in favour of the apostate if he thinks it necessary or desirable.

PART III.—I. PROVISIONS COMMON TO TESTAMENTARY AND INTERSTATE SUCCESSION.

I. Scope and operation of Parts II and III, clause 2.—This clause puts an end to right by birth that a son acquired in the property in the hands of the father. It is no doubt true that this right by birth might have been originally intended as a check on the powers of alienations enjoyed by the father. In practice, however, it has worked a great hardship inasmuch as it has prevented persons from undertaking new ventures on the security of the family property. Moreover, inasmuch as under the provisions contained in part II of this Code, the widow or a daughter succeeding to the property of the intestate is to get an absolute power of disposal over the property inherited by her, it does not stand to reason that only in the case of a son, the inheritance should be curtailed or restricted by the right acquired by his son on birth. The Samaj, therefore, sees no objection to this clause.

II. MAINTENANCE.

Clause 3 (i).—In this clause after the word "residence" the word "and education" should be inserted. In modern times proper facilities for education have become as much necessary as food, clothing and residence and consequently provision for education must be included in the term "maintenance."

Clause 9, Maintenance, when to be a charge.—By virtue of the provisions contained in Parts II and III-A, the property that a person may get on succession would be his separate property and he shall have full power of disposal over it. The person so inheriting the property may defeat the rights of the dependents entitled to maintenance by alienating the whole of the property in his hands. It is, therefore, necessary to make the maintenance of dependents mentioned in clause 5 above, a statutory charge on the property.

PART IV.—MARRIAGE AND DIVORCE.

Chapter I, Celebration of marriage, clause 3.—In this clause, there is nothing stated about the respective age of the parties to the sacramental Hindu form of marriage. This might create an impression on the minds of average citizens that the provisions relating to the marriages contained in the Hindu Code, have abrogated the provisions of the Child Marriage Restraint Act, 1929. The Samaj would, therefore, suggest that the point, that that Act would continue to govern the Hindu marriages under the Code should be made clear and specific.

The Arya Mahila Samaj is not in favour of the alternative clauses 3, 4 and 5.

Clause 6.—In cases where a marriage is solemnised in the sacramental form, there is no evidence available about the fact of marriage, other than the oral testimony of witnesses who might have attended the marriage. Such evidence is not likely to be available after a lapse of time. The Samaj feels that marriages in the sacramental form should be registered. Such registration would in no way affect

the religious element or ceremonies but would afford a documentary proof of the fact of marriage. The Samaj feels that the provisions contained in this clause are statutory and would suggest to the Committee to consider the desirability of making such marriages compulsorily registrable.

Clause 23, Guardianship in marriage.—In the order of guardians given in this section, sister finds no place. A sister would be in a better position to look after the interests of the boy or girl concerned than a paternal uncle. The Samaj would, therefore, suggest that after entry 4 in this clause, an entry (4-a) be added to the following effect: "The sister subject to the same rules of preference as in entry (4) above."

Clause 28.—The Samaj welcomes the provisions contained in this clause. Cases have occurred where the bridegroom's party after having extorted a substantial amount as dowry from the bride's father or guardian has turned the bride out of her husband's house without any means of livelihood. The bride's relations are tempted to incur debts and pay substantial amounts as dowry because of their anxiety to see the girl settled happily in life. Though the provisions contained in this clause may not check the dowry evil, they would at any rate leave the girl something to fall back upon in times of difficulty. The Samaj feels that the dowry evil must be attacked directly and that such indirect attempts would not achieve the desired object.

Chapter III, Nullity and dissolution of marriage—Clause 29.—The application of this clause is restricted only to cases of marriages celebrated after the commencement of this Code. In matters relating to marriage, the Hindu females have suffered long and severely. It is, therefore, difficult to understand why such a restriction should be imposed. The benefits of the provisions contained in this clause should be available to all irrespective of the fact whether the marriage was celebrated before or after the commencement of this Code.

Clause 30.—Inasmuch as the Code seeks to make a Hindu marriage strictly monogamous, some provision for dissolutions of marriage was absolutely necessary. The Samaj, therefore, welcomes the provisions contained in this clause. The period of seven years laid down in sub-clauses (a), (c) and (e) is considered to be too long and it is suggested that the same should be reduced to five years.

In sub-clause (f) after the words "as a concubine", the words "or leads a life of adulterous connexions which is not connived at or condoned" should be added.

The Samaj would suggest the addition of two more grounds, namely, (g) if he uses cruelty of such a nature as is likely to endanger the life of his wife, or (h) if the husband has renounced the world.

Clause 31.—The Samaj is not in favour of the provisions contained in this clause and would urge that specific provisions dealing with the questions of procedure, alimony, etc., should be inserted in this Code itself. The reference to the "Indian Divorce Act", which was primarily intended for the Christian community, is likely to raise a strong objection to the idea of making a provision for divorce itself. Though enlightened Hindu opinion is in favour of having a legislative provision for dissolution of Hindu marriage, there is a certain section which is strongly opposed to it. It is, therefore, necessary to disarm their opposition as far as possible.

PART V.—MINORITY AND GUARDIANSHIP.

There is no provision in this part dealing with the question of change of religion by the natural guardian of the minor. It would be desirable to insert a provision authorizing the court to appoint a guardian if the continuance of the natural guardian who has changed his religion is not in the interest of the minor.

With regard to clause (4), it would be desirable to add at the end the words "Unless it be in the interest of the minor to make such an appointment."

PART VI.—ADOPTION.

Clause 5.—Under this clause as it stands it would be competent to a Hindu male to adopt a boy during the lifetime of his wife without any reference to her and notwithstanding her dissent. On the adoption of a boy, the wife is to be the mother of the adopted boy and if the adoption be made without reference to her and notwithstanding her dissent, not only would the harmony in the family be disturbed but the adopted son might not receive the same degree of affectionate care and attention from the

adoptive mother. The Samaj would, therefore, suggest that the explanation to this clause be so amended as to dispense with any reference to the wife, only when she is living apart from her husband.

Sub-clause 1 lays down that the person making an adoption must have completed his fifteenth year. Under the Indian Majority Act such a person is a minor and cannot enter into any valid and binding contract. The Samaj suggests that the age should be raised to 18.

Clause 12.—Under sub-clause (2), a father would be competent to give a son in adoption without any reference to the mother and notwithstanding her dissent. Such a provision amounts to a total disregard for the natural love and affection that a mother entertains for her son. It is, therefore, desirable to give proper recognition to the mother's wishes unless she is living apart from her husband and the son. This sub-clause should be so amended as to bring out that sense clearly.

Clause 13.—This clause deals with the question as to who is capable of being adopted. Sub-clauses (iii), (iv) and (v) should be dropped and in their places sub-clauses laying down that the age of the boy to be adopted should not be more than that of the person adopting though the original object or motive for adoption might have been the spiritual benefit that the adopted son might confer on the person adopting him, the adoption is at present considered to be more of a secular affair. The restrictions proposed in sub-clauses (iii), (iv) and (v) would work a great hardship on the person adopting by confining his choice to a narrower circle.

Clause 14.—Sub-clause (ii) introduces a much desired reform. Boys who from the point of view of natural love and affection, could be said to be better fitted for adoption were so long excluded from being adopted because of the interpretation placed by the courts on the original texts.

20. Mrs. Yamūtai Kirloskar, Delegate, Maharashtra Mahila Mandal.

1. In the list of enumerated heirs in clause 5 of Part II, widowed daughter-in-law is excluded. This right of heirship to the widowed daughter-in-law is at present enjoyed by her under the provisions of the present Deshmukh's Act and is not taken away in this Code. This is certainly a hardship and injustice to the widowed daughter-in-law. It is therefore recommended that the widowed daughter-in-law should be also one of the heirs of the compact series along with widow and the daughter. In this way the right given to her by the Deshmukh Act must be retained in this Code.

2. *Stridhan*.—As for the stridhan concerned, the Mahila Mandal is thankful to the committee for enlarging the definition of Stridhan and making all property held by her from any source whatsoever as her stridhan property; but it is not known why the committee should have found it necessary to make a distinction between property inherited by a woman from her husband and obtained by her from other sources. The Committee has also prescribed two sets of heirs for these two at different kinds of stridhana. All this appears cumbrous and unjustifiable as there would be two different sets of heirs to the property of one deceased woman. This distinction must be abolished and there must be one set of heirs to all kinds of stridhan.

3. The committee must be congratulated upon abolishing the "limited estate" held by a woman altogether and making all estate held by a woman her absolute property. This distinction of "limited estate" and absolute estate was a great hardship upon women and cannot be supported on any ground in these enlightened times. This provision must be retained at any cost in this Code.

4. As for provisions in chapter on marriage are concerned, the committee must be also congratulated upon removing the hardships of women, generally. The committee must do away with the restrictions imposed on the "Sagotra" and inter-caste marriages. Provisions in this respect must be definitely embodied in the Code itself.

5. In clause (d) of clause 3, it is stated that the parties must not also be "sapindas of each other" unless the custom or usage governing each of them permits the marriage between the two. This saving clause must be deleted. Custom or usage howsoever ancient, which is positively against the definite provisions of the Act must

not now be recognized. No custom which violates any of the rules of this Code should be considered as valid and legal. This clause can also be opposed on biological and eugenic grounds.

6. The provision in the Code prohibiting all polygamous marriages is a reform in the right direction.

7. In Chapter II of Part IV of marriage which deals with duties of husband and wife, some provision must be made recognizing joint ownership of both wife and husband even in his lifetime. Some provision must be made in the Code itself to see that the husband does not waste away all his property to the detriment of the interest of a wife and husband. Chapter III deals with nullity and dissolution of marriage—dissolution is allowed to the minimum extent. Grounds will have to be increased, for instance—dissolution should be allowed to the wife or husband when they are both incongruous or incompatible nature.

8. Chapter VI deals with adoption. In giving or taking a son in adoption the wishes of the wife are wholly ignored. The husband, it is said, can take or give away a son in adoption without consulting the mother of the boy or even notwithstanding her dissent. This is pure injustice to the women also in general. When this Code aims at equality of rights between two sexes, it is strange that these provisions are retained. These must be abolished and it must be said that a man can take or give his son in adoption only with the consent of his wife.

21. Lady Vidyagauri Ramanbhai Nilkanth.

The Hindu Law Committee deserves gratitude from all women's institutions which primarily aim at the social, economical and educational advancement of women. The fact that the present day Hindu Law considers the position of women not equal with men and unless and until this inequality is removed women cannot rise to their proper level in all departments of life. Moreover, modern progress in every direction demands that laws that were intended for the good of society should not remain static but modified according to the needs of the time. The codifying of Hindu Law is therefore a very urgent necessity and the framers of this Code are to be congratulated for their deep study into the various repercussions of changes and their extreme carefulness to abide by the Dharma Shastras as far as possible. It is but natural that changes are unwelcome to some portions of society who only look to prevailing customs and are averse to anything new being introduced. But such opposition should not weigh in the eyes of the law-maker whose object is administration of justice.

Inheritance—

(1) The widow of a predeceased son should share equally with son and widow.

(2) Part II, clause 1, *Heirs in the compact series*.—Daughter's son should have preference over (3), (4), (5) and (6).

(3) Part III A II.—A concubine as well as her children should not be included amongst dependants as enumerated in clause (5). They should have no legal right of inheritance.

Marriage—

(1) Part IV, clause 30.—(c) Cruelty should be defined according to Baroda legislation, (d) add "desertion for three years." Page 31 (a) and (c).—Put "three years" instead of "seven years."

(2) In 30.—Add (g); add "If a husband has married another wife in the lifetime of the first wife."

(3) Clause (32).—The community in which divorce is allowed at present should also be governed by the new law and divorces should be obtained by the same procedure as mentioned in the Code.

(4) In the case of those marriages which have been performed before the commencement of the law the fact of a marriage in the lifetime of wife or husband should be deemed sufficient ground for claiming dissolution of marriage.

(5) Add "adultery on the part of either husband or wife as a ground for obtaining dissolution of marriage and separation."

(6) Breach of Sarda Act. Such marriages should be voidable if so desired, not later than two years after attaining majority by the party who was a minor at the time of the marriage.

22. Maharashtra Mahila Mandel, Poona Centre.
(Miss Malate Ranade)

According to Hindu conception, law in the modern sense was only a branch of Dharma, which has the widest significance. Dharma includes religious, moral, social and legal duties and can only be defined by its contents. The Mitakshara mentions six divisions of Dharma, one of these is vyavahara law, which means civil law, or law in the modern sense. Rules of vyavahara or civil law relating to marriage, adoption, partition and inheritance were in the main drawn from actual usages, and were modified and supplemented by the opinion of Hindu Jurists. Thus it can be seen that the main source of Hindu Law is custom. Smritis and digests were largely based on customary law. But with the march of time changes take place in the circumstances and men's views of truth and justice. Law must be kept in harmony with the circumstances and opinions of the time. Kings were to perform this function of abrogating and modifying the rules of law. At present, statutes declare, abrogate or modify the rules of the Hindu Law. Quite recently the Hindu Women's Rights to Property Act (XVIII of 1937) was passed to amend the Hindu Law of all the schools, so as to materially confer greater rights on women than they had. The law affects the coparcenary, partition and alienation. It also affects the topics of inheritance and adoption. Difficulties were experienced in administering this Act. It was not desirable to make piecemeal legislation and so the Hindu Law Committee have been appointed by the Government of India for the purpose of formulating a Code of Hindu Law, which should be complete as far as possible. The Committee, accordingly, have prepared a Draft Code.

One of the main features of this Bill is to remove the sex-disqualification and to abolish the Hindu women's limited estate. The Maharashtra Mahila Mandel, Poona Centre—a sub-branch of A.I.W.C., very much appreciates these features of the Bill, as the primary function of this Association is to deal with all questions affecting the welfare of women.

In the first place this Association wants to state clearly its approach to the Bill. It deeply feels for the disabilities under which Hindu women are labouring. Injustice cannot be tolerated. The Association stands for salutary changes and modifications to be made in the existing law, if they are necessary to meet the growing needs of the progressive community. Beyond this, changes and modifications are not welcome, for it is the rule of justice that the principles which have been followed for the time immemorial, should not be changed, except when they become unreasonable or immoral.

2. This draft Code will be the law of Hindus when it will be passed by both the Houses of the Central Legislature. The purpose of this procedure is to ascertain the opinion of the society at large, through their representatives. But at present this purpose will not be fulfilled. The Assembly as at present constituted, was elected about ten years back. Since then the public opinion has changed considerably, and the members of the Assembly could not be said to be the real representatives of the present feelings of the people, and therefore, should not take up the responsibility of passing such laws. Again, the majority community, viz., Hindus, is not properly represented. In addition to this, the peculiar war condition through which the country is passing, makes it almost impossible for anyone to create opinion either for or against the Bill by any propaganda whatsoever.

3. One of the objects of the Committee is to evolve a uniform Code of Hindu Law which will apply to all Hindus. It may be seen that this object is not attained, for if the Central Legislature passed this Bill, the Hindu community will have laws as follows:—

(A) The law on the topics enacted by the Central Legislature as proposed by the Draft Code.

(B) Original Hindu Law with respect to joint family property, partition, debt, alienation, religious endowments until the provinces enact laws for these topics.

(C) The laws with respect to succession to agricultural land. This can be enacted by the provinces only.

(D) Laws copied from the British Indian Laws in various Indian States.

In short it may be said that the uniformity of law for whole of India is not possible on account of various practical difficulties.

4. Part II of the draft Code deals with intestate succession. This part regulates the succession to the heritable property of a Hindu dying intestate. While determining whether the changes effected are salutary or not, approach to this subject would be as to how the deceased would have distributed the property (excepting under peculiar circumstances) if he had not died intestate.

Before 1937 the rule of Hindu Law was as follows: The property of the deceased goes to the son (by son is meant son, grandson and great-grandson). In default of son, inheritance is to go according to compact series of heirs in order as they are mentioned.

पत्नी दुहितरश्चैव पितरौ आत्मस्तथा ।

तत्पुत्रौ गोत्रजो वन्तुः शिष्यः सन्नृचरिण ॥

The Hindu Women's Rights to Property Act, 1937, has radically altered the order of succession as it stood before. The old rule that the widow succeeds to a man's estate in the absence of male issue has been altered by making the widow heir to his property along with his son, grandson and great-grandson, where they are in existence.

The draft Code proposes to maintain the position of the widow under the Hindu Women's Rights to Property Act, 1937. She is to take along with the male issue. The Act replaces the rule of Hindu Law recognized in all the provinces except in Madras, that a widow is entitled to a share where her sons or step-sons actually divide the estate between themselves. The Act vests in her on her husband's death, the right of the same share as a son, along with her sons or step-sons, independent of any partition, which may or may not be entered into by them. The very existence of a relation of wife and husband makes it the duty of the husband to provide for his wife during his lifetime, and she rightfully gets the share in her husband's property.

5. Before the Act of 1937, the widowed daughter-in-law and grand daughter-in-law had a right of maintenance in their capacity as the widows of coparceners. Coparceners are those persons who, by virtue of relationship have the right to enjoy and hold the joint property, restrain the acts of each other in respect of it, to burden it with debts and at their pleasure to enforce partition. Outside this body there is a fringe of persons possessing inferior rights, such as that of maintenance, this class includes the widows of the coparceners. When one coparcener dies, his interest in the property accrues to the other coparceners by survivorship. Survivorship consists in the exclusion of the widows and other heirs of the coparcener from succeeding to his undivided interest in the coparcenary property. In ancient times property was held invariably by the members of the joint family and separate acquisitions were inconsiderable. Partitions must have been infrequent and where they occurred they would only bring new joint families into existence. Changes in circumstances and the men's views are inevitably brought about by the lapse of time. Separate holding has become essential and it works injustice to give a mere right of maintenance to the widows of the coparceners. That right of maintenance was sufficient to satisfy the needs of women in earlier times. But now, right to particular property has become necessary to meet the needs of present time, i.e., in earlier times, for leading peaceful life a widow needed only food, housing and clothing, which the right of maintenance covers. At present, in addition to these, she needs education for which the coparceners are not bound to expend. Again, the claim of a widow for maintenance is not a charge upon the estate as bound it in the hands of a bonafide purchaser for value without notice of the claim. In short, the widows of the coparceners were in pitiable conditions and the Act of 1937 was passed to give better rights to women in respect of property. The widow of a predeceased son, and of a predeceased son of a predeceased son, succeed to the separate estate of a man along with the male issue for their respective shares. The Act follows the view of Vishvarupa in making the widowed daughter-in-law and granddaughter-in-law entitled to share along with, or in default of the male issue and the widow. The comment of Vishvarupa on the text of Yajnaalkya is "if equal shares are allotted by the father, the widows of his sons and grandsons and his own wives, to whom no stridhana had been given by their husband, or father-in-law, or himself, should be made partakers of their husbands' share."

The Draft Code proposes to exclude these widows from the right of inheritance and to give them the right of maintenance. This is pure injustice, for the circumstances, which led to the passing of Hindu Women's Rights to Property Act, 1937, and which are enumerated above, are still in existence. So the rights given by the Act are still necessary. This Association strongly urges that the widowed daughter-in-law and granddaughter-in-law be added as simultaneous heirs.

Reasons given for the exclusion of these widows from the right of inheritance, is that it leads to excessive fragmentation. This is no argument, as that much fragmentation would have taken place if the husbands of the said widows had been alive. This evil can be avoided by abolishing the principle of fragmentation and not by incurring injustice.

6. Under the existing law, the daughter comes next to widow, taking after her, as well as in default of her. As between daughters the inheritance goes first to the unmarried daughter, next to daughters who are married and possessed of means. If there is a widow or male issue she gets only the right to be maintained until marriage, and her marriage expenses are to be satisfied out of the joint family property—her father's property.

The Draft Code proposes to add daughter as simultaneous heir and to place married and unmarried daughters on the same footing. Again each of the daughters takes half a share.

The Association suggests, firstly, that each of the daughters should get one-fourth share only, for the daughters get their proper shares in their husband's property. Secondly, that, before distribution of the intestate's property, provision should be made for the maintenance and education of minor daughters and minor sons also, and then the remaining property should be distributed among the heirs, so that the minor children of the intestate would get their respective shares in addition to the provision for their maintenance.

7. According to the existing law in Bombay, the widows of gotraja sapindas as such are entitled to inherit as collaterals and are to be preferred to male gotraja, in a more remote line. This proceeds on the view that succession goes in the order of sapindaship. Sapindaship as explained by Vijnaneshwar makes even the wives of brothers, sapindas to each other, because they produce one body with those who have sprung from one body. According to Mitakshara the wives of sagotra sapindas are themselves sagotra sapindas and they are included in Yajnavalkya's term "Gotraja."

This right in favour of the widows of the nearer gotraja sapindas to succeed in priority before the next male gotraja sapindas come in, appears to have been taken away in the Bill suggested. The reason given is uniformity. Uniformity should be better secured by an enlargement of the general right of women over all India, rather than by a deprivation of any higher rights that are possessed by women in some part of the country. Therefore the Association strongly urges the restoration of this old right of women.

8. One of the aims of the Hindu Law Committee is to abolish widow's estate.

The typical form of estate inherited by a woman from a male is the widow's estate. In Bombay, however, property inherited from a male by a woman other than the widow, mother, paternal grandmother or the widow of a gotraja sapinda is her stridhan, i.e., the females who enter the family by marriage always take a limited estate when they take as such heirs. While those who are born in the family but leave it by marriage, take an absolute estate. The distinctive feature of this estate is that, the woman is the absolute owner of the property, but she has no power to alienate the estate except for two purposes (1) religious or charitable purposes, (2) legal necessity. On her death property does not devolve on her own heirs, but it reverts to the heirs of the last male owner. The existence of this kind of estate is due to the decision of the Privy Council which limits stridhana to the kinds enumerated in the Smriti texts. The only reason given for the limited estate is that the Spirits have laid down so. This again depends upon the interpretation of the verse in the Smritis. In the Mitakshara this theory of limited ownership has no place at all. All property however acquired by the woman becomes her stridhana and such

stridhanā devolves not upon the heirs of the last male-holder, but upon her own heirs. This scheme of Mitakshara is based upon the verse No. 145 of Yajnavalkya Smriti. The verse runs thus :—

पितृ मातृ पतिं ज्ञातृ दत्तमभ्यन्युपागतम् ।
अधिभेदिकापच क्रीधनं परिकीर्तितम् ॥

"What was given to the woman by father, mother, her husband or her brother or received by her at nuptial fire or presented on her supersession and the like, is denominated a woman's property." Vijnaneshwara explains that the term "Adi" includes property which she may have acquired by inheritance, purchase, partition, seizure and finding and says, "the term woman's property conforms in its import with its etymology and is not technical." According to him Manu's six-fold classification is only illustrative. Obviously he is right, for Manu, Yajnavalkya and all other Smritis enumerate more than six kinds of stridhana.

Thus it would be clearly seen that the rules of present law which have created woman's estate are not based on the verse in the Yajnavalkya Smriti and so this woman's estate can be safely abolished.

Objection is sometimes raised that if the absolute estate is given to the woman, the property would not remain in the family a groundless objection—for men who are given absolute estate are equally capable of squandering away their property.

9. Part IV of the Draft Code deals with marriage and divorce. According to the existing system of Hindu Law, two forms of marriage are recognized. A Hindu may marry any number of wives although he has a wife or wives living, but a woman cannot marry another man, while her husband is alive. The parties to the marriage must both belong to the same caste, in Bombay, it has been held that a marriage between a male of higher caste and female of lower caste is valid (anuloma). The parties to a marriage must not belong to the same gotra or pravara and must not be sapindas of each other. There are two ceremonies essential to the validity of marriage (1) invocation before the sacred fire, (2) Saptapadi. Divorce is not known to the general Hindu Law.

It is now provided by the Special Marriage Act, 1872, as amended by Special Marriage (Amendment) Act, 1923, that marriages may be celebrated before a Registrar between persons each of whom professes one or the other of the following religions, that is to say, the Hindu, Buddhist, Sikh or Jain religion.

The Hindu Draft Code proposes to introduce many desirable and long-awaited changes. A Hindu must not have a spouse living at the time of marriage. The caste restrictions as well as the restrictions on Gotra and Pravara have been done away with. The chapter on nullity and dissolution of marriage is a great step forward. Divorce can be sought on the six mentioned grounds, i.e., the other party (a) is incurably of unsound mind, (b) is suffering from leprosy, etc.

Code proposes to provide for divorce only in the case of sacramental marriages celebrated after the commencement of the Code.

This Association urges that the provisions should be extended to marriages celebrated even before.

10. Under the existing law, a Hindu male is competent to take a boy in adoption without his wife's assent and notwithstanding her dissent. The wife cannot adopt during her husband's lifetime except with his express consent. The only persons who can lawfully give a boy in adoption are his father and mother. The primary right to give in adoption is that of the father. He alone has absolute right to dispose of his son in adoption even without the consent of his wife, and notwithstanding her dissent. The wife cannot give away her son while her husband is alive, and capable of consenting, without his consent, but she may do so after his death.

The draft Code proposes to maintain all these provisions so that under it, the father is capable of adopting a son, or giving a son in adoption without the consent of the mother, and notwithstanding her dissent.

Whatever may have been the underlying principle of these provisions, the effect of these provisions is to work injustice in case of mothers. It is a fact, which cannot be denied, that the relation between the child and the mother is more intimate and tender than that between the child

and the father. Naturally the mother would feel more deeply the separation from the child than the father would feel. So mother's right should be equal with the father; if not more, to be consulted before her boy is given in adoption.

This Association suggests that the father should not have a right to adopt a son, or give a son in adoption without the consent of the mother of the child.

11. Hindu opinion is strongly against an apostate inheriting property. Change of religion should be disqualification. One can easily state many examples of persons disinheriting their apostate sons. This Association desires to urge that a change of religion should, in future, disqualify an heir from inheriting properties under the Hindu Law; but conversion to sects or creeds of Hindu origin such as Buddhism, etc., should not be regarded as a disqualification.

12. The draft Hindu Code proposes to abolish the right by birth of a son, grandson or great-grandson to his ancestral property. It was fittingly said about this doctrine that "the doctrine of the son taking an interest in his ancestral property by birth is one of the notable achievements of the Hindu legal genius and provides a safeguard for the son against spendthrift fathers. It also sometimes happens that the wife dies, leaving a son or two, and the husband marries again; in such cases there is sometimes a danger of the step-mother inducing her husband to disinherit her step-son but the doctrine of interest by birth has provided a safeguard against this kind of danger also." This Association urges that this doctrine should not be abolished.

13. This Association has submitted its views on the underlying principles of the draft Hindu Code. It does not profess to examine in minute details the various provisions of the Code, clause by clause. That work may be done by the experts.

23. The Registrar, High Court, Bombay.

I am directed by the Honourable the Chief Justice and Judges to say that the draft Hindu Code appears to be highly controversial and to raise questions of general policy. The High Court should not be asked to express any opinion upon it as it is not the function of the Judiciary to enter the field which is exclusively the privilege and the responsibility of the Legislature.

24. Mr. R. S. Bavdekar, I.C.S., District Judge, Ahmednagar.

The word "Hindu" is so defined as to include "who would have been governed by the Hindu Law or by any custom or usage as part of their law if the Hindu Code were not in force." In the absence of proof of special usage to the contrary, Khojas and Kachhi Memans in the Bombay Presidency are governed in matters of intestate succession by the Hindu Law. It is not quite clear whether the intention is that these persons should be governed in the matter of intestate succession by the new Code. If not this may be made clear by a suitable amendment.

Part II, clause 10.—This provision has little application to the Hindu society as it is constituted at present. The best course therefore in my opinion is to delete it and allow the Crown to take by escheat. If it is retained, the words "preceptor", "disciple" and "fellow student" should be defined.

Part II, clause 14.—In regard to succession to stridhan, the husband has been placed after the son and daughter and after the son's son, son's daughter, daughter's son and daughter's daughter. As the widow is now classified along with the son, the daughter, the son of predeceased son and the son of the predeceased son of a predeceased son, there is no justification for postponing the husband to the son and daughter. In my opinion he should be classified with the son and daughter.

Part III-A; clause 2.—This clause is against the prevailing sentiment among Hindus, but as the framers of the Code correctly point out, when the widow and daughter will take an absolute interest, it will be difficult to justify a different treatment of the son. The section should therefore remain.

Part IV, clause 30.—The period of seven years in clauses (a) and (c) is too long. It may be reduced to four years.

Part VI, clause 27.—It seems unnecessary to restrict the jurisdiction for ordering entries to be made in the register of adopted children to the District Court. The jurisdiction may be conferred upon Subordinate Judges

of the first class or second class in accordance with the value of the property.

Part VI, clause 31.—Section 31 makes a copy of an entry in the register of adopted children proof of the fact of adoption. In my opinion once an entry has been made in the register of adopted children, no person who was party to the proceedings for the entry in the register of adoption should be allowed to challenge the fact of adoption except on the grounds on which he would have been allowed to challenge the fact if he was a party to an adoption suit and decree declaring that a particular person was the adopted son of the adoptive father was obtained, for example by fraud, etc.

25. Mr. D. V. Vyas, I.C.S., District Judge, Ahmedabad.

As pointed out in the explanatory note to the Bill, the Hindu Code deals with certain important branches of the Hindu Law such as succession, both intestate and testamentary, maintenance, marriage and divorce, minority and guardianship and adoption. The Bill seeks to avoid the evils of piecemeal legislation. It seeks to codify the Hindu Law on these subjects and, in my opinion, it has achieved success. No doubt the provisions of this draft Bill in certain respects are of a revolutionary character and the enforcement thereof will have wide repercussions on the Hindu society. On the whole, however, the Bill is framed in such a way as to keep in line with the progressive trend of thought of the society and also to respect as far as possible the orthodox opinion. The Committee has considered the whole question from various points and the provisions are carefully drafted.

In Part II of the Code relating to intestate succession, enumerated heirs are specified in clause 5 and they are divided in various classes. The class III assigned to "sister" is not proper and her place ought to be at least in class II. Then clause 10 is not necessary as in the present society there is nothing like a preceptor or a fellow student as in the past. Clause 2, Part III-A, thereof provides that the son shall not have a right over the property of the father merely by reason of birth. This cuts at the very root of the Hindu society of which the pivot is the joint Hindu family.

Part IV about marriage and divorce puts a stop to polygamy. This will have a salutary effect on Hindu society.

I am in general agreement with the provisions of the Code. The Code when passed into law will not only improve the status of women but will regulate marriages with a right of divorce. It will also put on sound basis the Law of Adoption and regulate the Law of Succession.

26. Mr. M. C. Shah, B.A., LL.B., Assistant Judge, Ahmedabad.

1. As the explanatory statement to the Code shows, the Bill deals with certain very important branches of the Hindu Law such as succession, both intestate and testamentary, maintenance, marriage and divorce, minority and guardianship and adoption. The Code seeks to codify the Hindu Law on these subjects and in my opinion it has achieved a remarkable success both in drafting as also in reconciling some of the conflicting views of the different schools of Hindu Law and in giving a concrete shape to the various aspects of the law relating to these subjects. I am in general agreement with the provisions of the Bill which, in my opinion, are very liberal and are framed not only with a view to fall in with the progressive trend of thought amongst Hindus but also to respect orthodox opinion wherever possible. No doubt the provisions of the Bill are carefully drafted but I have a few suggestions to make.

2. The first is in regard to the definition of "Hindu" occurring in clause 2 (2) of Part I. The definition appears to ignore the element of birth altogether and whereas it includes within its ambit persons professing the Hindu, Buddhist, Sikh or Jain religion, and those who are hitherto governed by the Hindu Law by custom or usage it does not include persons born as Hindus. This will be clear by a reference to the explanation given in the margin. The definition therefore requires to be amended suitably so as to cover persons born as Hindus. The element of birth does appear to have been recognized in illustration (b). As regards this illustration the latter part thereof requires to be worded properly. As it stands, it includes a legitimate child but a child would not be legitimate if only one of its parents is a Hindu because a marriage between a Hindu and a non-Hindu is not recognized and is not a valid marriage. The second objection is that the idea of

the bringing up of a child as conferring on it the status of a Hindu is not covered by the definition of "Hindu", and the third objection is that in the case of an illegitimate child the child ought to take the religion of its father. Supposing the father is a Hindu and the mother a non-Hindu, according to the definition if a child is brought up as a non-Hindu it would be a non-Hindu but that is opposed to general principles as also to the popular sentiment and the child in such a case ought to take the religion of its father, or also the child would be lost to the Hindu fold. Conversely if the mother was a Hindu and the father a non-Hindu the child even if brought up as a Hindu would not be recognized as a Hindu and such recognition is opposed both to sentiment as also to the established notions. Therefore the element of the bringing up of a child should not be recognized as a determinative factor for the caste of the child.

3. Turning to Part II of the Code relating to intestate succession, the sister is assigned a very low place in the series of heirs and in my opinion she should retain her present rank in the order of succession amongst Sapindas in the Mitakshara succession. As it is she is placed in class 3 of heirs and is excluded by the son's and daughter's grandchildren which is opposed to the law as recognized by the Bombay school.

4. Turning to Part III-A of the Bill clause 2 thereof provides that the son shall not have a right over the property of the father merely by reason of birth and this appears to have been done with a view to bring it on a level with the property derived by the mother and sister. That may be so but this provision destroys the very idea of a joint family. If a joint family is to be recognized, and that has been recognized in the Bill, it will be inconsistent with the idea of a joint family to deny the right of the sons by birth in the father's property. Besides, to deny such a right to the son will be inequitable considering that the son still bears the pious obligation to pay his father's debts. It is therefore submitted that this provision ought to be omitted from the Bill.

5. With regard to clause 5 of Part III-A of the Bill it enumerates certain dependants and includes among them the widow, son, unmarried daughter and widowed daughter and at the same time the explanation in the margin says that as they take as heirs they will not figure as dependants. In my opinion this is likely to create a confusion and it is better to define the term "dependant".

6. The provision in clause 24 of Chapter I, Part IV, punishing bigamy, should be welcome. Similarly the refusal to recognize the transfer of a minor's property by his *de facto* guardian as contained in clause 10 of Part V should be welcome as it is in the interest of the minor as also of the third party.

7. I have no comment to offer in respect of the other provisions of the Bill which in my opinion, are sound.

27. Mr. P. H. Gunjal, LL.B., District Judge, Kanara.

1. There can be no doubt that the new draft Code serves a very useful purpose, inasmuch as it will bring into force a uniform Code amongst all Hindus irrespective of the various schools which obtain at present in different parts of the country. I have myself realized what a considerable confusion has been caused in this district by its being held that this district, though at present located in the Bombay Presidency, is governed by the Madras School of Hindu Law, as it was once a part of the Madras Presidency. In such circumstances, uniformity of law throughout the whole country will be a great asset, indeed. However, I think that some of the proposed changes are revolutionary in effect, especially the abolition of son's right by birth or right of survivorship and provision for monogamy and nullity and dissolution of marriages. These proposed changes are bound to evoke much adverse criticism by the orthodox Hindus. After carefully going through the draft Code and taking into consideration the views of the local Bar Association, I shall make a few observations regarding certain changes and modifications which suggest themselves to me.

2. Coming to Part II of intestate succession, the first revolutionary change appears to be in clause 5 wherein the heirs are enumerated and we have to see that the daughter is placed as a simultaneous heir along with the widow as well as the son. It is true that in clause (2) of clause 7 it is laid down that the daughters shall take only a half share. However, if a particular intestate may die leaving only one son and four daughters for instance, the

shares altogether taken by the four daughters will be considerable and will surely work a great hardship against the only son. (Ordinarily, one should say that there is apparently no reason why sons and daughters should not be placed on the same level as they are offspring of the same parents. But it will be remembered that the daughters have also an opportunity of inheriting shares in their husbands' property as being the widow of their respective husbands, as widows are now given a share. From that point of view, daughters after their marriage will get an equal share along with their sons in the family of their marriage and stand to get another share in the estate of their father with their brothers. This position cannot ordinarily be enjoyed by the sons. From this point of view, it appears necessary that the total shares, to be taken by the daughters together, may be limited to something like a 'one-fourth' or so in the father's estate exactly like the provision made in clause (a) of section 7 where it is laid down that if the widows are more than one, all of them together will take one share.

3. Turning to clause 14 dealing with the order and mode of succession to stridhana, it is seen that in item (a) in sub-clause (b) the son and daughter are placed on the same level in the order of preference. That appears to be unobjectionable according to the general principles that have been given a full play in the new Code. However, when we come down to items (7) and (8) mother's heirs appear to have been given a higher place by being placed in item (7) and thus put above the father's heirs who are placed in item (8). The reason for this is not easy to be seen. If while referring to son and daughter as the first preferential heirs they are placed together as seen in item (1) there is no reason why the mother's heirs should be given a higher place than the father's heirs. The mother's heirs, as can be seen, were not stridhana heirs up to now except in the case of maiden's property. Father's heirs have all along been recognized as stridhana heirs by the commentators in the case of maiden's property and in the case of females married in an unapproved form. Even in the case of females married in the approved form judicial decisions have recognized that on failure of husband's heirs, father's heirs succeed in preference to the Crown. Hence, I may suggest that father's heirs may be given a higher place than the mother's heirs by inverting the order between items (7) and (8).

4. Coming then to Sub-Part II of maintenance in Part III-A, I suggest that in sub-clause (iii) in clause 5 there may be some restriction added that the widow would be entitled to maintenance provided she leads a chaste life. The clause as now inserted "so long as she remains a widow" would not be an adequately safe provision as it would amount to saying that a widow who ceases to be a widow by having remarried will forfeit her right to maintenance whereas the widow who apparently continues to remain a widow but may be leading an unchaste life, would not forfeit her right. This appears to be unreasonable and contrary to the principles as are observed and enforced at present.

5. Proceeding next to Part IV dealing with marriage and divorce a far-reaching reform appears to have been intended to be effected by strictly recognizing and adhering to the principle of monogamy. Both in sacramental marriages as well as in civil marriages the first essential condition insisted on is that neither party must have a spouse living at the time of the marriage. Monogamy may be very desirable and may also be a very noble principle. However, it cannot be doubted that it is altogether a new innovation to which Hindu society will take a long time before being accustomed. In the Code as now drafted no age-limit has been placed for either the husband or the wife beyond which they cannot marry. Thus, it means that a husband may after losing the first wife marry a second, may after losing the second marry a third, may after losing the third, marry a fourth irrespective of any limit of age, that is, even if he may have attained the age of 50 by then. But if a comparatively younger husband, after having a living wife, has found that he has no offspring by her or has no son by her, for whom Hindus have a peculiar sentiment, he cannot marry a second time even with the intention of having a son, if his first wife be living; and even in the chapter dealing with nullity and dissolution of marriages, no provision is seen whereby he can be enabled to have a dissolution of his first marriage on this count. This indirectly means that he will have necessarily to resort to take a son in adoption even when he may

have a lurking hope that he could have had a natural son of his own if he was enabled to marry at least a second wife. Driven to desperation on this compulsorily enforced reform, one cannot say that it is impossible to imagine that at least a few husbands, who may have a grievance against their first wife not having borne them any offspring or any son, may have the temptation to somehow bring about the end of their first wife by resorting to methods like slow-poisoning when they find that her existence alone is a bar in their way of marrying a second time. Hence, it may be reasonably suggested that rather than introduce monogamy in this very strict form at the very commencement of this new Code, some indulgence may be allowed to marry at least a second time in case the first wife has borne no offspring or has not produced a son. This suggestion is by way of recognizing a widespread sentiment prevalent among Hindus to have a son whose birth is taken to be necessary for giving salvation to the parents. It will not be advisable to ask all such parents to resort to adoption as it is known by common experience that adoptions have not been very happy and successful.

6. Adverting to the sacramental marriage, I am of opinion that clauses 3, 4 and 5 as newly inserted are distinctly preferable to the alternative clauses 3, 4, 5 and 6 as previously drafted which are still shown as the alternative clauses and hence I would suggest that the previously drafted clauses 3, 4, 5 and 6 may be omitted and the newly drafted clauses 3, 4 and 5 may be retained. However if at all the formerly drafted clauses are to be kept up then I would suggest that sub-clause (c) of clause 3 may safely be omitted rather than keep it as is actually done in clause 6 below by referring to it as one of the conditions the non-observance of which will not invalidate a marriage. I believe it is now too late in the day to insist that the parties belonging to or having the same gotra or common pravara should not be eligible for marriage. That the drafters have realized this is apparent from the fact that it is laid down in the succeeding clause 6 that the non-observance of this condition will not invalidate the marriage as can be seen from sub-clause (b) of clause 6. Rather than do it this way, I would suggest that sub-clause (c) of clause 3 itself may safely be omitted. However, all this will not survive if as I have said the newly drafted clauses 3, 4 and 5 are retained and the old clauses 3, 4, 5 and 6, suggested as the alternatives, are deleted.

7. Further, I suggest that the suggestion made by me for a man being enabled to marry at least a second time in spite of having a first wife with no male child may also be inserted in the regulations regarding civil marriages.

8. Proceeding then to Chapter III dealing with nullity and dissolution of marriages in Part IV, the provision that a dissolution of marriage should be possible on the mere ground that the respondent was impotent at the time of the marriage and at the time of the institution of the suit appears to be indeed calculated to have far-reaching effects which may be many times undesirable. Impotency is not at all known to be an incurable disease unless it may turn out to be chronic. Hence, due to temporary reasons, the respondent may happen to be impotent at the time of the marriage and also at the time of institution of a suit, which is possible to imagine as having been actually filed within a month or two after the marriage. It may be appreciated that in the succeeding section 30 in sub-clauses (a), (c) and (e) the suffering of the particular disability has been insisted upon for at least a period of seven years as a condition precedent before giving rise to any cause of action. If that be so, it cannot easily be appreciated why it should be said in section 29, sub-clause (1) that the presence of impotency will be enough to nullify the marriage if present at the time of the marriage and next at the time of the institution of the suit. In my suggestion this clause will have to be considerably modified so as to make impotency a valid ground for dissolution or for having the marriage declared null and void only if it be of a chronic and incurable nature. The necessary safeguard may be provided by inserting the provision for the requisite period.

9. Adverting thereafter to Part VI dealing with adoptions a number of salutary reforms have undoubtedly been correctly introduced with a view to bring uniformity. However, by referring to clause 6 in that part one cannot easily appreciate why the capacity to take in adoption

should be conferred on the male of the widow, who has completed respectively his or her fifteen years. It is true that under the present law when there was no age-limit prescribed, adoption by boys who were above 14½ years old have been recognized to be valid. But that appears to me to be no reason why while codifying, a higher limit should not usefully be prescribed with advantage. We can see that an adoption once made is incapable of being annulled (vide clause 24) and hence if a young man of immature understanding as he will necessarily be at the age of 15, will be influenced by those interested near about him to take another boy in adoption at that age, he may have ample leisure thereafter to repent his indiscreet action when there is every possibility that he may have sons born to him in the latter age! Now, it is a matter of common experience that several young widows of immature understanding are influenced and misled by interested persons to take a boy in adoption and thereafter the widows have to repent for their indiscreet action. When we find that even for a civil marriage if he or she has not attained the age of 21, they are required to obtain a consent of his or her guardian [vide sub-clause (4) of clause 7 in Chapter I of Part IV] and when the adoption can be undertaken without any such consent of any guardian, it appears desirable that in conformity with the age-limit contemplated for civil marriage the completion of age for an adopter for the adoption to be valid may be safely raised to 21 both for any male Hindu or any Hindu widow. At any rate, it may be raised to 18 years with advantage in conformity with the age-limit contemplated in clause 7 (3) of Chapter I of Part IV for the eligibility of the man for marriage. It is not easily possible to visualize any great or hard inconvenience that may ensue by the age-limit being thus raised. In clause 13, for the sake of clarification and to avoid any doubt, another clause may be added.

(vii) He must not be an illegitimate boy.

10. Finally, while dealing with the effects of adoption in clause 18 of this part the adopted son is placed on the same level as that of a son born in the family. But at the same time it is additionally provided that he will have the extra privilege that the property already vested in him before the adoption will continue to vest in him. According to law as it obtains at present, it is well-known that there is a difference laid down in the share to be inherited by the adopted son in case a natural son is afterwards born to the adoptive father. It is not known whether such a distinction which obtains at present is meant to be done away with. From the point of view of giving equality to the adopted son along with any naturally born son that may be born thereafter the provision contained in clause 18 appears to be alright. However, in view of the special privilege given to him that the property already vested in him will continue to be so vested in spite of his adoption in another family, the like of which cannot at all be the privilege of an afterwards born natural son, it may be usefully considered whether some distinction as obtaining at present should not be made in the share to be inherited by an adopted son, if a natural son be born thereafter to the adoptive father.

28. Mr. B. K. Dalvi, B.A., LL.B., District Judge, Dharwar.

The attempt to codify the Hindu Law is really a laudable one and tries to remedy a long-felt grievance of the progressive elements in the Hindu community. It cannot be denied that the attempt is aimed at introducing a uniform Code of the Hindu Law which will apply to all Hindus by blending the most progressive elements in the various schools of law which prevail in different parts of the country and will go a long way in the unification of the Hindu society. No doubt the Code, as it is now sought to be introduced, cannot escape the blame of piecemeal legislation, but it could not be helped as the powers of the Central Legislature to legislate on such topics are restricted in their scope. At any rate it is a great advance on the steps taken so far for the evolution of the Hindu Law. I am in favour of the various important changes that are sought to be introduced in the Hindu Law in matters of intestate and testamentary succession, marriage and divorce, minority and guardianship and adoption. I may, however, point out that the law of succession to stridhan could have been made simpler instead of introducing joint heirs as is done in clause 1 of section 14 (b) of the Code (Part II). Similarly I am of the opinion that it would have

the bringing up of a child as conferring on it the status of a Hindu is not covered by the definition of "Hindu", and the third objection is that in the case of an illegitimate child the child ought to take the religion of its father. Supposing the father is a Hindu and the mother a non-Hindu, according to the definition if a child is brought up as a non-Hindu it would be a non-Hindu but that is opposed to general principles as also to the popular sentiment and the child in such a case ought to take the religion of its father, or also the child would be lost to the Hindu fold. Conversely if the mother was a Hindu and the father a non-Hindu the child even if brought up as a Hindu would not be recognized as a Hindu and such recognition is opposed both to sentiment as also to the established notions. Therefore the element of the bringing up of a child should not be recognized as a determinative factor for the caste of the child.

3. Turning to Part II of the Code relating to intestate succession, the sister is assigned a very low place in the series of heirs and in my opinion she should retain her present rank in the order of succession amongst Sapindas in the Mitakshara succession. As it is she is placed in class 3 of heirs and is excluded by the son's and daughter's grandchildren which is opposed to the law as recognized by the Bombay school.

4. Turning to Part III-A of the Bill clause 2 thereof provides that the son shall not have a right over the property of the father merely by reason of birth and this appears to have been done with a view to bring it on a level with the property derived by the mother and sister. That may be so but this provision destroys the very idea of a joint family. If a joint family is to be recognized, and that has been recognized in the Bill, it will be inconsistent with the idea of a joint family to deny the right of the sons by birth in the father's property. Besides, to deny such a right to the son will be inequitable considering that the son still bears the pious obligation to pay his father's debts. It is therefore submitted that this provision ought to be omitted from the Bill.

5. With regard to clause 5 of Part III-A of the Bill it enumerates certain dependants and includes among them the widow, son, unmarried daughter and widowed daughter and at the same time the explanation in the margin says that as they take as heirs they will not figure as dependants. In my opinion this is likely to create a confusion and it is better to define the term "dependant".

6. The provision in clause 24 of Chapter I, Part IV, punishing bigamy should be welcome. Similarly the refusal to recognize the transfer of a minor's property by his *de facto* guardian as contained in clause 10 of Part V should be welcome as it is in the interest of the minor as also of the third party.

7. I have no comment to offer in respect of the other provisions of the Bill which in my opinion, are sound.

27. Mr. P. H. Gunjal, LL.B., District Judge, Kanara.

1. There can be no doubt that the new draft Code serves a very useful purpose, inasmuch as it will bring into force a uniform Code amongst all Hindus irrespective of the various schools which obtain at present in different parts of the country. I have myself realized what a considerable confusion has been caused in this district by its being held that this district, though at present located in the Bombay Presidency, is governed by the Madras School of Hindu Law, as it was once a part of the Madras Presidency. In such circumstances, uniformity of law throughout the whole country will be a great asset indeed. However, I think that some of the proposed changes are revolutionary in effect, especially the abolition of the right of survivorship and provision for monogamy and nullity and dissolution of marriages. These proposed changes are bound to evoke much adverse criticism by the orthodox Hindus. After carefully going through the draft Code and taking into consideration the views of the local Bar Association, I shall make a few observations regarding certain changes and modifications which suggest themselves to me.

2. Coming to Part II of intestate succession, the first revolutionary change appears to be in clause 5 wherein the heirs are enumerated and we have to see that the daughter is placed as a simultaneous heir along with the widow as well as the son. It is true that in clause (d) of clause 7 it is laid down that the daughters shall take only a half share. However, if a particular intestate may die leaving only one son and four daughters for instance, the

shares altogether taken by the four daughters will be considerable and will surely work a great hardship against the only son. Ordinarily, one should say that there is apparently no reason why sons and daughters should not be placed on the same level as they are offspring of the same parents. But it will be remembered that the daughters have also an opportunity of inheriting shares in their husbands' property as being the widow of their respective husbands, as widows are now given a share. From that point of view, daughters after their marriage will get an equal share along with their sons in the family of their marriage and stand to get another share in the estate of their father with their brothers. This position cannot ordinarily be enjoyed by the sons. From this point of view, it appears necessary that the total shares, to be taken by the daughters together, may be limited to something like a 'one-fourth' or so in the father's estate exactly like the provision made in clause (a) of section 7 where it is laid down that if the widows are more than one, all of them together will take one share.

3. Turning to clause 14 dealing with the order and mode of succession to stridhana, it is seen that in item (a) in sub-clause (b) the son and daughter are placed on the same level in the order of preference. That appears to be unobjectionable according to the general principles that have been given a full play in the new Code. However, when we come down to items (7) and (8) mother's heirs appear to have been given a higher place by being placed in item (7) and thus put above the father's heirs who are placed in item (8). The reason for this is not easy to be seen. If while referring to son and daughter as the first preferential heirs they are placed together as seen in item (1) there is no reason why the mother's heirs should be given a higher place than the father's heirs. The mother's heirs, as can be seen, were not stridhana heirs up to now except in the case of maiden's property. Father's heirs have all along been recognized as stridhana heirs by the commentators in the case of maiden's property and in the case of females married in an unapproved form. Even in the case of females married in the approved form judicial decisions have recognized that on failure of husband's heirs, father's heirs succeed in preference to the Crown. Hence, I may suggest that father's heirs may be given a higher place than the mother's heirs by inverting the order between items (7) and (8).

4. Coming then to Sub-Part II of maintenance in Part III-A, I suggest that in sub-clause (iii) in clause 5 there may be some restriction added that the widow would be entitled to maintenance provided she leads a chaste life. The clause as now inserted "so long as she remains a widow" would not be an adequately safe provision as it would amount to saying that a widow who ceases to be a widow by having remarried will forfeit her right to maintenance whereas the widow who apparently continues to remain a widow but may be leading an unchaste life, would not forfeit her right. This appears to be unreasonable and contrary to the principles as are observed and enforced at present.

5. Proceeding next to Part IV dealing with marriage and divorce a far-reaching reform appears to have been intended to be effected by strictly recognizing and adhering to the principle of monogamy. Both in sacramental marriages as well as in civil marriages the first essential condition insisted on is that neither party must have a spouse living at the time of the marriage. Monogamy may be very desirable and may also be a very noble principle. However, it cannot be doubted that it is altogether a new innovation to which Hindu society will take a long time before being accustomed. In the Code as now drafted no age-limit has been placed for either the husband or the wife beyond which they cannot marry. Thus, it means that a husband may after losing the first wife marry a second, may after losing the second marry a third, may after losing the third, marry a fourth irrespective of any limit of age, that is, even if he may have attained the age of 60 by then. But if a comparatively younger husband, after having a living wife, has found that he has no offspring by her or has no son by her, for whom Hindus have a peculiar sentiment, he cannot marry a second time even with the intention of having a son, if his first wife be living, and even in the chapter dealing with nullity and dissolution of marriages, no provision is seen whereby he can be enabled to have a dissolution of his first marriage on this count. This indirectly means that he will have necessarily to resort to take a son in adoption even when he may

have a lurking hope that he could have had a natural son of his own if he was enabled to marry at least a second wife. Driven to desperation on this compulsorily enforced reform, one cannot say that it is impossible to imagine that at least a few husbands, who may have a grievance against their first wife not having borne them any offspring or any son, may have the temptation to somehow bring about the end of their first wife by resorting to methods like slow poisoning when they find that her existence alone is a bar in their way of marrying a second time. Hence, it may be reasonably suggested that rather than introduce monogamy in this very strict form at the very commencement of this new Code, some indulgence may be allowed to marry at least a second time in case the first wife has borne no offspring or has not produced a son. This suggestion is by way of recognizing a widespread sentiment prevalent among Hindus to have a son whose birth is taken to be necessary for giving salvation to the parents. It will not be advisable to ask all such parents to resort to adoption as it is known by common experience that adoptions have not been very happy and successful.

6. Adverting to the sacramental marriage, I am of opinion that clauses 3, 4 and 5 as newly inserted are distinctly preferable to the alternative clauses 3, 4, 5 and 6 as previously drafted which are still shown as the alternative clauses and hence I would suggest that the previously drafted clauses 3, 4, 5 and 6 may be omitted and the newly drafted clauses 3, 4 and 5 may be retained. However if at all the formerly drafted clauses are to be kept up then I would suggest that sub-clause (c) of clause 3 may safely be omitted rather than keep it as is actually done in clause 6 below by referring to it as one of the conditions the non-observance of which will not invalidate a marriage. I believe it is now too late in the day to insist that the parties belonging to or having the same gotra or common pravara should not be eligible for marriage. That the drafters have realized this is apparent from the fact that it is laid down in the succeeding clause 6 that the non-observance of this condition will not invalidate the marriage as can be seen from sub-clause (b) of clause 6. Rather than do it this way, I would suggest that sub-clause (c) of clause 3 itself may safely be omitted. However, all this will not survive if as I have said the newly drafted clauses 3, 4 and 5 are retained and the old clauses 3, 4, 5 and 6, suggested as the alternatives, are deleted.

7. Further, I suggest that the suggestion made by me for a man being enabled to marry at least a second time in spite of having a first wife with no male child may also be inserted in the regulations regarding civil marriages.

8. Proceeding then to Chapter III dealing with nullity and dissolution of marriages in Part IV, the provision that a dissolution of marriage should be possible on the mere ground that the respondent was impotent at the time of the marriage and at the time of the institution of the suit appears to be indeed calculated to have far-reaching effects which may be many times undesirable. Impotency is not at all known to be an incurable disease unless it may turn out to be chronic. Hence, due to temporary reasons, the respondent may happen to be impotent at the time of the marriage and also at the time of institution of a suit, which is possible to imagine as having been actually filed within a month or two after the marriage. It may be appreciated that in the succeeding section 30 in sub-clauses (a), (c) and (e) the suffering of the particular disability has been insisted upon for at least a period of seven years as a condition precedent before giving rise to any cause of action. If that be so, it cannot easily be appreciated why it should be said in section 29, sub-clause (1) that the presence of impotency will be enough to nullify the marriage if present at the time of the marriage and next at the time of the institution of the suit. In my suggestion this clause will have to be considerably modified so as to make impotency a valid ground for dissolution or for having the marriage declared null and void only if it be of a chronic and incurable nature. The necessary safeguard may be provided by inserting the provision for the requisite period.

9. Adverting thereafter to Part VI dealing with adoptions a number of salutary reforms have undoubtedly been correctly introduced with a view to bring uniformity. However, by referring to clause 5 in that part one cannot easily appreciate why the capacity to take in adoption

should be conferred on the male of the widow, who has completed respectively his or her fifteen years. It is true that under the present law when there was no age-limit prescribed, adoption by boys who were above 14½ years old have been recognized to be valid. But that appears to me to be no reason why while codifying, a higher limit should not usefully be prescribed with advantage. We can see that an adoption once made is incapable of being annulled (vide clause 24) and hence if a young man of immature understanding as he will necessarily be at the age of 15½ will be influenced by those interested near about him to take another boy in adoption at that age, he may have ample leisure thereafter to repent his indiscreet action when there is every possibility that he may have sons born to him in the latter age. Now, it is a matter of common experience that several young widows of immature understanding are influenced and misled by interested persons to take a boy in adoption and thereafter the widows have to repent for their indiscreet action. When we find that even for a civil marriage if he or she has not attained the age of 21, they are required to obtain a consent of his or her guardian [vide sub-clause (4) of clause 7 in Chapter I of Part IV] and when the adoption can be undertaken without any such consent of any guardian, it appears desirable that in conformity with the age-limit contemplated for civil marriage the completion of age for an adopter for the adoption to be valid may be safely raised to 21 both for any male Hindu or any Hindu widow. At any rate, it may be raised to 18 years with advantage in conformity with the age-limit contemplated in clause 7 (3) of Chapter I of Part IV for the eligibility of the man for marriage. It is not easily possible to visualize any great or hard inconvenience that may ensue by the age-limit being thus raised. In clause 13, for the sake of clarification and to avoid any doubt, another clause may be added.

(vii) He must not be an illegitimate boy.

10. Finally, while dealing with the effects of adoption in clause 18 of this part the adopted son is placed on the same level as that of a son born in the family. But at the same time it is additionally provided that he will have the extra privilege that the property already vested in him before the adoption will continue to vest in him. According to law as it obtains at present, it is well-known that there is a difference laid down in the share to be inherited by the adopted son in case a natural son is afterwards born to the adoptive father. It is not known whether such a distinction which obtains at present is meant to be done away with. From the point of view of giving equality to the adopted son along with any naturally born son that may be born thereafter the provision contained in clause 18 appears to be alright. However, in view of the special privilege given to him that the property already vested in him will continue to be so vested in spite of his adoption in another family, the like of which cannot at all be the privilege of an afterwards born natural son, it may be usefully considered whether some distinction as obtaining at present should not be made in the share to be inherited by an adopted son, if a natural son be born thereafter to the adoptive father.

28. Mr. B. K. Dalvi, B.A., LL.B., District Judge, Dharwar

The attempt to codify the Hindu Law is really a laudable one and tries to remedy a long-felt grievance of the progressive elements in the Hindu community. It cannot be denied that the attempt is aimed at introducing a uniform Code of the Hindu Law which will apply to all Hindus by blending the most progressive elements in the various schools of law which prevail in different parts of the country and will go a long way in the unification of the Hindu society. No doubt the Code, as it is now sought to be introduced, cannot escape the blame of piecemeal legislation, but it could not be helped as the powers of the Central Legislature to legislate on such topics are restricted in their scope. At any rate it is a great advance on the steps taken so far for the evolution of the Hindu Law. I am in favour of the various important changes that are sought to be introduced in the Hindu Law in matters of intestate and testamentary succession; marriage and divorce; minority and guardianship and adoption. I may, however, point out that the law of succession to stridhan could have been made simpler instead of introducing joint heirs as is done in clause 1 of section 14 (b) of the Code (Part II). Similarly I am of the opinion that it would have

been better if the institution of "adoption" was abolished altogether. It has been the cause of ruin of many a Hindu family giving rise to innumerable, prolonged and costly litigation. If at all that institution is necessary, then its scope should be curtailed as far as possible. If a Hindu wants that there should be perpetuation of his line and that an adopted son is necessary for his spiritual benefit after his death, he should better adopt during his lifetime. If he wants that it should be done by his widow, then there should be a specific direction to that effect given to the widow in writing; otherwise the widow should have no right to adopt anyone to her husband. At present in most cases adoptions are made by widows in order to take revenge against the coparceners of their deceased husbands who invariably harass them or to benefit their own kith and kin and in making adoptions the widows are actuated only by material considerations and not by a desire to confer spiritual benefit on their deceased husbands. This has given rise to a number of litigations, and the law of adoption at present is a fruitful source of litigation resulting in the pecuniary ruin of the families concerned. With these general suggestions I proceed to point out certain provisions, which, in my opinion, require some alterations.

(1) In clause 3 (j) (Part I) in the definition of "stridhana" the words "before, at or after her marriage" after the words "by gift from a relative or stranger" should be deleted as they are unnecessary.

(2) In clause 12 (Part II) instead of the words "has passed by marriage into a family other than that of the intestate" it should only be provided "has married." The retention of the words objected to would unnecessarily lead to difficulties of interpretation.

(3) In Part IV in clause 3 under the heading "Sacramental marriage" the sub-clause (b) says "neither party must be a lunatic or an idiot at the time of the marriage."

I think this clause can very well be split up into two as follows:—

(i) Neither party must be a lunatic at the time of marriage.

(ii) Neither party must be an idiot.

Note.—An idiot is an idiot from birth. And hence the change is suggested.

(4) In the same part in section 26 under the heading "Duties of husband and wife" in clause (b) to the proviso it is said that a wife shall be entitled to live separately without forfeiting her claim to maintenance from him "if he keeps a concubine in the house." I do not quite follow why the right to live separate and claim maintenance should be made dependent on the fact that the husband keeps a concubine in the house. He can very well evade this provision by keeping a concubine outside. So the words "in the house" should, in my opinion, be deleted.

(5) Similarly in the same section in clause (f) it is provided that the wife can live separate and claim maintenance "for any other justifiable cause." I think this should be deleted altogether. The expression is very vague and it would be difficult to determine what a "justifiable cause" means in particular cases. This is likely to lead to unnecessary difficulties of interpretation and further estrangement of feelings between the parties.

(6) In Chapter III of the same part in section 29, sub-clause (4), it is provided as follows: "Where a marriage is annulled on the ground that a former husband or wife was living and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead . . . children begotten before the decree is made shall be specified in the decree and shall in all respects be deemed to be the legitimate children of their parents." I think in this sub-section the words "and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead" should be deleted. I do not quite follow why the legitimacy of the children of such a marriage should be made to depend on the parties contracting the marriage in good faith and with the full belief that the former husband or wife was dead.

(7) In Part VI the sub-clause (D) in section 8 should be deleted altogether. I do not understand why, if a widow is unwilling to adopt to her husband, she should be forced to do it by her junior co-widow.

29. Mr. V. B. Raju, I.C.S., District and Sessions Judge, Kaira.

1. The draft Hindu Code proposes to introduce radical changes in Hindu Law in regard primarily to the following matters:—

(a) Providing shares to daughters along with sons, (b) abolishing the principle of survivorship, (c) replacing limited estate of women by absolute estate, (d) introducing the rule of monogamy, (e) making provision for divorce under certain conditions and for inter-caste marriage.

2. I am generally in favour of the provisions relating to divorce and inter-caste marriages in the draft Hindu Code.

3. As regards the provisions giving shares to daughters along with sons in theory they appear to be more consistent with the ideal of equality of sex than the present law. But in practice unless the Hindu society is prepared for such a change the reform may end in a failure. There must be equality of sexes in the matter of education and ability to manage property, before there can be equality of sexes in the matter of inheritance. I do not suggest that giving to daughters a share in the inheritance is not a desirable object but what I suggest is that it is far more necessary to educate daughters generally and especially with regard to the management of property before giving them an absolute estate in the property to be inherited from their fathers. One has also to see that the family as a whole does not suffer by the new reforms. If daughters are to be given a share in the inheritance along with sons there should be a prohibition of dowries and perhaps there should be a provision for marriage expenses of daughters to come out of their share in the inheritance or for such expenses to be deducted from the daughter's share when the inheritance opens. Provisions may be introduced for prohibiting or registering dowries and for making the amount of dowries the absolute property of the brides without any power of alienation for ten years and for creating a trust in respect of dowries whether consisting of money or ornaments of immovable property. The bridegroom should execute a trust deed keeping the dowry in trust for his bride. The dowry should be inalienable for the first ten years except with the consent of the bridegroom, his parents and if both his parents be not alive of his brothers and of the bride and of her parents and if both of her parents be not alive of her nearest relative on the father's side. Penalties may be attached to the giving or acceptance of a dowry unaccompanied by a trust deed.

4. The framers of the Hindu Code appear to be under the impression that they have to frame a Hindu Code for all time to come. Otherwise they would not have introduced many revolutionary changes all at once. In the matter of reforming the Hindu Law which has been in existence for thousands of years wisdom should dictate that revolutionary changes should be made cautiously and perhaps one by one. If the whole Hindu society and not merely the educated higher class is not prepared for the whole gamut of revolutionary changes the final result would be far more undesirable. It is far better when introducing revolutionary changes to proceed cautiously.

5. So long as married daughters are under the control of their husbands the proposal to give a share to daughters will have no practical significance except to constitute a dowry after marriage. If the proposal is regarded as an experimental one and is qualified by making the inherited property unalienable or inalienable for a period of ten years after the inheritance or until the daughter attains the age of forty whichever is earlier except with the consent of relatives of both the wife and the husband and if at the same time workable legislation is introduced either prohibiting the system of dowries or for deducting the amount of dowry and the expenses of management from the daughter's share I would agree to the proposals to give a share to the daughter along with the sons with the above qualifications.

6. As regards the proposals to abolish *in toto* the principle of survivorship and of right by birth in property I suggest a compromise that the principle of survivorship be abolished, but not the principle of right by birth in property. The principle of right by birth in all property except self-acquired property should continue and is a great safeguard. It is a provision of the nature of security and insurance to future generations and brings closer together the ties between the present generation and the future generations. I am strongly against the provision in clause 2 of Part III-A.

7. As regards the proposed rule of monogamy, there can be no doubt that it is an ideal to be achieved. That ideal can be achieved by making divorce free and easy and also by recognising or conniving at concubinage. The ultra-moderns might even say that not monogamy but free love is their ideal. There is no point in prohibiting bigamy and yet recognising concubinage. If bigamy is to be prohibited so should concubinage. Concubinage does greater mischief than bigamy because it leads to illegitimate children while the latter does not. If bigamy is to be prohibited a man who cannot repress or control himself can easily convert himself to Islam in order to circumvent the proposed Hindu rule of monogamy. Legislators can achieve the ideal of monogamy no more than they can achieve the ideal of belief in one and only one God among all the Hindus. Those who believe in one God, those who believe in one particular God and those who believe in one different God are all under the fold of Hinduism. It is futile to aim at the ideal of simplicity or uniformity on such points. It is the fault or genius of Hinduism to give birth to many sects and cults. If the Legislators are going to impose the rule of monogamy on Hindus they cannot prevent a Hindu from changing his religion or founding a new cult or religion. After all bigamy and polygamy are not practised to such an extent among Hindus as to be an evil. I should think that the number of Hindus with more than one wife would not exceed one per cent. Even the Gods of the Hindu Mythology did not observe the rule of monogamy. Who knows whether after the War certain parts of the world where too many males have been killed will not introduce the rule of bigamy or polygamy as compulsory or at least discourage monogamy. For some years past birth control had been regarded as very desirable in the whole of Europe and I am sure that after the birth control will be discouraged in Europe except perhaps on medical grounds. Some Hindus, who have no children or who have no male children marry a second wife with the consent of the first wife and in some cases at the wishes of the first wife. I am strongly against introducing the rule of monogamy for the following reasons among other reasons:—

(a) Cases of bigamy in Hindu society are very rare.

(b) Although on paper Hindu society would appear a "civilised" society with the rule of monogamy in practice there would be more concubines and more illegitimate children, a result which is far more undesirable than bigamy. Civilisation is a relative and flexible concept. Naked children may be regarded as barbarous while Nude clubs may be regarded as civilised. Polygamy may be regarded as uncivilised while Free Love may be regarded as civilised.

(c) It is absurd to introduce the rule of monogamy and at the same time to recognise or connive at concubinage.

I think however, that some provision should be made for the better maintenance and treatment of the first wife or wives. If the first wife is not properly maintained by her husband she may be given the right to divorce her husband and to remarry, provided she has no children, under the age of twelve. The first wife may be given by Law a share in the property of the husband at the time of the latter's marrying a second wife which share is to be returned to the husband if she sues for and obtains a divorce. Human nature is so complex and varied that you cannot have strict and rigid rules relating to social behaviour. If there are any rigid rules the evil effects of such rigid rules have to be modified by other rules of a permissible nature. That is exactly why in the draft Hindu Code provision has to be made for divorce; which also demonstrates clearly that you cannot and must not have a single uniform rule in regard to social behaviour for all the varying conditions and circumstances of human life.

At present women's estate is limited. It is proposed to make women's estate absolute. I suggest as a compromise that women's estate should continue to be limited with the qualification that after ten years the limited estate should ripen into an absolute estate.

If this compromise proposal works well in practice then daughters can be given a share along with sons.

8. I may also make a few suggestions regarding the detailed provisions—

Part I, clause 2 (2).—I would suggest a change in the first three lines as follows:—

"Hindu" in this Code means a person professing the Hindu, Buddhist, Sikh, Jain or any religion other than Islam and Christianity, etc.

Many define Hindu as a person who is not a Muslim or Christian by religion. There is no reason why the definition in the draft Code should be more restricted.

Part II, clause 2 (1) (b).—In the definition of heritable property I would add the words "which" after the word "and" and before the word "passes."

Clause 4 (a).—I would add the words "in accordance with the provisions in sections 6 and 7," at the end.

Clause 4 (b).—I would add the words "in accordance with the provisions in sections 8 and 9" at the end.

Clause 4 (c).—I would make the same change as in clause 4 (b), sections 5 and 6. There is no need to have classification in view of the rule that those included in one entry shall be preferred to those included in any succeeding entry.

Clause 7 (b).—The proposed rule though simple is not justified by logic or justice. I would suggest that a divided son should take only a two-thirds share.

Clause 7 (d).—I would suggest that a married daughter should also take only a two-thirds share or half-share.

As regards the other provisions of the draft Hindu Code, I am generally in agreement with them.

9. The Hindu Law has been the subject of judicial comments for several decades and excepting some minor points the Hindu Law on the whole is fairly settled. No doubt there is need to reform the present Hindu Law in some or several respects. But if the codification of Hindu Law is taken up it may mean the reopening of the field for judicial conflict even on points which have been settled.

10. I am a great believer of simplification but not at the expense of logic or justice. In several provisions the framers of the Hindu Code have justified their proposals merely on the ground of simplicity and not on the grounds of logic or justice.

11. I strongly object to the introduction of too many revolutionary changes in the Hindu society. After all the draft Hindu Code will not be the last words on the subject of Hindu Law although no doubt the authors of the draft Code would wish it to be last words. I should certainly agree that in many respects it is the ideal to be achieved. But I strongly assert that it is impracticable and would be unwise to introduce many radical changes in Hindu society which is by nature very conservative and very reverent to the past.

12. I am in favour of the proposals regarding divorce and inter-caste marriages in the draft Hindu Code. I am in favour of making women's estate limited only for ten years. The question of giving a share to daughters and introducing the rule of monogamy may be postponed for at least one decade which is certainly not long in the History of Hindu society.

13. Although I am in favour of the principles of some of the reforms proposed in the draft Hindu Code, I am very strongly against the introduction of new legislation on the subject of Hindu Law until three years after the end of both the German War as well as the Japanese War.

30. Mr. S. R. Kaprokar, First-class Sub-Judge, Thana.

The idea of embodying Hindu Law in a Hindu Code is old. Dr. Gour and Dr. Mulla have attempted to formulate the provisions of Hindu Law in the form of Code. But they could only express the law as it was, without trying to amend or modify it, although it was obvious that amendments and modifications were necessary. The present attempt is made by a Committee which had the authority not only to consolidate but also to amend the law, so as to bring it in a line with progressive and enlightened public opinion.

There is room for difference of opinion on the question of the desirability of reducing any branch of law to the form of a rigid Code. But the modern tendency is towards codification where it is possible. There is at least one clear advantage from codification, viz., certainty as to what is the law. If there is any defect in the present administration of Hindu Law it is the element of uncertainty. This is illustrated in the present uncertainty in the law of adoption. Not only the "man in the street" but even learned experts, find it difficult to say what exactly is

the law on many aspects of the topic of "adoption". Codification will remedy this state of things. But the danger of codification is that it makes the law rigid and formal and incapable of elastic interpretation to meet a new set of circumstances not in contemplation before.

The Committee has recognised that piecemeal legislation on this subject should be avoided. But this aim is not achieved as the Central Legislature is not competent to legislate on some vital topics. The proposed Code deals with only those topics of Hindu Law on which alone the Central Legislature can legislate. The result is that "Agricultural land" which is the most important form of property in this country, is excluded from the operation of the Code. The code is silent on the topic of agricultural lands by including that subject in the "concurrent list". I do not think that there will be any serious difficulty in the way of effecting such an amendment at an early date.

The changes proposed by the Committee are very drastic. They may be grouped under the following head: (a) Disruption of the joint family, (b) improvement in the status of women by giving them a right to inheritance, and by abolishing "Widow's Estate", (c) reform of the law of marriage by enforcing monogamy, and recognising the principle of divorce, (d) simplifying the law of adoption. I will make a few remarks under each of these heads.

The proposals by which "interest by birth" and "survivorship" are abolished have the effect of causing the disruption of the institution of joint family. The proposals are, therefore, revolutionary from the point of view of orthodox Hindu opinion. It has been said that the institution of joint family has been the backbone of Hindu society and that it has enabled that society to continue to live in spite of successive waves of invasions by outsiders and continuous domination of the country by foreigners for long periods of time. I think there is some truth in that contention. But whatever may be the merits of the joint family in old times it is obvious that the institution of joint family has already broken down. It is quite unsuitable to the conception of modern times, and the needs of present day society. The institution of joint family, has encouraged male coparceners to remain idle, and inactive, as they get interest by birth, and a share in the coparcenary property, without any effort of their own. The coparcenary is also closed to female members of the family. Female members could acquire no right to, or interest in, the coparcenary property, except for claiming bare maintenance from it. Modern ideas cannot tolerate a coparcenary having these characteristics. No tears need be shed for the passing away of the institution of joint family.

According to the new proposals the share of every coparcener will pass to his heirs as if it was his separate property. The proposal relating to inheritance contain some new principles. It is provided that certain heirs of a deceased called "simultaneous heirs" will always get a share in the property of the deceased. Some have objected to this principle on the ground that it introduces Muhammadan conceptions in Hindu law. This provision is no doubt very similar to the corresponding provisions of Muhammadan law. But a good principle may be taken from any source. The real objection to the new scheme of inheritance proposed by the committee is, that it will not only encourage, but necessitate, excessive fragmentation of Hindu estates. In due course of time the scheme will apply to agricultural lands along with other property. Agricultural land in India has been already subjected to the process of excessive fragmentation. The problem now is how to consolidate holdings so as to make them economic units for purposes of cultivation. That problem will be further aggravated by the proposals in the new Code. The Committee has proposed in clause 12 that the provisions of the Partition Act of 1893 should apply when a partition is claimed by a married daughter inheriting a fractional share in her father's property. But these provisions are hardly adequate or sufficient to save Hindu estates from further fragmentation. I think, therefore, that provision should be made for the right of pre-emption as between co-sharers inheriting fractional shares in the property of the deceased. There should also be a limit to fragmentation by a partition. It may be provided that partition below a certain economic unit should not be allowed, and that the person entitled to a fractional share under these circumstances should be compensated in money.

The proposal to allow a widow always to get a share in husband's property, whether the husband was a member of a joint family, or had separated from the family, would be most welcome. It will bring relief to widows in Hindu society, which is long overdue. The abolition of what is called a "widow's estate" is also an overdue reform. Perhaps no other concept of Hindu law has caused greater distress to the Hindu widow, and greater litigation in courts of law, than the concept of "widow's estate". The concept is bad in principle, and has proved mischievous in practice. It is contended by some orthodox Hindus that if widows are given absolute powers over their property, they would soon fritter away that property, and many unscrupulous people would deceive them by taking advantage of their ignorance and inability. I think this fear is not substantial. Under Muhammadan law, and the Indian Succession Act, and the Parsi law, widows get absolute estates in the property inherited by them. It is not proved that the widows in these communities have been ruined on account of their absolute powers of disposal. The same would apply to the majority of Hindu widows who are governed by the same considerations and circumstances. It may further be argued that the conferring of absolute powers creates a sense of responsibility when absolute powers are conferred upon her. Orthodox opinion is sure to oppose the new proposals. But this reform must be carried out at all costs.

The proposals for the reform of the law of marriage are sound in principle. Monogamy is practically the rule in the present day Hindu society at least so far as the middle and the higher classes are concerned. That ideal must be made universal by law. It is contended that the enforcement of the principle of monogamy may cause hardship to the lower classes among whom the practice of marrying of many wives for economic reasons still prevails. But I do not think that the practice can be tolerated on such grounds. The proper ideal must be enforced among all the classes of the society. It will be for the eventual benefit of all of them.

In the original proposals as framed by the Rau Committee there was no provision for the introduction of the principle of divorce, although the principle of monogamy was introduced. I think the two ought to go together. Divorce is a necessary evil in all societies. All marriages cannot prove happy and it will be unjust and impracticable to enforce the continuance of the marriage tie in such cases. At the same time divorce must neither be encouraged nor be made easy. It is gratifying to note that divorce on limited grounds has been included in the present proposals. Six grounds have been enumerated in section 30 of the Code on which a party to marriage may claim, and obtain, divorce from the other spouse. In my opinion there is a glaring omission here. The omission is the ground of adultery. I think faithfulness to each other is of the essence of the marriage tie, whether the marriage is a sacramental one or is contracted by registration. I think adultery ought to be recognised as a ground for dissolving marriage.

The proposals regarding the reform of the law of adoption seems to me very adequate and quite sound. I would however suggest that the time-limit for an adoption, provided in clause 17, should be reduced from three years to one year, so that as little inconvenience as possible may be caused by the adoption, by divesting estates vested in others in the meanwhile.

The new proposals, taken as a whole, seem to me very sound and there is no doubt that they embody progressive and enlightened opinion on the subject. I think, however, it may be justly said that the proposals are in many respects far in advance of public opinion. More than 85 per cent of the population of India is still illiterate, and the people live mostly in small villages far removed from the centres of modern ideas. It will be difficult to say that the present proposals are demanded, or even suggested, by the majority of the people constituting rural India. But I do not think that this is a proper reason for solving these proposals. A society is led and guided by its enlightened leaders, and it is their duty to bring home to the ignorant and the backward population the necessity and the desirability of these proposals. The danger and futility of introducing legislation, far in advance of public opinion was recently illustrated by the operation of the provisions of the Sarada Act. Those provisions are being

honoured more in the breach than in the observance. The reason clearly is that proper ground was not prepared in the minds of the people for the appreciation of the proposals in that Act. I think, therefore, that there should be a reasonably long period for wide publicity of the provisions of the new Code, and for intensive propaganda for educating public opinion, before the new Code is brought into force.

31. Rao Bahadur G. V. Patwardhan, Retired Small Cause Court Judge, Poona.

PART I.

Section 5, clause (c).—The definition of half blood includes children of the same man by different wives. But cases of children born of the same woman from different husbands are sometimes found. Cannot the definition be made wider so as to include these latter? Such cases are now rare, but are likely to be more common owing to the growing number of widow remarriages in the present advanced state of society. I leave it to the Committee to consider if the suggestion is worth adopting.

Clause 7.—The Caste Disabilities Removal Act of 1850 should be repealed in so far as it applies to Hindus. A convert's descendants are rightly excluded from inheritance by clause 21 of Part II on the ground of a Privy Council decision that the said Act does not apply to them. The Act applies personally to the actual convert alone. If he is not excluded, why should his children be? This is a glaring anomaly and appears to me opposed to justice and reason. Before that Act, converts were excluded under Hindu law, and the same position should in my opinion be restored by repealing the Act in its application to Hindus. Hence the suggestion.

PART II.

Clauses, sub-clause (4).—This clause deprives a woman of her status as an agnate or cognate in her husband's family, so long recognized by existing Hindu law. A woman becomes a part of her husband's family by marriage. She is the better half of her husband. She becomes his sapind on marriage both according to Mitakshara and Dayabhag and also the trend of judicial decision. (*Vide* Mulla's Hindu Law, 9th Edition, page 30; section 39 and page 90, section 83.) I am of opinion that the existing law should not be disturbed. At least the number of female Sapindas commonly recognized by both schools should be maintained. Otherwise the removal from sapindship will be felt as a shock to ideas so long ingrained in the Hindu mind. Hence I suggest that the words "not" and "only" in the second line of that clause be dropped and the word "also" be put in place of "not" so that the line will read as follows: "and shall also by reason of her marriage be entitled, etc."

Clause 10.—This may be omitted altogether as the class of heirs herein described hardly exists now in the old sense of the words describing them such as Acharya, etc., and if they are interpreted in their modern and loose sense, their number may often be more than one and it will be difficult to fix and choose the particular heir.

Clause 11.—Similarly the class of persons herein mentioned hardly exists except the Ascetic or Yati and hence provision may only be made for the heir of that class alone by omitting the rest.

Clause 19.—The proviso to the clause contemplates a legal proceeding between husband and wife, in which her chastity is brought in issue. Such a proceeding can hardly be imagined to be any other than a suit for maintenance by the wife, the husband having refused it on the ground of her unchastity, or a suit by him for divorce on the same ground. I find, however, that there is no provision in the Code for refusing maintenance or for getting a divorce on the ground of unchastity. It will, therefore, be necessary to provide that a husband shall not be bound to maintain an unchaste wife and unchastity may be mentioned among the grounds for getting a divorce. Clause 30 makes provision for an extreme case of a wife being a concubine or prostitute. The Committee may think that mere unchastity should not be visited with the penalty of loss of maintenance or of liability to be divorced. An occasional lapse may be condoned. I would hence suggest that habitual unchastity may be made a ground for

separate maintenance and for getting a divorce. This may be done by amending sections 26 and 30 in a suitable manner.

I am also of opinion that a widow habitually unchaste subsequent to her husband's death should be divested of the property inherited by her from her husband. Such an addition should be made to clause 19. I am aware that present judicial decisions do not support my view. But I advocate the changes stated above in the cause and interest of the maintenance of a high standard of morality in society.

PART III-A.

Clause 11.—This abolishes right by birth in ancestral property. It is argued that the widow and the daughter being made simultaneous heirs with absolute rights, the son's rights are curtailed, and the simplest course will be to abolish the right and bring the law into unison with the Dayabhag. This right by birth, however, served a useful purpose. It operated as a check on a vicious spendthrift squandering the property by his vagaries and leaving the family destitute. We see many instances in which a father addicted to drinking, gambling, speculating and such other vices, wastes the property and his dependants such as sons, grandsons and widow are left in a miserable condition. To avoid this if right by birth is abolished, some provision may be made to restrain the father from an unchecked extravagance leading to the total annihilation of the ancestral property. I would therefore suggest that the dependants entitled to maintenance should have a right to sue for an injunction or such other proper remedies which would have the effect of restraining the holder of ancestral property from wasting it by incurring what are called Avyavaharik or immoral and illegal debts enumerated by Mulla in the 9th edition of his Hindu Law at page 368.

Clause 6, sub-clause (g).—In determining the amount of the maintenance it is stated that the income from a widow's own earnings or any other source should not be taken into consideration. I am, however, of opinion that this should be taken into account, as it will help to increase the allowance of other dependants if it were found to be otherwise meagre and inadequate. Moreover, if any chance for the worse occurs in the widow's earnings she can apply to the Court to have her allowance proportionately increased. I therefore suggest that the words "but not" should be substituted by the word "and".

Clause 8.—An exception should be made of immoral debts. They should have no priority. Hence the words "except immoral debts" should be added after the words "debts of description". Such debts are enumerated at page 368 of Mulla's Hindu Law, 9th edition.

PART IV—CHAPTER I.

Clauses 3, 4 and 5.—I do not prefer the alternative clauses in the bill as introduced in the Assembly.

Clause 3-A does not allow a bigamous marriage on the part of husband. I think it should be allowed under the same circumstances under which a wife would be allowed to have a decree for divorce or for separate maintenance and residence under sections 30 and 26 of the Code with the addition of two more circumstances, namely, (i) permanent incapacity for begetting children, and (ii) the highly incompatible temperaments of the married couple, making a happy conjugal life impossible. In such cases, the first wife is often found to consent to her husband marrying a second wife. In such cases the interest of the minor children of the first wife should be safeguarded.

Clause 9, sub-clause (3).—Add "Such notice shall be published by the Registrar in such manner as may be prescribed by rules made under section 25 so as to secure sufficient publicity."

Clause 12, sub-clause (3).—"A certificate of appeal so lodged should be produced by the appellant before the Registrar"—these words may be added at the end of the clause.

Clause 21.—The last two lines should be dropped and the following addition made at the end of the second line:—

"Such fees shall be deposited with the Registrar by the applicants along with the application." This would save trouble in recovering the fees later.

Clause 24.—Add a proviso thus:—“Provided that this section shall not apply to bigamous marriages allowed under clause 3, sub-clause (a) above.”

Clause 28.—The last three lines to be dropped and the sixth line to be amended so as to read as follows: “For the benefit of the wife and transfer it to her if she is already 18 years old, otherwise on completing her 18th year as the case may be, or if she dies without completing that age, to her stridhan heirs.”

The reason for dropping the last three lines is to dispense with the demand for transfer. Such a demand may not even be made at all through ignorance. The obligation to transfer should be on the transferee irrespective of any demand.

Clause 29, sub-clause (1) (v).—Add “This shall not apply where the bigamous marriage had been permissible under clause 3, sub-clause (a).”

Clause 30.—In the second line before the word “after” put “either before or” so that the provision should have a retrospective effect. Because the circumstances stated therein might as well apply to marriages celebrated before the Code and the practice may as well get the benefit of the provision.

In sub-clauses (a), (c) and (e) of this clause the period of 7 years should be reduced to 3 or at the most 5; because 7 is too long.

PART VI—ADOPTION.

Clause 6, sub-clause (3).—Add “Unless the widow so authorized dies without making an adoption or fails to make an adoption within 3 to 5 years from the date of her husband’s death without any justifiable cause, then the senior one among the remaining widows may make an adoption to the deceased husband.”

It seems to me that the husband had evidently a desire that a son should be adopted to him by his authorized widow. In case his desire is not carried out by that widow it would not be fair to infer that he absolutely prohibited the other widows from adopting. Hence I thought it proper to suggest the addition stated above. It is analogous to clause 8, sub-clause (d).

Clause 8, sub-clause (d).—The words “within a reasonable time” should be replaced by the words “within 3 to 5 years” to avoid indefiniteness giving rise to disputes, etc.

Clause 12.—Add a sub-clause after sub-clause (4) thus:—
“Sub-clause (5).—A remarried widow does not lose her right to give her former husband’s son in adoption unless expressly prohibited by him (vide conflicting decisions at Mullage, page 539, paragraph 476 (2)). The matter should be made indisputable by removing the doubt.”

Clause 11.—It would follow from this that sub-clause (a) of this clause should be deleted.

Clause 13.—The restrictions 3, 4 and 5 should not be made applicable where the person making the adoption is above 50 years old and wants to adopt with the object of perpetuating his family and securing some one who would take care of himself and manage his affairs.

32. The Bombay Incorporated Law Society.

The Committee of the Bombay Incorporated Law Society has gone through and considered the draft Hindu Code and beg to report as under.

We recommend that the draft Hindu Code with the following amendments or alterations or additions be accepted.

Part II deals with inheritance.—Clause 5 (1) deals with the “simultaneous heirs.” We suggest that instead of providing for a pre-deceased son’s son and to predeceased son’s son’s son, it should be provided that the heirs of predeceased son and predeceased son’s son should get the share which the predeceased son and predeceased son’s son would have got if they were living, such share to be distributed amongst the said heirs as if it were the property of the predeceased son and predeceased son’s son and was devolving on the heirs as on the intestacy.

By clause 12 of Part II, Partition Act, 1893, has been made applicable in respect of immovable property devolving upon a woman who before or after such devolution has passed by marriage into a family other than that of the intestate. We agree to the principle of the said clause but recommend that the same should be made applicable to all cases in which there are women

co-heirs and that the scheme of the Partition Act, specially the procedure relating to the right of a co-heir to get any share valued and to purchase the same at such valuation, etc., should be made applicable not only to immovable property but to all properties of the deceased by making suitable provision in that respect in the Act.

In clause 13 of Part II, dealing with stridhan, it should be made clear that the right of a husband to take the wife’s property (stridhan) in times of distress and sell it during her lifetime as at present in force under Hindu Law should be taken away.

Clause 14 of Part II deals with devolution of stridhan. We suggest that no distinction should be made regarding different types of stridhan but there should be only one rule of inheritance and that the husband, sons and daughters should all succeed equally to the estate of a female as simultaneous heirs and that the heirs of predeceased son or daughter should get the share which the predeceased son or daughter would have got if he or she were living, such share to be distributed amongst the said heirs as if it were the property of the predeceased son or daughter and was devolving on the heirs as on intestacy.

Part III-A, sub-part II deals with maintenance.—In clause 3, the expression “maintenance” has been defined as follows:—

“The expression “maintenance” includes provision for food, clothing and residence.”

We recommend that it should run as follows:—

“Provision for food, clothing, residence and education.”

Clause 5 deals with persons entitled to maintenance. We recommend that the widow, and the widow of a predeceased son, predeceased son’s son or predeceased son’s son’s son should not have any right of maintenance as dependants out of the estate of the deceased in case of intestate succession as they would be getting definite shares and are entitled to treat such shares as absolute owners under the Code. To provide otherwise as in the draft, giving such persons a right to maintenance, which would have to be determined by courts irrespective of the fact that they are to be allotted a definite share, would not only lead to unnecessary litigation but be unfair to the other heirs.

We also recommend that regarding provision for maintenance of a son, son of a predeceased son, or who is a minor, the age should be increased to 21 years instead of the age of minority and words “who is under the age of 21 years” should be substituted accordingly for the words “who is a minor,” we strongly recommend that the provision for a maintenance given to a concubine under clause 5 as a dependant should be deleted totally.

Regarding clause 9 of sub-part II of Part III, (a), we suggest certain alterations in view of the difficulty which has been found in practice due to amendment in section 39 of the Transfer of Property Act in the year 1930. As at present construed section 39 of the Transfer of Property Act leads to a difficulty in selling the property in view of the fact that notice of a person entitled to maintenance from the vendor of the property precludes the buyer from purchasing the property as he is not a transferee without notice of such right and in this connection, we would recommend that the language of the old section 39 of the Transfer of Property Act should be restored whereby the transfer would be had only if it was made with the view to defeat the right of maintenance, etc., and not otherwise.

Part IV deals with marriage and divorce.—In clause 3, regarding requisites of a sacramental marriage, we desire that it should be provided that instead of the provision under the draft, namely, “if the bride has not completed her 16 years, the consent of her guardian in marriage must have been obtained for marriage” should be substituted by providing that the bride must have completed her 16 years and the bridegroom must have completed his 18 years. We desire this to be specially put as experience has shown that the Child Marriage Restraint Act, which only restrains or penalizes but does not invalidate marriages, if marriages are performed which are prohibited by the Act, has remained practically a dead letter and the only solution therefore is to make marriages under a certain age invalid.

Clause 30 of Chapter III deals with decrees for dissolution of marriages and we desire that three important provisions, which have been omitted as grounds for dissolution should be provided, namely, firstly, "the husband has since the celebration of the marriage treated the petitioner with cruelty"; secondly, "has renounced the world"; and thirdly, "is unheard of for a period of seven years". We would also omit the present provision in sub-clause (f) and instead provide as follows:—
"and has been guilty of adultery, which is not condoned or connived at".

In sub-clause (c) of the said clause 30 regarding desertion for seven years, we would substitute in the same, the words "seven years" by "three years."

We suggest that due provision should be made for alimony, which alimony is to cease on remarriage on the lines of the Indian Divorce Act.

Part V deals with minority and guardianship.—Clause 4 thereof as it stands takes away the right at present, namely, the inherent jurisdiction of the High Courts to appoint guardians of the undivided interests of minors. See 32 Bombay in *re. Manilal* and subsequent cases. We suggest an addition to the following effect:—

"Provided nevertheless the right of the chartered High Courts to the exercise of their inherent jurisdiction regarding appointment of guardian of the undivided interest of the minors as hitherto shall not be affected."

Part VI deals with adoption.—We recommend that regarding the rights of giving in adoption, clause 12 giving the primary right to the father and mother, thereafter, should be substituted by providing that the right of giving in adoption will be rights of father and mother, exercisable, jointly during the lifetime of the father and the mother and thereafter by the survivor of them.

Lastly, regarding the procedure of registration of adoption, namely, of proceeding through the court as provided in Chapter II of the said Part VI, we recommend that instead of making an application to the District Court, the present procedure of adoption being registered before the Registrar of Documents should be adopted and the Registrar of Documents should be made a Registrar of Adoption with whom the document could be registered and the parties must not be forced to go to the court unless there is a dispute.

33. Mr. R. N. Pusalkar, B.A., LL.B., Pleader, and Professor of Law, Kolhapur.

The sponsors of the draft Hindu Code have received many benedictory messages from important luminaries in the political, social and legal world. A successful lawyer can express himself boldly in favour of Urdu as against Hindi. His social position is there to support him, but the very fact that a man devoting himself entirely to one important line should try to influence knowingly certain vital questions over which keen difference of opinion exists, is bound to be criticised. In the same way our benedictors—whoever they may be without exception when they hasten to bless a scheme with due deference to their heights, are bound to say they have prejudiced the issue.

If one were to ask a question whether our existing Hindu Law requires a change or not, any one will say yes. The consent so expressed is not to be construed in such a way as to supplant a fantastic law under the name and guise of a Hindu Code. It is respectfully suggested that the framers of the Code have proposed a measure which fails to satisfy the average standard of the average basic principles of the Hindu Law.

The iconoclast of history exists at different periods under different guises. Our present day iconoclast—the legislator—is one of many. Our Hindu Law has since 1850 suffered piecemeal at the hands of this iconoclast—the legislator. Originally when the East India Company conquered territory and assumed governance here, they showed great concern for the right interpretation of the Hindu Law. But things began to change with the assumption of the Government of India by the Queen Empress. Even when the proclamation of 1858 gave assurance of non-interference in religious and social matters, things have been allowed to develop in a way which negates the assurances given under the proclamation and Hindu society in particular is suffering direct and indirect humiliations at the hands of the social reformer

and the legislator. The present Hindu Code is the culminating point by which in case it becomes a law our Hindu society will definitely die a juristic death.

Other causes are already working for the disintegration of our Hindu society. The impact of ideas from other European countries is unleashing amongst us ideas which time alone will say whether they were good. The growth of communications and mutual contact with the outside world is bringing about a change in our individual psychology. The tussle is going on among ourselves as to which idea is the better one for our immediate existence. However, we will leave all such considerations for the present, and restrict ourselves to the examination of the provisions and suggestions of the proposed Hindu Code.

At the outset, it is to be noted that the Hindu Code proposes to abolish the Hindu joint family which is known as the coparcenary. Coparcenary is the backbone of the Hindu system of social life. It is described by J. D. Mayne in his Hindu Law as a "Republic" (page 224, 4th edition, 1888). The Hindu joint family is one of those wonderful institutions of the world whereby the family life of every member is and has been regulated. The modern trend of social aspirations in so far as individual position in society and his relation to the property under his control is concerned, is based upon principles of collectivism. Nothing for the individual, but everything to the individual and to the society of which the individual is only a part. What does Hindu joint family give us? Taking by birth and divesting by death is the highest ideal of a society of which every Hindu must be proud to belong. Every male member in the joint family group is equal owner and immediately after the death of such member his interest ceases as if he were not born at all, and passes by right by survivorship to others. The head of the family is not a trustee but something more than a trustee. His authority is very wide. Any member of the joint family group can break the joint family if only he expresses his wish to separate. Even separated brothers can reunite and again form a joint family.

If one were to ask why is it that we should lay so much stress upon the continuance of the joint family, our reply will be that because it is a backbone of the Hindu society and it is because of this joint family that Hindu society has sustained throughout. The advantages which the joint Hindu family has given to the members of the family are more than the disadvantages which the present school of thought seems to imagine. The present century has witnessed the growth of socialistic and communistic societies. The most ideal form of the socialistic society is considered as one wherein no individual possesses any personal property while all the wealth in the State belongs to the organized society with the Government at its head and that each is to take as much according to his individual need and individual merit. Judging from this standard, it may be asked whether one does not see all these social ideas actually existing in the formation of our joint family. Taking by birth and divesting by death is the highest form of acquisition and the highest act of divesting oneself of his interest in the wealth of the family. The society was organized on family basis. Family was the unit in the society. There was no individual ownership in any member born in a joint Hindu family.

Another criticism levelled against the Hindu joint family is from another view point. The antagonist of the Hindu joint family argues that the Hindu joint family has not made sufficient and liberal and adequate provision for the females. When the male members in the family themselves had their interest so limited in the joint family that they could enjoy the property along with others so if the females were treated with equal disadvantages, no one need complain. The growth of individualistic life since the advent of the British rule is wearing away a larger section of the members of the Hindu society towards breaking up of the joint family and living a separate life. The Hindu joint family has never interfered with the right of an adult male member to claim separation as against the other members of his family. However, the legal incidence of the joint family deserves to be maintained. On experience one will find that the life in the village is more suited to the joint Hindu family than a separate and an independent life. The advantage which the joint Hindu family enjoys in rural areas are

obvious. There is that compact body of the members of the family who all enjoy the property in common and thereby live a more easy life. These advantages will not be possible if officially this joint family were abolished as proposed by the draft Hindu Code. On the death of every Hindu householder the property of the family will necessarily be partitioned in shares, which will lead to weakening the strength of the family and occasionally unnecessary family disputes.

The well-known verse of Yajñawalkya wherein the blind, the deaf, the mute and the disabled are provided a shelter under the common roof of the joint Hindu family need not be repeated. The modern aspirations of the highly developed social life is to provide sanatorium and houses for all such members in a society who suffer from such disabilities either of nature or of accident. Our Hindu society has made such provision in our family life and from time immemorial such disqualified persons have received their due attention from the family and the State to take care of them. From this view point also the joint Hindu family will be found to be an indication which is very great and useful as well.

The whole of the proposed Hindu Code, so far as the part relating to succession is concerned, seems to have received its inspiration from the Muhammadan law. The succession as proposed is clearly of the type which is found under the Muhammadan law. Under the Muhammadan law there are, according to the Sunni system of inheritance, the sharers, the residuaries and the distant kindred. According to the Shia law, the order is somewhat different which is (1) parents, children and other lineal descendants, (2) grand parents how high so ever and brothers and sisters and their descendants and (3) paternal and maternal uncle and sons of the deceased and of his parents and grand parents how high so ever and their descendants how low so ever. So looking to the section 5 of the proposed Hindu Code we find that class I is described as heirs in the compact series who are the widow, the son, daughter and son of the predeceased son and son of the predeceased son's son and the daughter's son, the parents and brother and daughter's son. What difference is there between the Muhammadan order of succession and the order of succession as proposed for the Hindus? If one were to say in a lighter vein that this is introducing the Pakistan in our Hindu institutions, we think the criticism will not be without its due significance. Same is the case in respect of the other class of heirs as proposed in the Bill. There are descendants of the deceased, the descendants of the father, father's mother, father's father and his descendants, father's father's mother, father's father's father and his descendants and mother's mother, mother's father and his descendants. In passing, reference is made to the propinquity of the heir in the light of religious benefit which such heir will give to the deceased. But our question will be: Where does religion come in so far as the present Bill and its proposals are concerned? The succession as proposed is entirely devoid of any religious or spiritual consideration. It is mentioned in clause 5, class 1, that the compact heirs are the wife and others. While, according to the Hindu Law which is being administered for the last century or more and even before that time the compact series of heirs to a separate deceased Hindu is wife, daughter, parents, brothers and others in the event of the deceased not leaving any male lineal descendant such as son, son's son and son's son's son. The idea underlying this mode of succession is obviously in the light of spiritual propinquity which these lineal descendants conferred as against other heirs. So from this view point, the order of succession as proposed is grossly irregular and imitative of another institution whose avowed aim of life is organized on an entirely different basis. The Koran and the works of authority which the Muhammadan jurists respect with unquestioned authority is the source of their law. That society has got to be congratulated when they will, with all the force at their command, insist upon their institutions being maintained without any change even that of a word or a syllable; when we are thinking of a society which is as ancient as the vedas and which has survived the ages and different calamities, one is to be more critical and even uncompromising when the legislator even with all the best of his motives, were to suggest the virtual abolition of our ancient heritage.

We will now examine in brief the salient points of comparison between the proposed Hindu Code and Muhammadan Law.

According to proposed Hindu Code.	According to Muhammadan Law.
I. Compact series, heirs . . . Other descendants of the deceased. Other descendants of the father. Other descendants of father, mother and others.	I. (1) Shares residuaries, etc., according to Sunnis. (2) Parents and children, etc., according to Shias.
II. Members of the first class will exclude the heirs of other class.	II. The nearer in line excludes the more remote.
III. Wife, son and daughter take necessary share.	III. Wife, parents, son and daughter take share.
IV. Wife, one or more than one, one share, son one share, and daughter half the share of the son.	IV. Wife, $\frac{1}{3}$ when child, when no child $\frac{1}{3}$, daughter $\frac{1}{3}$, when no son $\frac{2}{3}$. Son—Residuary.

From the foregoing, it will be clear how the proposed Hindu Code draws its inspiration from the order of succession under the Muhammadan Law. There is absolutely no justification why the present order of succession, as already exists, be changed with the growth of public opinion and as necessitated by circumstances the Law Courts have interpreted the existing Hindu Law, the basis of Hindu Law is Shriti, Smriti and Sadachar (approved conduct). This idea is clearly abandoned by the sponsors of the Hindu Code.

In addition to the similarity which the proposed Hindu Code bears to succession under the Muhammadan Law, the Code draws upon the provisions of the Indian Succession Act. Barring certain exceptions, the Indian Succession Act is not made applicable to Hindus, Jains, Buddhists and Sikhs. But the recommendations suggested in the Hindu Code, if passed into a law, will necessitate an immediate amendment in the Indian Succession Act, which also will mean official disappearance of the Hindu Law.

The stridhan is another subject which the Hindu Code wants to enlarge. Under the provisions of the Hindu Women's Rights to Property Act (XVIII of 1937) succession to the husband's share in a joint Hindu family is regulated and the right of the widow to effect partition as against the other members of the husband's joint family is recognized. The stridhan which has been recognized so far by law and usage has not been materially interfered with. In the proposed Hindu Code stridhan is defined as property of woman, however acquired, whether by inheritance, or devise or at partition, in lieu of maintenance or arrears or maintenance and so on. This proposal is directly opposed to the principles of the Hindu Law as derived from the original sources. No one will feel inclined to be uncharitable to our mothers and sisters and daughters when their individual estate is proposed to be enlarged under the Hindu Code. So long the form of the family is to remain as it is, i.e., following the father's descent, it is not inconsistent that properties inherited from males related by marriage be not interfered with as stridhan. Act XVIII of 1937 is a very salutary provision so far as the estate of a woman after the death of her husband is concerned. Is it to be inferred that by the proposed change the position of woman under Hindu Law will be improved. More than seven-eighths of the population of India lives in villages where ignorance is still ruling high. To add to this the proselytization of the Muslim faith and the Christian faith is getting keener. The political horizon is full of foreboding dark clouds of civil and internecine conflict between Hindu and Muslim sections of the people. The wave of communism is showing more velocity in its approach to our every-day life and is becoming more and more manifest among the youth of the country. Bonds of religion are seen being tightened among one section of the people while another section is actually flying away from the same and allowing the opponent to encroach and annihilate the very social existence of such class. Is it not a cause of grave fear and also an act of highest indiscretion on the part of our legislators, be they most highly placed in society, or be they imbued with a frenzy of highest reform, or be they any high persons, that they should shut their eyes to so many dangers and dangerous situations and try to

sponsor a measure which kills the very goose of her species even if she may believe her egg to be golden. So the whole subject of stridhan will have to be discarded as it will not improve the position of our women.

Under maintenance head some provisions are suggested. Our contention is that because of the existence of the co-parcenary many members of the family are maintained as a matter of course. Very few occasions arise where parents, unmarried daughters and widows of sons and the like ones are not maintained. If the law will be stiff, then every one agrees to be ruled by it. We allow corporate bodies like companies to rule us even though one may dislike the rules. Why then the law-giver should not take his firm stand on the rock of joint family? Why should he disrupt it? The present position of law is not at all very bad.

After maintenance come provisions relating to marriage and divorce; and lastly come the provisions relating to adoption. The proposals are worth being examined by themselves and they may be a separate subject of independent legislation.

To state in brief the proposed Hindu Code is definitely a bad legislation in so far as it tries to annihilate the Hindu society and Hindu culture. The Muslim Personal Law Validating Act (XXVI of 1937) known as the Shariat Act will and should serve as a guide and an eye-opener to our benevolent legislators. The Muhammadan Law was administered in accordance with the rules of equity, justice and good conscience. They found this trio of equity, justice and good conscience as belonging to a cult of the foreigner who had really no insight into the spirit of Islam. They, therefore, agitated and got a special law passed by which almost all matters relating to Muhammadans in India will be dealt with and decided according to the rules of the Shariat. And this Shariat Act is starting point for the Muhammadans to strengthen their social life and administration through law Courts strictly in accordance with their books, while this proposed Hindu Code is going to work out a process in antithesis, which will eventually result in its extermination and extinction.

This must be avoided, is our open challenge.

**34. Mr. K. B. Gajendragadkar, B.A., (Hons.), LL.B.,
Pleader, Satara City.**

I feel proud to see that most of my recommendations on the two Bills of Intestate Succession and Marriage are accepted by the Committee and are embodied in the present draft Hindu Code. I now venture to offer my suggestions on the Code.

1. The Code is divided into six parts and each part is again subdivided. There does not seem to be a uniform arrangement. For instance only in Part IV sub-parts are styled chapters, while sub-parts of other parts are not separately shown. It is humbly submitted that there should be a uniform systematic arrangement.

2. In clause 2 (1) (c) of Part II the word son is defined and it is stated that it does not include dasiputra. This seems unjust. It cannot be said with reason that dasiputras are to blame in any way. It is really their fathers and mothers who sin, if at all. It seems unjust that the children who are brought into the world without any fault of theirs and without volition on their part should be penalised; besides by this definition in the case of Shudras also the dasiputra would not get a share. The committee, therefore, should provide that as in the case of Shudras a dasiputra should take a share in the case of higher class also.

3. Clause 2 (3) (a) provides that a Hindu domicile will be determined in accordance with the rules contained in sections 6 to 18 of the Indian Succession Act of 1925. It is no doubt true that the provisions to be found in these sections are well thought out and well framed. These provisions will have to be actually incorporated in the Act with the suitable adaptation to the circumstances of the Hindu society, if necessary.

4. The most important change made in the list of heirs is that the daughter is made a simultaneous heir along with the son and the widow. This appears to be quite in consonance with the natural affection and reason and can be supported on the grounds of equity and justice also. But the question is whether the committee is right when it proceeds to allot a share equal to one half of a son's share to a daughter. Vijnaneshwar himself allots a one-fourth share to a daughter and it is not quite

known with what justification and on what grounds the committee thinks it proper and expedient to increase the share. It is, therefore, submitted that the share of the daughter should be one-fourth.

5. Coming to provisions in respect of stridhan it would appear that the committee have framed the enumerative definition on the lines of the Mitakshara definition of stridhan. It is not clear why the committee found it necessary to do so. Under the provisions of the Code, full ownership has been conferred on woman and so it is sufficient to say that there is no distinction between woman's ownership and man's ownership and their rights in respect of all kinds of property are the same. It is aimed at in the Code that there should be no distinction due to sex. It is also objectionable that the committee should have found it necessary to devise one set of heirs for man's inheritance and another for the inheritance of woman. The committee is making a further distinction between property inherited by woman from her husband and that inherited by her or received by her in other ways and the committee is prescribing two different sets of heirs for those two different kinds of stridhan. This is cumbersome and unjustifiable as there would be two sets of heirs to the property of one deceased woman. When woman becomes man's equal there ceases to be any necessity for any distinction as regards heirs. In fairness, there should be in fact prescribed only one set of heirs in the case of both man as well as woman.

5-A. With respect to the provisions of section 18 it is common ground that Hindu husbands even if aware of the unchastity of their wives seldom have recourse to a criminal prosecution for adultery. The proviso need not be there as it appears not compatible with the actual state of Hindu Society. It is true that there have been proceedings in which wanton defences on the ground of unchastity to the widow's claim to property have been made to defeat her but instances in which such claims have succeeded have been few and far between. Courts have been vigilant as to the poor widow's rights and nothing short of very cogent and strong proof has satisfied them in order to arrive at a finding of unchastity. This clause appears to be, therefore, unnecessary.

6. Clause 21 disqualifies the children born to a Hindu who has ceased to be one by conversion to another religion from inheriting the property of any of their Hindu relations. It is praiseworthy in so far as it goes. But the Act must disqualify the Hindu himself who has ceased to be a Hindu by conversion to another religion from inheriting the property of any of his Hindu relatives. Specific provision must be made to that effect in this Code itself and section 2 of the Caste Disabilities Removal Act, 1850, which provides that no person shall be deprived of his rights of inheritance by reason of his renouncing his religion must be repealed. This concession has worked considerable havoc on Hindu society for a very long time and has put a premium on conversion. The repeal of this privilege is long overdue and will certainly put a check on the process of conversion.

7. In Part III dealing with testamentary succession it is vaguely stated that Hindus shall be governed by such provisions of the Indian Succession Act, 1925, and other enactments as may, for the time being, be applicable to them. The definite provisions of the Indian Succession Act and the other enactments contemplated must be clearly specified. It is further submitted that some sort of restrictions must also be put on testamentary powers of the person as is done under the Muhammadan Law. Otherwise the man will sometimes will away his entire property, both ancestral and self-acquired, and then his heirs would not get anything as they are entitled to a share only when a man dies intestate.

8. Sub-part II of Part III (a) deals with maintenance and Part V deals with minority and guardianship. The provisions embodied therein are all not controversial, salutary and embody almost the existing laws. It is confidently hoped that no objection can be taken to any of the provisions of these parts. A slight suggestion is however offered to see whether when the maintenance is allowed to illegitimate daughter some provision can be made for her marriage expenses also.

9. Part IV deals with marriage and divorce. It is not known how the committee say that the criticism that sub-clauses (b) and (c) of clause 4 are not consistent with sub-clauses (a) and (b) of clause 7 and that the two sets of

clauses destroy each other may not be entirely just. The criticism is perfectly just and proper. Besides sub-clause (b) of clause 4 comes into conflict with clause 17 of Part VI. This clause provides that the descendants of a valid marriage outside the caste shall be treated as descendants of a valid marriage; thereby indirectly validating the inter-caste marriages. There is, therefore, no necessity to try to keep the original clauses 4 to 7 in place of the new clauses 3 to 5. The new clauses should, therefore, be retained.

10. In sub-clause (d) of clause 3, it is stated that the parties must not be Sapindas of each other unless the custom or usage governing each of them permits the sacramental marriage between the two. This saving clause must be deleted. Custom or usage, however ancient, which is positively against the enactments must not now be recognised. No custom which violates any of the rules of this Code should be considered valid.

11. Clause 3 (a) strictly prohibits all polygamous marriages. This appears rather harsh. Some exceptions must be allowed. Polygamy should only be allowed if the wife is hopelessly barren or incapable of performing marital duties or on such other strong grounds.

12. Clause 6 prescribes that sacramental marriages may also be registered. This reform is in the interests of both male and female. Whenever an event creates any right or obligation it is always desirable to have an authentic record of such an event. No event is so important as a marriage so far as legal rights, status or obligation are concerned. It is an anomaly that there is usually no record of a Hindu marriage. It is not customary among Hindus to have any documentary evidence of marriages and if any question about the fact of marriage arises it often depends upon oral evidence available at the time. The registration of marriages, though optional at present, is a reform in the right direction.

13. Clauses 7 to 22 of this chapter deal with civil marriage and substantially reproduce the existing provisions of the Special Marriage Act. It is not properly conceivable why the committee is anxious to have the provisions of the civil marriage in the Hindu Code on the lines of the provisions of the Special Marriage Act when the person, if he chooses, can, of course, marry under the Special Marriage Act. In fact there should be no necessity to take resort to this form of marriage. All advantages, such as the inheritance to the widow and the daughter, the principle of monogamy and divorce, etc., are made now available to couples marrying under the sacramental form. The Hindu marriage is considered as a sacrament and not a contract. If a person marrying under the sacramental form gets all the advantages which he would have got under the contractual system of civil marriage there would be no necessity, indeed, to preserve this contractual system of civil marriage at all in Hindu Code. There should be one uniform system of sacramental marriage. These provisions should be deleted.

14. Chapter II of this part deals with duties of husband and wife. In this connexion, it is submitted that if the theory of joint ownership enunciated by Jaimini is to be recognized, then she must have some right to the property of her husband even in his lifetime. Some provision must be made in the Code itself on these lines to see that the husband does not waste away all his property.

15. It is good that in clause 27 it is laid down that if parties marry in the civil form of this Code as Hindus, succession to the property must be governed by ordinary Hindu Law. It is further laid down that even if Hindus marry under the Special Marriage Act succession must be governed by the Hindu Law. This is not proper and just when the persons who are Hindus with their eyes open, marry under the Special Marriage Act, even where there is similar civil form in the Hindu Code it is presumed that they do want to take advantage of the special provision of that enactment. Provision of succession under the Special Marriage Act should not therefore be repealed by this Code.

16. A laudable attempt is made in clause 28 to check the dowry evil. It is not however known how far it will be practicable.

17. Chapter III deals with nullity and dissolution of marriages. Dissolution is allowed to the minimum extent. Besides these provisions are purely permissible. The grounds will have to be increased. For instance,

the following two additional grounds should be inserted in clause 31 :—

(i) Renunciation of the world by the husband.

(ii) Cruelty on the part of the husband endangering the life of the wife.

18. Part VI deals with adoption. It is well drafted and most competently dealt with. By this enactment the litigation regarding adoptions by Hindu widows will wholly vanish. In view of the divergent and contradictory rulings of the Privy Council and the High Courts such kind of legislation on the subject of adoption was really long overdue.

19. Clause 15 lays down that the widow's power to adopt terminates when any son of a husband dies leaving a son or a widow, and once terminated the power would never revive. This would perhaps cause hardship. Suppose a man dies leaving a widow, a son and a son's wife. A son and his wife die in the lifetime of the widow, then by this provision she cannot adopt. If the son's wife had been living she would be competent to continue the line. It must be said, therefore, that the widow's power terminates so long as there is son or his wife living. Some such provision must be made in this clause.

20. It is not known why exception should be made in the case of adoption in the same gotra. No grounds are at all given in the Code for this exception. Really there should be no exception and a boy whose upanayan has been performed should not be adopted at all.

21. It is a matter for serious consideration also whether the adoption of an orphan should be allowed. Sometimes a man would like to have an intelligent orphan as his son. So the institution should be brought into existence.

22. In clause 19, rules regarding divesting of estate by adoption are given. An adopted son takes the place of a natural born son. No distinction is made between the two. In fact, clause (2) (a) of Part II says that "son" includes a Dattaka son. There is no necessity of giving rules of divesting of estate by adoption.

These are my observations on the important provisions of the Code which are humbly and respectfully offered for the consideration of the Committee. In the end, it must be said that this Code is, generally speaking, a blend of the finest elements in the various schools of Hindu Law and quite simple in language. It should command the approval of all.

II

ADDENDA TO THE ABOVE OBSERVATIONS.

1. The word "minor" occurring in clause 5 (viii) of Part III-A under the head "II. Maintenance" has not been defined. The definition of the word "minor" given in Part V might be incorporated under "Maintenance" also.

2. The law relating to adoption in those cases where the following persons are living is not explicit :—

(1) An adopted son of a predeceased son, (2) a disqualified son, (3) a congenitally blind son, (4) a son who has become convert to another religion. Will these persons constitute a bar to adoption?

3. The question whether a widowed mother who has remarried can give away her son (from the former husband) in adoption must be also made clear. The question of the distribution of property between the adopted son and an after-born natural son must also be considered.

4. It appears that the wife is to be regarded as cognate of the father even after marriage. This is against Hindu sentiment and principle. In the definition of the word "cognate" the words "or by marriage" must be inserted at the end.

5. In giving and taking the son in adoption the rights of the wife are wholly ignored. It is a great hardship upon the women, especially when the Code aims at equality of rights amongst the two sects. This kind of distinction cannot be tolerated. Suitable alteration must be made in these provisions. [See clauses 12 (2) and 22 of Part VI.]

35. Mr. P. D. Patwari, LL.B., Advocate (A.S.), Khadia, Ahmedabad.

SUGGESTIONS.

1. *Exclusion of son's and grandson's widow.*—By the Hindu Women's Rights to Property Act of 1937, the widowed daughter-in-law and the widowed grand-daughter-in-law were entitled if they had no son to the

shares of their respective husbands. Their exclusion from the succession and mere arrangement for the maintenance and residence of the widowed daughters-in-law is unjust. Much has been said and written on the miserable condition of a Hindu widow and little has been done to remove it. There is no outrage, insult or labour from which she has not silently suffered. This centuries-old evil which has caught hold of the Hindu Society is not less disgraceful than that of untouchability and should not be neglected lightly. In this connection, widow should have, if she has no son, her husband's share and if she has a son she should get a share equal to that of a daughter. Unlike a daughter she has no chance of protecting roofs of a rich or healthy earning husband or to receive any property from him or his family. If the deceased is rich her share will not affect heavily on other heirs; if he is poor, no question of succession or maintenance arises.

In case of middle class she should be treated among sons and daughters as one more daughter in the family.

2. *Difference in age between husband and wife.*—Another pitiable condition of a Hindu widow is that although she was given a right of remarriage more than eighty years ago by the Act of 1856, she cannot marry. Even when her parents are ready no one comes forward to accept her; for, the rich man can easily procure a delicate maiden while a poor one craving for a wife dare not against the current of public opinion. Society is dominated by a custom just like an individual chained by a habit. In both cases some help from an exterior source is needed to free the self or society from such tie. This help can be secured by inserting a clause in the Hindu Code to the effect that difference between a husband and wife should not exceed fourteen years at the time of marriage whether the marriage takes place under the Special Marriage Act (popularly known as civil marriage). It is not an exception but an accident when a woman wishes to have a husband more than fourteen years older than herself. Law does not take into consideration such accidents. This limit is the only way to control the business of their own flesh and blood carried on flourishingly by heartless creatures. In case the difference of age exceeds fourteen years we are likely to see these unnatural sights found everywhere now-a-days where the mother is younger than her sons and daughters. This clause will also prevent deaths and destruction of health of young girls who die one by one due to wide difference in age by marrying an elderly widower having plenty of animal vigour.

3. *Medical examination.*—We must be courageous enough to provide that every Hindu male or female must produce a certificate of physical fitness before marriage. Almost half the number of causes for getting divorce are physical or mental defects of the parties to the marriage. Prevention is always, and in all cases, better than cure. The very imagination to live as a husband or wife for a day or two with a person who is suffering from insanity, impotency, leprosy or virulent venereal disease is painful. It is a tragedy beyond imagination to pass seven years of life with such a person, after which he or she can get divorce. Most of these diseases are not only infectious but hereditary. It is better to prevent such marriages than to spend lakhs of rupees for lunatic asylums, sanatoria and other institutions for blind, deaf and dumb. The State must provide for the medical examination of the poor, free of charge. If this is not possible an amount of five rupees or so is not extravagant considering the trouble and expenses of marriage in India. There is no reason against this provision in the interest of our sons and daughters and their progeny except our false idea of prestige. Persons possessing such certificate obtained within a year or two before marriage from colleges, insurance companies and like institutions may be exempted.

4. *Compulsory registration of sacramental marriage.*—It is necessary to obtain full advantage of the reforms stated above; sacramental marriage should be compulsorily registered like civil marriage by producing certificate of health and age. This will also make the Act preventing child marriages more effective which has become useless as the hard-hearted do infringe it even in British India and get themselves liberated from their cruel criminal acts by paying a small amount of fine. We are careful about the rights and liabilities concerning immovable property exceeding hundred rupees by getting the document affecting it compulsorily registered. We must be much more careful to keep some evidence of such a

pious relation as marriage which creates rights and obligations far more in number and importance than those created by any other human affairs.

5. *Preventing evasion of law of British India.*—To safeguard the interests of minor, provision must be made when the conditions imposed by the Law of British India are evaded by performing the marriages out of British India. This end can be achieved by enabling an injured minor, at his or her instance, to declare such marriage void after attaining majority through a Court of Law.

36. Mr. L. V. Deshpande, B.A., LL.B., Pleader,
10, Mahatma Gandhi Road, Vile Parle.

The draft Hindu Code is a commendable effort to adjust the main principles of Hindu Law so as to meet the present day requirements and exigencies of Hindu Society concomitant with modern ideas and conceptions of human life and liberty.

Recently I had to deal with a peculiar case under Hindu Law. My client (the plaintiff) purchased the suit property under a title-deed passed by the vendor for himself and as guardian for his lunatic brother. The ownership of the vendors was held to have been proved; but the Court upheld the defendant's contention that the same brother who purported to have conveyed the share of the lunatic brother had no legal authority that entitled him to act for the lunatic. The Lunacy Act, 1912, was held to be applicable in the case of the undivided interest of the lunatic in the property of the joint Hindu family. 20 Bom. 659 and 17 I.C. 473 were relied upon by the plaintiff to establish that the Court had no power to interfere with the affairs of the joint Hindu family and the powers of the Hindu manager were wide enough to enable him to alienate the interest of the lunatic coparcener as in the case of minor members. The Court however decreed the plaintiff's claim to the extent of the half share of the same brother.

I therefore request the Committee to make suitable provisions to safeguard the rights and interests of the lunatics.

37. Mr. D. Tanubhai Desai, Solicitor, Bombay.

I suggest that the draft Hindu Code with the following amendments or alterations or additions be accepted:—

Part II deals with inheritance.—By clause 12 of Part II, Partition Act, 1893, has been made applicable in respect of immovable property devolving upon a woman who before or after such devolution has passed by marriage into a family other than that of the intestate. I agree to the principle of the said clause but suggest that the same should be made applicable to all cases in which there are women co-heirs and that the scheme of the Partition Act, specially the procedure relating to the right of a co-heir to get any share valued and to purchase the same at such valuation, etc., should be made applicable not only to immovable property but to all properties of the deceased by making suitable provision in that respect in the Act.

In clause 13 of Part II, it should be made clear that the right of a husband to take the wife's property (stridhan) in times of distress and sell it during her lifetime as at present in force under Hindu Law should be taken away.

Part III-A, sub-part II deals with maintenance.—In clause 3, the expression "Maintenance" has been defined as follows:—

The expression "maintenance" includes "provision for food, clothing and residence."

I suggest that it should run as follows:—

"Provision for food, clothing, residence and education."

Clause 5 deals with persons entitled to maintenance. I suggest that the widow and the unmarried daughter should not have any right of maintenance as dependents out of the estate of the deceased in case of intestate succession as they are getting definite shares and are entitled to treat such shares as absolute owners under the Code. To provide otherwise as in the draft, giving such persons a right to maintenance, which would have to be determined by Courts irrespective of the fact that they are to be allotted a definite share, would not only lead to unnecessary litigation but be unfair to the other heirs.

I also suggest that regarding provision for maintenance of a son or son of a predeceased son, who is a minor, the age should be increased to 21 years instead of the age of

minority and words "who is under the age of 21 years" should be substituted, accordingly for the words "who is a minor" I am strongly of opinion that the provision for maintenance given to a concubine under clause 5 as a dependent should be deleted totally. No other law of any other community provides for it and an obsolete rule of the old days misapplied by Privy Council should no longer continue.

Regarding clause 9 of sub-part II of Part III (a) I suggest certain alterations in view of the difficulty which has been found in practice due to the amendment in section 39 of the Transfer of Property Act in the year 1930. As at present construed section 39 of the Transfer of Property Act leads to a difficulty in selling the property in view of the fact that notice of a person entitled to maintenance from the vendor of the property precludes the buyer from purchasing the property as he is not a transferee without notice of such right and in this connexion, I would suggest that the language of the old section 39 of the Transfer of Property Act should be restored whereby the transfer would be bad only if it was made with the view to defeat the right and not otherwise.

Part IV deals with marriage and divorce.—I suggest that in clause 3 regarding requisites of a sacramental marriage, it should be provided that instead of the provision under the draft, namely, "if the bride has not completed 16 years, the consent of her guardian in marriage must have been obtained for marriage" should be substituted by providing that the bride must have completed her 16 years and the bridegroom must have completed his 18 years. I desire this to be specially put as experience has shown that the Child Marriage Restraint Act, which only restrains or penalizes but does not invalidate marriages, if marriages are performed which are prohibited by the Act, has remained practically a dead letter and the only solution therefore is to make marriages under a certain age invalid.

Clause 30 of Chapter III deals with decrees for dissolution of marriages and I desire that three important provisions, which have been omitted as grounds for dissolution should be provided, namely, firstly "the husband has since the celebration of the marriage treated the petitioner with cruelty"; secondly, "has renounced the world", and thirdly, "is unheard of for a period of seven years." I would also omit the present provision in sub-clause (f) and instead provide as follows:—

"and has been guilty of adultery, which is not condoned or connived at."

In sub-clause (c) of the said clause 30 regarding desertion for seven years, I would substitute in the same, the words "seven years" by "three years."

Part V deals with minority and guardianship.—Clause 4 thereof as it stands takes away the right at present, namely, the inherent jurisdiction of the High Courts to appoint guardians of the undivided interests of minors. See 32 Bombay *in re* Manilal and subsequent cases and I suggest therefore in clause (4) an addition to the following effect:—

"Provided nevertheless the right of the chartered High Courts to the exercise of their inherent jurisdiction regarding appointment of guardians of the undivided interest of the minors as hitherto shall not be affected."

Part VI deals with adoption.—I suggest that regarding the rights of giving in adoption, it should be provided in clause 12 giving the primary right to the father and mother, thereafter should be substituted by providing that the right of giving in adoption will be the rights of father and mother exercisable jointly during the lifetime of the father and the mother and thereafter by the survivor of them.

Lastly regarding the procedure of registration of adoption, namely, of proceeding through the Court as provided in Chapter II of the said Part VI, I suggest that instead of making an application to the District Court, the present procedure of adoption being registered before the Registrar of Documents should be adopted and the Registrar of Documents should be made a Registrar of Adoptions with whom the document could be registered and the parties must not be forced to go to the Court unless there is a dispute.

28. Sholapur Bar Association.

I. THE DESIRABILITY OF CODIFICATION.

The Association by a narrow majority, was of opinion that the proposed codification of Hindu Law was desirable

in the interests of uniformity, certainty and progress. An influential minority, however, considered that the proposed codification was unnecessary and undesirable at the present stage as (a) the various customs, notions, habits of thought and living prevalent in various localities and communities should not be ruthlessly sacrificed to the doubtful advantages of uniformity, (b) judicial decisions and precedents have to a large extent given certainty to the existing law and (c) legislation should keep pace with, and not outstrip, progress in the community, as would be the case if the Draft Hindu Code were made a statute.

II. PART II—INTESTATE SUCCESSION.

(1) The Association is opposed, as a matter of principle, to the grant of absolute estate to females. The fragmentation of an integral estate into several conflicting and uneconomic units among unharmonious groups and families not united by the ties of common interest and blood, would result in chaos. The evils of fragmentations are particularly obvious and pernicious in the case of immovable property.

The Association, therefore, recommends that females inheriting property should in all cases be given a woman's limited estate and that appropriate alterations be made in the definition of *stridhan* and other clauses affected by the above recommendations.

(2) *Clause 5, enumerated heirs, class I.*—The Association recommends that daughters should not be included among the simultaneous heirs when there is a son, son's son or son's son's son living.

It is further recommended that the widow of a son, son's son, or son's son's son should be included in the compact series after No. 6, the brother's son; but she should be given only one-fourth of the share which her husband would have taken, if alive. She should be given only a limited woman's estate with the option of taking maintenance in lieu of her share.

(3) *Clause 5, enumerated heirs, classes III, IV, V and VI.*—The following recommendations are made by the Association as being just, regard being had to the claims of nearness in degree and to natural affection:—

(a) In class III, the sister should take the place of the brother's son as No. 4, and the brother's son and other heirs should follow in the order of sequence given.

(b) In class IV, the father's sister should take the place of the father's brother's son as No. 4, and the father's brother's son and other heirs should follow in the given order of sequence.

(c) In class V, the father's father's sister should take the place of the father's father's brother's son as No. 4, and the father's father's brother's son and the other heirs should follow in the given order of sequence.

(d) In class VI, the mother's sister should take the place of the mother's brother's son as No. 4, and the mother's brother's son and the remaining heirs should follow in the given order of sequence.

(4) The Association recommends that widows of gotraja sapindas should inherit as agnates after classes I and II of the enumerated heirs, occupying, for the purposes of preference the same position as their husbands would have, if alive.

(5) In all the cases mentioned above, the female heirs should take only a woman's limited estate.

(6) *Clause 7, manner of distribution among simultaneous heirs, Part II.*—The Association recommends that a distinction should be made between married and unmarried daughters as regards the quantum of their share. It is fairly obvious that the married daughter has already received the benefit of all her marriage expenses from her father's estate, whereas such expenses, would in the case of an unmarried daughter, have to come from her share. The Association, therefore, in consonance with the rough and ready mode of computation fixed by the Draft Hindu Code regarding the marriage expenses in Part III-A, Clause 6, sub-clause (1), provided, recommends that the share of a married daughter should be half of that of an unmarried daughter, i.e., quarter share.

(7) *Pre-emption.*—The Association recommends that, in order to minimise the evils of fragmentation, and to prevent the disruptive influences of the introduction of strangers into the family property, the male heirs should be given the right of pre-emption regarding the estate inherited by female heirs.

III. PART III-A—CHAPTER I.

(1) *Clauses 1 and 2, Survivorship and varied interest by birth.*—The Association recommends that the Hindu joint family system, as in existence at present, should be maintained.

The Association is of opinion that the system is so ingrained in the average Hindu mind, and ways of thought and living, that to destroy it with a stroke of the pen would be catastrophic. The bonds of common blood, interest and ownership are incentives to common co-operative effort for common benefit. In fact it is socialism in miniature. The integrity and economic stability of the common estate is preserved and the evils of fragmentation avoided.

The so-called defects of the system have been much exaggerated and, in practice, they do not cause any hardship. Property can be freely transferred for proper purposes of necessity and benefit while a wholesome check is placed on spendthrift members. When jointness is not desired, any member can put an end to it by separating from the rest and partition solves the problem. An individual member is free to keep his separate earnings for himself.

The joint family is disliked only by a small and negligible percentage of educated people influenced by the current of Western ideas. The Hindu community, as a whole favours the system, and among them, in the vast majority of cases, it works successfully and beneficially.

The idea of vested interest by birth is not entirely foreign even in progressive European countries like Great Britain, where marriage settlements are often made in favour of the issue to be born, in which the issue takes interest by birth.

The Association, therefore, strongly recommends the deletion of clauses 1 and 2 of Part III-A of the Draft Hindu Code.

IV. MAINTENANCE.

(1) The Draft Hindu Code deals with only one aspect of the law of maintenance, i.e., where the person from whom maintenance is sought has inherited some property. The personal obligation of a person, irrespective of whether he has inherited property or not, to maintain his parents, wife, infant sons and unmarried daughters has been totally omitted.

The Association, therefore, recommends that a provision to that effect be inserted in the Draft Hindu Code.

(2) *Part III-A, Clause 4.*—The Association is of opinion that no person who has received a share in the estate should be entitled to maintenance. The Association, therefore, recommends the deletion of the sentence "or where the share so obtained . . . by way of maintenance under this part" and the proviso to section 4.

(3) *Clause 5 (iii).*—The Association is of opinion that the widow, as heretofore, should be entitled to maintenance only as long as she remains chaste. The words "and chaste" should be added.

(4) *Clause 5 (x).*—The Association recommends that in order to discourage concubinage, the concubine should not be given maintenance and that Clause (x) should be deleted.

(5) *Clause 6, Sub-clause (e).*—The Association recommends that in awarding maintenance, the reasonable wants of the persons from whom maintenance is sought should also be taken into consideration, as cases are quite likely to occur where the person claiming maintenance may be in much better condition financially than the person from whom maintenance is sought.

V. PART IV—MARRIAGE AND DIVORCE.

(1) *Sacramental marriage, clause 3 (a).*—The Association strongly disapproves of the practice of polygamy; but is of opinion that its abolition at the present stage would be too drastic a step having regard to the present state of Society particularly the uneducated masses. The sterility of the previous wife or her unfitness for marital life are the usual reasons for a second marriage. The desire for progeny, particularly male, is ingrained in the average Hindu mind and to prohibit polygamy in these circumstances, would be particularly harsh and perhaps encourage concubinage. Propaganda and education should be the medium to be employed to convert the masses to the acceptance of monogamy.

The Association, therefore, recommends that, for section 3 (a) of the draft Hindu Code, the following be substituted:—

"The female party should have no spouse living at the time of marriage."

(2) The Association recommends that the first set of clauses 3, 4 and 5 be preserved, but if set II is preferred by the Legislature, clause 6 should be retained.

(3) *Clause 24.*—In view of the opinion of the Association regarding polygamy in paragraph 1 above, it is recommended that clause 24 be deleted, as the existing sections 494 and 495 of the Indian Penal Code are sufficient to cover all cases of bigamy.

(4) *Chapter II, clause 26—Duties of husband and wife.*—The draft Hindu Code mentions the duties of the husband but omits the duties of the wife. The Association, therefore, recommends the insertion of the following sentence in section 26:—

"The wife is bound to live with the husband and submit to his authority."

(5) *Clause 28—Consideration for consenting to marriage.*—The Association, while approving of the object of the above clause, is of opinion that the clause as framed will not achieve the desired object. The bridegroom, being in all cases above eighteen, is competent to marry without the consent of any relative. Moreover, dowry usually assumes the form of a marriage present to the bridegroom which is not covered by the present clause. If the dowry, as in several cases, is given to the bridegroom for economic support in view of his added responsibilities, it should be utilized for their joint purposes, and it would be unjust to divert it from its proper purpose and give it absolutely to the wife alone. The clause, as framed, is competent only to cover cases of "Sulka", or bride price, which is fast dying away.

The Association, therefore, recommends the deletion of clause 28, leaving it to propaganda and education to achieve the social reformation in this direction.

(6) *Chapter III, clause 1, sub-clause 2.—Nullity and dissolution of marriages.*—(a) The Association recommends the addition of the following proviso: "Provided that the suit has been brought within three years from the date of the marriage or three years from the date of the attainment of majority by the petitioner, whichever event happens earlier."

(b) The Association recommends the deletion of clause 1, sub-clause (2). A marriage ceremony between persons within prohibited degrees is not a marriage in any sense and is so repellant that even its limited recognition for the purpose of declaration of nullity should not be accorded.

(c) *Sub-clause (3).*—The Association recommends the addition of the words "Provided that the marriage has not been consummated."

(d) *Sub-clause (4).*—It is recommended that the words "and at the time of suit" should be added after the word "marriage."

(e) *Sub-clause (5).*—In view of the Association's opinion regarding polygamy, it is recommended that the words "or wife" be deleted.

(f) *Clause 29, sub-clause (2).*—The omission of the District Court appears to be inadvertent. It is, therefore, recommended that the words "to the District Court" be added before the words "High Court" and similarly the word "to the District Court" be added before the word "High Court" in the proviso to clause 2.

(g) *Clause 29.*—In consonance with the opinion of the Association regarding polygamy, it is recommended that the word "wife" be deleted.

PART VI—CHAPTER I—ADOPTION.

(1) *Clause 5—Capacity to adopt.*—The Association is of opinion that a bachelor should not be allowed to adopt, as he has not undergone the "samskara" of marriage which alone entitles him to have legal progeny. It is, therefore, recommended that a suitable insertion to that effect in clause 5, sub-clause (1), be made.

(2) *Clause 5.*—The Association recommends that no person, male or female, should be capable of adoption unless she or he has completed the age of 21.

(3) *Clause 12.*—The Association is of opinion that the mere fact that a boy has no parent living should not come in the way of his being given and taken in adoption, when such adoption is to his benefit. In such a case, an application to the District Court analogous to one under the

Guardians and Wards Act should be preferred, and the District Court should grant permission to a proper person to give the boy in adoption. The Court, in such permission, should have regard to the interests of the minor and whether the adoption is to his benefit. The Association recommends that a suitable provision be inserted in section 12 on the above lines.

(4) *Clause 12, sub-clause (4).*—The Association recommends that the person giving in adoption should have completed his or her twenty-first year.

(5) *Clauses 27 and 31.*—The Association recommends that registration of adoptions in the District Court should be made compulsory and that the registration of the adoption should be deemed conclusive evidence as to the factum of adoption. Rules should be framed regulating the form and procedure in cases of applications for registration.

(6) The draft Hindu Code does not deal with the effects of the birth of a natural born son after the adoption. The Association recommends that in such a case that the adopted son shall have for the purposes of inheritance and other matters, the same right as the natural born son and shall share the estate equally with him. The insertion of a provision to that effect is recommended.

The Association strongly hopes that due weight will be given by the Hindu Law Committee to the above recommendations.

39. Be'gaum Bar Association.

The Be'gaum Bar Association welcomes the efforts undertaken by the Government of India to formulate a Code of Hindu Law on modern lines and in the light of the present changed conditions of Hindu Society.

This Association is however of the opinion that some of the changes proposed in the present Hindu Law are quite drastic and revolutionary, and may not be immediately acceptable even to enlightened Hindu opinion, and that some proposals incorporated in the draft Code may be acceptable to it only if they have been duly explained to the Hindu population by wise propaganda.

This Association also feels that the present house of Central Legislature elected as early as 1934 does not reflect the correct public opinion in the country at the present moment.

This Association therefore feels that the consideration of the draft Hindu Code by the Central Legislature be held over until the close of the war, as the present is hardly the appropriate time for a cool and all-sided consideration of this important subject; the preliminary work may however be carried on for the present.

This Association recommends to Government that the draft Hindu Code be translated into the main Indian languages and freely distributed in India and opinions thereupon invited from the Hindu population in the rural and urban parts of India before the matter is again placed before the legislature.

40. S. Y. Abhyankar, Esq., B.A., LL.B., Advocate, High Court, Bombay.

*6. From the explanatory statement it appears that the present revised draft Code is intended to be placed before the two chambers of the Central Legislature for their consideration so that the legislature may have a complete picture of the Committee's proposals in their entirety in order to enable them to deal with particular topics. However, the Committee say in paragraph 3 that they should not be regarded as wedded to the draft published. They intend to revise the draft in the light of public opinion as elicited by them orally and in writing.

7. The revised draft seems to be published in furtherance of the Joint Select Committee's suggestion to resuscitate the Committee and encourage the formation and enactment of the remaining parts of the Code, so that the necessary adjustment is made to the bills before them. Surely the Joint Select Committee did not want a tentative draft.

8. The Committee say that it was their object to evolve a uniform Code of Hindu Law which would apply to all Hindus by blending the most progressive elements in the various schools of law. Apparently by schools the Committee referred to the recognized schools of Hindu Law.

* Paragraphs 1 to 5 which deal with the genesis of the present proposals, the constitution of the Committee, etc., have been omitted.

9. The subjects dealt with in the Code are in the concurrent list and, therefore, it is only those topics on which alone the Centre could legislate. The Committee infer that the very fact that the topics are in the concurrent list suggests that they are the topics on which all India Uniformity was *prima facie* desirable.

10. The Committee has not only tried to blend, according to them, the most progressive elements but have introduced innovations which are not justifiable except when they are proved to be conducive to the good of Society. The report does not show any such proof or inquiry.

11. One may be further permitted to observe, notwithstanding the high standing of the members that the very fact that these topics are not in All-India List, lead exactly to the contrary inference that uniformity was neither desirable nor feasible. It will be pointed out when dealing with the topics of marriage and divorce that this pet theory of uniformity has made the suggestion impracticable and vague.

12. In the explanatory notes appended to the draft Code, the Committee say that they had prepared a draft on those topics of Hindu Law on which alone the Centre can legislate at present. Further on, they say in paragraph 5 that the topics dealt with in the draft are all topics on which the Centre could legislate at present and Hindu Law enactable by the Centre has necessarily to confine itself to them. They say that the very fact that they were in concurrent legislature list suggested that they were topics on which uniformity was *prima facie* desirable.

13. It is probably for that reason that they have modified the preamble and stated therein "Whereas it is expedient to amend and codify certain branches of Hindu Law." They have prepared a draft Code with respect to those branches. It is worthwhile to note that the original Bill as well as Joint Select Committee's Bill were intended by the preamble to be parts of Hindu Law which was to be successively amended as a whole. That project to amend the whole Hindu Law in successive stages seems to be abandoned for the reason that the legislation with respect to the other branches cannot fall within the concurrent list. Thus the Hindu Society is faced with piecemeal legislation again.

14. With this plain object before them the public has to consider whether it is advisable to codify and amend certain parts of Hindu Law which alone can be enacted by the Centre. The enactment of piecemeal legislation is deprecated by Local Governments, by the Joint Select Committee as well as by the Rau Committee itself; if one fails to understand the reason for hurrying up the codification and amendment of certain parts of the law alone, leaving the Hindu Society to face the experiment of the worst form of piecemeal legislation with its implications on the remaining parts of the personal law. The Committee does not give any reasons therefor.

15. To prevent this result the desirable course would be to send these Bills which are before the Assembly along with the draft Code with a recommendation to codify and amend if necessary the Hindu Law in successive stages in the Provincial Legislatures.

16. It is the humble suggestion that the view of the Committee that the Centre could legislate on the topics does not appear to be correct and the reasons are as follows.

17. None of the three lists refers to personal laws of the Hindu, Buddhist, Jain, Sikh communities as being within the purview of either the Central List, the Provincial List or the concurrent list; therefore, it follows that these lists were not intended to affect the personal laws of these communities which were mixed with religious notions, and therefore, they can only fall within the general powers conferred by section 99, to make laws with respect to the whole or part of British India on the Central Government and in the case of a Province with respect to the Province.

18. Constitution distributing the power between the Centre and Provinces similar to ours is found to be enacted for the Dominion of Canada by the British North American Act of 1867/30 and 31 Victoria C.S. sections 91 and 92 of that Act provide lists for these matters, namely, matters falling within the Dominions List, matters falling within the Provincial List and Supplemental powers to legislate for the whole are given by these two sections. The rule of interpreting the constitution with respect to

these powers have been set out by the Privy Council in various cases. Rule 2 of those is in these terms:—

"The general powers of the legislation of the Dominion in supplement to the power to legislate upon the subject expressly enumerated must be strictly confined to such matters as are unquestionably of national importance and interest and must not touch on subjects assigned to the provinces unless these matters have attained such dimension as to affect the Body Politic of the Dominion." Vide, Hailsham's Laws of England, Volume XI, Article 138, page 93.

19. Taking, therefore, this rule as being the rule of interpretation for similar statute as the Government of India Act, it would be worthwhile to examine the genesis of the enactment of the third concurrent schedule. In order to do this, it would be necessary to refer to the reports of the Joint Parliamentary Committee on the Indian Constitution Act. That report has been read and accepted even in the Courts as being the part and the basis of the constitution. Paragraphs 51 and 52 of that report deal with this matter. The principle of having list No. 3 (Concurrent list) is discussed in the Joint Parliamentary Committee in these above paragraphs. In view of the experience obtained in India and elsewhere the Central Legislature should have a legislative jurisdiction to enable it in some cases to secure uniformity in the main principles of laws throughout the country, in others to guide and encourage the Provincial efforts and others to provide the remedies for mischiefs arising in the Provinces, but extending or liable to extend beyond the boundaries of such Province. By way of illustrating this, they cite the Great Indian Codes as illustrating the first, the second by such matters as labour legislation and of the third by legislation for the prevention and control of epidemic diseases. They did not think it desirable that the uniformity of law which the Indian Court provided should be destroyed or whittled away by the unco-ordinated action of the Provincial Legislature. This is one aspect. The second aspect was, as local condition varies from Province to Province, it was necessary that the Provincial Legislature should have power of adopting the general legislation of this kind to meet the particular circumstance of the Province. With this background showing the intention of the legislature in enacting this concurrent list, items 6 and 7 of list No. 3 in Schedule 7 will have to be interpreted. Items 6 and 7 part one are as follows:—

(6) Marriage and divorce, infants and minors, adoption.

(7) Wills, Intestacy and Succession, save as regards agricultural land.

20. These items have to be examined and interpreted, with the help of the principle quoted above. Now take marriage and divorce. Marriage laws governing the seven main religions were not touched, but the special marriage Act was a Code of marriage law with respect to the general population outside the seven religious communities, so also the Indian Divorce Act. Take the next item, infants and minors. The Guardian and Wards Act of 1890 is the Code with respect to these matters. These matters are included in the concurrent list to enable the Provinces to adopt the law to the particular circumstance of each Province. Take item 7, Wills, Intestacy, Succession. This obviously refers to the Indian Succession Act, which is the Uniform Code for persons not belonging to the Communities governed by the personal laws so that except "Adoption" not a single item relates to personal law and, therefore, it is only the law of adoption that can be within the purview of the Centre.

21. As stated above, the personal law is not referred to in express terms in any of the lists. The reliance placed on items 6 and 7 cannot, as interpreted above, give powers to the Centre to legislate on these matters and the necessary consequence follows that these topics cannot be legislated for by the Centre except under the general power given by section 99. It is not the Uniformity that is desired but the destruction or whittling away, the Uniformity of the law laid down by the Great Indian Codes, is sought to be prevented by the concurrent list.

22. There is one other point of view from which the question can be approached on the assumption that items 6 and 7 can be so interpreted as to include the several topics on which the draft Code is prepared. The concurrent powers in these cases would be supplementary

powers which can be used only in matters which have attained such dimensions as to affect the body politic of India.

23. After the introduction of the Provincial Autonomy the several Provinces are foreign countries *inter se*. This has been ruled by the Bombay High Court and the test apparently on which the proposition is based are—

Each Province has got laws of its own, public debt of its own, services of its own, and courts of its own. Each province can sue the other in the Federal Court, the Centre can sue the Province or the Province can sue the Centre, so that each Province is a country by itself and foreign in respect to others and matters falling within the Personal Law would be in the jurisdiction of each Province as being matters relating to the Domicile of the persons concerned. Now let us apply this test to the draft marriage bill as drafted now. With a view to bring in Uniformity in respect to the marriage law the Committee is forced to say with respect to the new clause 3 of Sacramental Marriage as follows:—

"The most suitable course therefore seems to be to embody in the general law only the most fundamental requirements while leaving the persons at liberty to follow their other customary requirements in their practice if they so desired."

Analysis of the requirements to get at the fundamentals would show the necessity for the bride and bridegroom alone to exist and nothing further so that to reduce the most important sacrament believed in by the majority of Hindus, to suit the conditions of minority communities like Sikhs, Brahmans and other similar societies is to reduce it to a farce. This is the result of Uniformity.

24. It is, therefore, once again emphasized that these matters must be left to the Provinces and do not fall within the rule of interpretation discussed above with respect to the Canadian laws.

If unfortunately the Central legislature passes the law on these topics, the Hindu community will have laws as follows:—

(1) The Law on the topics enacted by the Centre as proposed by the draft Code.

(2) Original Hindu Law with respect to joint family, partition, debt, alienation, religious endowments, benami transaction, until the Provinces enact laws for those topics.

(3) The laws with respect to succession to Agricultural land. This can be enacted by the Provinces only.

(4) Laws copied from the British Indian Laws in various Indian States. These would be the different laws which will govern the Hindu Society, if unfortunately the course is adopted.

25. It is suggested, therefore, that there should be no change of the Personal Law of the Hindus to a territorial law, but it should be kept personal as it is. Codification only as opposed to codification and amendment should be had on the basis of different schools. Once the law is codified on the basis of different schools, the points of agreement and differences in various schools could be narrowed down and ground would be prepared for assimilating the whole Hindu Law as a Federal Law, if and when the Federation comes into existence in British and Indian India and then the several statutes will form important steps towards a desirable end.

26. The Assembly as at present constituted was elected about ten years before. Since then much water has flown under the bridge, public opinion has considerably changed and the members of the Assembly could not be said to be the real representatives of the people and should not therefore take up the duty of passing such laws.

27. Second objection to the competency of this Assembly for the purpose of passing these laws is that the majority community, viz., Hindu, is not properly represented in proportion to their number and practically half of the house is composed of non-Hindus consisting of members of various communities and therefore could have no sympathy with the Hindu beliefs. One may go further and say that with respect to members elected by the Muhammadan and the Christian constituencies whose religion is of a proselytising nature, the interest and duties are likely to conflict and therefore their opinions as well as their votes are likely to be affected by the consideration of getting recruits for their religion. Nobody says that they would consciously do it; but the tendency would be that way. Therefore Hindu interests are bound to suffer unless a strict rule of law is made that members of other communities ought not to vote on such bills or

a majority of $\frac{3}{4}$ three-fourths of the community concerned must be obtained to pass the bill. No doubt there is a convention up to now observed to that effect; but the Joint Select Committee has shown that that convention has not been observed and Hindu members have objected to that course in their dissenting minutes. It can, therefore, be said that even if the Assembly has got the power still it ought not to exercise that power in view of the consideration set out above.

28. In addition to this the peculiar war conditions through which the country is passing makes it almost impossible for anyone to create opinion either for or against the Bill by any propaganda whatsoever. There are difficulties met with in calling meetings, in publishing articles and also in going from place to place. Under these circumstances the bill ought not to be read for the first time but either postponed for consideration till normal times come or dropped altogether.

29. The somewhat unusual procedure adopted of redrafting the bills already before the Assembly points out that even the authorities are not satisfied with respect to the course of the Bills in the Assembly.

30. In the first place the Hindu Law not being enacted by any legislature cannot be amended by the legislature but what the Committee proposes to do is, in effect, to abrogate certain parts which it thinks to be unreasonable and that is objected to as a matter of principle. What the Rau Committee originally proposed to do in this connection can be best understood by the following portion in paragraphs 37 and 38 of their report which are quoted below :—

"37. Nor, on the other hand, can we believe that the thoughtful reformer will wish to lay violent hands on the ancient structure of Hindu Law except for proved necessity. It is a spacious structure, with many schools, and by a judicious selection and combination of the best elements in each, he should be able to evolve a system which, while retaining the distinctive character of Hindu Law, will satisfy the needs of any progressive society.

"38. It is a Code of this kind that we contemplate; a Code which shall base its law of succession on the ideas of Jaimini rather than of Baudhayana and its law of marriage on the best parts of the Codes of Manu rather than those which fall short of the best; a Code which shall recognise that men and women are equal in status with appropriate obligations as well as rights; a Code which, generally speaking, shall be a blend of the finest elements in the various Schools of Hindu Law; a Code finally, which shall be simple in its language, capable of being translated into the vernaculars and made accessible to all. Such a Code will doubtless take time and many minds will have to collaborate in its preparation. But there must be many competent men and women in India who would be glad to assist in the execution of so majestic a task affecting the personal law of nearly two hundred million people."

31. This means that the Committee as well as the Select Committee wish to make a selection and combination of the best elements in each school so as to be able to evolve a system which while retaining the distinctive character of Hindu Law will satisfy the needs of any progressive society that the Code would base its Law of succession on the idea of Jaimini Marriage Law on the best part of the Code of Manu the law which shall recognize men and women equal in status with appropriate obligation as well as rights. Such a Code will take time and many minds should have to collaborate in the preparation and so on so that the picking and choosing of certain part has got to be made so as to retain distinctive character and satisfy the needs of progressive society. A proposed Code of this kind must first define what are the distinctive characteristics of Hindu Law as opposed to any other systems prevailing in India; then it must also particularise the needs of the progressive society. In the absence of these definitions it is very difficult to say what the Committee considers to be distinctive characters or the needs of progressive society. It is difficult also to see which are the best parts of Marriage Law in the Code of Manu and which fall short of the best. What is the criterion which the Committee is going to apply to satisfy these tests? The Public must have before them a clear idea of what the Committee means. A Committee of four persons only selected without any apparent principle is not exactly the sort of Committee for such purpose, however

eminent some of the persons in the Committee may be. In the absence of well-defined idea as to the criterion which they wish to apply the public will have to accept their draft Bill as an instance or as an indication of what they think best and if that is so one may safely say that the Committee as well as the Select Committee have not taken trouble to find out the distinctive features which would be considered later on in detail.

32. The Committee says that such a code will take time and many minds should have to collaborate in its preparation by competent men and women. If that is the idea underlying this Code then it is suggested: Let that idea be worked out by referring the Bill to a larger Committee the representatives of which should be chosen from the various provinces and Schools of Hindu Law, from principal seats of Shankaracharya, from the various communal and other associations which are in touch with the public life and such a Committee should decide as to what are the best elements to be retained and what to be rejected unless such a Committee is appointed and public opinion is ascertained through such representatives, to accept the opinion of such a small Committee as of four persons would not be desirable. It need not be said in plain words that to amend the ancient and spacious structure with many schools, the present Committee would not be the sort of Committee to be entrusted with such work.

It would thus be clear that even if it be thought necessary to amend and codify the Hindu Law the Assembly as at present constituted is not the proper legislature for it.

33. The Joint Committee is aware of the difficulty in dealing with a particular topic of law and it says that it would be difficult to deal with that topic without having before them a complete picture of all proposed reforms and that their task would have been simplified if the whole picture was before them but the Committee says that it was not impracticable to proceed with one topic as in the meantime the Government should take steps to resuscitate the Hindu Law Committee and to encourage the formulation and enactment of the remaining parts of the projected Act in the interval and such readjustments as may be necessary might be made in the light of decision taken in connexion with the other branch of Hindu Law, but the Joint Committee is silent as to whether the Bill would not be put in force before the whole Hindu Code is before them. It is pertinent to note that even the modest suggestion of Sir Brojendra Mitter, the Advocate-General of India, that clause 1 should be so amended that this legislation even if it is passed should not come into force before the other relevant chapters of Hindu Law are enacted has not been accepted. It means, therefore, in effect that the Bill would be passed whether other parts are enacted and passed or not and if necessary an experiment made with the Hindu society. Every responsible body, many local Governments, many of the District Judges with long experience have been opposed to the making of the piecemeal legislation and it is therefore the submission that such piecemeal legislation ought not to be resorted to even if it is thought desirable and decided to amend and codify the Hindu Law. But the revised draft clearly showed that the recommendations are vain and Hindus are to be subjected to experimenting in social legislation.

34. It would be worthwhile to consider the basic principles of Hindu Law violated by the Rau Committee and approved by the Select Committee and also by the revised draft Code notwithstanding the opinion of members of the Assembly expressed in debate. In their explanatory note to the Bill the Rau Committee sets out the main features of their Bill as follows :—

(1) That it embodies a common law of intestate succession for all Hindus in British India.

(2) It removes the sex disqualification by which Hindu women in general have hitherto been precluded from inheriting property in various parts of India.

(3) And thirdly that it abolishes the Hindu Women's limited estate. In addition to these 3, the Committee has accepted the principle of simultaneous succession of more than one heir at the same time, and they give no reasons for it, in their explanatory note, and one does not understand why this departure has been made by them from the basic principle which is the characteristic of Hindu Law. The rule of Hindu Law is as follows :—

The property of the deceased goes to the son (and by son here is meant by son, grandson and great-grandson). In default of son inheritance is to go according to Badha Krama the compact series of heirs in order as they are mentioned on the principle that the nearest in blood takes the inheritance. The first and the central root idea that has remained unchanged from time to time up to now is not to look on an individual in his isolation but to look at him in connexion with a group or family or collection of individuals drawn together by relation and bound together by ties of common blood.

35. This system recognizes the family as a semi-corporate body as the unit of society. In contrast with this system you have in the western countries two systems, viz., individualistic and communist or socialist. The latter one, that is, the socialist system is a reaction against the individualistic system. The Hindu system strikes a middle course so that you have not the extremes of individual on the one hand and society on the other and the family is a group based on natural ties and affection and therefore it tends to the smooth working of the society. The family being taken thus as unit the laws of inheritance or succession are based so as to support the stability of the family; secondly, the disparity between males and females to prevent dissipation of the property; thirdly, limited ownership and fourthly successive ownership as opposed to simultaneous succession. These are the cardinal doctrines on which the Hindu Law has been based. We do not find a word in the explanatory note why this particular distinctive characteristic feature of the Hindus is given a go-bye. On the contrary there are many considerations which would justify the Legislative Assembly in deleting the provisions which make certain heirs as simultaneous heirs.

36. Up to 1937 the principle of simultaneous succession has never been adverted to in all the succession acts to amend parts of Hindu Law. It was for the first time introduced by the Deshmukh Act for the limited purpose of giving relief to certain females coming into the family by marriage. The effect of this innovation has never been considered from different aspects by anybody. It has never been discussed before the Assembly at the time and as that Act was for limited purpose and the right given to the females concerned was only the widow's estate it was not necessary to oppose the proposal on various grounds. Now that the whole Hindu Law or at least the intestate succession is being codified it is necessary to consider this fundamental change from the various aspects. The economic aspect of this innovation appears to have been put before the Rau Committee as is apparent from paragraph 22 of their Report on page 15: "In addition, there is an economic factor in the problem. It has been pointed out by several correspondents that in a poor country like India the distribution of a man's estate amongst the widow, the son, the son's widow, the daughter and possibly the mother, as well, will inevitably result in the dissipation of such little property as there may be in the country. Whatever may be the ultimate solution of this problem, we feel that it could be investigated adequately only in an inquiry embracing the whole law of succession."

37. This report was made in June 1941 and the proposed Bill was first published in 1942. Whether any inquiries referred to in the paragraph quoted above were made in the meantime, it does not appear, and such problems cannot be investigated in that short period. It can safely be said therefore that that Committee had not considered the economic aspect of the dissipation of the property referred to in paragraph 22 quoted above. There is no doubt that the question was before the Committee while drafting the Bill to codify the Hindu Law for the intestate succession of the Hindus. It was therefore necessary to set out the reasons why in the proposal made the law of succession based on the natural desire and on the natural instinct to keep the property in the family was thought necessary to be changed. Females born in the family go out of it by marriage and they would not be in a position to discharge those obligations and therefore they are excluded from inheriting the property.

38. The Vedic text cited before the Committee is as follows:—

A son born of the body does not transfer (paternal) wealth to a sister; he has made her the receptacle of the embryo of the husband; if the parents procreate children

(of either sex), one the performer of holy acts, is to be enriched with wealth.

Sayanacharya's comment on the following:—

However, in between these two (i.e., between a son and a daughter), one possessed of male sex becomes the author of the meritorious work such as the offering of Pind oblation and the like. The other possessed of the female sex, is only entitled to be decked by beautiful things such as wearing apparel and jewellery and the like. A son being authorized to perform meritorious actions such as the offering of the Pind obligations, etc., is entitled to inherit the property of his parents; a daughter is not so; she is simply to be given over in marriage to another outside the family.

39. This point was never considered by the Rau Committee and the Select Committee has brushed aside this text on the ground that they have not been referred to by subsequent writers but the Joint Select Committee has omitted to note that the text which they refer to only gave the inheritance in default of the son and not with the son. When in the absence of son, as nearest in blood they were allowed to inherit; but that does not mean that they should be brought on along with the male heirs to divide the inheritance with him.

40. Certain members of the Joint Committee have in their dissenting minutes pointed out that the law of succession was closely inter-related to the law of marriage. Mr. Kalikar remarked as below on this point:—

"In recommending the revolutionary changes in the Hindu Law of succession the Rau Committee have shown lack of grasp of the fundamentals on which the Hindu society is based. It is generally recognized that law of succession is closely interrelated to the law of marriage. The prohibited degrees in marriage is peculiar to the Hindu society. Consequently the Hindu Law of succession prohibiting women from absolute interest, is unique in the world. The prohibition of marriage, within certain degrees, has the sanction of Hindu religion behind it and any violation of this injunction is looked upon with contempt in the society. Therefore in my view a legislature has no right to enact a law of inheritance which is against the religious, moral and eugenic ideals of the society."

Nilkantha Das and Baijnath Bajoria state as follows:—

"It is generally recognized that the law of succession is closely inter-related to the law of marriage. The prohibited degrees in marriage recognized and enforced by Hindu Law have no parallel elsewhere in the world and consequently the Hindu Law of succession interdicting women from inheritance, as such is unique. The systems of law where prohibited degrees are different, succession by women is possible because property is kept in the family by the marriage of persons in close relationship with each other. For instance, marriage between cousins is allowed and is common in the Christian and Muhammadan societies. Such a marriage is highly incestuous according to Hindu Law and is greatly abhorred by the Hindus. So long as society is based on private property the natural desire, we may say the natural instinct, of keeping the property in the family cannot be ignored. It is because the marriage between near relations is prohibited by Hindu Law, that it was necessary to exclude daughters from inheritance as that would have meant property being broken up and portions passing to distant families. The Hindu Law-givers respected the science of eugenics when they laid down the prohibited degrees in marriage. And they respected the property instincts of man when by excluding females from inheritance they provided for the property being kept in the families."

41. Curiously enough, in the revised draft Code the Committee do not consider the pertinent question raised by the three honourable members in the debate. If they thought that the views propounded therein were not proper they should at least have discussed the reasons and given their opinion to the public in the marginal notes appended. The Committee have merely ignored the debate.

42. In view of the strict prohibited degrees of consanguinity for marriage the simultaneous right proposed to be given to daughters by this Bill is bound to end in dissipation of the property and thus one of the natural desires of the persons holding property, viz., to continue the property in the family cannot be satisfied. In other communities such as Muhammadans, Parsees, Jews, Englishmen, Christians—marriage between paternal first cousins is not prohibited and therefore the danger of dissipation

of the property cannot be experienced by these communities. Further, the rules of Muhammadan Law were meant for the Arab community which was at that time of nomadic habits and their property was of a very simple description such as camel, cattle, sheep, etc. Even in the case of English Law up to 1880 women had no right to property and the marriage operated as a merger of the property in that of the husband. It is only in 1925 that the right was given. But it is too soon as yet to see if the experiment is a success or not. Further, England is not mainly an agricultural country and their rules with respect to real property are entirely founded on a different system so that the experience of these communities is of no avail to the Hindu community, especially when the bulk of the property consists of agricultural land and few houses.

43. The Committee had gone one step further than the Deshmukh Act in that under the Deshmukh Act the son, widow and daughter-in-law all inherited the property together with the law of survivorship and the widow and the daughter-in-law only took a limited estate which is called "widows' estate". Under the proposed law the son, grandson, great-grandson, the widow and the daughter-in-law and parents when dependent are proposed to take together as simultaneous heirs without the right of survivorship and it is proposed to give absolute estate to the widow and daughter. Under the existing law the succession being joint, an heir is compelled to seek partition if he wants to be out of the family. Separation of the property being looked down upon, it is resorted to in extreme cases. By the proposed law, succession though simultaneous is separate and each heir is given the consciousness that he has his independent share. The widow and daughter are given absolute estates. Fragmentation of the heritage is thus made easy as every heir will naturally seek his share to be separated and given to him. The son who was so long dependent upon to continue the line now loses the bulk of the estate. The idea of the joint family is thus uprooted. The points therefore which go against acceptance of the principle of simultaneous succession are as follows: (1) Vedic text is against it; (2) the purposes of the law of inheritance, viz., to keep the property in the family is violated owing to the strict rules against inbreeding laid down by Hindu law; and (3) the economic factor. In an agricultural country like India it would result in the dissipation of the property.

44. The Rau Committee as well as the Joint Committee apparently have acted on the fact that the principles of simultaneous succession has been accepted in the Assembly in passing the Deshmukh Act, but that Act was only for the limited purpose of giving relief to certain families and the want of the opposition, or the silence on this point ought not to be taken as acceptance of the principle. This is borne out by the Home Member making the Government consent conditional on limiting that Bill to wife and daughter-in-law only. They expressly mentioned that they were not prepared to extend the principle to daughters. That was in about 1936. Nothing has since happened which has induced the Government to see the injustices done to the daughter in 1939 except the claim made by certain sections of the ladies. Even the Rau Committee was not at first prepared to include daughter as one of the simultaneous heirs but in their note the Rau Committee says that they have changed their opinion in view of the weighty opinions received.

45. It would thus be clear that in making this departure from the Hindu principle both the Rau Committee as well as the Select Committee have not given their reasons as to why they have done it and this principle ought to be deleted from the Bill if it is to be taken into consideration at all.

46. *Second main feature.*—To remove the sex disqualification by which Hindu women in general have hitherto been precluded from inheriting property from various parts of India. In discussing the principle of simultaneous succession it has been pointed out that the prohibition against inbreeding in the code of Manu made it necessary to postpone women from inheriting property so long as male descendants were alive. This was meant to prevent dissipation of the property. In view of the patrilineal nature of Hindu family equal right of inheritance to women was not desirable by removing sex disqualification. The advancement is a relative term or the Committee have forgotten to note that the Hindu society was based on the patrilineal family from the Vedic times. It is the

man who has the obligation to continue the line by setting up and maintaining the family. The woman has no such responsibility. If she gets any money or property she gets only for enjoyment. There cannot be any right without relative duty and responsibility. It will be seen that under the provisions of this Bill a daughter will inherit from her father and from her husband without any responsibility and to enjoy the property as she likes. The son will have to share the father's estate with his mother, sister, widowed sister-in-law and dependent parents of his father and will be exclusively burdened with the responsibility of continuing the line and maintaining his paternal family. This is really removal of sex disqualification with a vengeance. Apart from the Shastric injunctions, equality and justice demand that the daughter should not be a simultaneous heir with the son. "Up to now, a woman when she marries passes completely out of her father's family and becomes completely merged in her husband's family. Therefore our Law-givers recognise that one of the most potent causes of marital unhappiness was retention of the wife's interests in the father's family.

47. No interest can be more potent than the interest of the property and therefore they provided that a married woman should have generally speaking no interest in the paternal property. On the one hand she would be drawn to her children and husband by ties of natural affection and affinity and she would be drawn to her father's family by reason of the property interest. Psychologically speaking, therefore, the family life would cease to exist for want of unity of interest. Such a condition of mind would hardly create a family life in her husband's family and for this reason it was laid down in the Vedas that she would not be entitled to inherit and it is only in recognition of her relationship that she is given a right to inherit in the absence of a son and widow. It would thus be seen, therefore, that removal of sex disqualification as proposed would further cause a dissipation of the family and it may cause a disruption of the family life with bad effect on the progeny.

The right of a daughter is recognized only in the absence of a son and my Association is not prepared to go beyond that stage, except in the case of a daughter who remains unmarried.

48. In giving their reasons for including the daughter along with the son, the Committee has relied upon certain texts from Manu and Yajnavalkya but these texts refer to Putrika which has a technical meaning, the meaning being a daughter who is given in marriage to her husband under an agreement entered into by the father with the husband, that the son born to the couple would belong to the father and the verse refers to this kind of daughter.

49. The third main feature of the bill is the abolition of the Hindu woman's limited estate. With respect to this also my Association is of the view that the root idea of the Hindu family system is the preservation of the family property and in view of that root idea the absolute right of property is not recognized even in the case of self-acquired property of a male as will be apparent from the text. See commentary of Mitakshara on West 113 of Yajnavalkya Smriti.

The conclusions of the Rau Committee are—

"But, on the whole, it seems safe to state that Smriti authority for the doctrine of Hindu women's limited estate is not unequivocal. The same view is corroborated by the Select Committee based on the same reason. They held that in the Mitakshara this theory of limited ownership had no place at all. All property however acquired by the woman becomes stridhan and such stridhan devolved not upon the heirs of the last male holder but upon her own heirs. Such was the scheme of Mitakshara. The same point has been made by the Rau Committee in their fourth memorandum on which their explanatory note is based. It would be necessary therefore to examine the supposed Mitakshara theory on which the whole proposition is based. It turns upon the introduction of the word 'Adya' in Verse 143 of Smriti of Yagnavalkya. In the second line of the verse, as the word 'Adya' after the word 'Adhivedanika' and Mitakshara interpretation of the word 'Adya' is all kinds of property obtained by inheritance, sale, partition and gift, would be stridhan. Here the word stridhan has its popular meaning and not a technical one. On this interpretation the Rau Committee in their fourth memorandum says that a distinction must be made

between property on the one hand and dominion over or devolution of the property on the other, so that they say stridhan should be taken as meaning property of a woman notwithstanding the degree of domination or the course of devolution of the property."

50. The second step in their reasoning is that as no woman was disqualified for succession by reason of her sex, so equally fundamental seemed the proposition that no limitation should be imported into the nature of an estate because it is held by women and the Mitakshara while it includes all property belonging to a woman in the term stridhan nowhere imposes any limitation on her domination over it. Then the Committee goes on to reply to the doctrine of the perpetual tutelage of Hindu women by relying on a single line on the Mitakshara:—

"The text of Narada which declares a dependence of women is not compatible with their acceptance of property even admitting their dependence. In other words, in Vignaneshwara's views, this dependence even if admitted has little bearing on property rights—a conclusion which is borne out of the fact. According to all schools of Hindu Law a woman has absolute powers of disposal over certain kinds of Stridhan and they further express their opinion that the Law has become complicated because we have departed from Vignaneshwara and the solution is once more to be found in a resort to his ideas. Now this portion has got to be examined."

51. The first thing to be considered is that the word "Adya" after the word "Adhivedanika" in the second line of Verse 143 is not found in all editions of Yajnavalkya Smriti and doubt is expressed by scholars whether the crucial term 'Adya' which is Vignaneshwara's sole justification really occurred in the original verse of Yajnavalkya. Instead of the word Adya, Apararka, one of the earliest-commentators of Yajnavalkya, writes Chaiva instead of the word 'Adya' after Adhivedanika. Jimutvahana contends that the correct reading is Adhivedanikam-Chaiva and not Adhivedanikad-yancha.

52. The second reason in corroboration of the theory that the original word was not Adya is to be found in the grammatical rule that the word Adya is generally used in Sanskrit at the end of an enumeration and it should have come not after Adhivedanika in Verse 143 but after Anvadehyaka in Verse 144 which is the last specific category of stridhan mentioned by Yajnavalkya. This opinion is expressed by Dr. Altekar of the Benares University at pages 264 and 265, in his book on the position of women in Hindu civilisation. The Committee has referred to this book. Therefore it cannot be said that the Committee had not this suspicion before it. But they did not refer to it at all. All that the select committee does is that the founder of the Dayabagha school was chiefly responsible for advocating the theory of limited ownership in their report but they did not see that this reasoning was based on the interpretation of the word 'Chaiva' instead of Adya in that verse and he is not the sole person that has given that rendering but that even Apararka had done it. One would have expected some argument against this point in either of the reports or the explanatory note. Therefore the foundation for this doctrine has been based on probably wrong text.

53. The second reason against the proposition of the Committee is that the rule with respect to stridhan has been extended by them to all kinds of property. They should have seen that a distinction has been made between property inherited from males such as husband and property inherited from females or otherwise, in the first case all property inherited from males she inherits in her capacity as the surviving half of her husband and therefore she takes it as representing the estate which is burdened with obligation and therefore she is bound by those obligations. The obligations do follow the nature of the property inherited in her hands. The Rau Committee further say that Vignaneswar nowhere lays down any limitation on her domination over it nor does he give her absolute domination over the same. If this silence of Vignaneswar is read with his own general theory of restricted ownership the conclusion would have to be that Vignaneswar did not intend to give absolute domination over that property. The passage from Dr. Altekar's book on page 220 is pertinent here.

"It is however very doubtful whether Vignaneswar really intended to invest the widow with the right of disposal over the landed property included in her stridhan but acquired by inheritance or partition. He was not prepared

to concede even to the male manager of the joint family the full power to alienate the immovable property that he may have himself acquired. Could he then have ever dreamt of investing women with a right which he was not prepared to grant even to the male manager? His silence on the point may simply be due to the fact that he tacitly accepted the general principle that women are limited heirs. A principle which was approved even by Brihaspati, the most well known advocate of women's rights—Page 315, Notes 2 and 3, Altekar."

54. Further the word 'Adya' which means etcetera; the word if at all is used by him has been obviously intended to include items like bride-price, gifts from relations and presents received after marriage which are mentioned in the immediately following lines. If, therefore, the basis on which a theory is based is doubtful and the inference drawn by Vignaneswar's non-mention of any limitation on her domination is still weaker especially when it is read in connection with the other portions.

55. Then the third reason given is the text of Narada which declared the dependants of woman, is not incompatible with their acceptance of property but the point here is not whether they could accept or take property but their dominion over it. It is illogical to say that because a person is capable of holding property, therefore, he must be absolute owner of it. It may depend upon the status of the person, upon the nature of the property and the circumstances of the society in which he moves, for instance, a minor is capable of holding property but he cannot have any absolute dominion over it nor property like real property in English which vests absolutely in the Crown can be the subject-matter of full dominion. Therefore, in using the argument about the tutelage of women not being incompatible with their acceptance does not help the deduction held by the Committee.

56. It is not only the Dayabagha, Brihaspati, Katyayana but later writers like Mitra Misra are not in favour to give absolute power to the widow and it is worthwhile to refer to Dr. Altekar's summary at page 321 of the position in reply to the query whether widow's power is to be enlarged and he says the disability is that her power in this connection is not unrestricted. This is of course a disability from one point of view but also a protection from another. In the Punjab and Palestine, for instance, male peasants had unrestricted power of alienation. The result was that many of them sold away their valuable lands and became paupers, as they could not properly utilise or invest the sale proceeds, and Dr. Altekar proceeds further: "We should not forget that 95 per cent of widows are uneducated, inexperienced and altogether innocent of the provisions of law. If they are given the right to dispose of their landed property, many of them will be induced by interested parties to enter into unwise transactions" and he concludes that "in the present circumstances it is not in the interest of the widows as a class that they should have unrestricted powers of alienation." Curiously enough Mr. Justice Divatia has also uttered a warning to the same effect.

57. The Joint Committee states, "There is a body of opinion which will maintain that women as a class should be excluded from inheritance and should not be given absolute ownership over property they acquired either by inheritance or partition and they referred to the opinions urged on the basis of certain Vedic Texts the general incompetence of women, the evil of fragmentation, of hoarding and the fear of the property being lost to the family. The text they refer to says nothing about right or domination over property, but merely states that they are entitled to inherit in the absence of sons. One other argument used is that the widow's alienation is a frequent source of litigation.

58. No. 1.—"The most serious aspects of this disability are, that it is one of the most fruitful sources of litigation in our Courts to-day.

No. 2.—"That for the sake of protecting the property when the woman is not in real need, it penalises her, when in a time of real need she requires all the money she can get by the sale of the property. It is also further stated by them "whatever may have been the case in the past, a general disability of this kind can hardly be defended at the present day, when we have women legislators, women lawyers and women ministers." The first serious aspect of this disability is according to them that it is a fruitful source of litigation. So are cases regarding Dattak. Why not do away with the institution of Dattak altogether? The second reason given is that there are women legislators,

women lawyers and women ministers, but their proportion to the whole women population is extremely small and as Mr. V. V. Deshpande in his book has shown that Dr. Mitter's observation that the case relating to the extent and nature of women's estate which come before our courts are more numerous than the other cases of the Hindu Law put together, is quite inaccurate. He has given statistics to justify his remarks. Equally with the number of cases are cases arising in which the power of a joint family manager or father are questioned in Courts by sons but all that is kept up at least not deleted. In fact that topic has not been touched up to now and it seems it was not likely to be taken up in the near future.

59. As stated in some of the paragraphs above in Hindu Law absolute power or domination over property is an exception rather than a rule and it appears that in that respect the Continental Law is the same. The Continental Law restricts the testamentary powers of every holder. Therefore it cannot be said that the restrictions on a person's power of disposal are necessarily bad so that the doctrine of absolute estate being conferred ought not to be accepted by the legislature. Diwan Bahadur Brahma, a well-known lawyer of Nagpur, is of this opinion and gives practically the same reasons for his opinion in his tract on the Law of Hindu Intestate Succession.

60. While discussing the daughter's rights it has been seen that the daughter is not entitled under the text to be a co-heir with the son but it may be that in the present day daughters might remain unmarried and in that case she is without any support. It is suggested therefore that a daughter should be given a right to inherit along with the brothers when she is unmarried. The suggestions of Dr. Altekar on page 298 of his book are reasonable and should be accepted.

"The above discussion will show that the following changes are necessary in the Law of inheritance as far as the daughter is concerned :

(1) The daughter should have the right to share in her patrimony equal to half that of her brother if she remains unmarried; she would lose this share on her marriage.

(2) She should have the right to demand that an amount from her patrimony equal to half share of her brother and not equal to one-fourth such share as laid in the Smritis should be spent on her education and marriage."

61. In addition to this, the several chapters have to be criticized in detail which would be done in a later supplement to this but generally it may be said that the comment of Diwan Bahadur Brahma on the several clauses are just and reasonable.

41. Ahmedabad Bar Association.

CODIFICATION OF INTESTATE SUCCESSION.

1. This Association is fundamentally opposed to the codification of the Hindu Law in general and intestate succession in particular. The Hindu Law is based not on mere proprietary claims or on mere social fabric of family property as under English Law or any other personal law but is primarily grounded on the sacred principles of religion which have from times immemorial been the basis of conduct of a Hindu born as such, throughout his life. The statutory enactment which revolutionizes these principles is fundamentally contravening the solemn promises of Her Majesty Queen Victoria's proclamation that in matters of religion and personal law her subjects in India shall have fullest liberty. This proclamation has never been violated and in the matters of personal law, based on religion, it is not open either to the Central or Provincial Government to legislate at all contrary to the tenets of succession and other subjects of Hindu Law. "The codification hence in the opinion of our association is misconceived and *ultra vires*."

2. In a vast country like India the Law of inheritance which subsequently came to be propounded in various provinces originated from the important obsequies ceremonies known as "pindodakakriya". The male issues had and have primarily obligation to offer both pinda and tarpan to the pitrus. The efficacy to offer these to the father and other ancestors was the basis of preference in claims which ultimately developed into a fiction of right to property.

3. This personal law came to be recognized in different provinces according as the saint or Rishi gave directions to his clans and they then developed into different systems for several groups. Thus this has become a

personal law and each group is justified in claiming that such a personal law should not be interfered with by any form of legislation. It is neither open nor legal for any of the two Governments to impose a personal law of one group upon another group against its wishes. There is no justification for the Government to impose upon a group a particular system of inheritance which is not a law with it as law, simply on the ground that a homogenous or a uniform system is contemplated to be called into existence. The Muhammadans, both Shiya and Sunni groups, are allowed to have their personal Law of inheritance without the slightest interference; why should the Hindu group be called upon arbitrarily to submit to a singular system however repugnant it may be to the various groups. The system under the Code tolls the death knell of survivorship, right by birth and coparcenary system as is clear from Part III-A, clauses 1 and 2. It abolishes nearly the Mitakshara principles *in toto* and gives preference to Dayabhag principles. The provinces inhabited by the Hindus following the Mitakshara system have and should really have the legitimate grievance against slavery under such an enforced legislation upon them. The framers of the Code cannot and are not expected to treat lightly the claims of these Hindus because in their opinion codification may amount to simplification. Every Hindu by birth should be free and is justified in claiming to be free in the principles which are directions of Rish of his own gotra, pravara or shakha. The system as it now prevails in different parts in our opinion does not call for the slightest interference, much less revolutionary innovations as are embodied in the draft Code and we have no less pleasure in opposing the codification than those who are supporting the same. Under the prevailing system of Hindu Law, a Karta of Hindu family, be he father or otherwise, has limitations in disposing of joint family or ancestral property and has an obligation to preserve the same for the benefit of coparceners. This wholesome and prudent check is sought to be given a go-by by the proposed enactment which creates a right to succeed on death instead of a right in the said property by birth.

4. Definition in clause 1 in Part II, heritable property and Part III-A, are revolutionary changes open to objection for reasons stated above.

5. The inclusion of a daughter as simultaneous heir with sons and widow is objectionable on the principles originating from religious tenets. The male heirs, son, grandson, great-grandson and no more or further than that in compact serious of heirs are entitled to offer oblations and hence from the very beginning they are taken as standing on the same footing and hence when succession, which is not the primary object in Hindu Law, came to be attached to the efficient offering of Pinda, naturally daughter on merits came to be excluded. She cannot give Pinda and moreover becomes "Paragotri" by her marriage. She lost all her legal status and right in the family of her birth and daughter's claim to parental estate stood lower than that of those who belong primarily to the family by birth or marriage and who could by Pindapradana confer religious merits on the deceased. The widow of the deceased on religious principles carries with her a fiction of efficacy in offering Pinda and she is allowed legally to develop it by principles of adoption. This is the ground why widow stands immediately after the three descents, i.e., son, son's son and son's son's son, the only simultaneous heirs before the Deshmukh Act, in order of succession. On consideration the widow belongs to the family of deceased and has also a right to confer merits on the deceased; some legal concession can be made in her favour and she is so placed by the Deshmukh Act; but so far as daughter's inclusion in the list of simultaneous heirs rests on no merits except that she is born in a family like a son, she must have some claim like that of a son if not equal at least half. The share and claim of both stand opposed to reason of the law and common sense, and also to religious principles.

6. The classification of the heirs though evolves its new system by preferential claims, it brings down a change in which outsiders of the family take a priority to those who are born within the family. Group No. II and Group No. III in section (5) in Part II illustrate this amply. These outsiders who have hardly any regard for family traditions and its welfare and introduce themselves prior to those born in family will naturally be asserting their preferential claims. Group II and Group III should

inter-change places. That will keep the old order alive; for changing which there is no concrete ground or even a *prima facie* case made out except that legislative choice gives preference. They have up till now claimed no priority at all.

7. In assigning half the share of the daughter to a son in clause 14 (c) the legislature has not calculated the disastrous effect that the male heirs shall stand impoverished as against the female issues. Because in her mother's estate she should get double the share of son is equally inequitable and unjust. While codifying, the legislature should also have in view the fact that female members of the family are not neglected and are given their due provisions in existing schools of law all over India.

8. The codification of intestate succession is opposed by us on religious principles first, and equitable principles next. Moreover, son-in-law who is an outsider so far as wife's parental family is concerned, will compel his wife to assert her claim in her parental property, disturb family peace there without slightest regard for the family reputation but solely guided by a selfish motive, his interest being centred in getting property and nothing more.

9. The proposals of the Code in giving simultaneous successions will only result in doing away with the fundamental idea of Hindu Law that the Hindu family and family property are units to be preserved for the benefit of the coparceners and females of the family who are in it by birth or marriage which will result in fragmentation of the property which would include in many cases single houses, businesses and small parcels of property. The result therefore will only be obvious enough to start disintegration in the first line on the death of the intestate propositus and in the second and third lines of succession to complete non-existence of such unit either by fragmentation, partition or by forced sales so that the right proposed to be given by this enactment, apart from its necessary effect of introducing strangers in the family and family houses in the form of sons-in-law and stranger-transferees.

These being the fundamental objections to the proposed enactment on principally religious custom or usage having the force of law, social fabric, obligations from male heirs, integrity of Hindu family, family properties, it is expected that the existing law of intestate succession should not be revolutionized in direct contradiction of aforesaid principles and the result is that if the enactment is passed as proposed with reference to this part it will not only be detrimental to the interest of the male heirs and reversioners on the death of a widow but will in numerous cases be detrimental to the interest of the females of the families at the hands of their own husbands or their husbands' relations and will make them mere tools to wreak vengeance for smallest parcels which are proposed to be given to them on succession.

ADOPTION (PART VI).

Clause 1.—Amongst Hindus custom overrides the law, provided the custom is ancient, invariable, not unreasonable or opposed to public policy. Provision, therefore, for abolishing all other forms of adoption, except the Dattak one, would not meet with approval.

Clause 1, sub-clause (3) may, therefore, be deleted.

Clause 5.—Instead of "Fifteenth" insert "Eighteenth."

Clause 12.—Under the existing Hindu Law, an orphan cannot be adopted. It is high time that there should be a change of law on this point. If the adoptee is an orphan, his certificated guardian may give him in adoption. Cases may be imagined in which a promising and intelligent boy who may be desired to be taken in adoption cannot be so taken, if he happens to be an orphan.

Clause 13—(iii).—Bar of marriage should be removed. But bar of issue before adoption may be added.

Clause (iv).—Bar of Upanayan should be removed.

Clause (v).—Instead of this a clause that the intended adoptee must be younger than the adoptive father or mother should be substituted. Clauses 3 to 5, put considerable restrictions upon the intending adopter, as to the selection of the boy proposed to be adopted. A suitable boy, fulfilling the requirements desired by the adopter may be difficult to be found unless the restrictions are few and mild.

Clause 15.—(2) should be deleted. Idea underlying adoption is conferring of religious benefit on deceased father or existing adopter. Doing away with Datta

Honam, will deplete the ceremony of adoption of all its religious sanctity.

Clause 19 (3) (a).—After the words "as the estate or estates stood" insert the following "at the date of the death of the adoptive father" and delete the words "immediately before the adoption."

Clause 28.—The period of 90 days for making the application should be increased to one year, and even then, benefit of section 5 of Limitation Act should be extended to applications beyond one year, on good cause being shown.

In Clause 1 (a) (i) of Chapter IV for the word "fifth generation" put the word "third generation" and for the word "seventh" put the word "fifth."

Clause (ii) to be retained.

Clause 2.—Forms of marriage to be retained.

Clause 3.—Requisites of sacramental marriage to be retained with following alterations—After the word "two" and before the word "Hindus" add the words "sui juris."

Sub-clause (1) to be retained.

Sub-clause (b) to be retained.

Sub-clause (c) to be retained.

Sub-clause (d) to be retained.

Sub-clause (e) to be altered as under—"If the bridegroom or the bride has not completed his or her 18th year, the consent of his or her guardian in marriage is obtained for the marriage."

Clauses 4 and 5 to be deleted and alternative clauses 4 and 5 to be substituted.

Clause 6.—"Sacramental marriage not to be deemed invalid in certain cases" to be retained.

Clause 6 (i).—"Optional registration of sacramental marriages" to be retained but the word "compulsory" to be substituted for "optional."

Clause 6 (2).—Read as follows:—No such registration shall take place, except with the consent in writing of both the parties to the marriage, provided where the wife or husband has not completed his or her 18th year, the consent of his or her guardian instead of his or her consent shall be required.

CIVIL MARRIAGES.

Clause 7.—Requisites of civil marriage.—In clause (5) of clause 7 after the word prohibited degrees, the word "by this chapter" be deleted and substituted by way of explanation 2 (b) which says who are within prohibited degrees.

Clauses 8 to 22.—Under the head "Civil marriage" to be retained.

GENERAL PROVISIONS.

Clause 23.—"Guardianship in marriage" to be read as under 23 (a) if Hindu boy or girl who are sui juris but have not completed his or her 18 years.

Chapter III.—Nullity and dissolution of marriage.—Clause 29—Decree of nullity of marriage—Delete the words "District Court or High Court" and substitute the word "Civil Court."

Clause (3) should be deleted:—

Instead it should read as under: "Every decree passed by a Civil Court under this chapter shall be subject to appeal under sections 96 and 100."

Clause 30.—Decrees for dissolution of marriage.—Clause 30 relating to dissolution of marriage should apply mutatis mutandis to sacramental marriages as well in view of ancient texts from which the clause deems to have been copied with the following additions and alterations:—

Clause 30.—Decrees for dissolution of marriage.—Substitute the word "Civil Court."

(a) Substitute "five years" for seven years.

(b) To be retained.

(c) Substitute the word "3 years", for "seven years."

(d) To be retained.

(e) Substitute the word "3 years," for "7 years."

(f) To be retained.

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I

1. The ideal to have a Hindu Code for the entire Hindu community throughout the length and breadth of India is welcome; but having regard to the age long customs and practices, sometimes cherished by the people as

religious observances, there should be two systems, namely Mitakshara and Dayabhag. Dayabhag system should continue to rule as and where at present it exists and the Mitakshara should prevail in the rest of British India. Indian States would follow the British Indian legislation.

2. The present joint Hindu family system contains the germs of socialism. Earnings of one member of family are being roughly owned and enjoyed by all members of the family. This principle can be well utilized and worked up; but it is also being abused by lazy members of the family. The committee should aim at maintaining the integrity of the family.

3. The new draft looks more to the person and encourages the development of individualistic and separatist tendencies. We must look to the maintenance of the family as a unit. The family should remain as the centre of gravitation and attraction and we should only give scope for individual enterprise consistent with the keeping-up of the family tie.

4. Part III-A of the draft Code should be deleted. There should be some control over and limitations to the power of disposal of property, which will be the case only if the son and grandson were to have an interest in the joint Hindu property.

5. The proposed Hindu Code should come into force five years, after it is passed.

6. At the end of clause 5 (j) Part I add the following:—"Provided that property inherited or obtained at a partition from her husband's family shall not be deemed stridhana."

7. Part II, clause (2), sub-clause (b).—Illustration is inappropriate in spite of the reasons given by the committee.

8. Clause 2 (b).—Retain Joint Select Committee's definition of "heritable-property" and omit "Part III (A)."

9. Part II, clause 5—Enumerated heirs, class I—sub-clause I.—Before the word "daughter" add the word "unmarried. Widowed daughter-in-law and grand-daughter-in-law" should be included in the enumerated heirs.

10. Part II, clause 7 (b).—Add "provided the divided son has not already taken away his share from ancestral estate."

11. Part II, clause 7 (d).—The words beginning with "married or widow" till the end should be dropped and in their stead, the words "until marriage" should be added after the word "unmarried."

12. Part II, clause 10 should be dropped.

13. Part II, clause 13.—Illustration (1) is inapplicable if amendment to the definition of "stridhana" as suggested above be accepted.

14. Part II, clause 14 (a) is inapplicable to the comprehensive definition of "stridhana" as proposed in the Code.

15. Part II, clause 20, should read thus: "A person, who is found guilty by a competent court to have committed murder or has abetted the commission of murder." Not the mere commission of the offence but the finding by the court should be necessary to incur disqualification and disinheritance.

16. Part II, clause 21.—The convert *himself* should be disqualified from inheritance and caste disabilities removal act should be abrogated.

17. Part II, clause 25.—At the end add "and as trustee for the benefit of the community to which the deceased belonged."

18. Part III, section 212 of the Indian Succession Act should be included regarding letters of administration.

19. Part III-A should be deleted and the law of joint Hindu family property should be retained as it is at present.

20. Part III-A, clause 6 (g).—Drop "but not the income from her own earnings or any other source" as wholly inconsistent with clause (e) of the same clause.

21. Part IV, clause (the alternative to clauses 3, 4, 5) add the contents of clauses (b) and (c) regarding insanity and degrees of relationship as mentioned under clause 3.

22. Part IV, clause 3 (e).—Consent of the guardian of a minor bridegroom should be a requisite.

23. Part IV, clause 3.—Add between (a) and (b) "provided any person whose first wife is through illness or otherwise incapable of conjugal life may apply to the District Court for permission to remarry in spite of the above clause."

24. Part IV, clause 4.—Add at the end "when the language in which the rites are performed is not understood by either party, those rites should be explained in the language understood by them."

25. Part IV, clause 5, regarding consent.—Add "or bridegroom" after the word "bride." A similar change should be made section 3 (e). (Alternative clause)

26. Part IV, clause 3 (d), (alternative clause) should be reproduced as per clause (d) of section 3 with the words "unless . . ." to the end.

27. Part IV, clause 7 (4) proviso about "no consent being necessary in the case of a widow," to be dropped. Similar change be made, clause 14, clause 18 (c), clause 23 (b).

28. Part IV, clause 11.—Three months' period in place of 14 days should be provided, in case of civil marriages, for taking objections under clause 11.

29. Part IV, clause 29.—The forum should be mentioned, in clause 29 (3).—In place of "District Judge" use the words "District Court."

30. Part IV, clause 30.—A period of three years should be substituted in place of seven in clauses (a), (c) and (e).

31. Part V.—After clause 31, a provision should be made to have the King's proctor made a party to the suit in pursuance of section 17 (a) of the Indian Divorce Act.

32. Part VI, clause 5—Adoption.—Substitute "21" for "15." Drop "Explanation." The possibility of begetting a son is a point which may weigh with the persons concerned.

33. Part VI, clause 11.—Even an orphan may be given in adoption by his elder brother. Under the existing law such an adoption is held valid if a custom is established (vide *Rambhishore v. Jayanarayan*, 48 I.A. 405 : 49 Cal. 120).

34. Part VI, clause 13.—Unnecessary restrictions are imposed by the committee for a boy being adopted. Thus the performance of the Upayanayan should not be disqualification nor the age-limit of 17, be compulsory.

35. One of the ingredients for the completion of adoption should be a writing and its registration should be compulsory. But such writing and registration would not be sufficient to establish the factum of adoption:

36. Part VI, clause 20.—Delete the words "or curtailing the rights of an adopted son".

In continuation of my above memorandum, I would like to make further observations.

CODIFICATION AND REFORM.

1. It is high time to codify Hindu Law. The existing Hindu Law is to be found in Shrutis, Smritis, Commentaries, judicial decisions and legislative enactments. The people find it difficult to ascertain the principles and provisions applicable to them. The law should be simple, definite and available and accessible to all who would like to follow and understand it. It should therefore be codified.

It is contended that if Hindu Law is codified, it would cease to develop. The argument is not sustainable. During the last 75 years and more the British Courts have tried to interpret and administer Hindu Law as it was once propounded. But it ceased to be evolved and it did not keep pace with the onward march of time. True "Dharma" consists in holding the people together. Law is not immutable but it should meet the growing demands of the progressive community. It should afford man and woman adequate opportunities for self-development, self-expression and self-expansion. The existing law falls short of the requirements of the progressive Hindu community. Women and Harijans would like to play and should be allowed to play their part well and worthily in the economy of the nation. The Hindu Law therefore should not only be codified but it should embody the principles and provisions, which will be in unison with the progressive elements in the society. We should be proud of the glorious past and of the memorable traditions but now we ought to consider and devise ways and means so that India takes her proper place in the comity of nations. In preparing the Hindu Code, therefore, while retaining what is best in our ancient culture and civilization, we should try to assimilate and embody what is calculated to be conducive to the good and glory of the community as a whole. There should not be any reasonable ground for a Hindu to leave the Hindu fold.

SAGOTRA MARRIAGES.

2. I welcome the idea of removing the prohibition on sagotra marriages. Gotra does not necessarily connote a common ancestor. Gotra of a female changes with her marriage and that of a boy by adoption. Prohibition should be based on principles of eugenics.

MONOGAMY AND DISSOLUTION OF MARRIAGE.

3. The draft Code certainly aims at introducing many desirable and long-awaited changes. A Hindu must not have a spouse living at the time of marriage. Under certain specified conditions however, a male should be allowed to have a second marriage during the lifetime of his wife. These exceptions should be noted by a statute. The chapter on nullity and dissolution of marriage is a great step forward. The draft Code proposes to provide for divorce only in the case of sacramental marriages celebrated after the commencement of the Code. It is desirable that this provision should be extended to marriages celebrated even before.

ADOPTION.

4. The provision that the father is capable of adopting a son, or giving a son in adoption without the consent of the mother and in spite of her dissent, works injustice to mothers. The relations between a child and his mother are more intimate and tender than those between the child and the father. She would deeply feel the separation. She ought to be consulted before the boy is given in adoption.

I therefore suggest that the father should not have a right to adopt a boy or give a son in adoption without the consent of the mother of the child.

RIGHT BY BIRTH.

5. The proposed measure aims at abolishing the right by birth of a son, grandson and great-grandson to his ancestral property. The doctrine of the son taking an interest in his ancestral property by birth is one of the noblest achievements of the legal Hindu genius and provides a safeguard against the spendthrift father. Further, if the wife dies, leaving a son or two and the husband marries again, there is danger of the wife inducing her husband to disinherit her step-sons. Injustice and inequitable distribution of property would follow. The doctrine of a right by birth therefore should not be abolished. The Code should provide under what conditions and for what purposes the father can alienate the ancestral property including the right of his sons. To avoid the evil of the other extreme the meaning and scope of self-acquisition or heritable property should be enlarged on the lines of the Hindu Gains of Learning Act, 1930.

43. Mr. N. B. Budhkar, B.A., LL.B., and Mr. N. B. Deshpande, B.A., Pleader, Karad, Dt. Satara.

1. The Hindus in rural areas are totally against the codification of their ancient laws. There is a division of opinion on this question in urban areas, and even there a large majority is against such codification. They believe that the purpose for which such codification is being made would not be served by it.

2. Such codification is against their age-long customs and usages which have their origin in various scriptures. It is opposed to their religious ideas.

3. The draft Code if made law will not represent the will of the people. The codification is an attempt to force the will of a vocal few upon the vast millions of Hindus who have little knowledge of what is being done in legislatures and by committees.

4. The draft Code embodies in a slavish manner Muhammadan and Christian ideas on grounds of uniformity and imaginary views of equality.

5. Hindus in mid-west are opposed to simultaneous succession, civil marriage, divorce and such other matters which have no place in Hindu religious books.

These are some of the reasons, amongst others, why I oppose the draft Hindu Code.

44. Bar Association Amalner, East Khandesh.

1. The draft Hindu Code contains many revolting changes entirely foreign to Hindu Law.

2. The Hindu Law as administered at present in this Province is sufficient enough to safeguard the spiritual and worldly interests of the Hindus. It does not call for

any change therein. There is therefore, no necessity of following other laws.

3. It is, therefore, the decided opinion of the majority of this Bar, that the draft Hindu Code be dropped altogether and the existing Hindu Law as administered in this Province be retained and followed in future.

45. Bar Association, Khargone.

The members of the Bar Association, Khargone, regretfully consider the draft Hindu Code a most retrograde step in the Hindu Law, as it goes beyond the established provisions of Hindu Law and introduces many undesirable principles. We strongly oppose the draft Code.

46. Mr. K. V. Shaligram, D.Com., I.M.C., Pleader, Poona.

1. Whereas the Hindu Law Committee receives and considers opinions from the public on the draft Hindu Code, hereunder are submitted my observations relating to the proposed legislation of the Hindu Law.

2: The codification of Hindu Law is quite expedient.

3. Besides the exceptionally abnormal conditions prevalent in the country, owing to the present world war, engrossing the mind of the public whose proprietary interest is directly and materially affected by such legislation, the channel through which the Bill is sought to be introduced is, in the first place, objectionable not only socially but also constitutionally.

4. In the explanatory statement to the draft Hindu Code, the Committee have pointed out the exclusive powers of the Centre to legislate on the personal laws. Schedule Seventh to the Government of India Act, 1935, contains Concurrent Legislative Lists. Had it been the exclusive power of the Centre to legislate on such subjects (items VI and VII of the Seventh Schedule) they would have been included, not in the Concurrent List but in Federal Lists which clearly ousts legislative powers of the Province. The inclusion of these items in the Concurrent List *ipso facto* bespeaks that even with regard to personal laws Provincial Legislation was contemplated by the Government of India Act, 1935.

5. Apart from this legal and constitutional aspect, the present Central body is not at all a true representative body of the public opinion of the day. Furthermore, inactivity of the majority of the present Members of the House on one ground or the other peremptorily invites attention while age-long matters are in the drastic making with far-reaching consequences substantially affecting the personal and proprietary rights of the overwhelming majority of the illiterate population of the country.

6. The Committee have failed to make specifically clear the basis on which they drafted the Code, in other words whether the basis is—

(a) Ancient texts, or

(b) as the law stands today with its modifications and enactments; or

(c) as is required by the present time in comparison with the rest of the universe.

7. The broadest principle of legislation of the personal laws is that the codification of such personal laws should *prima facie* reflect the historical, religious, economical and social antiquities with general peculiarities and unique singularities, if any, of the members of the community. All our ancient texts sufficiently evince and satisfy these conditions but with some diversities of opinions. And here exactly, in fact, is felt the necessity of codification.

8. The whole trend of the draft Code shows that the Committee have not in the least regarded this view. Otherwise they would not have proposed a parallel to each of the Hindu peculiarities in practice from immemorial times. Coparcenary, joint family, sacramental marriage and adoption are the unique and unparalleled singularities of the Hindu community. To each of them, a counter-proposal nearly abolishing the present form is contemplated by the Committee. Right by birth is replaced by right after death, survivorship by succession, sacramental marriage by a contractual one; and a clog on adoption. Matters foreign to textual Hindu law are newly introduced in the draft Code, namely, divorce, simultaneous shares to daughter and deceased coparcener's representation by his widow. The abolition, or counter-device of the first four enumerated above loses the substratum of the Hindu system. The introduction of the latter three erects altogether a new edifice.

9. The Hindu Law, as it stands today, comprises piecemeal legislation, decided case law, divergent interpretations of the ancient texts and customs of Laws. If this alone (existing law) is to be codified (and this alone needs codification) the following views are submitted. If, on the other hand, drastic proprietary and social changes are in view of the Committee (draft Code evinces the same) the same may well be promoted, instead of such codification, by the application of the existing Civil Marriage Act and the Indian Succession Act and by repealing the present Hindu Law. On the contrary, if Hindu antiquity, Hindu culture, Hindu civilization, Hindu religious history and society are to survive as distinct from the rest of the world's population, there is no other go except to reframe the present draft Code so as to reflect therein the points enumerated above.

10. As has already been said at the outset that the codification of Hindu Law is quite expedient, unification by codification and its application to the whole nation will certainly not defeat the desideratum.

11. While redrafting the present Code—

(i) Ancient texts should be regarded as the paramount basis. With the changing time, draft may provide some latitude which will not defeat the original principles *ex toto*.

(ii) A sub-committee of persons who are—

- (a) Scholars in relevant Sanskrit texts and/or
- (b) endowed with high legal acumen,

should be appointed to give authoritative interpretations to the ancient texts wherever such a need be. All the members of such a committee should be exclusively Hindus.

(iii) Whenever existing piecemeal enactments are in contravention to the authoritative ancient texts the same should be repealed or re-enacted in accordance with such textual references. For a wrong can never be remedied effectively by another wrong. Similarly should be treated the decided case law which has been interpreted by foreign or Non-Hindu Judicial Authorities in the past who relied upon the secondary or translated texts and interpreted by the interested persons in those particular cases.

(iv) Unification by codification and its application to the whole nation in suppression of the established distinction of the various existing schools is not an easy task, with tremendous opposition from the public. Again, the Concurrent Legislative List III in the Seventh Schedule to the Government of India Act, 1935, admits itself that the Provincial Legislation will help to maintain the established Local Law with its recognised customs. With time, merging of Mitakshara Law is calculated by the draft Code. The majority of the population is affected thereby. Moreover, it is a serious breach of the legislating principles and a direct attempt to make the minority rule the majority. Exceptions have never been allowed to govern good laws. Again conflicting views of authorities can be best tackled by Provincial Legislations suiting the conditions of the country and having the constitutional provisions.

12. Principal J. R. Gharpure has rightly remarked "Needless to say, therefore, that in a society like the Indo-Aryans with a long continued past, with its several stages of evolution affecting a vast number of human beings, it is only a steady course of evolution taking with it the popular mind and force which are calculated to give it a lasting place and not legislation which however quick in its results is bound to be equally quick and short-lived in its life."

13. If a monument of Hindu Law codification and an everlasting monument of the antiquity of the Hindu culture and civilization are desired, paramount importance to these among other such suggestions can be easily realised. The achievements of such codification may politically determine the fortune of the country.

47. Mr. P. M. Nadkarni, B.A., LL.B., Grant Road, Bombay.

Clauses 29 and 30 of the said Code provides for decrees of nullity of marriage and for dissolution of marriages. But these provisions apply only to marriages celebrated after the commencement of the Code. Unless provision is made for nullity and dissolution in case of all marriages, no redress can be had to either party to the marriage and the party will suffer lifelong. The male member can no doubt get over the difficulty by going in for a second marriage even before the Code comes into effect. I feel personally, and the majority of the Hindus

too so feel, that provision ought to be made for nullity and dissolution in case of all marriages at least on grounds of lunacy, incurable disease, idiocy, conversion and desertion. Why should a poor Hindu woman suffer lifelong if the husband is impotent, lunatic, etc.? I know an instance where a girl of 19 years was married to a Hindu. But from the day of marriage he became insane. He was sent to a mental hospital and returned home after recovery after six months. But he is not prepared to stay with his wife and has deserted her for the last seven years. Why not make provision for dissolution of marriages in such cases? Should she continue in that state for ever? Give her a chance to marry again and be happy.

48. Mr. G. R. Rajopadhyaya, Pleader and President, Varnashram Swarajya Sangh, Satara.

1. The draft Code has not the value, importance and authority of the Smriti.

2. It has been the practice among the Hindus from very old times that a Smriti comes into existence when there is popular demand for it. Every Smriti is introduced with reference to such demand, made by people to a sage revered by them. Being composed on such demand it was natural that the Smritis were and are regarded as authority by the public. There is no such demand for the draft Code and hence it cannot rise to the rank of a Smriti.

3. The authors of the Smritis are required to be such persons as are well-versed in the Vedas and have realized the self. The authors of the draft Code are admittedly not such persons.

4. The draft Code is contrary to the principles laid down in the Vedas, the Smritis, to tradition and even to the theories of modern social science and history.

5. The draft Code has introduced certain changes in the Hindu Law. Admitting that there is a certain section among the public who desire such changes, it cannot be denied that this section is a very small minority and so it is very unjust and oppressive, that the majority should be made to suffer for the wishes of that very small minority. It is the minority who is to suffer for the majority and not the reverse.

6. In Hindu Law, the vedas are the supreme authority. Next to them, the smritis which follow the vedas. After them the digests or nibandhas which follow the vedas and smritis. Admitting that the smritis have made a few changes in the vedic law, still such changes are confined to disallowing certain acts such as *niyoga*, etc., which were allowed by the vedas. The smritis have not made any changes allowing any acts which were forbidden by the vedas, except those which were temporary and due to stress of hard circumstances and as such called *apad-dharmas*. The changes made by the draft Code are not so, they are of a permanent character and not due to hard circumstances. Not only this, but unlike the smritis, they violate the very principles on which the Hindu society is founded.

7. Principal J. R. Gharpure has, in his general introduction to the English translation of Mitakshara, the celebrated commentary on the Yajnyavalkya Smriti, set out the following principles of Hindu Law and religion:—

(a) The Mitakshara has a very prominent place among the authorities on Hindu Law.

(b) According to Mitakshara, inter-caste marriages and sagotra marriages are prohibited.

(c) The institution of four varnas, four ashramas and four purusharthas constitute the Hindu religion.

(d) Marriage is a sacrament and is indissoluble.

(e) In marriage the woman changes her gotra from that of her father to that of her husband.

The draft Code has violated all these principles in that it has allowed inter-caste and sagotra marriages, has allowed registered marriages and thus turned marriage into a contract, has rendered marriage dissoluble by allowing divorce, has laid down that a woman retains her father's gotra after marriage thereby making her entitled to a share in her father's property.

8. Yajnyavalkya, the author of the smriti which the Mitakshara follows, had himself married a second wife when his first wife was living. The draft Code has made such second marriage unlawful, thus denouncing the act of the very personage who is regarded by the Hindu Society as a great authority on Hindu Law. Under Hindu Law, marriage for progeny is a duty. When this object cannot be fulfilled by the first marriage, it becomes

a duty to marry a second wife for that object with the consent of the first wife. The draft Code compels a man in these circumstances to discard the consenting first wife and then to marry another.

9. By allowing divorces, the draft Code has lowered down the ideal of marriage from duty to pleasure. Hindu Law consecrates the life of every Hindu man and woman as a sacrifice which consists in the discharge of the peculiar duty assigned to him or her which is called swadharmas. These swadharmas are classed under four heads which give rise to chaturvarnya or caste-system. As regards the woman, her swadharmas or duty consists in keeping firm to the family which she enters at marriage and of which she forms the centre. It is for maintaining the family intact that marriage is indissoluble under Hindu Law. By allowing inter-caste marriages and dissolution of marriage by divorce, the draft Code has laid an axe to the root of chaturvarnya and the institution of joint family which form the basis of the Hindu society. Besides inter-caste or inter-social marriages are hybrid marriages resulting in the sterilization of society according to theories of modern social sciences.

10. The vedas and the smritis have made a distinction between the function of man and woman according to their physical and mental capacities which they naturally possess. To man are assigned the functions of supporting the family, continuing the social line, studying and preserving the ancient lore and culture, offering oblations to Gods and the manes, etc., and to women are assigned the functions of assisting men in their functions and particularly keeping firm in the family as its centre. As women are by nature unable even to protect themselves, the Hindu Law has relieved them of the responsibilities of hard-life outside home and given them the position of deities shining in homes and society. It has been laid down that in childhood they are to be protected by father, in youth by husband, in old age by son or sons. Independence or absolute ownership brings with it the hard responsibilities of life for which they are not fitted by nature and so they are saved from such responsibilities, that is to say, from independence. The draft Hindu Code has dragged them down from the position of deities receiving honour and protection from men and by giving them absolute ownership, i.e., making them economically independent, thrown on them a burden which they are unable to bear by nature. Nature has placed on them the burden of child-bearing, etc., and it is unjust for men to add to this natural burden the said burden of responsibilities. It is selfish on the part of men to lighten their burden of protecting women and throw the same on women themselves. Women suffer for men the burden of child-bearing, etc. Why should not men suffer the burden of protecting women? Women must receive from men honour and protection as of right. Why should men deprive them of that right?

11. A woman can never be helpless under Hindu Law. The burden of protecting her is thrown by Hindu Law on her father or brother before marriage, on her husband after marriage, on her son or sons on the death of her husband and if she has none of these, then on those who share her father's (if she is unmarried), or husband's (if she is married) property. *If a woman is helpless, the fault does not lie with the Hindu Law but with him on whom the burden lies of protecting them. It is up to Government to punish such a faulty person and to cause him to render help to the helpless woman, or in the last resort, to maintain her as a ward at the cost of that person.* To give absolute ownership to women is not the proper remedy; it would be a remedy worse than the disease.

12. The framers of the draft Hindu Code profess to have drafted the code with mainly two objects: (1) to meet the progressive ideas of modern society; (2) to secure uniformity of rules in Hindu Law. As regards the first object, it may be said that the draft Code, instead of meeting the progressive ideas, goes in a contrary direction. In the first place, by making the majority of the Hindu people to conform to the wishes of a small minority, the draft Code infringes the rule of democracy which is admittedly a progressive idea. Secondly, the theories of individual liberty and independence of women, which form the basis of the draft Code, have now ceased to be regarded as progressive ideas. These theories have now become old and given place to new theories of societies, i.e., subordination of individual interests to the well-being and preservation of society as a whole. The best form of

socialism is the caste-system of the Hindus, as remarked by European thinkers even, like Meredith Townsend whom Principal Gharpure has quoted in his general introduction, above referred to. Like liberty, the theory of equality and competition has changed and given place to that of special function and co-operation. Independence of women leads to equality and competition between men and women. The competition of women with men in the intellectual field tells upon their child-bearing capacities and their health. Their competition with men in the economic field results in the moral corruption of men and women. In the conservation of social energy, the chastity of women is a more important factor and there are far more chances of losing this when women lead independent lives. The history of a number of societies has conclusively proved that the independence of women leads to disintegration and destruction of societies and non-independence of women conduces to their chaste life and thus preserves the society and conserves their energies. The modern progressive ideas are now veering round to the principles which form the bed-rock of the Hindu society. From this point of view, the draft Code stands to be condemned.

As regards the second object, the draft Code has hopelessly failed to secure uniformity. While trying to unite the differences between the two schools—the Mitakshara and the Dayabhaga—about the rules of succession, the draft Code has added to and widened the differences. It has divided succession into two heads: (1) Intestate and testamentary. The intestate succession may be governed by the rules under the draft Code but the testamentary succession may follow the Mitakshara or the Dayabhaga or any other school that may be invented by persons holding still different views. The draft Code has thus multiplied the existing differences to any number. The present forms of marriage are sacramental, being confined to Savarna and Asagotra marriages. The draft Code has created new differences, under the head sacramental marriages by bringing under it Asavarna and Sagotra marriages and also created a new head, by name registered marriages. Under the Hindu Law every Hindu has to follow a particular rule about succession or marriage; no option is allowed to him. The draft Code has given option to a Hindu as he pleases, regarding succession and marriage. What sort of uniformity is this? If this is uniformity, what on earth is not?

13. Not only in respect of succession and marriage does the Hindu Code dislodge the Hindu society from its firm foundation as said above, but it does so in other respects also. (1) It dispenses with Upanayana as a condition precedent to marriage. (2) The draft Code dispenses with the gift of the girl by her father or brother at her marriage and thus makes her independent. (3) By keeping a difference between the gotra of husband and wife, the draft Code has given marriage the character of a contract between two independent persons, to be dissolved at either's will and also made it difficult to ascertain to what gotra their offspring belongs, thus cutting off the institutions of family and gotra. (4) By allowing registered marriages, the draft Code has deprived marriage of its sacramental character and by dispensing with Homa, it has deprived adoption of its like character. The sacramental character of marriage, etc., has contributed very much to the stability of Hindu society. The loss of such character on account of the draft Code will certainly have the opposite result. (5) By giving shares to daughters as to sons in the father's property the draft Code tends to make so many divisions in that property that neither sons nor daughters will be profited by a share in it. Other effects of such a division of father's property will be: (a) Uneconomic holdings; (b) difficulty of management; (c) increase in disputes; (d) accumulation of social property in the hands of women after a few generations; (e) encouragement of marriages with mercenary motives on the part of men, etc. This is quite undesirable and detrimental to the well-being of Hindu society.

14. The Hindu Law is divided by smritis into three parts: (1) Achar, (2) Vyavahar, (3) Prayaschitta, which three form a compact whole so that if one of them is disturbed the others are disturbed also. The draft Code disturbs partly the first and partly the second and thereby disturbs the whole Dharmashastra which has Hindu Philosophy for its background. As long as Hindu Philosophy is not changed, Dharmashastra cannot be changed and so Achar and Vyavahar also cannot be

changed. One who does not know Hindu Philosophy, that is to say, has not realized the self, cannot be a Smritikar. The actions of the framers of the Hindu Code are *ultra vires* as they have entered a province which is not theirs.

15. No doubt the draft Code has some good features. It has widened the definition of Hindu so as to include Buddhists, Jains, Sikhs, etc., among the Hindus. It has preserved the existing Law of disqualifying descendants of converts from inheritance of the property of their Hindu relatives. Although monogamy is in vogue among the Hindus, there are some instances of polygamy. The draft Hindu Code aims at making provision for women and thus raising their economic status. But at the same time it has made a very bad and undesirable admixture by introducing many worse features. Without such admixture the draft Code should have improved its good features. Instead of disqualifying the convert's descendants from inheritance, it should have disqualified the converts themselves from inheritance. It should have made exceptions to polygamy in the cases above referred to. It should have made provision for women, not by giving a share to them in the father's property or by giving absolute ownership to them, but by the way, above suggested. The draft Code should not have allowed divorce, registered marriages, *Asavarnas* and *sagotra* marriages. In short, the draft Code should have been prepared like a *Nibandha* following the authority of the *vedas* and *smritis* which remain not only unshaken but rather confirmed by the discoveries of modern social science and history. The draft Code should not have deviated from the trodden path of Hindu Law, without making sure that the new path on which it is going to lead, the Hindu society is not slippery and that the trodden path is such. The Hindu Code will not only de-Hinduise the Hindu society by introducing non-Hindu principles into the Hindu Law but will also shorten the life of this long-lived Hindu society by introducing foreign poisonous elements into its body.

The draft Code has lost sight of the following reasons for which the limited estate has been held proper for so many past centuries :—

(1) That the property of a family should be kept intact as far as possible with the members of the family.

(2) That there should be a check on the borrowing capacity of a person and lending power of a creditor.

(3) That the fragmentation of estates shall be avoided as far as possible and hence there are laid down some restrictions in the case of even males who are incapable to inherit any property at all.

(4) Women are after all born and brought up in such a position as not to know the legal technicalities of maintaining the estate and they have to depend on the help of the males.

(5) The power to enjoy the estate so long as she lives is not at all shaken by the present law, and in the case of the manager who is a male there are restrictions such as family purpose—lawful and legal debts and moral debts which alone are held to be binding against other coparceners who are male minors and adults.

(6) *Stridhan* property which is held to be her absolute property is recognised all along to be an alienable property. Why has that not improved the position of women, if at all it is improvable by absolute ownership?

(7) In the case of minors they are allowed to set aside the alienation of their guardian if they are not for their benefit and there is no such distinction between male minors and female minors in getting them set aside on lawful grounds.

(8) The institution of continuity of a male line will be much hindered by absolute power given to a widow inasmuch as she will be inclined to dispose of all the property of her husband's family and there will be no longer any necessity of having a boy in adoption and nobody would give her or his son in adoption only to offer *Pindas* to the adoptive father when there is no property at all.

(9) The way to reduce litigation over the estate of widows is not to give them absolute power of disposal but to prohibit altogether the alienation beyond their lifetime. The *saranjam* and *vatan* properties are recognised to be inalienable. So also *deathan* property. In some cases where there is a custom the right of *Primogeniture* is accepted and even male members are given maintenance. Government has even laid down on males some restrictions

on the power of taking a stranger as an adopted son in the case of some *Jhagir* and other landed estates.

(10) The limited estate for such and other reasons conduces to the formation and stability of the family system, of the patrilineal institution and of the whole society and its culture.

49. Mr. K. P. Joshi, Pleader, Poona.

I, as a member of the *Desastha Rigvedi Brahman Shikshanottejak Sanstha*, Poona, place my views on the Code as follows :—

I oppose the codification of the Hindu Law on the grounds that the *smritis*, which are the fountains of Hindu Law, form part of the *Vedas*. These *smritis* were never the creatures of the Crown. The duty of the Crown is simply to administer the laws as laid down in the *smritis*. The Crown has no power invested in it to frame laws on matters dealt with in the *smritis*. This fundamental dictum or rule has been observed all along and even by the British Government since the time they came to rule India. The British Government is, further, bound by their pledges given from time to time. The move at codification is thus, not legal. The Government is not competent to codify the Hindu Law even through their legislative bodies on the plea that they represent the Hindu public. Secondly, the object of the Committee is not purely to codify the Hindu Law just as has been done by Sir *Dimshaw Mulla* in his book on Hindu Law but the Committee, mischievously, intends to introduce foreign principles into the Code which eventually wipe out the last vestiges of Hindu civilization and culture. A great offence has already been made and a mischief done to the Hindu Law by mal-interpretations of original texts of the *smritis* by High Courts and the Privy Council and some new principles introduced in the law by isolated legislations. Our real grievances relate to them and our anxiety consists in finding out ways to remove them. But instead of correcting wrongs many more are added by the Committee.

The active move at codification is by a very small section of the Hindu community compared with the mass to which the Bill has not as yet reached. The Hindu public in general are, at present, labouring under their own anxieties due to the present world war and have no leisure to give a thought to it. At such a time no genuine and honest public opinion could be obtained. The views which the Committee may get, will consist mainly of persons who hold anti-social individualistic tendencies and therefore, legislation should not be hurried merely on the strength and views of such persons.

In spite of the circumstances not quite favourable to obtain public opinion if the Government desires to codify the Hindu Law; I am unable to subscribe to the object of the Committee to evolve a uniform Hindu Code. Having regard to the age-long obedience to the *Mitakshara* school in our part the doctrines of that school are so completely assimilated in our minds and nature that we will not welcome principles other than those that will not be found in the *Mitakshara*, however they might be, in the words of the Committee, progressive elements. The *Sanstha* of which I am a member also holds the same view. If therefore the Code is to be drafted the principles of *Mitakshara* should be made to apply to the countries to the south of India. The *Dayabhag* school may prevail in Bengal. The sub-schools may be abolished with the consent of the public of the provinces they govern.

I and my *Sanstha* agree on this point. We are further of opinion that all the features of the *Mitakshara* school should be maintained. They are: Joint family system, Birth rights of sons, grandsons and great-grandsons in the ancestral property and limitations on the rights of the females only so far as the property inherited or obtained by them on partition is concerned with rigid provisions made for the widows in the family. Monogamy and cosmopolitan marriages which, it is the intention of the Committee, to introduce are strongly objected to on grounds of eugenics. The introduction of simultaneous heirs, in my opinion and in the opinion of the *Sanstha*, offends against the patriarchal system and leads in a way to the fragmentation of the property. This introduction will, eventually, obliterate the families and their names where they had established for ages. It, further, causes injustice to males by giving double heritage to females. This does not mean equal treatment. Divorce, though not actually allowed by the Hindu Law, is in vogue under the force of

custom in certain section of the Hindu community. Re-marriage is also permitted by custom except amongst the Brahmans and Kahatriyas and the Vaishyas. They form a minor portion of the population. If parties to marriages really desire to possess divorce rights, they may celebrate their marriages under the Civil Marriage Act.

The Hindu Code, if it is to be drafted, should be drafted strictly on the lines of the smritis and of the Mitakshara. Patrilineal family and hereditary caste are the basic institutions in the Hindu social systems. The first demands the solidarity and the entity of the family and the integrity of the family property. The second institution aims at purity of blood and the purity of the sexual life of the Hindu woman. These should not at all be disturbed.

My Sanstha and the Akhil Deshaatha Rigvedi Madhyawarti Mandal, Bombay, have resolved in their Parishad convened at Poona in the Month of May 1944, that the codification should be postponed until the war is concluded and normal conditions prevail.

The following are some of the suggestions made with the intention of amending the body of the draft Code. These are not exhaustive. There are many minor details on which I may differ but as those provisions do not actually contravene the Mitakshara but is a matter of convenience only I simply pass them off. These provisions relate to the age of the boy while taking him in adoption, whether upanayan should be performed in the natural family or in the family of adoption and the like.

Part I, Clause 2.—To be deleted and the following substituted:—

"The Code applies to persons professing Hindu, Boudhya, Sikh and Jain religions.

The Hindus in this Code means those who by birth and religion, are Hindus and who have not renounced the Hindu faith but who after renouncement, have been re-admitted into it, since the date of their re-admission."

Clause 5 (j).—To be deleted and the following substituted:

"Stridhana means property of a woman, howsoever acquired except property inherited by her or obtained on partition from the family of her husband."

Part II, Clause 2 (b).—Add "but does not include property held by him jointly with other members of the family."

Part II, Clause 2 (c).—Add at the end "Son includes son, grandson and great-grandson."

Part II, Clause 5.—Delete clause (1) and substitute "son and widow." Delete clause 2 'daughter' and substitute clauses 2, 3, 4, 5 and 6 as clauses 3, 4, 5, 6 and 7.

Part II, Clause 7.—Delete.

Part II, Clause 20.—Add the following: "provided he is found guilty of the offence by a competent Court."

Part II, Clause 21.—Delete the last portion of the section, viz., the words "unless such children or descendants are Hindus at the time when the succession opens."

Part II, Clause 25.—Delete the portion from "such" in the second line to "subject" in the last line and add the following "such property shall vest in the trustees of the community to which the intestate belongs."

In view of the suggestions made above, illustrations and provisions of the draft as contravene the suggestions should be altered or deleted as the case may be.

Part III, Clauses 1 and 2 are to be deleted. The Law of the Hindu Joint Family should be substituted as it exists to day:

Maintenance which forms part of this Part III-A should be amended liberally, guarding strictly the rights of the widows in the family as well as for making provisions for the marriages of the daughters suitable to the property of the deceased.

Part IV, Clause 2 to be deleted. The following should be substituted: "There shall be only one form of Marriage, namely, Sacramental Marriage. Civil Marriages are allowed to Buddhists and Sikhs if they have no objection."

Clause 3.—Add "of the same caste" between the words "Hindus" and "upon" in the second line.

Clause 3 (a).—Delete and substitute the following: "The bride is not previously married and the bridegroom, though married, has his wife not living or if living, through illness or otherwise she is certified by the Civil Surgeon as incapable of conjugal life."

* Will mean that a widow is incapable of marrying in the sacramental form.

Clause 5.—Delete and substitute section 6 at page 15.

Clases 6 to 22.—So far as Hindus are concerned they do not apply to them. They may be made to apply to others, namely, Buddhists, Sikhs and Jains if they consent.

Chapter III.—The above remarks apply to this chapter also. It does not appear that a provision has been made in case a son is born to the adoptive father after a son is adopted by him. I feel that such a provision is needed for the protection of the after born son on the lines of the present provisions.

I have offered my humble views on the draft Hindu Code. I oppose codification of the Hindu Law on the ground that the Government is not competent to supersede the Hindu shastras and undertake legislation. The Hindu Law as administered in India is complete and perfect in itself. Under cloak of codification the Committee is introducing principles unknown to Hindu Dharmashastra. It is a determined attempt to obliterate the natural and immemorially ancient distinctions of varna and caste and to abolish precipitously all local, communal and family usages which are observed with religious sanctity by the Hindus. For the sake of securing uniformity of Hindu Law the joint family corporation is given a go by. The principle of survivorship is gone. I do not believe that any irreparable loss is likely to be occasioned by postponing the consideration of the Hindu Code Bill until favourable conditions set in.

50. Bombay Prarthana Samaj.

General observations.—The Bombay Prarthana Samaj is glad to find that steps are at last being taken to codify the Hindu Law and thus remove all the uncertainties and indefiniteness which have so far prevailed in the administration of Hindu Law. It will thus go a long way in stopping a large amount of litigation which at present prevails in the courts in India and before the Privy Council which have so often upset the Hindu Law which was till then understood to be the right interpretation. The Prarthana Samaj therefore heartily hopes that the Hindu Code will at last be passed by the Legislature so that the Hindus may know their law with certainty and definiteness.

PART I—PRELIMINARY.

Illustration (d) to clause 2, sub-clause (2) runs as follows:—

(d) A person who joins the Brahma or Arya Samaj is a Hindu.

There is no conversion in the Brahma or Prarthana Samaj. A Muslim, Christian, Parsee, or a Jew joining these Samajas does not thereby become a Hindu and therefore it is improper to provide that such people should be governed by the Hindu Law. The illustration therefore should run as follows:—

(d) A person professing the Hindu religion joining the Brahma and the Prarthana Samaj and a person joining the Arya Samaj is a Hindu. The case law which has treated the Brahma as Hindus has reference only to persons professing the Hindu faith joining the Brahma Samaj—see 30 I.A. 249, I.L.R., 49 Cal. 1069, or the illustration may be framed as follows:—

(d) Any person joining the Brahma or Prarthana Samaj who would have been governed by the Hindu Law if this Code had not been passed or a person joining the Arya Samaj is a Hindu.

There are Prarthana Samajas in the Province of Bombay and Madras and so that no unnecessary dispute may arise with respect to them, the word Prarthana Samaj is introduced in the above illustration.

Clause 4.—Clause 4 says that the rule must be observed for a long time. The expression 'for a long time' is vague and indefinite. It should therefore be made definite by saying that the rule must have been observed at least for 25, 30, 40 or 50 years.

Clause 6.—Clause 6 amends the Special Marriage Act III of 1872 by deleting sections 24 and 26, by deleting among other sections 24 and 25. Section 24 governs succession to the property of parties married under the Act by the Indian Succession Act.

The Prarthana Samaj would have liked the succession of all Hindus to be governed by the Indian Succession Act. By deleting that section the Hindus have lost whatever gain they made in that direction. Similarly section 25 abolished all adoptions for persons marrying under that

Act. That also was in the opinion of the Prarthana Samaj an advance in the proper direction. By deleting section 25 the Code has deprived all Hindus of that advance.

PART II.—INTESTATE SUCCESSION.

Clause 3 (b).—This clause provides that upon the death of any woman who at the commencement of this Code had the limited estate known as the Hindu women's estate, in any property, such property shall devolve on the persons who under this part would have been the heirs of the last full owner thereof, if such owner had died intestate immediately after her. Thus this clause retains the limited nature of Hindu women's estate in cases of widows at the time of the commencement of this Code. The Prarthana Samaj would like that the estates of even these widows should be turned into absolute estates as is done by the Code in the case of women becoming widows after the commencement of this Code.

Succession to the property of males.

Clause 4.—The Prarthana Samaj desires that the provisions of sections 32 to 49 of the Indian Succession Act XXXIX of 1925 should be made applicable to the succession of the property of all Hindus, males or females (whether stridhan or otherwise). Under these provisions the position of a widow is much better than that provided by the Hindu Code. Besides, these sections of the Succession Act make no distinction between males and females, sons and daughters, brothers and sisters. They are thus in consonance with the ideals of the Prarthana Samaj. Besides, those provisions are clear and plain and avoid all obscurity under the Hindu Code. The Prarthana Samaj therefore would like that all the provisions for intestate succession provided by the Hindu Code should be deleted and that the above provisions of the Succession Act should be substituted in their place. Even at present the section 24 of the Special Marriage Act provides that the succession to the property of any person professing the Hindu, Buddhist, Sikh or Jain religion who marries under that Act and to the property of the issue of such marriage shall be regulated by the provision of the Indian Succession Act. The Prarthana Samaj now wants that the provisions of this section 24 of the Special Marriage Act should be extended to all Hindus, Buddhists, Sikhs and Jains.

In the alternative we would suggest that in the matter of succession as prescribed by the Code no difference should be made between a son and a daughter and the descendants of a son and of a daughter (male or female) and that they should be treated to be on an equal footing. Similarly no distinction should be made between a brother and a sister or the descendants of the brother and the sister (male or female).

Stridhana.

The Prarthana Samaj warmly welcomes clause 13 which gives the woman the same rights over stridhana as defined in Part I-5 (f) including the right to dispose of it by transfer *inter vivos* or by will as a man has over property acquired by him in like manner that is to say a woman's right over stridhana shall not be deemed to be restricted in any respect whatsoever by reason only of her sex. It thus puts an end to the Judge-made law about the woman's estate and reversions which have been a very fruitful source of litigation and goes a long way towards the emancipation of a woman.

The observations made above with reference to the succession to the property of males should in the opinion of the Prarthana Samaj apply to succession to stridhana property. No distinction should be made between succession to the property of a male and to stridhana. The Prarthana Samaj would like that the distinction of property made by clauses 14 (a) and (b) should be abolished and the succession to both the properties should be governed by the same rules. In the case of an unmarried or a married or a widowed woman, the heirs should be those under the Indian Succession Act or in the alternative those which the Hindu Law Committee may be pleased to prescribe.

The Prarthana Samaj is of opinion that clause 19 should be altogether deleted. If a wife is unchaste her husband may if he likes disinherit her by will. No other person should be given the right to interfere with the estate vested in her under the Code. If the husband does not disqualify her by will it should be presumed that he has condoned the unchastity.

Clause 21.—This clause recognizes the disqualification of the descendants of a convert in matters of inheritance.

The Prarthana Samaj is glad that if the children or descendants are Hindus at the time when the succession opens, the Code allows them to inherit. In the present condition of Indian society conversion separates the convert altogether from his family, caste, or society and there is strong repugnance felt towards the convert by them. Under such conditions the Prarthana Samaj is of opinion that the convert should also be disqualified from inheriting to his unconverted relations. If the person to whose property inheritance opens be of opinion that apostasy should not be a disqualification he can make a testamentary disposition and make a provision for the apostate.

PART III.—PROVISIONS COMMON TO TESTAMENTARY AND INTESTATE SUCCESSION.

I.—Scope and operation of Parts II and III.

Clauses 1 and 2.—The Prarthana Samaj warmly welcomes the provisions of the clause making devolution of interest in joint family property passed by a male Hindu to devolve in every case not by survivorship but by testamentary or intestate succession as the case may be. This will put an end to the archaic joint family system.

The Prarthana Samaj similarly welcomes the provision of clause 2 making the property devolving by testamentary or intestate succession upon a son, son's son or son's son's son his separate property and his son, son's son, or son's son's son, whether alive at the time of succession or born subsequently, shall not have any right over such property merely by reason of birth. This clause removes other impediments on the disposition of property involved in the joint family system. This clause has removed a great hardship on the Hindu community inasmuch as it had rendered it impossible for a person to undertake any venture or successfully carry on trade.

II.—Maintenance.

This clause is applied only to the estate of a male Hindu. When males and females are placed on an equal footing this clause should also be extended to the estate of females.

Clause A.—This clause deals with the question of right to maintenance of certain dependants out of the estate of the deceased. One can understand a dependant who has not obtained by testamentary or intestate succession any share in the estate of the deceased, being provided with maintenance out of the estate of the deceased. It would, however, be unreasonable to make provision for the maintenance in the case of a dependant who has obtained a share but the share so obtained is considered inadequate for his or her maintenance. It is difficult to understand why the other heirs who succeed to the property of the deceased should be made to pay for the maintenance of such a dependant. The question would naturally arise in the case of an unmarried daughter. Under the part dealing with the law of intestate succession she has for the first time been recognized as an heir to her father. After she thus gets a share all her rights against the estate of her father ought to come to an end. The provision contained in this clause is likely to cause a serious hardship to the other heirs, especially because under clause 1 of this part the expression 'maintenance' is to cover in the case of an unmarried daughter, the reasonable expenses of and incidental to her marriage. The proviso seems to be unnecessary.

Clause 5.—Maintenance should be given only to an aged father and to an aged mother to whom only the Hindu Law refers. As to the widowed daughter it is difficult to understand whether such a provision as is contained in this clause is at all necessary in view of the fact that a daughter whether she is unmarried, married or widowed has now been included among the simultaneous heirs under clause 5 of Part II of the Code.

Sub-clause (8).—This clause unnecessarily and unduly cuts down the rights of an illegitimate son which he gets under the Hindu Law. Under the Hindu Law other than that of *Dnyadhya* after the death of a Hindu, his illegitimate sons in cases where they are not entitled to inherit or to a share on partition are entitled to maintenance out of his separate property or out of property in which he was a coparcener at the time of his death. According to *Mitakshara* school the right to maintenance continues even after he has attained majority until death. An illegitimate son of a *Sudra* is entitled to a share of the inheritance provided his mother was a *dasi*, that is a woman in the exclusive keeping of his father. It is incomprehensible

why these innocent and unfortunate sons should be made to suffer for the sins and vices of their parents. On the contrary the sinful and vicious parents must be made to suffer for their sins and vices. Therefore one would like that illegitimacy should not cut down the rights of the illegitimate sons and if they are at all to be cut down they should at least be confined to the rights they have under the Hindu Law as it prevails at present, with the variation that right to inheritance of the illegitimate son of Sudra should be extended to the illegitimate sons of the three higher classes. It is regrettable that the Hindu Code is going back on the Hindu Law.

Sub-clause (9).—Illegitimate daughters should have the same rights as the illegitimate sons on the grounds mentioned above. Further it is submitted that it is very difficult to get illegitimate daughters married but if they get the rights as stated herein their marriages will be facilitated. Men are more likely to go in for marriage with a woman with property than with a woman who will be a burden.

Sub-clause (10).—It is shocking to find that the Code which stands for monogamy and gives a single wife to a man should give legal recognition to concubines and to allow him to have as many concubines as he can afford. Further concubines are not recognized for inheritance or maintenance under any other system of civilized law. Such a recognition would encourage the breach of the spirit of monogamous marriage contemplated by the Code.

The difference in the points of view as to illegitimate children and the concubines is in consequence with section 488 of Criminal Procedure Code which gives maintenance to illegitimate children but does not recognize the concubine at all. This degradation of the Hindu Law must be removed in the face of all opposition.

Clause 6.—The proviso to this clause deals with the question of marriage expenses admissible in respect of an unmarried legitimate daughter. Under Part II a daughter is now to be an heir along with the sons and consequently there is no necessity to insert any provision in respect of the expenses for her marriage.

Clause 7.—This clause should altogether be deleted as it unnecessarily limits the freedom of a widow to live where she likes. Further the term 'just cause' is vague and likely to give cause to litigation. Somehow or other the Hindu mind hesitates to emancipate women.

Clause 8.—Under the Hindu Law a Hindu cannot so dispose of his property by will as to affect the rights of maintenance to which a person is entitled under the Hindu Law. A similar provision should be inserted in the clause.

Clause 9.—The property coming to the heirs would become their separate property and they can deal with it at their pleasure. This clause as it stands would therefore enable the heirs to defeat the claim of maintenance-holder and should therefore be dropped. Instead thereof a clause should be inserted making the maintenance of the dependant a statutory charge on the estate taken by the heirs.

PART IV.—MARRIAGE AND DIVORCE.

Chapter I.—Celebration of marriage.

Introductory.

Clause 1, sub-clauses (a) (i) and (a) (ii) give the definition of the term 'Sapinda relationship.' The Prarthana Samaj would like the Sapindaship to be restricted to that laid down in proviso 2 to section 2 of the Special Marriage Act of 1872. This proviso prevents marriages only in cases where relationship can be traced between the parties through some common ancestor who stands to each of them in a nearer relationship than that of a great, great-grand father or great-great-grand-mother or unless one of the parties is the lineal ancestor or the brother or sister of some lineal ancestor of the other.

Sub-clause (b) should be altogether dropped. Clause (a) goes to one extreme and clause (b) to the other. The Prarthana Samaj would like to have the golden mean between the two as laid down in the Special Marriage Act, 1872, section 2, and would like to have the same for both the sacramental marriage and the civil marriage.

Sacramental marriage.

Clause 3, sub-clause (a).—“Neither party must have a spouse living at the time of the marriage.”—The Prarthana Samaj wholeheartedly supports this sub-clause as it now stands. The fact that the Hindu marriage is at present polygamous or potentially polygamous is a blot on Hindu society. It degrades the woman and makes her

look upon as a sort of chattel if not cattle. It also degrades the man who looks upon his wife in the same light because of the polygamous or potentially polygamous nature of the marriage. This is revolting to reason and sentiment. It is against all advanced and enlightened thoughts of the world and makes the Hindu marriage looked down upon in all Christian-countries.

Marriage as recognized by English Law.—“Marriage according to English Law involves the essential requirement that it must be the voluntary union of one man and one woman for life to the exclusion of all. Thus if this essential of a monogamous union is lacking the English Divorce Court will disclaim any jurisdiction in a matrimonial case relating to the so-called marriage. Though it has often been stated as a principle that the English Court will not regard any union as a marriage if opposed to the Christian conception and that a polygamous or a potentially polygamous union will not be recognized in English Law, it would seem that this principle is only strictly applied in cases coming within the jurisdiction of the English Divorce Court.” (Halsbury's Laws of England, Volume VI, page 283, Halsbury Edition.) (See also Dicey's "Conflict of Laws", 5th Edition, page 280, and Westlake's Private International Law, VII Edition, page 68): Further it is laid down in I.L.R. 28 Bom. 597 as follows: “A marriage performed in accordance with the rights of the Brahmo Samaj is invalidated by the fact that either of the parties thereto has a husband or wife by a marriage alive!” Thus the Brahmo marriage is held to be monogamous and the Brahmos would therefore well insist on the fact that all Hindu marriages should be brought up to the level of their marriages. A very large number of Hindus are married to a single wife. This clause by removing the potentiality of polygamy of a Hindu marriage raises its dignity in the eyes of the world and would cause little hardship.

The Prarthana Samaj would urge in this connection that “Anand Marriage Act VII of 1909” should either be repealed or amended so as to prevent polygamous marriages taking place under that Act. That Act has been in recent years resorted to for performing polygamous marriages. Similarly the Arya Marriage Validation Act XIX of 1937 should be similarly treated, i.e., it should either be repealed or amended so as to prevent polygamous marriages taking place under that Act. That Act also has been in recent years resorted to for performing polygamous marriages.

We are glad that this sub-clause (a) validates a widow remarrying in the sacramental form as it lays down that neither party must have a spouse living at the time of marriage. The Prarthana Samaj therefore urges that the Hindu Widows Remarriage Act XV of 1866 should be repealed and the disabilities imposed by that Act should be removed. The Prarthana Samaj is glad to find that sub-clause (b) makes the marriage of a lunatic or an idiot void and invalid.

Sub-clause (c).—The Prarthana Samaj would like that the provision of section 2 of the Special Marriage Act III of 1872 which requires that the man must have completed his age of eighteen years and the woman her age of fourteen years should be inserted here. This clause should be so amended as to require the consent of the guardian till the completion of 18 years.

Clause 4.—One more sub-clause may be added after sub-clause (1), namely, “A sacramental marriage may also be solemnized in any religious form which shall be generally acceptable to the members of the community to which the parties belong.” This sub-clause is necessary to avoid any question as to whether the usual ceremony observed in the Brahmo and the Prarthana Samajas satisfied the conditions necessary for its being considered a “custom” having the force of law. We would therefore strongly urge the insertion of this sub-clause.

Sub-clause (2).—In this clause the words ‘before the sacred fire’ should be dropped. The members of the Brahmo and Prarthana Samajas do not perform any ceremonies before the sacred fire. Therefore by dropping these words they can take advantage of this clause. Besides the word ‘before the sacred fire’ would deprive the large majority of Hindus, namely, Sudras from taking the benefit of this clause. The sacred fire according to the Hindu ideas must be lit up by the Brahmins with Vedic mantras, and no Brahmin would consent to do so as is shown by the notorious “Vedokta prakaran of Kolhapur.”

Clause 5.—The Prarthana Samaj would like that this clause should be deleted. If it is retained nobody will care to obtain the consent of the guardian and the provision to obtain the consent of the guardian would become a nullity.

The Prarthana Samaj is opposed to the alternative to clauses 3, 4 and 5 mentioned in the Hindu Code.

Clause 6.—The Prarthana Samaj would urge that the optional registration under this clause should be made compulsory and should not be left to the sweet will of the parties concerned though the registration may not be required for the validity of the marriage but for the purpose of facilitating proof of the sacramental marriage. The optional registration is likely to bring about unnecessary litigation and would give an opportunity to scheming persons to dispute a marriage if it be not registered. One can well imagine what confusion and uncertainty will arise if births and deaths will be optionally registrable. The same would be the case of marriages that are made optionally registered.

Civil marriage.

The Prarthana Samaj would prefer to have the word 'solemnized', substituted for the word 'contracted' wherever it occurs in this chapter. The word 'solemnized' is used throughout in Act III of 1872, and it is difficult to understand the reason for this change. The word 'solemnized' lends more solemnity to a marriage ceremony.

Clause 7, sub-clause 5.—This sub-clause should be so amended as to read that the parties should not be related in the degree of Sapindaship as defined above in this opinion when dealing with clause 1 (a) of this chapter.

Clause 18.—The Prarthana Samaj has in this opinion expressed that the same Sapindaship, namely, that given in the Special Marriage Act, 1872, section 2, should be observed both in the sacramental marriage and civil marriage. If that opinion be accepted, this clause 18 would be unnecessary and should therefore be dropped.

Clause 23.—This clause is unnecessary, intricate and obscure. It has not been found necessary to make such a provision under Act III of 1872 and no dispute has so far arisen for want of such a provision. The word 'guardian' should, it is submitted, be restricted to the person who actually acts as a guardian or to the guardian *de facto*. This provision is likely to hamper unnecessarily the solemnization of civil marriages. At present the girls of the Pandharpur Orphanage are married under Act III of 1872 and either the Secretary of the Prarthana Samaj, Bombay, or the Superintendent of the Orphanage acts as the guardian of the girls. The present provision would make it impossible to register the marriages of the Pandharpur Orphanage Girls under the Hindu Code and to drive them to marry under the Special Marriage Act III of 1872 by compelling both the husband and the wife to that marriage to declare that they do not profess the Christian, Jewish, Hindu, Muhammadan, Parsee, Buddhist, Sikh or Jain religion. The Hindu Code repeals Gow's Act and therefore that is the only declaration left to them, if the Secretary of the Prarthana Samaj or the Superintendent of the Pandharpur Orphanage is not allowed to act as their guardians. This clause should therefore be dropped.

Chapter II.—Consequence of marriage including duties of husband and wife.

Clause 26.—At the end of clause (c) to the proviso to clause 26 the words "or reasonable apprehension of it" be added.

At the end of clause (d) to the proviso to clause 26 the words "during the period of desertion" be added. The wife should be entitled to maintenance from the time the desertion begins and the husband should have the option of putting an end to the desertion and receiving back his wife.

At the end of clause (f) to proviso to clause 26 the words "proceeding from the husband" be added. Thus the conversion of a wife to another religion may be a justifiable cause for her living apart from her husband but that ought not to give her a right to maintenance.

Clause 28.—The Prarthana Samaj welcomes this clause, as the benefit of any dowry or bride-price will go to the wife as it ought to do. This will divert the dowry or the bride-price to the proper channel. In this clause for the words "whereas consideration for consenting to a marriage celebrated" the words "If as part of the marriage

transaction taking place" be substituted. The dowry is often offered by the bride's party without any demand on the part of the bridegroom or his party. In that case the words "whereas consideration for consenting to a marriage" cannot properly be applied and thus the provisions of this clause would be frustrated. The same can be said of the bride-price paid to the relatives of the bride. Further add the words "The husband or" after the words "or any of his or her relatives to" in line 7 of clause 28. As a rule the dowry or a major portion of it is given to the husband and therefore the additional word "to the husband or" is essential as otherwise this clause would altogether be nullified.

The explanation to clause 28 will have to be dropped if the above changes are made.

Chapter III.—Nullity and dissolution of marriage.

Clause 29, sub-clause 1 (iii).—The Prarthana Samaj has in this opinion expressed that the same Sapindaship, namely, that given in the Special Marriage Act, 1872, section 2, should be observed both in the sacramental marriage and civil marriage. If that opinion be accepted this sub-clause 1 (iii) shall have to be removed. With regard to clause 29, sub-clause 1 (iv), the Prarthana Samaj is of opinion that the words "and at the time of the institution of the suit" should be added at the end.

Sub-clause (2).—This clause lays down that a petition for a declaration about the nullity of marriage on the ground mentioned in this clause lies to the High Court only. It is difficult to understand why a difference should be made in respect of this ground when on grounds mentioned in sub-clause (1) the petition would lie either to the District Court or High Court. A petition to the High Court would be more expensive and the distance might also cause hardship to the applicant. The Prarthana Samaj would suggest that the petition on this ground should also lie either to the District Court or High Court. This can be achieved by adding the ground contained in this clause as ground No. (VI) to sub-clause (1).

Sub-clause 4.—In this clause the words "or when a marriage is annulled on the ground of lunacy or idiocy of either party thereto" should be omitted. Sub-clause (iv), clause 29 (1), requires that for a declaration that the marriage is null and void, the lunacy and idiocy should exist at the time of marriage. If the lunacy or idiocy at the time of marriage is condoned and procreating of children is allowed the marriage should not be declared null and void on the ground of lunacy or idiocy at the time of marriage. Such a provision should be inserted in clause 29 (1) (iv).

Clause 30.—The polygamous nature of the Hindu marriage does not make divorce a necessity for the husband as he can at any time discard the wife with whom he is displeased and marry another wife. But so far as the wife is concerned divorce is a necessity even at present as she can under no circumstances get rid of the undesirable husband but now that monogamy is introduced by the Code divorce becomes a necessity for both. The Prarthana Samaj consider divorce an evil which is unavoidable in the present imperfect state of human society and weakness of mankind. The Samaj would be glad if no cause for divorce would arise but when no mode of relief is available divorce must be reluctantly resorted to. The Prarthana Samaj is therefore glad to find that the Code has inserted the provision for dissolution of marriage.

Sub-clause (1) restricts the application of this clause only to marriages celebrated after the commencement of the Code. The Prarthana Samaj would like that it would apply to all marriages whether celebrated before or after the commencement of the Code.

Clause 30 (1) sub-clause (c) and (e).—The period of seven years mentioned in ground (c) be reduced to five. In clause (e) the words "for a period of not less than seven years" be deleted. If the party is suffering from a venereal disease in a communicable form that disease will certainly be communicated before the period of seven years expires. Hence it is absolutely useless to obtain the dissolution after the disease is communicated as no one would like to go in for marriage with the party to whom the disease is communicated. The Prarthana Samaj would like that the following grounds be added to this sub-clause:—

(1) That the defendant has been guilty of adultery unless the adultery has been committed with the consent or connivance of the petitioner or the petitioner has condoned it.

(2) That the defendant has not been heard of as being alive within the period of seven years by those persons who would have naturally heard of him if he had been alive.

Clause 31 should be deleted. The Prarthana Samaj would suggest that provisions dealing with procedure and other consequential matters should be specially inserted in the Code itself as it would like that the Code should be self-sufficient and should not require reference to another Act, namely, the Indian Divorce Act.

Clause 32.—In this clause the words "recognized by custom or" should be deleted. Custom often allows divorce on flimsy grounds and sometimes on no grounds, by bribery and corruption. The Prarthana Samaj is of opinion that the marriage tie should not be dissolved lightly and without the existence of the grounds mentioned above and by corrupt tribunal.

PART V.—MINORITY AND GUARDIANSHIP.

An additional provision should be inserted in this chapter dealing with the question of a change of religion by the natural guardian. If the continuation of the guardianship is detrimental to the interests of the minor by reason of the change of religion by the natural guardian it should be open to the court to consider the question of the desirability of appointing any other person as guardian notwithstanding the existence of the natural guardian. Further section 3 of the Hindu Widows Remarriage Act XV of 1856 should be repealed.

Clause 4.—The words "Unless it be in the interest of the minor to make such appointment" be added at the end of this clause.

PART VI.—ADOPTION.

The Prarthana Samaj is not in favour of any adoption. It does not believe in any spiritual benefit said to be conferred by adoption. Nor does it appear that large majority of Hindus believe in any such spiritual benefit. Adoption is sought with a view of getting at the property of the adoptive father. It leads to so many conspiracies by scheming persons for the purpose of getting the property of the adoptive father especially from the widow after his death. It is a fruitful source of litigation and miserable consequences, especially to the adopting mother. It is also fraudulently resorted to set aside alienations made by the widow. It is a legacy to Hindu society, from old archaic ways of thinking. The Prarthana Samaj is therefore of opinion that adoption should no longer be tolerated and the Hindu Code would deserve thanks of the Hindu public if it abolishes all adoption. It is further pointed out that a similar state of law prevails under section 25 of the Special Marriage Act, 1872, which enacts as follows:—

"No person professing the Hindu, Buddhist, Sikh, or Jain religion who marries under this Act shall have any right of adoption. The Prarthana Samaj desires that this section should apply to all Hindus." Unfortunately this section is being repealed by the Hindu Code.

51. Dr. C. V. Mapara, M.B.B.S., Maninagar, Ahmedabad No. 8.

Divorce and monogamy Bills.—The broad principles underlying the introduction of the Bills are universally accepted. However, practically speaking, there will be varied objections to the enactment of these Bills, if some modifications or additions of certain other clauses are not made. The Bills should be so constituted as to minimize the legal difficulties of womenfolk especially in taking advantage of the laws, as it is generally found by experience in many suits in general that they are meeting with various obstacles in going through the tedious legal proceedings, compared to the opposite sex. In Baroda State, even though these laws are in existence for a good time now, very few ladies could avail themselves of them. The most important reason for this sort of affairs is not so far off to seek. The legal difficulties, and very strict clauses of the laws for ladies to prove, are the main factors for them to consider, rather than the fact that they do not desire to take advantage of the laws. I therefore venture to suggest as to what steps should be taken so as to facilitate the womenfolk mainly to avail themselves of the laws.

I. *Bill of divorce.*—I suggest two more clauses should be added to those already contemplated, and shall give you my reasons for them—

(1) "In case either of the parties has remained away from the other for a continuous period of at least five years, no reasons being required to be ascribed to this

state of separation, both of them are free to obtain divorce."—The idea underlying this suggestion is quite obvious. The womenfolk, specially in higher societies of life, will have greatest difficulties in proving "impotence in man, his mental derangement, specific diseases, torturing of wife by him, etc." They may however easily remain away from their husbands under such circumstances for five years, at a stretch, in order to obtain divorce according to the law. Moreover if the husband does not keep his wife for any reasons best known to him, she may obtain divorce after five years' separation. There may be many more reasons as to why husband and wife remain separated from each other, but it may be almost impossible in many instances to prove them legally, especially for ladies, and hence the idea of this suggestion of mine that the court should not go into the inquiries of causes of separation, but should be satisfied with the fact that a woman has gone into a sort of penance for five years by remaining away from her husband for this period, and should grant her divorce from her husband.

(2) "In case the husband effects a second marriage, the first wife automatically gets divorce, and should get maintenance from the husband so long as she remains unmarried (does not remarry)."—The idea underlying this suggestion is this, that if the man is prohibited legally to marry a second time during the lifetime of his first wife (divorce not being previously obtained), she will be tortured by him even to death or may keep her in a miserable plight, and he may have a keep (fiance) why not then he be allowed a second marriage (let it be under the express consent of his first wife before a magistrate) and she may have a chance of divorce and remarriage? Or she may have maintenance so long as she does not remarry?

II. *Bill of monogamy.*—Compared to the vast population of India, there are few instances of polygamy, as either the people refuse to give away their girls to such men or the girls themselves refuse to marry them. However, if for some reason or other, the man effects a second marriage by hook or crook, the first wife may obtain divorce immediately and the law may not be enacted, if the Bill of divorce as suggested by me under "I" is made into law. If, however, the majority desire to have this law too (prevention of polygamy) I suggest that if the first wife gives her written consent in the presence of a magistrate under his court seal, the husband is free to remarry, and she too automatically gets divorce under the Divorce Bill as suggested by me. I sincerely believe a woman would not consent to the husband's second marriage unless she has her strong reasons (e.g., life of miseries, unhappiness, presence of a keep by her husband, etc., from which circumstances she herself would desire to be free but may not be able to prove them).

To summarize, besides the clauses already contemplated, I suggest the following additions:—

I. *Bill of divorce.*—(1) Five years' separation from each other makes divorce possible (no reasons required to be ascribed).

(2) Divorce be allowed to the first wife in case of second marriage of her husband.

II. *Bill of monogamy.*—The man can effect a second marriage, if the first wife gives her written consent in the presence of a magistrate under his court seal.

The Samaj declares its strong objection to the reforms proposed, in the fundamental principles of the Hindu Law especially regarding the rights of inheritance of women. This conference looks upon these reforms with apprehension as they effect indirectly the Hindu undivided family system, which forms the vital and principal part of the Hindu Law.

52. G. G. Paricharak, Esq., B.A., LL. B., Pleader, Sholapur.

I have carefully gone through the draft Hindu Code and hold the following views on it:—

The codification of the Hindu Law is nearly impossible taking into consideration the development of the Hindu Law. Even the persons who are acquainted with the jurisprudence are not one in holding whether the codification serves the better purpose or not. The codification may serve the purpose of uniformity and certainty but has also the defect of rigidity. The personal and social laws should be as far as possible flexible.

The codification, as it is proposed, is not based on sound principles and in a right direction. The lowest common multiple of all of the laws and usages are adopted;

the result is therefore to please only the progressive group and to displease the enormous masses which hold more or less the orthodox view.

Looking into the whole Code I have not found that an attempt is made to come to certain points which are essential from the point of orthodox view.

The Hindu society has not progressed to the extent to which the draft goes. It is for the social reformers to create ground which would be suitable for the successful application of the draft Code. On the contrary, these social reformers are an insignificant minority at present. So this Code will not be received with enthusiasm by Hindu masses.

Supposing that the draft Code is going to be adopted by the Legislature in any event, I submit the following amendments to the Code.

PART I.

The definition of Hindu is too extensive so as to include certain sects which do not follow the Hindu traditions and the principles of Hindu religion as they should. For example, the Brahmos include among them the Muhammadans as well as the Christians. All of them will come under the category of a Hindu if the present definition is taken into consideration. So also mere professing of Hindu religion should not be sufficient to call one a Hindu. He must be ideally, religiously, theologically and philosophically Hindu.

Up to now the customs and usages were given more importance. It was said that custom overrides 100 written texts of law. In the development of Hindu religion all these customs and usages of different people were adopted and respected to initiate them in the Aryan fold. By this Code very few customs and usages are saved. 'Stridhan' this definition will have to be changed in view of the further treatment on this subject.

PART II.—INTERSTATE SUCCESSION.

The intestate succession, as adopted either by 'Mitakshara' school or 'Dayabhag' school, was based on a certain logic. Mitakshara determined the line of succession according to the propinquity while Dayabhag determined it on the nearness to the offering of the oblation to the manes of the deceased. The line of succession adopted in this Code is not based on sound logic and many may differ who should come first and who should come next.

In the compact series widow and daughter are included. They are to take absolute property. Here I differ. My reasons are that the widows in India are illiterate and quite unaware of the ways of the world. It is more probable that they would dissipate the property ignorantly and even to the detriment of their own interest. Secondly the widows can remarry. It is nowhere stated in the Code that by remarrying the widow loses the right to her first husband's property. On the contrary, if the estate is vested in her absolutely she would take the property with her next husband's. This is certainly abhorring. Ethically I believe there is no sound reason why she should take the property to the next husband's. Thirdly, the widow inherits at present a limited estate with wide powers for disposing of it in times of necessity. So really she may not be upset with any difficulty to dispose of the property for her own use when really required. Fourthly, the estate will not be divided and subdivided and will not go into the hands of persons unacquainted and unrelated to the persons to whom the family property belonged.

In the case of daughter also I hold the view that she should not be given a share. My reasons are that the daughter goes to another family altogether and the property should not go with her. It will be introducing foreign elements and quarrels as regards property. The adjustment would be quite difficult. Even if the adjustment is held possible, the management of the property would be too difficult. Secondly, excepting in the case of few very rich people the daughter would not be at a loss if she is not given a share as she already reaps the benefit of education and the marriage expenses. It is common knowledge that even after marriage the daughters are well looked to by her parents, brothers and other near relatives.

In the Bombay school at present the daughter inherits an absolute estate. For that province it may appear a retrograde step. But other provinces would not feel at all if daughter is not given an absolute estate.

The property which is called 'Stridhan' property at present should be maintained with all its legal effects.

PART III-A.

Some may hold the view that the joint family among Hindu society at present is in a dying condition. But all the same we may find that it has not died out. On the contrary, this joint family system is resorted to by almost all. Joint family has its own good and bad points. But it is such a system as can be thrown away by individual volition when necessary. So joint family system is not to be worried over. It has the following good points. When the nations are also making it a point that all the property should be of the nation and there should be a distribution of national wealth according to the needs, why can a family not successfully do it? Hindu joint family system is a socialism in miniature.

The recognition of birthright is most logical and sensible. The ancestral property which the father gets from his father should be entirely left to his son. Morally speaking he is in a way a trustee. Secondly, on a delinquent father, there is a check not to waste the share of his son. Thirdly in the present Code only the minor son is to be supported as a dependant upon the father. It is not always the case that as soon as a son reaches majority he is able to earn bread for himself. If he can claim the right by birth in the property he is better protected. Fourthly, in the interest of the family even the father can dispose of the property for legal necessity.

So in short the joint family system should be preserved as it is. The present Code adopts the right to the property according to Dayabhag school. But Mitakshara school prevails over all the provinces except Bengal and the abolition of the joint family system would affect the nine-tenths of the population. Such a drastic change affecting almost all should not be adopted.

PART III-A (2).—MAINTENANCE.

Right to maintenance of certain dependants out of the estate of the deceased.—The framers of this Code have lost sight of one fact that there are relations who are bound to be maintained at any cost whether a man possesses property or not. For example, the aged parents, the wife and others. Their right to maintenance should not be dependant upon the fact of possessing any property.

If some share is given in lieu of maintenance there should not be again consideration for awarding more maintenance taking into consideration other things.

A concubine kept continuously by the deceased up to the time of his death so long as she remains chaste, etc., is awarded maintenance. In fact, there should not be such a patronage to the concubine. A concubine should understand that she is to be supported by the person who has kept her and nobody else should do it.

In the case of a widow at the time of determining the amount of her maintenance, the income from her own earnings or any other source is not taken into consideration according to the present Code. It is perfectly right, but some kind of injustice is done if the widow tries to exact her pound of flesh in any event from the husband's family. So, I think that this kind of income should be counted at the discretion of the court.

Maintenance of a widow residing outside the family house.—I for one do not agree with the provisions on this point. The widow is often not treated with as much respect as she should and she may be compelled to reside outside the family house. So she should get the amount of maintenance even though she may reside outside the family house if she does so for good reason.

PART IV.

The definition of *Sapinda* relationship is wider. At present in many provinces this relationship is counted to the three degrees from mother and father. And for the prevalence there is authority in later *Smritis*. So I think that the *Sapinda* relationship should be restricted to the three degrees from father and mother. Two forms of Hindu marriage, namely, sacramental marriage and civil marriage are recognized. The form of a civil marriage should never be recognized as a form of Hindu marriage. We will be satisfied if that form is, independently of Hindu law, recognized.

As regards the essentials of marriage, alternative clauses suggested may be adopted, and there should be the requisite ceremonies for sacramental marriages.

I see no objection for optional registration of sacramental marriages. But that should not be sufficient to validate an invalidate marriage and it should not also have the force of a civil Marriage.

The power of a court to fine when objection not reasonable.—The fine is such a preventive one that a man would generally not take the risk of initiating proceedings even though there may be much truth in his contentions. The amount of fine would, therefore, be lowered. If it is afterwards found that the provision is being misused, later on, the amount of fine should be made a preventive one.

General Provisions.—The persons chosen to give consent are too many, and the provision that if a person refuses to give consent to a civil marriage the next man should be chosen to give consent and that his consent is sufficient and valid according to the draft Code, is adopted to facilitate civil marriages. But in doing so the right of the proper person is denied. To refuse to give consent is a right included in the right of giving consent.

Chapter II.

Consequences of marriage including duties of husband and wife.—Curiously enough there is no duty for a wife in the Code. I hope it is only an unfortunate omission. It is worthwhile to state that she should be made subject to the authority of her husband and to remain chaste. It is not much to expect it of her.

The words "undesirable for her" in 26 (c) should be omitted. For those two words would make her a determining factor.

28.—Consideration for consenting to marriage to be trust property. This provision is made, it is said, to check the dowry system. But the wording is not a happy one and it won't be able to check the dowry system as such. The reasons are that the consent of the persons may not be required. For, both the persons marrying may be of age. Secondly, the marriage presents are not included in the category of dowry. So the provisions can be evaded. Thirdly, even if the amount of dowry is given, why should it be only for the use of the bride when the interests of both have become one? So at least it should be made a trust property of which the married couple is a beneficiary.

I humbly think that the framers of the draft did not intend the persons consenting. But they meant whoever may be in charge of the marriage affairs on behalf of the bride or bridegroom.

Chapter III.

It is true that there are divorces among Hindu Society as per custom. But Hindu Law as such does not recognize a system of divorce. The introduction of the provisions of divorce may be of some use to a very few members out of the communities such as Brahmins, Kashatriyas, Marwaris and others who do not recognize divorce. I for one think that the highest goal of marriage is an indissoluble tie. Apparently the divorce may seem to solve certain difficulties, but that is not a real solution. The marriage is a science of highest accommodation between the husband and wife. All the world over divorce is recognized. But in India in certain communities at least marriage is deemed to be an indissoluble tie. This may conveniently be preserved at least as specimen of highest goal of marriage to be followed by the other human kind at one time or the other. Those communities who do not recognize divorce are not enthusiastic to have this right. They like the speciality of marriage in spite of occasional bickerings with which they have learnt to accommodate. It would be too much to say that their life has become embarrassing for want of provision of divorce. One may be able to show certain exceptional cases wherein a man may be moved to acknowledge the principle of divorce. But the greatest good of the greatest number should be looked to. The allowance for the provision for divorce for these few would introduce a privilege and a bait to others who are weaker to take the benefit of the principle of divorce. And thus there will be, on the whole, a loss. In case of marriage both the bride and the bridegroom should know that they are to lead the life with one mind whether in prosperity or in days of calamity. Now coming to the grounds for divorce, I am of opinion that though these grounds are shown to be terse and not available in the ordinary course the experience would show that these grounds may be cheaply availed of. Ground A is not proper for the following reasons. If the husband goes mad after the date of marriage it is the duty of a wife to nurse and treat him up to the date of his cure or death. The same is the case with B. Ground C is a controversial point. The husband may say that he has deserted

her for good reasons while the wife would say for not good reasons, and the court would decide one way or the other and the real truth may not come to light. Ground E should be dropped altogether for the following reasons. Firstly, the venereal disease is a curable one. If that disease continues for seven long years it is the lack of civic sense of duty that is responsible. Secondly, during these several years both the parties might be contacted with that disease. It is better to keep them as they are instead of allowing them to divorce each other and marry a second time to propagate the disease not between the two but between four. If at all the framers of the Code intended that this disease should not spread they should have well said that the persons getting divorce under this ground shall not be again eligible for marriage.

The principle of monogamous marriage is adopted in the draft Code. That principle is praiseworthy. But the practice of polygamy is so much deep-rooted in Hindu society that it would not be advisable to do away with it with a stroke of the pen. The vision to look at the polygamous marriages unfavourably is much softened by the adjustment and policy of endurance and suffering at times. The ideas as to the spiritual and temporal benefit of a son has sometimes brought about polygamous marriages, I may respectfully submit that before this evil is tried to be eradicated statistics should be taken of the number of polygamous marriages, their causes and effects and the measures against them should be considered.

To sum up in short the provisions as regards marriage, nullity of marriage and divorce the following things may be added. Our idea about marriage is a puritanical one; all the world over the marriage is looked upon as a contract while we Hindus look upon it as a sacrament. This is a matter of pride for us. In this land of Sita and Savitri and other venerable ladies marriage has much more meaning than the persons in the other countries have. So that speciality has to be at all costs preserved. The provision of nullity of marriage and divorce should be altogether dropped as they are not recognized by Hindu Law. The reference to the Smritis is not a sound one. The Smritis are written to include the laws for all sects of people and in different ages. We must be able to deduce the best possible principles out of the whole lot, and none would disagree with one who says that the marriage should be a sacramental one and an indissoluble tie, as a highest goal of marriage.

PART VI.

In the case of adoption Dwyamushyan form should be also recognized. The consent of the boy to be adopted should also be obtained. 8 (d):—The provision in 8 (d) is a hardship which compels a senior widow to adopt at the time chosen by the junior widow. The provisions as regards challenging the alienations made by the widow before the date of adoption are not good. This increases the litigation for nothing. The adopted boy or the persons who give him in adoption should be satisfied with the property which is there at the time of adoption. Thus this will bring to an end useless and gambling litigation.

We Hindus have developed a legal system which has suited, and would suit, us most. The adoption of the present draft Code would seal the fate of these legal conceptions of which not we but the world should be proud of. These legal conceptions are as regards the joint family system, the idea of marriage, the idea as regards divorce, that of adoption, that of Stridhan and many others such as the rule of Damdupat. The present draft Code is a merging of several Codes and is not certainly a progressive step though it thinks of itself so.

For all these reasons, the idea of enacting the Hindu Code should be dropped. The Code is not published and circulated in all the Indian languages to enable the public to go through it and express their views. Under these circumstances no haste should be resorted to.

In constitutions and politics plebiscite and referendum are taken if the opinions of the masses are required. If such procedure is adopted I am sure the framers will be disillusioned and would be compelled to come to a conclusion that the Hindus do not want this Code at all at least at present. The Hindus would say that their Code is not a man-made Code and they do not want to turn it into a Code sanctioned by the State. It is a speciality of Hindu law that the Hindu Laws are to be applied by the State as they are, and it is no duty of the State to make the laws for the Hindus.

The intention of the framers of the Code to make a uniform Hindu Law seems to be that all Hindus should be brought under one law to facilitate possibly their brotherhood. But I am sure that though the different laws are applied to different localities, one Hindu does not look upon another Hindu as a non-Hindu on that account and solidarity of Hinduism is not threatened.

The Code may wait the preparation of ground for receiving these provisions till the time the society has made its progress. The law should be framed to keep pace with the progress of the society. The progress should not be made only by legislation. The society at present is neither prepared to do away with the caste system though there are some signs present in enlightened circles. The same is true with regard to other branches.

If there are different rulings of the High Court which create chaos and uncertainty that difficulty may be done away with by following the best possible rulings.

There are certain other legislations such as Freedom of Religion Act, Caste Disabilities Act, Native Christian Convert Act and others which have dug holes in the Hindu society and which have damaged the cause of the Hindus. They should at once be abolished. It would be doing something good to the Hindu society which will ever remain indebted for such good pieces of legislation and which as a matter of right they may claim.

I have humbly put all these suggestions before the Committee which may be quite enough to consider most favourably and in the light in which I have put, I request the Committee to oblige the whole Hindu world by looking towards Hindu Law with Hindu mind and by legislating if at all, in conformity with the Hindu religion, culture, civilisation and tradition.

53. Seva Sadan Society.

The Council of the Seva Sadan Society is in full agreement with the main principles of the draft Hindu Code, viz. —

- (1) There should be a uniform code of succession for all Hindus resident in British India.
- (2) Removal of sex disqualification and recognition of the right of women for purposes of inheritance, etc.
- (3) The abolition of the limited estate for women and recognition of their right to deal with or dispose of their property as they like, whether inherited or acquired.
- (4) The recognition of the principle of monogamy with the right of dissolution of marriage to either party.

54. Seth Bhagwandas Manmohandas Ramji, J.P., Vice-President, Bombay Provincial Varnashram Swarajaya Saugh.

1. We strongly oppose the draft Hindu Code recently published by the Hindu Law Committee. The said Code is not acceptable to the general Hindu public.

2. Hindu Law according to the Hindu conception is a Dharmashastra. The draft Hindu Code undermines the very foundation and fundamentals of the Law of the Hindus, e.g., principles of succession to property, joint family and survivorship and marriages.

3. As rightly said "Hindu Law contains its own principles of exposition and cannot be determined by an abstract reasoning or analogies borrowed from other systems of law."

4. Amongst Hindus succession is governed by propinquity, marriage is a sacrament, and religious rites are compulsory; joint family is the normal rule and jointness in food, worship and estate is presumed; the rule of survivorship, management by the Karta, restraint on alienation by the Karta and right by birth in the family are the most important incidents.

5. The Hindu Code of the Rau Committee has been based on a wrong and misconceived foundation of the Hindu concepts and their social order and is opposed to all the abovementioned basic fundamentals. In short it is *ultra vires* the scope and the authority of Legislatures in that behalf.

6. Moreover the new departures from the above principles by the introduction of new heirs, civil marriage breaking up of the sacredness and durability of the marriage ties, abolition of the Mitakshara joint family—all these will directly tend to destroy the Hindu ideals and the culture of the Hindu race and disrupt the Hindu solidarity, the economic family unit and the social ties and encourage the purely material and individualistic outlook on life at variance with the Hindu ideals.

7. In short, the Hindu Code would disintegrate the Hindu race and make it an easy prey to outside influences and onslaughts on its culture and solidarity.

8. Even from the ultra-reformers' point of view, the present disturbed times and the exigencies of war with its difficulties, restraints and handicaps in every respect and the Legislatures not functioning normally—These are not the proper circumstances and environment for considering such revolutionary and reactionary changes which the Hindu Code proposes to make in a community of more than thirty crores of people.

We therefore strongly feel that the Government should drop the whole attempt to codify Hindu Law.

55. Sanatan Vedic Dharma Sabha, Akasheth Kava Street, Ahmadabad.

The draft Hindu Code is so revolutionary and ruinous that it has created all over India, storms of protest, resentment and feeling of rank injustice.

2. The whole move is propped up by social rebels and anti-Hindu revolutionaries against Hindu religion and culture.

3. We do not propose to give evidence before the Law Committee which has already committed itself, unwarrantably to religious and cultural interference.

4. The very definition of the word 'Hindu' as applicable to followers of different religions without any common scriptures or principles dynamites the whole basis of law in Hinduism.

5. The plea of uniformity in the whole of India is a fraudulent device for thrusting in changes whose full import few can understand. The whole Brahmanical ceremonial and Hindu idea of society and marriage can thus disappear.

6. The present variety has a general unity of scriptural basis which would be ruined by secularizing the law and submitting it to the vagaries of Legislatures from day to day.

7. The Hindus cannot accept or tolerate any representatives secularly elected for secular purposes, dabbling culture as embodied in their laws by their divine sages and saints and such interference is regarded as *ab initio* null and void.

8. The millions of orthodox Hindus do not want to be thus robbed of their stable and divine sacred law and such a move is felt by them as treachery and treason against the community, under the cover of a foreign Government and mixed legislatures.

9. The religious heads, orthodox Sanskrit pandits, Hindu religious sabbas, heads of temples and maths and those others who really represent the Hindu people in such matters have given a clear *No* to such a transformation and liquidation of the sacred Hindu Law.

10. This Code robs the Hindus of the sanctity of their law, of the Sanskrit basis of their law, of the customary mouldings of the law, of the stability of the law, of the real uniformity of its divine basis, and of all the advantages of the law which has made the Hindu society live through history.

11. The only way to utilize the wasted money, energy and talents on this new Code is to make it applicable only to those who get themselves registered to be governed by it. The whole thing will then be exposed.

12. The Hindus have not made any demand for it nor do they need it. It is not a matter for secular legislation and in our opinion it is beyond the sphere of Government's jurisdiction. It is not a matter for the Committee nor for majority of lay and neutral opinion. It is a matter of *undeniable and inalienable cultural rights of the people*.

We trust therefore that the whole movement of the Hindu Code will immediately be stopped and no handle given to grow discontent by social as well as political revolution.

56. Brahman Sabha, Karveer (Y.C. Gune, President.)

The proposals of the Rau Committee as proposed are entirely unsatisfactory. This Sabha records its emphatic protest against the suggestions regarding the abolition of the coparcenary and other revolutionary and destructive changes proposed in the matter of stridhan, maintenance, adoption, marriage and divorce, etc. This Sabha urges to refuse permission for the introduction of the Bill. The Hindu community within the territory of the Native States is inseparably bound with their Hindu brothers

within the territories of British India territories in culture, traditions and religious observations and as such this meeting views with alarm the proposed changes by the new Hindu Code.

57. Sree Sankara Mutt, Matunga, Bombay.

With regard to the draft Hindu Code published by your Committee, my Association representing the orthodox section of the Hindu population begs most respectfully to associate itself with the opinions and criticisms expressed by His Holiness Sri Jagatguru Sri Sankaracharya Swamigal of Sri Kanchi Kamakoti Pitam, Kumbakonam.

My Association believes that codification of Hindu Law, which is a living organism, will be tantamount to negate the very spirit and fundamental principles of Hindu religion and philosophy, like unity in diversity, difference in Dharma due to adhikara-bheda, chastity of women, belief in shraddha, etc. My Association is of opinion that the draft suggested by your committee contains revolutionary changes like divorce, validation of sagotra and inter-religious marriages, which are abhorrent to the correct interpretation of the Smritis. The insistence on monogamy will be suicidal to the Hindu community politically, when Muslims can have four wives at a time and multiply their progeny without anybody daring to interfere with their personal law. A mixed legislature consisting of representatives of various religions should not lightly tamper with the immemorial laws and customs of one religion only. If your Committee's draft is passed, reformers will be introducing drastic changes in the Hindu Law by the back door of codification without having a straight fight with orthodox elements on the various issues involved. It is, therefore, the considered opinion of my Association that the Code drafted by your Committee is not acceptable to the vast majority of the Hindu population.

58. Maharashtra Brahman Sabha, Poona.

1. The consideration of the Hindu Law Code should be postponed till after the cessation of the present war.

It should be taken into consideration by the Central Legislature, after fresh elections are held.

2. Though the object of the new Hindu Code is to bring about uniformity in the Hindu Law prevailing in the whole of India, it is highly desirable to retain peculiarities of various provinces in the point of succession and inheritance, as Mitakshara prevails in major portion of India, while Dayabhaga is followed in Bengal and Mayukha in the United Provinces.

3. Provisions of the proposed Hindu Code should be settled and voted upon by the Hindu members of the Central Legislature, members of the other communities remaining not voting.

4. The proposed Code should come into force five years after it is passed.

5. In Part I, clause 2 (2), after the word 'professing' the words "either by birth or conversion" should be added.

6. Clause 5 (b) substitute 'Society' for 'Law.'

7. At the end of clause 5 (j) add the following:—

"Provided that property inherited or obtained at a partition from her husband's family should not be deemed stridhana."

8. Part II, Clause 2.—(b) Illustration is inappropriate in spite of the reasons given in the marginal note.

9. Clause 2.—Retain Joint Select Committee's definition of "Heritable property" and omit Part III-A.

10. Clause 5.—From the enumerated heirs, class I (1), drop 'daughter' and add "son's widow and son's son's widow, but their right to property should be limited.

- In class II of the enumerated heirs add daughter before (1).

11. In clause 7-(b), add "provided the divided son has not already taken away his share from ancestral estate."

12. Clause 5—Enumerated heirs, class I, sub-clause (1).—Remove or drop "daughter from simultaneous heirs" and include her in sub-clause (2) "Before daughter's son", that is, retain her present position in the list of heirs.

13. Clause 10 should be dropped.

14. Clause 13, illustration (1) is inapplicable, if amendment to the definition of stridhana as suggested in 7 be accepted.

15. Clause 14 (a) is inapplicable to the comprehensive definition of stridhana as proposed in the Code.

16. Clause 21.—The convert himself should be disqualified from inheritance, and Caste Disabilities Removal Act should be abrogated.

17. Part IV, clause 25.—At the end add "and as trustee for the benefit of the community which to the deceased belonged."

18. In Part III, section 212 of the Indian Succession Act regarding letters of administration should be included.

19. In Part III-A, clauses 1 and 2 should be deleted and the law of joint Hindu family property as it is at present should be retained.

20. Clause 6 (g).—Drop "But not the income from her own earnings or any other source" as it is wholly inconsistent with sub-clause (e) of the same section.

21. Part IV, clause 2.—The sacramental form of marriage alone should stand.

22. Clause 3.—(The alternative to clauses 3, 4 and 5), add the contents of clauses (b) and (c) regarding insanity and degree of relationship as mentioned under clause 3, in Part IV.

23. Clause 3 (a).—Add between (a) and (b) "provided any person whose first wife is through illness, sterility or otherwise incapable of conjugal life, may apply to the district court for permission to remarriage in spite of above clause."

24. Clause 4.—Add at the end "when the language in which the rites are performed is not understood by either party, those rights should be explained in the language understood by them."

25. Clause 5.—Add 'or bridegroom' after the word 'bride.' A similar change should be made in clause 3 (c).

26. Clause 3 (d) should be reproduced as per sub-clause (d) of clause 3 with the words 'unless . . . ' to the end.

27. Clause 7 (4), proviso about "No consent being necessary in the case of a widow" to be dropped. Similar changes to be made clause 14, clause 18 (c), clause 23 (b).

28. Clause 29.—The form should be mentioned.

29. Clause 29 (3).—In place of "District Judge" use the words "District Court."

59. Sub-Committee of Shri Shukla Yajushakeeya Madhyand in Maharashtra Brahman Sabha, Poona.

PART I.

1. The policy of the Government of India in codifying Hindu Law through the agency of the Central Legislature under its present form and constitution is undesirable as a large number of the Hindu Members are not taking part in it, thus making the present Legislative Assembly not fully representative, as to undertake such an important work, pertaining to the biggest and overwhelming major section of the population of India, i.e., who prize more their personal law, i.e., Hindu Law, and if in spite of the existing drawbacks and defects (constitutional and otherwise) the Government of India were to decide to take action in that direction as proposed, it would be unstatesmanlike and in defiance to the desires and wishes of that section of the people for whom and for whose benefit, the Code proposed, is made to be an Act.

2. The codification of the Hindu Law, with due provision for certain immemorial and ancient local customs, will be welcomed by the Hindus, if at all the same is not tried to be made in such hot haste under uncertain times of the present world-wide war and through such an agency as the present not fully representing and depleted Central Legislature.

3. If in spite of the above objections, the Government of India is bent upon introducing and getting passed into an Act, through the present Central Legislature, the proposed draft Hindu Code, we suggest and submit, in the alternative, the following amendments, additions, alterations and omissions thereto, which, we hope, both the Hindu Law Committee, as well as the hon. Members of the Central Legislature, shall consider, with due attention and sympathetic attitude and shall try to absorb and incorporate them, as far as possible:—

(1) The provisions of the proposed Hindu Code should be settled and voted upon by the Hindu Members only, of the Central Legislature. Members of the other communities not taking part in settlement remaining not voting.

(2) Though the object of the Hindu Code is to bring about unification of and uniformity in the Hindu Law prevailing in the whole of British India, it is highly desirable and in many cases, essential, to retain peculiarities and particular customs, prevalent in various provinces on the point of succession and inheritance at least, as per the

Mitakshara school of Hindu Law [that prevails in the major portion of India while the Dayabhaga and the Mayukha schools of Hindu Law are followed only in Bengal and in the United Provinces and some part of Gujerath (North Konkan including) respectively.] Hence the Committee's attempt to apply the Dayabhaga school of law to the whole of India, on the two above points, is neither approved or appreciated, nor encouraged and consented to by us all.

(3) *Clause 4.*—Omit second part.

(4) At the end of clause 5 (j), add the following:—

"Provided that the property inherited or obtained at the partition from her husband or husband's family shall not be deemed streedhan."

(5) *Clause 6.*—Drop the proposed amendment of the Special Marriage Act III of 1872 from the First Schedule hereto.

(6) *Repeals—Clause 7.*—Add in the Second Schedule "Act XXI of 1850 (Caste Disabilities Removal Act) abrogated to the extent, as it applies to Hindus."

PART II.

(7) *Clause 2 (b).*—Drop definition of 'Heritable property' and replace instead the one proposed by the Joint Select Committee, viz:—

'Heritable property' means property which belongs to an intestate in his or her own right and possesses, whether he dies leaving male issue or not, by inheritance, as distinct from survivorship.

(8) As we propose that joint family property under Mitakshara school of law should not be included in the heritable property, and should pass by survivorship as before, so omit Part III-A altogether.

(9) Also illustration to sub-clause (b) is inappropriate in spite of the reasons given in the marginal note. So drop it and reframe an appropriate one if necessary.

(10) *Clause 5—Enumerated heirs, class I.*—Remove or drop 'daughter' from simultaneous heirs and include her in sub-clause (2) before "daughter's son"; i.e., retain her present position and number in the list of heirs.

(11) Also include widowed daughter-in-law and widowed grand-daughter-in-law in the enumerated heirs at their proper places.

(12) *Clause 7 (b).*—Add "Provided the divided son has not already taken away his share from ancestral estate."

(13) Drop altogether sub-clause (d) of clause 7.

(14) *Clause 10* should be dropped altogether.

(15) *Clause 13.*—Illustration (1) would be inapplicable if amendment to the definition of stridhan as suggested above be accepted.

(16) *Clause 17* should be dropped altogether, as we are opposed to accepting marriage outside his or her caste, as a valid marriage.

(17) *Clause 21.*—The convert himself should be disqualified from inheritance, and Caste Disabilities Removal Act should be abrogated.

(18) Apostasy should be made a disqualification, and the like amendment should be made in clause 21.

(19) *Clause 25—Escheat.*—At the end, add "and as trustee for the benefit of the community to which the deceased belonged."

PART III-A.

(20) It should be omitted deleted altogether, and the law of joint Hindu family according to the Mitakshara school, should be retained as it stands at present.

Maintenance.

(21) *Clause 6 (g).*—Drop "but not the income from her own earnings or any other source," as it is wholly inconsistent with clause (e) of the same section.

PART IV.—MARRIAGE AND DIVORCE.

(22) *Clause 2.*—The sacramental form of marriage alone should stand.

(23) *Clause 3 (a).*—Drop "neither party must" and replace by "the bride must not."

(24) *Clause 3.*—Add proviso at the end: "Provided any person, whose first wife is through irrecoverable illness incapable of conjugal life, or does not bear any issue for a period of 12 years from the date of marriage, may marry another wife." Also add (d) "The parties to the marriage must belong to the same caste of Varna."

(25) *Clauses 3, 4 and 5* the alternative clauses.

Clause 3 (a).—Drop "neither party must" and replace by "the bride must not."

(26) Also add the contents of sub-clauses (b) and (c) regarding insanity and degrees of prohibited relationship.

(27) *Clause 3* (alternative).—Reproduce the words "unless" to the end as in section 3 (d) above (regular).

(28) *Clause 6.*—Add in clause (4) "The registrar and his office for this purpose shall be appointed and constituted from amongst the Hindus."

(29) *Clause 7 (4).*—Proviso about "no consent being necessary in the case of a widow" should be dropped.

(30) Similar change should be made in clause 14, clause 18 (c) and clause 23 (b).

(31) *Clause 11* "One calendar month" in place of 14 days should be provided, in case of civil marriage, for taking objections.

(32) *Clause 29.*—The form should be mentioned. It should be where the marriage took place or where the respondent resides.

(33) *Clause 29 (3).*—In place of "District Judge" use the word "District Court."

(34) Drop sections 30, 31 altogether, as we are opposed to divorce being allowed according to law, for the Hindus; save and except as it is permitted and practised today according to recognized custom and usage in any caste or community.

(35) To avoid disparity of age between the parties to marriage (both sacramental and civil) and to prohibit the following should be added; "The bride should be younger than the bridegroom and no bridegroom above the age of fifty shall marry a minor girl."

PART VI.—ADOPTION.

(36) *Clause 7 (2).*—Add word "subsequently" after word "executed."

(37) *Clause 14 (1).*—Drop the words 'the only son.' Say that he is excluded from the operation of this section.

(38) *Clause 23.*—Six months' period should be allowed instead of 90 days for making an application for registration of adoption as the majority of the people concerned happen to be from illiterate and ignorant agriculturist class.

(39) *Clause 30.*—Add word "Hindu" after the words "the register of" and before the words "adopted children."

(40) Similar change should also be made in clause 31, after and before the same words as above.

(41) *Clause 27.*—The form, instead of 'District Court' should be 'local civil court of the lowest grade.'

II.

1. It would really be contrary to every principle of democratic institutions and representative legislatures, in any country in the present world, that a task of the magnitude—that will bring about far-reaching effects entailing extensive and almost subversive changes in the existing basic principles, schools and thoughts of Hindu Law—of formation and codification of Hindu Law, as is being proposed and attempted to be made in the form of the so-called "Draft Hindu Code"; should be entrusted to the present legislature, undemanded and unfortified by a popular demand and mandate.

2. The Hindu Law Committee is attempting to attain its object—as expressed in the explanatory statement issued and prefixed by the Committee to the proposed draft Code—of evolving a uniform Code of Hindu Law, which would apply to all Hindus, by blending together the most progressive elements in the various schools of Hindu Law, such as Dayabhag, Mitakshara, etc., that prevail in different parts of this country (India), has also assiduously worked for the achievement of the following further objects, in preparing its proposals, viz., (a) removal of the disqualification of woman to inherit property, (b) the abolition of the woman's limited estate; (c) practical abolition of all local, communal and family customs and usages—one of the main sources of Hindu Law—honoured and faithfully followed since age-long times to the present day, (d) the disruption and destruction of the integrity of the institutions of (1) patrilineal family पितृव्यतः उद्भवति (together with its special form, the joint Hindu family) and (2) hereditary caste परंपरातः जति and (e) the destruction of the purity of sexual life of the Hindu women.

All these have necessarily resulted in making its proposals quite foreign and hostile to the very fundamental principles of both the Hindu ancient Dharma-shastras and time-honoured social order.

(i) For immemorial usage and custom of the respected members of each community is one of main sources, as pointed out above, not only of Dharma-shastras but also of Hindu Law, and even the decision of all the Mimamsakaras is one, unequivocal and strong on this point and they all do declare "स्मृत्या एव वेदी एव" meaning such a usage shall override the Sruti and the Smriti, and ought to be followed by persons belonging to that locality, community or family and also must be revered and respected by the Rulers and more so, in the case of a conquered or subjected country: (vide Yajñavalkya Smriti I, 343).

Therefore uniformity in Hindu Law which does away with those peculiar and distinct usages and customs, is not going to be acceptable to any group in the Hindu society.

(ii) Patrilineal family and hereditary caste, are the basic institutions in the evolution of Hindu social order.

(a) The first institution demands the integrity of the family property in the hands of those who would be permanent members of the family and who would be responsible for continuing the same. The male issues of a person take their birth in the family and till their death they are recognised as the representatives of the family of their male ancestor. Even if they establish separate households, they are termed 'off-shoots' of the paternal trunk and so continuity of relationship with the original stock is secured, that is why it is ordained that the property should always be transmitted to the male issue of a person, to maintain and continue the solidarity and the entity of the family and its connexion with the property.

The Mitakshara (School) Communities have from ancient times followed in minutest details the incidents of the above theory. Consequently the Mitakshara joint family is verily a firmly established institution, throughout the length and breadth of India, except in Bengal. Even in Bengal the trends of the communities, as observed in actual life (apart from the few cases of Anglicised Hindus) clearly prove that notwithstanding the comparative freedom recognised by Dayabhaga (Bengal) authorities of father and brother in the joint families, there is hardly any difference between a Mitakshara joint family and a Dayabhaga joint family. Modern writers like the late Dr. P. N. Sen and the late Mr. G. S. Sarkar have emphasized this similarity with clarity and conviction and the Calcutta High Court has also affirmed the same by its judicial decisions on so many occasions.

The Committee has introduced a number of heirs along with the male issue simultaneously at the first place in the order of succession of these newly added heirs. The daughter in fact even according to the Dharma-shastric order and the custom-ingrained notional ideas, does not continue to be a member of her father's family or gotra after her marriage, inasmuch as ऽ एव i.e., giving away is actually made or takes place in her marriage to her husband; while the Committee wants us to regard hereafter quite the contrary to this. The parents are given a right to inherit to Stridhana property of a woman, vide Part II, clause 14 (b) sub-clauses (4) and (5), which include the Stridhana property of a daughter too. This is quite repugnant to the Hindu notion of a एव or giving away of a daughter in marriage mentioned heretofore. So no parents would ever entertain, much less, like or approve of taking back anything that they have given as gift or otherwise to their daughters either before or after marriage and in the same way the parents would detest desiring at any time, the other Stridhana property of their daughters. All female heirs have been given absolute rights and ownership over the property which they inherit or otherwise acquire. The Committee also proposes to do away with the Mitakshara principle of the birth-right of male issue in the property of their male ancestor. This too makes it clear that the Committee is out to destroy the joint family corporation.

If all the above provisions were to become law, as proposed by the Committee, henceforward the principle of survivorship will be gone, and there must be partition on the death of the father in every generation, and the joint family corporation will cease to exist.

Our experience as lawyers tells us that the Muhammandans even, amongst whom women are recognized as sharers, do not welcome and almost dislike the said provision and the very idea underlying that provision.

(b) The other basic institution, which the Committee has hit hard, is that of the hereditary caste. The

integrity of caste is preserved by marriages being secured and performed within each group meaning caste. It is known to every one that among the immemorial Hindu castes, marriages do take place within such castes. The Committee has however, under the cloak of permissive legislation, allowed full freedom to every Hindu in this subject of marriages. Thus by legalizing the issue of all such anti-social unions, the Committee has given recognition to half-caste and mixed issues (संकरं व्रज) who will be occupying identical status, in every caste group, with its purely descended members. That is a deliberate attempt being made to do away with this institution of caste also.

(iii) Monogamy and divorce are bound to destroy the purity of the sexual life of the Hindu women. This reform of monogamy has been introduced by the Committee in order to be just to the mothers of the race; and according to its views monogamy must bring in divorce.

Marriage amongst Hindus is an unbreakable and inseparable (except by death) (संस्कारः) sacrament, and is neither a contract nor an institution or means, simply to pacify sexual lust. It is secured with the pious and high object of enabling the parties thereto, to discharge duties to Father, duties to country and duties to Dharma and thereby to attain the ultimate goal and object of the true Hindu life and ideology of मोक्ष i.e., salvation of the soul.

The ideal of married life set up by our sages, and largely attained by women belonging to higher 'Brahmin' caste Hindus, is the one described in verses (5-144 and 162) of Manu :-

The women of these higher communities have from immemorial old times held fast to their hearts these high ideals of सतिव्रतं, duties to husband. And among these communities public opinion is yet so powerful against even remarriage of a woman on the death of her husband, that up to now, the widow Remarriage Act of 1850 has done very little harm or practically no harm at all to this high ideal.

And the true function of the state is to help the different communities, castes and creeds in the maintenance of moral values recognized in each of such communities, castes or creeds. When individual men or women, belonging to such groups, above described, revolt against the particular moral ideals accepted and accredited to by these groups, both the force of public opinion and the physical power of the state, should be used effectively, against such recalcitrant members to check their fall. But instead of this, when public opinion is very strong in the matter of सतिव्रतं the Committee desires the state to afford such women definitely anti social liberty under the fair guise of being fair, though not partial, to the fair sex, being influenced, it appears, by the Anglicised and Muhammadan notions. Through such contemplated legislation, these provisions are bound slowly to introduce deterioration in the purity of sexual life of the Hindu women and is in no way going to be beneficial to any one.

3. By allowing the adoption of the only son, vide paragraph 14 (1) in Part VI—Adoption: the Hindu Law Committee has, not only violated the principle underlying the Hindu idea of adoption; but has frustrated the very aim and object of adoption. An adoption amongst Hindus, according to their time-honoured and ancient notions, is made for the perpetuation of the family estate and its name, for the protection and continuation of the family estate and for performing obsequies and ceremonies of offering Pinda and water, at the anniversaries and other occasions to the adoptive parents and their ancestors. So if the only son is given in adoption, it would be obvious, that there will be no son left behind to the person giving in adoption, for the above purposes. In short, if the Committee's proposal be accepted and made into law, it would work, to allow to wipe out one family and rejuvenate the other.

4. There are several other provisions in this draft Code, that are already separately suggested and pointed out, as undesirable and unbecoming ones, and all these, betray the complete incapacity of the Committee, to appreciate the true Hindu view of life.

True Hinduism demands the subjugation of individual rights and pleasures to social and religious duties ordained by Dharma-shastras for attainment of the ultimate aim and object of Moksha, i.e., salvation of the soul. As all the injunctions of the Dharma-shastras and religious usages, represent, when viewed with a secular perspective, nothing

else, than the various social duties, imposed upon each and every Hindu, according to his social status and capacity. And the reinforcement and upkeep of this real Hindu civilization and culture, is the sacred function of every sovereign power governing India.

60. Mahamahopadhyaya Pandit Vasudevashastri.

Agent to His Holiness Srmat Jagadgaru Madhvwacharya Uttaradhi Math, Wadgonkar Chaul Sholapur District (?), Sholapur.

As the head of the religious seat of Hindus, I hereby let you know that the draft Bill of the Hindu Code as framed and published by the Rao Committee is contrary to the tenets of the Hindu religion, and that it is likely to disturb the social order of the Hindus and would prove impracticable. This *Dharmapeetha* (religious seat) is against it. I make an earnest suggestion that the Bill should not be passed into law.

61. Mr. Batahal Mansukham Patel, Secretary, Shri Sanatan Samast Hindu Dharma Sabha, Ahmedabad.

In the new draft Hindu Code prepared in English by the Hindu Law Committee, persons belonging to the communities, such as Hindu, Buddhist, Jain and Sikh are treated as Hindus. This Code is not published in the different regional languages of the country for the information of persons belonging to all these communities. The majority of the population of the country resides in villages and not in cities, and for their information, the Code should be published in the languages of different communities. Moreover, it should be issued to the press and the newspaper men for publication so that the people can study it properly and express their opinions on it.

The marriage system, the right of inheritance and the caste system of the Hindus are based on the books of Hindu theology such as the Vedas and the Smritis which are believed to be the commandment of God and are calculated to achieve the welfare of the Hindus not only in this world but also in the next world. They are maintained by the ancient Hindu Code since crores of years.

In the draft Hindu Code published in English by the Hindu Law Committee, known as Rao Committee, there are following provisions leading to the destruction of the Hindu religion and the Hindu culture, namely, provision for marriages between *apsindas* and *agotras* and for inter-caste marriages, restriction on bigamy, dissolution of marriage under certain circumstances, as is the case with the civil marriages compulsory registration under the Civil Marriage Act of the marriages solemnized under the Sanatan vedic rites, destruction of the ancestral property by transferring it to the other family by conceding the right of inheritance to daughters according to the Muslim custom, registration of adoption, testamentary succession involving 28 crores of illiterate population in the complication of wills giving rise to quarrels between brother and sister, father and mother, and thereby destroying family love, and making way open for (taking disputes to) Courts.

A true Hindu cannot accept this Code because it violates the orders laid down in Manu Smriti and other religious books of the ancient Sanatan vedic religion and destroys the Hindu culture. Persons talking of individual freedom should not thrust on 30 crores of people the new Code which is (drafted) in accordance with the views of a handful of progressive persons enamoured of western civilization. It would be proper if those who do not want to abide by the old Hindu Law, make a new Code or arrangements as required by them.

The great sages and the Hindu Emperors have never felt the necessity of changing the order of the Hindu society based on the Vedas, Manu Smriti and other religious books and the progressive persons who have taken western education since 150 years and who talk about individual freedom, should give up the idea of binding almost the whole Hindu community holding orthodox views with the new draft Hindu Code.

In connexion with the draft Hindu Code, I think that the Committee should take the evidence (and invite the opinion) of only high religious priests, pandits, shastria, and learned persons who love Hindu culture and of such pleaders and other persons who hold similar views.

Governments may go on changing but no Government can change the religious laws of any community. Government is subject to religion but the religion is not subject to Government. If real importance is to be attached to individual freedom, the Committee should give up the idea

of making alterations in the ancient customs and manners of the Hindu Society.

62. Hindi Bhashi Association, 259, Kalbadevi Road, Bombay.

We do not want the Hindu Law based on the Shastras to be changed into a Code changeable by the will of the people or of certain persons from time to time, especially because it would mean the introduction of the elements of uncertainty, human fallibility and variability with the changing moods, circumstances and powers that be. Thus it would mean ruin, disintegration and gradual moral decay of the Hindu society.

63. Sjt. Pandit Munishandra Pathak, Nyayacharya, Professor, J.V.M. Sanskrit College, Secretary, Pandit Parishad.

1. We have strong objection of a preliminary nature that the definition of Hindu as given in the Code is not the definition of a Hindu as properly understood, and recognized by the Shastriic scholars.

2. No human authority, not even the sovereign, has really any right to interfere in our religion or in our Hindu Law which is wholly based on religion. We regard to all interference done hitherto as really speaking unjustifiable and a trespass on the right of the Hindus.

64. Sjt. Shree Prasad Misra, Secretary, Sanskrit Chhatra Sangh, J.V.M. College.

1. We do not want a man-made Code instead of our ancient divine law which has come down to us from our great Rishis of old.

2. The Code, as it is, is wholly detrimental to our ideal of womanhood in which *Sateeva* occupies the foremost place.

65. Mr. Lakshman Gopal Date and certain others of Sholapur.

The Hindu Code framed and published by the Rao Committee is contrary to the tenets of the Hindu religion, is likely to disturb the social order, will prove impracticable and will hurt the religious feelings of the Hindus. We oppose the draft on the following grounds.

1. The codification of every law does not necessarily serve the purpose of the society. There appears to have been a difference of opinion even in the jurisprudence as to whether there should be codification or not.

2. This is not the right opportunity for codifying the Hindu Law; for

(a) There are not in the Legislative Assembly representatives of the masses who hold views favourable to the Hindu religion and the Hindu Law.

(b) We strongly oppose the principles included in the new draft for codification.

(c) There is a vast difference between the line of thought adopted in the new draft Bill and that followed by the Hindus in general.

3. Assumptions made in the new draft of the Hindu law are primarily wrong and unrealistic.

4. To give importance to the social or family interest in the first instance and then to consider the personal happiness would be regarded as the right way of thinking. But in the new draft, the individual happiness has been given prominence. Consideration of individual happiness will bring about undesirable changes in the social order and family life of the Hindus.

5. This new draft Bill will tend to change entirely the order and solidarity of the social and family life of the Hindus.

6. The new draft appears to be an attempt to revolutionize the Hindu religious notions and the religious feelings of the Hindus are hurt thereby.

7. The principles of religion taken as a basis to frame draft Bill according to its own views have been so taken without giving consideration to history of the rise and development of the Hindu religion.

8. It is impossible to make one and the same law applicable to all Hindus. The line of thought adopted in making it so applicable is wrong in itself. The framers of this draft have included non-Hindus in the Hindu community.

9. According to scriptures, there is no option allowed to any individual in the matter of religious observances. The commandments laid down by the scriptures are binding on them. But this Code gives liberty to act contrary to the principles of religion, which is not proper.

10. The Code, has defined the term "Hindu" in an erroneous manner and has by according approval to the inter-caste marriages, tried to bring about admixture of castes and races which action on the part of the Committee is simply deplorable.

66. Sukla Yajurvedi Madhyandin Maharashtriya Brahman Sangh, Sholapur.

The draft Hindu Code as in the present form does not deserve to be law and is not conducive to the welfare of the Hindu society. In particular,

(1) The definition of a 'Hindu' is too vague and is capable of being used by mischievous persons for evil designs. A Hindu must at least undergo some of the Samskaras laid down by the Shastras.

(2) Daughters should not get a share along with sons at the time of inheritance.

(3) Widows should get only limited, i.e., widow's estate.

(4) The system of joint Hindu family is socialism in a microcosm. Supposing for the sake of argument that it is an evil, yet it is an evil of choice and can be cast off at the mere expression of a desire to separate. The system is not obsolete but serves the society to this day.

(5) Regarding the form of marriage, the Association strongly feels that the civil marriage is repugnant to Hindu ideas and culture and hence it should not be included in a Hindu Code.

(6) Clauses 3, 4 and 5 as introduced in the Assembly be maintained in relation to a Samskar Hindu marriage.

(7) Marriage between persons belonging to the same Gotra or common Pravara should not be prohibited by law.

Regarding codification, the Association feels that codification is not in the interest of the Hindu society as the privileges of personal law are lost thereby. Then again, Hindu law has developed variously in different parts of the country and unification will bluntly brush aside all the venerable systems.

The Association begs to place these views before the Committee with the hope that they will be given due weight.

67. Vidwat Sabha, Nadiad.

1. The Vidwat Sabha of Nadiad (district Kaira) strongly protests against the introduction of the Hindu Code on its being based fundamentally against the basic principles of Hindu Dharmashastras, Hindu social usages and Hindu culture.

2. This Sabha is of the opinion that the general Hindu public is not aware of the vital changes introduced in the Hindu Code Bill, and the Bill has not been circulated broadly in the various provinces for eliciting public opinion over it. It is hoped that a reasonable time will be further allowed for considering the various items of the Bill. This Sabha further requests the Government to postpone the considerations of the Bill in the Central Legislature till after the cessation of the present war.

3. This Sabha is of opinion that the present sitting members cannot claim to represent Hindu opinion on such vital socio-religious points in Hindu cultural life as are proposed to be tackled with in the code. The candidates who get themselves elected on including this very vital point in their manifesto can be said to represent the Hindu opinion upon this point. Hence the Hindu Code should be allowed to be taken into consideration by the Central Legislature after fresh elections are held.

4. This Sabha is also of the opinion that the votes of non-Hindu members should not be taken into consideration on Hindu Bills touching their socio-religious life.

68. Bombay Provincial Dharma Sangh, Madhav Bag, Bombay.

We have to protest strongly, on behalf of this Sangh, against the whole move of liquidating the Shastric Hindu Law and substituting in its stead a man-made Code with anti-religious and anti-Hindu bias. We object to the very principle of secularizing our sacred Hindu law, which has proved its unique vitality, longevity and value. We do not want temporary uniformity at the sacrifice of permanent solidarity and cultural integrity which are the special features of the Hindu Law. It will be found that at the bottom this movement is not one for uniformity or codification but for transforming the law towards a wholly different ideology. The draft therefore is worse than useless and also surreptitiously mischievous. It must be quashed and the Hindu Law Committee dissolved as early as possible so that the misuse of public money thereon may be stopped.

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69. His Holiness Sreemad Jasadguru Sri Shankaracharya Maharaj, Sankeshwar and Karver, Poona City.

The draft Hindu Code has been perused by His Holiness with the help of pandits and lawyers.

The codification of Hindu Law is a matter of grave concern to Hindus of every description and it is unjustifiable to take precipitous decisions in this respect without allowing sufficient opportunity to everyone to have his say.

The Government of India and the Hindu Law Committee appear to have concluded that codification of Hindu Law under the legislative authority of the former is going to prove a boon to the various Hindu communities. They seem to have taken this decision on the advice of a certain number of Hindu lawyers as is reported by the Committee in its report, notes and statements. It is not known what is the number of these lawyers, collaborators of the Committee; nor is their status and qualification to represent the complete Hindu viewpoint known to anyone besides the members of the Committee.

It is claimed that the Hindu society of the present day is led in all matters of ethical standards and social relationships by persons who are prominent on public platform, the organizers of various Hindu public (under the modern ways) bodies. No one has made any genuine attempt to estimate carefully the value and amount of influence these modern leaders wield over their fellow-members of the different communities in matters touched by the draft Hindu Code. Among Hindus of every description, not more than 10 per cent have received bare English education. Of these small class of English educated Hindus there would not be even 5 per cent Hindus who are anglicized in their manners, customs and outlook of life. This small percentage of the total Hindu population (not more than a half per cent of the total Hindu population) can be said to be affected in certain matters by the influence of ideas propagated by those self-styled public leaders of the present day.

In their innermost hearts, these modern leaders are themselves found to be very suspicious in respect of the validity of their views which are not consonant with the propositions enunciated in the Dharmas Shastras. Under critical moments, many of these are seen taking protection from threatened evil consequences by resorting to Shastric processes and methods calculated to ward off the threatened results through an invisible chain of cause and effect. Even the members of the Hindu Law Committee cannot absolutely affirm the non-existence of Apurva effect of the Mimamskas; nor can they deny the reality of existence beyond this life on earth and the cycles of births and deaths. However as these modern thinkers are always indefinite in their ultimate conclusions, they try their best to spread and popularize this atmosphere of indefiniteness and suspicion among their less sophisticated Hindu brethren and try to undermine the influence of Shastric injunctions on their minds by creating doubts regarding the efficacy of the social order envisaged thereunder under present conditions. As these persons are among the most vocal on public platform, in press and in University education it is not intended to deny that this atmosphere of indefiniteness and suspicion is slowly gaining ground and gradually reducing this well regulated social order to a fluid and unsettled condition.

These present-day leaders are the organizers of the Hindu Mahasabha and other public bodies of the same type. The Hindu Law Committee has not, however, cared to consult even these. In the preparation of the draft Code it has taken into confidence a handful of lawyers. It is very obvious that lawyers as a class are not best qualified in giving advice on questions affecting the fundamental principles of the Hindu social system. They are trained in an educational system, introduced here by our political rulers bred in a hostile civilization; These lawyers are accustomed to examine all these matters from the narrow professional point of view. And in consequence of their outlook being predominantly secular and professional they examine each question by the test that every social value and moral standard depends upon everchanging public opinion. Their professional interests even unknown to themselves, are always uppermost. They are not expected to look at these vital questions by the detached outlook of authors of Srutis and Puranas.

On the other hand persons and bodies who truly wield real influence in respect of all important matters of social

regulation are neglected by the Hindu Law Committee in its preliminary deliberations. Among the various Hindu communities the Dharmacharyas having their seats and territories under their jurisdiction in different parts of India, the Mahants and Peethapadis, the heads of castes and caste panchayats and lastly learned Brahmans are the seats of social authority. The Hindu sacraments, the rites and rituals connected with them, the eligibility or otherwise of the caste members to perform these, and all other matters of social intercourse among the members of the caste are determined even to-day as it was thousands of years ago by local caste and family customs. These customs are dependent for their validity on the Shastric texts; and these latter get their authority from the sacred vedas which are eternal. Thus these customs which are consonant with the exact texts of the Vedas and those others which are accepted as transcendental law by the respected persons in a particular locality, caste or family and traditionally followed from immemorial times in the respective locality, caste or family can alone become the source of law for the Hindus belonging to that locality, caste or family. As the institutions and bodies above-mentioned are properly qualified to know and ascertain these texts and customs their direction and advice are accepted from very ancient times by various Hindu communities, in all important matters of social intercourse. By shastras themselves these bodies and institutions have been invested with authority for adjudicating upon all matters of social and caste discipline and impose proper penalties on miscreants and wrong doers. Even the head of a State cannot escape the jurisdiction of Dharmacharyas. And what is important to note is that even to-day the vast majority of Hindus eagerly seek and readily submit to the authority of these time-honoured institutions and bodies.

The Hindu Law Committee has laid down an erroneous procedure for itself in taking into confidence certain lawyers only in deciding upon the codification of Hindu Law under the legislative authority of the Government of India. It is unjustifiable to hold that the Government of India possesses the moral, political or even the legal authority to interfere in the private laws of Hindus. Every lawyer is accustomed to hold that the British Government and consequently by devolution the Government of India do possess at least the legal power to interfere in the private laws of the Hindus. But this assumption has neither historical basis nor is it warranted by the political practice of the rulers. The assumption of political authority over British India by the British Crown conferred on it the right jurisdiction and authority possessed and exercised by the previous rulers of these territories by the right of conquest. These latter neither possessed nor ever exercised any authority in these matters. The above bodies and institutions really possessed the needful authority and the proper domain of the functions of the political rulers of India had ever been protective and maintaining the Hindu social order by helping these bodies and institutions in the discharge of their task. As at no period of time known to history hostilities have been broken out between the abovementioned bodies and institutions and the political rulers of India, the mere stepping into the shoes of the previous rulers by the British Crown cannot confer upon it the jurisdiction and authority of these bodies. On the other hand on the British Crown and on other political authority denying their powers from the British Crown are thrown the sacred and traditional duties of helping these bodies in the performance of their functions and these maintain and protect this social order. So a bare statement regarding the assumption of authority of every kind and in every matter of social regulation made on behalf of the British Crown is not sufficient to confer on it the necessary legal power in this behalf.

The political practice of the British and Indian administrators during the past hundred years is also in keeping with the theory above explained. Up to very recent times every political administrator and statesman has rigorously adhered to the policy of strict non-interference in the private laws of the Hindu communities. To take but two strong examples out of a host of similar others: The Governor of Bombay writes in an administrative minute of 23rd July 1823: "The place of the Dharmashastra is supplied in many cases by known customs founded indeed on the Dharmashastra, but modified by the convenience of different castes or communities;

no longer denying any authority from any written text

There are but two courses by which a remedy can be applied; the first is to make a new code, founded entirely on general principles, applicable to all ages and nations; the second is to endeavour to compile a complete and consistent code from the mass of written law and fragments or traditions presenting only conflicting authorities and perhaps supplying on similar principles any glaring deficiencies that may remain when the matter for compilation has been exhausted. The first of these courses, if otherwise expedient, is *entirely impracticable hereby the attachment of the natives to their own institutions and by the degree to which their laws are interwoven with their religion and manners*. The second plan is therefore the only one which it is in our power to pursue. The first step towards the accomplishment of its objects appears to be to ascertain in each district whether there is any book of acknowledged authority either for the whole or any branch of the law; the next is to ascertain what exceptions there are to the written authorities, and what customs and traditions exist independent of them. The best modes of conducting these inquiries are, first to examine the shastres, heads of castes, and other persons likely to be acquainted either with the law, the customs of castes on the public opinion regarding the authority attached to each; and secondly, to extract from the records of courts of justice the information already obtained on these subjects in the course of judicial investigation. "The second is an extract from the famous Queen's Proclamation of 1858"; it reads thus "Firmly repaying ourselves on the truth of Christianity and acknowledging with gratitude the solace of religion we disclaim alike the right and desire to impose our convictions on any of our subjects. We declare it to be our Royal will and please that none be in anywise favoured, none molested or disquieted by reason of their religious faith or observances; but that all shall alike enjoy the equal and impartial protection of the law; and we do strictly charge and enjoin all those who may be in authority under us, that they abstain from all interference with the religious belief or worship of any of our subject on pain of our highest displeasure."

In its report on Indian Constitutional Reform the Joint Committee of the British Parliament candidly owns (at page 10, paragraph 18):—"But from our aspect of Indian life British rule has tended to stand aside; it has followed a policy of neutrality and non-interference in all matters which touch the religions of India. Yet it must be recognized that in a country where the habits and customs of the people are so closely bound up with their religion; beliefs this attitude of interference in certain matters of public policy, however justifiable it may have been, has sometimes had the result of making it difficult for the Government to carry into effect social legislation in such matters as child marriage and the problem of the untouchables."

From such passages as the above-quoted, the hitherto practice of the British Crown and of the Government of India in matters of social legislation can be well ascertained. Thus neither on the basis of any right or title or on that of long usage can it be claimed that the codification of Hindu Law can justifiably be undertaken by the Legislative Authority of the Government of India. And when there is even no legal justification for the claim it is obvious from political or ethical point of view no such claim can be put forward by anyone possessing any sense of propriety.

Occasionally in these days one comes across certain erroneous views regarding the nature of Shastric rules embodied in the Vyawahar portion of the Shruties and the extent of the obligation imposed upon the political authority of the State to enforce them on the subjects. It is believed that as most of these rules have their origin in popular recognition, they are alterable at will, by their nature and the political authority of the Hindu State is given liberty by the Dharma Shastra to enforce the rules altered from time to time by the Hindu subjects of the State themselves. It is necessary to remember the Shastric position so clearly enunciated by Mitra Misra the author of "Veermirodaya" in the very beginning of his work on Vyawahar Prakash.

It will be clear from this passage that the rules incorporated in the Vyawahar portions of the Smritis and customs recognized thereunder should be duly enforced by every political authority of India on its Hindu subjects irres-

pective of the religious, social or political creed of such authority. And there cannot be any doubt that, even to-day the vast majority of Hindus desire but nothing else. The civil courts established under the Government of India are in matters of the private laws of the Hindus mere collaborators of the indigenous tribunals or assemblies of caste persons of panchayats, of Dharmacharyas and of learned Brahmans in their task of maintaining this social order and enforcing the rules developed thereunder. Mr. Steele who was authorized by the Bombay Government more than a century ago to prepare a collection of customary law of the castes of Bombay recognized very clearly this fact. He observes: "In all these (castes), however, an adherence to hereditary custom is maintained by the authority of an assembly of the caste who prescribe the penance to be performed by the offender, constituting of some sacrifice either in person or purse and generally commutable into a fine or a dinner given to the individuals of the caste. Compliance, with ancestral custom forms it appears, the standard of duty with the great majority of Hindus. All are anxious to preserve their own caste from contamination by refusing to intermarry or eat in company with any individuals of a caste lower than their own; and the spirit of the written texts by which the higher castes affect to be guided is enforced in the lower by the authority of Brahmanical priests and caste assemblies."

By refusing jurisdiction to civil courts in caste questions and caste discipline and by enforcing rules of Hindu Law as derived from its recognized texts and ascertained customs through their agency, the Government of India have up to now maintained the true character of those civil courts as collaborators of the indigenous tribunals of caste assemblies, Brahmanical priests, Dharmacharyas and others in their task of upholding of the Dharmashastra and protecting the social order. The grave results of enforcing an altogether foreign set of rules enunciated and laid down by the legislative authority of a body quite incompetent to do the same are not properly realized. The vast majority of the Hindus will continue to seek guidance in their social relationships from the above authorities and whenever the two sets of rules come into conflict, devout and religious Hindus and those who consciously desire the upkeep and solidarity of this social order by their strict adherence to the Shastric injunctions, shall lay themselves open to the civil penalties that would be imposed on them through the political authority of the State. The codification of Hindu Law shall require the civil courts to unmake most of the work that would be done by the popular tribunals in the direction of social control and on the contrary shall accelerate the dismantling of these socially useful bodies and tribunals.

The Advaitic Hindus of India owe allegiance and admit the jurisdiction of the different Shankaracharya maths obtaining at different places. They are governed by the orders of and decrees issued from these maths on religious matters and questions of caste discipline. They possess authority and power of imposing penances and levying fines often to a large amount either during personal circuits or by deputation of disciples and agents on infringers of religious and social customs and caste discipline. Acting as subordinate to these and exercising jurisdiction over Brahmans of particular places are the Dharmadhikaris. The Brahmans of this name are watan-dars and have authority to inquire into alleged infractions of caste discipline and customs and prescribe penance, levy fines and ordain exclusion from caste. The Vishisthadvaita, the Shudhadvaita and Sevaita Hindus similarly are governed by the respective Dharmacharyas of their own sects and the Dharmadhikaris of these sects exercise jurisdiction over different localities on the members of their own sect. The rights, jurisdiction and authority of all these Dharmacharyas are implicitly admitted by the respective followers of each different sects and hence they have been duly recognized by the British Government in the sanads granted to them and by the civil courts in various decrees. His Holiness Shreemad Jagadguru Shri Sankaracharya Maharaj of Sankeshwar and Karveer math is an occupant of one of the important maths of the Advaita Hindus and exercise jurisdiction over a large territory comprised within the natural boundaries of the River Narmada on the north and river Tungabhadra on the south. The codification of the Hindu Law is going to have a very strongly adverse effect on the social and religious jurisdiction which His Holiness is exercising along with others similarly placed Dharmacharyas. And as seen

from the above neither any of the previous political rulers of India nor the present rulers of India including the British Government do possess or have ever possessed any authority or power in this connection. Many of the Princes of Indian States are among the disciples of His Holiness and they stand the chance of being declared and treated heretical if they are disposed to codify Hindu Law through their legislative bodies. Coming now to a consideration of the proposals included in the draft, His Holiness feels that no worse measure could have been prepared by even the avowed enemies of Hinduism. The three declared principles of (a) uniformity, (b) removal of sex disqualification and (c) absolute estate for females; and the other concealed principles such as (d) breaking up of caste system, (e) individual instead of corporate ownership of property, (f) Islamification of the law of succession, and (g) destruction of the ideals of Satidharma and others as well, all these go to show that the framers of the measure are carrying on a kind of crusade against the all-cherished ideals of Hinduism. It appears that the moderns who have been trained in a foreign and hostile environment are groaning under the disadvantages and handicaps they are supposed to suffer under the existing system. But instead of quietly separating themselves from the parental stock and forming a sect of their own as time and again history tells us, was done by dissenters, they are retaliating with vengeance and are out to destroy the whole system itself. His Holiness agrees in this connection fully with the criticisms the All-India Varnashrama Swarajya Sangha, Vidwat Samiti, has made against the proposals of the Code.

Regarding the order of succession, an idea is current among the newly educated Hindus that the author of the Mitakshara has allowed latitude to make alterations in the order laid down by him in his work. The main reason for this idea gaining ground is that the author has not based the order of succession on the efficacy of the heir to confer spiritual benefit on the deceased by offering funeral oblations. No doubt the author of Dayabhaga has applied with great force the doctrine of spiritual benefit to evolve his own order of succession. But whether it is the author of the Mitakshara or the author of the Dayabhaga, both of them are only giving logical reasons to support the already existing usages in the respective Hindu communities. All such usages, devoutly followed by the members of the respective communities as transcendental law have the force of law and enact the same sanctions of invisible results as any other direct text (positive or negative optative) of the vedas would entail. And whether these usages are supported by logical reasoning or are not so supportable, there can be no deduction from the legal force with which their acceptance or non-acceptance is accompanied. If heirs not mentioned by the author of the Mitakshara, are arbitrarily introduced anew in the order laid down by him and enforced among the communities where that book is accepted as authority persons inheriting property under the arbitrary order shall be open to the charge of having wrongfully deprived others (rightful heirs) of their property and shall incur sin of the same quality as persons not coming under the Dayabhaga, system would be open to on their so taking inheritance as has been pointed out by the Vidwat Samiti in its decisions there is only a minute difference between these two authors regarding their notions of ownership over property.

The Code does recognize two forms of Hindu marriage: (a) sacramental, and (b) civil. It deals with the celebration of a sacramental marriage from clause 4 to clause 7; while with the civil marriage it deals from clause 8 to clause 22.

It is evident that the framers of the Code seek to give legal recognition to two distinct institutions with differing incidents under the proposed Hindu Code. The provisions included at clause 4 (b), (c) and (d), clause 5 and clause 6 show that they are alive to the fact that according to the beliefs of the Hindu communities the sacrament of marriage can be duly accomplished only on the observance of certain conditions and on the performance of certain ceremonies both of which are well defined and quite familiar to the members of respective communities. Legal recognition has been given to some of those beliefs. Thus a sacramental Hindu marriage does not take the form of a civil contract and the framers have everywhere carefully avoided the use of the term 'contracted' in connection with a sacramental marriage.

The legal incidents flowing from a civil Hindu marriage can be based on at present and amended according to the

policy of the State changing according to the overchanging ideas of justice and morality as is believed. But it would be unjust to introduce amendments to rules of marriage law defining the status and capacities of the parties to marriage on the basis of fixed invisible result. The proper function of the State is to give legal recognition to the religious belief of the various Hindu communities as expressed in the incidents flowing from the institution as developed in the textual law or the ancient and a proved usages of these communities.

According to the textual law a proper marriage gives rise to the status of the husband in the male side and that of the wife in the female side. It also serves as an entry of the male in the order of a householder (Grihasthrama). It is essential that the status of wife should originate in the girl married, as the man has, in his future life to accomplish these four important purposes through her help, viz., (a) the order of the householder; (b) conjugal union, (c) procreation of a son; and (d) due performance of religious injunctions. When the girl belongs to the same caste and does not belong to a family having gotra or pravara that could not be united in marriage with the gotra and pravara of the bridegroom's family and she is not a sapinda of the bridegroom and that a marriage ceremony was not performed in her connection on any previous occasion then she is fit to be taken in marriage. The status of wife can originate in such a girl alone after the proper ceremonies are duly performed.

The Code seeks to alter the textual law with respect to the rule of identity of caste and suitability of gotra and pravara by the application of the doctrine of *factum valet*. There is no problem for the orthodox members of Hindu communities to be solved in this connection as stated in the explanatory note by the Committee. The care with which Hindu marriages are brought about is well-known. Sir G. D. Bannerjee says on page 31 of his book on law of marriage and stridhana "one cause of this scantiness of case law is, I believe, the sacramental character of marriage in Hindu Law. Owing to this the Hindus are so careful to observe the rules concerning marriage and to avoid error, unless it be on the safer side that disputes concerning this topic seldom arise for judicial determination." P. R. Ganapati Ayyar says (Hindu Law, page 383) "Of course the Hindus attach a very great almost a sacred importance to marriage and disputes connected with this topic are comparatively rare. The most scrupulous care is bestowed by those concerned in matters of marriage that it may not afterwards be said that there has been any omission or defect which avoids the marriage or renders it illegal." Where is the proof for the statement of the Committee that the reckless or negligent behaviour of the father or the guardians have rendered the condition of a considerable number of Hindu girls truly pitiable? There is no problem in existence which calls for imperative remedy.

The solution of this problem given by the Committee is based on an altogether erroneous reasoning. The prohibitions regarding the suitability of a girl for marriage though contained in the same verse stand on a different footing. There is no text of Hindu Law which enjoins the forsaking of a girl who not younger or shorter in stature or has not a brother living, after she is duly married. On the other hand there are several explicit texts which enjoin the repudiation of a Sagotra or a Sapravara girl even after the marriage.

The translation of Matrya Sukta, text by Sir G. D. Bannerjee is incorrect. This is the text which means: "The progeny of the preceptor who has initiated a person in sacred Gayatri." It is well-known that at the time of Upanayanam, it is the father or after his death the grandfather, brother or any other near relation who has to initiate the boy in the sacred Gayatri Mantra. The daughter of such a relation is prohibited from being taken in marriage; and not of the preceptor who has instructed the person in the Vedas. Similarly Sir G. D. Bannerjee is wrong when he says that the texts enjoin the giving up of a girl possessing one's mother's name after she is married. The texts only lay down an expiration in such a case and allow the marriage tie to continue. Thus all the arguments raised by the Committee for validating inter-caste, Sagotra and Sapravara marriages on the doctrine of *factum valet* are erroneous and based on flimsy grounds.

The explanatory note of the Committee has not a word in support of the validation of inter-caste marriage similarly

proposed on the application of the doctrine of *factum valet*. It is true that the Shrutis are not unanimous in condemning anuloma marriages though they unanimously condemn all pratiloma marriages and the union of a regenerate male with a Shudra female. But it must be remembered that the law laid down in the Shrutis is applicable in all the four epochs (Yugas) believed in by the Hindus, viz., Krita, Treta, Dvapara and Kali. In all the ages other than the Kali Yuga inter-caste marriage is valid. In the Kali Yuga according to the Hindu belief, owing to loss of physical vigour and mental capacity suffered by human races in a male procreated progeny of one's own caste does not exist the same strength and capacity and so these marriages came to be prohibited.

Now the reality of these beliefs as far as Hindu learning is concerned has got to be admitted. In treatises on Ayurveda (Hindu medical science) we find certain medicines prescribed under certain peculiar physical conditions in older works such as the Charaka and the Sushruta. In later works such as the one by Vagbhata these medicines have been omitted with an explanation that they were fit to be administered only in other epochs and cannot be advantageously used in the Kali Yuga under the changed physical and mental conditions and capacities of human beings. In treatises on Yoga Shastra (science which deals with mental discipline) certain practices and methods by which mind is to be trained have been described as fit only for human beings living in Krita and other epochs and have been forbidden for the present Kali Yuga; thus all Hindu sciences (physical as well as human) start with this axiomatic belief that the physical attributes and mental characteristics of human beings change with the change of cyclic epochs of time.

Commentators whose object was to explain the texts of the Shrutis they were commenting upon had a choice before them. They might explain the text in a way as would be applicable to human beings in all the ages or they might so explain it as would give us the law applicable in the present age. Medhatithi and Vijnaneshwara and others have adopted the first course. While commentators like Aparaka, Madhavacharya and others have adopted the other course. Digest writers were, however, freely and unhesitatingly laid down the law applicable to Kali Yuga as they were not commenting upon any single Suriti text. Thus we find Hemadri, Devanna Bhatta, Raghunandana, Nilakantha, Kashinath Upadhyaya and almost every one else referring to the prohibitions applicable in Kali Yuga in respect of inter-caste marriage.

That, as far as recorded evidence is available, inter-caste marriages were not actually solemnized in common practice, is amply clear. Even the observations of foreign travellers such as Alberoni and Chinese travellers who visited India during the medieval period unmistakably point out to Hindu marriage taking place within the respective castes only. Sir Gurudass Banerjee who is quoted as authority by the Committee in an other connection, is not even prepared to accord validity to marriages taking place between members of different sub-castes of the same main caste on the ground that in actual practice the various Hindu communities hold the endogamous marriages within the community alone to be approved and valid. The late Mr. S. Srinivasa Ayyangar expressed an opinion against the validity of inter-caste marriages. In a recent case, the Madras High Court after elaborately examining all the grounds cited in favour of anuloma unions held such unions to be forbidden in the Kali Yuga. See *Subbaramanya v. Venkata Subbamma* 1941 (Mad.) A.I.R. 513. The remarks of the late editor of the 10th edition of, Maynes Hindu Law are apt and worth referring to. The inconveniences resulting from the validity of such marriages are obvious. It reviews an archaic set of rules wholly unsuited to modern conditions for it introduces into the general law the doctrine of inferior wives and secondary sons, the creation of new intermediate castes and the intensification of existing differences by the addition of new inequalities (page 180).

It might be suggested that these observations apply only when piecemeal reform is introduced by judicial decisions but not when the whole of Hindu Law is going to be codified. In this connection it is necessary to impress upon the minds of the legislatures that even after the codification of the entire body of Hindu Law the social life of the several Hindu communities is going to be governed as in the past by the rules of castes and it is the caste panchayats and the Dharmadhikaras, Mathadhipatis and the Mahants who will continue to be mainly responsible

for the regulation and not the judicial tribunals. The several Hindu communities have been recognized under the doctrines of Dharmashastra as more or less autonomous units and their independent authority of these pauchayats extended to such a large sphere of the social action of the members of the respective groups that the occasional interference by the judicial tribunal against the general tenor of caste regulations is not going in any way to induce the Hindu castes and communities to give up their ancient belief.

As the texts point out that a girl belonging to an unsuitable gotra and pravara should, even after the conclusion of the marriage ceremony, be maintained on a repudiation of the relationship, it is obvious that neither the status of wife attaches to such a girl nor can the purposes of a proper marriage be accomplished through her. As there can be no conjugal union with such a woman the son enjoined under the Shastric texts cannot be procreated on her; similarly she cannot co-operate with the person in the performance of any religious ceremony. The status and capacity for these, which depend entirely upon Shastric injunctions would not arise. The holding of such marriages as valid by civil courts would give rise to further anti-social complexities in the life of Hindu communities.

If a son were procreated on a woman who was married through ignorance of her gotra, she becomes an out-caste and if she was married with full knowledge of her gotra, then he is a chandala. In both the cases according to Shastric injunctions he cannot inherit the property of his father and his mother not being wife of his father, cannot inherit as the widow of that person. There would be similar complexities in connexion with the marriages of the progeny of such unions.

The main object of the Dharmashastras is to prepare the individual for Moksha. The unimpeached acceptance and following of one's Dharmas by an individual is the only unerring guide to attain this end. The draft Hindu Code has done its best in trying to uproot the whole of the fabric of Dharmashastra and thus make it impossible for any Hindu hence forward to act in accordance with Shastric ideals and injunctions.

70. Sanatan Vedic Dharma Sabha, Surat (Rao Bahadur C. S. Pandya—President).

Intestate and testamentary succession.—The Sanatan Vedic Dharma Sabha is glad to remark that the Bill now prepared by the Hindu Law Committee shows some improvement, when it is compared with the amended Bill which emerged from the deliberations of the Joint Select Committee. The Sabha, however, regrets to observe that the objections raised by it in 1942 regarding the grant of rights of simultaneous ownership and absolute rights of property over all inherited estates, to Hindu women, have been overruled by Hindu Law Committee also. The Sanathan Dharma Sabha therefore repeats that Hindu women should not take absolute estates.

Marriage and divorce.—Sacramental marriage.—The proposal to abolish plogamy altogether is a good innovation, but the abolition should not be made absolute, that is, of universal application, but should be subject to the following exceptions, viz., that a person may be allowed to marry a second wife during the lifetime of an existing wife, if the existing wife is barren, diseased, vicious, or when she has freely consented. Polygamy in such exceptional cases is allowed by such a great authority as Manu and is justified on religious grounds. If this suggestion is accepted, the following should be added to sub-clause (a) to clause 3, viz. "Provided, however, that in all castes where custom insists or does not insist on strict monogamy, it will not be incompetent to a person to marry a second wife during the lifetime of an existing wife in the following cases only, viz., when the wife is barren, diseased, vicious, or when she has freely consented." Corresponding alterations will also have to be made to clause 24.

2. The alternative to clauses 3, 4 and 5 in Part IV is preferred by the Sabha.

Civil marriage.—Civil marriage system should be omitted from this Code.

Minority and guardianship.—No remarks.

Adoption.—Datta Homā should be introduced as an essential feature according to the present law.

71. J. Kirloskar, Esq.

PART II.

Clause 16—Right of child in womb.—A child in womb can reopen a partition—vide *Minakshi v. Virappa* (1889) 8 Mad. 89 and *Chengana Nayudu v. Muniswami Nayudu* (1896) 20 Mad. 75 and *Dayabhaga Chapter VII, paragraph 10*. This means from the date of conception the child stands on equal footing with the father. That is to say, the father has no right to give the son in adoption.

If the Committee accepts my view, Part VI of the Draft Hindu Code is redundant.

Part I, 2 (2): "Hindu in this Code means"—for the word 'means' the word 'includes' should be substituted.

The words Gotra and Pravara should be defined.

PART IV—CHAPTER I.

(3) *Requisites of a sacramental marriage.*—(f) Before the marriage is solemnized, the health of the parties should be certified by a medical authority.

72. Sri Krishnamurti Rao (Accounts Office, Ordnance Factory, Ambernath, Bombay Presidency).

I am chiefly very keen on the law of divorce being passed forthwith to enable poor girl victims to save themselves from the clutches of their husbands who are enjoying themselves with other fallen women and begetting children by their connexion with them and simultaneously make their legitimate wives drudges and slaves and ill-treating them in addition.

Due respects to Sri Sankaracharya and others who always stick to the position that no changes can be effected because it is all against the old laws of Manu, etc.

They are great people who have not actually seen cases of misery and suffering.

There cannot be any objection at all to the codification of the law because recourse will be had to it only when it is extremely necessary by the party affected. It is only a provision to come to the relief of the distressed.

It is only in very grave cases and it is only when the party (who is usually timid and will not seek publicity) that resort will be had to seek divorce which may be a very great relief to both the husband and the wife—so as to enable the husband to marry the woman he prefers to his legitimate wife and the wife to be rid of all trouble from him and be free to act as she wished—to re-marry the man of her choice.

These reforms are hanging fire for the past many years. One cannot expect any favourable opinion from the old, and orthodox set and Swamis, etc., who are not alive to the situation (domestic) as it is to-day and won't help in the amelioration of the great distress our poor girls are in.

It is only those who realize the actual present position who will help and support the codification.

73. Mr. L. M. Deshpande, Secretary, Bombay Provincial Owners' Association and Messrs. N. B. Budhkar, B.A., LL.B., N. A. Deshpande, B.A., Pleader, Secretaries, Satara District Land Owners' Association, Karad District, Satara.

We learn that the Bill to amend and codify the Hindu Law relating to intestate succession is being placed before the Assembly during the present session, for passing into law. We sincerely request not to pass the Bill for the following reasons:—

(1) It is stated that the Bill is circulated for public opinion, but there is no opportunity to express the same. Copies of the Bill are not available as we received a reply from the Government Printing Press, Bombay, that the copies were out of stock. No public meeting can be held as they are banned under the Defence of India Rules. Permission to hold a meeting for expressing opinion on the Bill was sought from the District Magistrate, Satara, but no reply has yet been received. The public do not have any information on the Bill also from the press. The platform and the press are thus closed for the present and therefore the passage of the bill should not be rushed through the legislature.

(2) The food situation has caused great anxiety to all people alike and has engaged their attention wholly. Consideration of Bills of such far-reaching consequences

requires peace of mind and sufficient time. At present both these are wanting and so the Bill is inopportune.

(3) The Bill has excluded the succession to agricultural lands because the Central Legislature has no power to pass laws regarding agricultural lands. Even law regarding succession is of concurrent jurisdiction, but law regarding agricultural lands is a subject mentioned in the List of Provincial Legislature. The present Bill if passed is to come into force from the beginning of 1946. This means that the Governors of the Provinces, where no legislatures are functioning are to pass the law on the subject. This is a very important subject and so the law regarding the succession to agricultural land should be passed only with the vote of elected representatives of the people. Agricultural land is the only property of the masses. Most of them are illiterate. They cannot make testaments. Further succession according to the present Bill will create more fragmentation and increase not only civil litigation but will add to criminal litigation also. It is therefore of the utmost need to the agricultural landowners that further passage of the Bill should be immediately stopped.

(4) The Bill contemplates changes which sap the very foundation of the joint Hindu family institution and lead to its disruption and to dissipation of property.

74. Mr. L. M. Deshpande (Ex-M.L.C.), Inamdar, Karad District, Satara.

1. The Code seeks to supersede the texts of ancient authorities like Manu, Yajñavalkya and others. Hindu Law, as at present understood, the law of customs and usages followed by the Hindus in different provinces. These customs and usages are based on the scriptures of the ancient authors. The decisions of the different High Courts and the Privy Council, in matters of topics in the present draft Code are also based on the texts and commentaries of the works of those authors. It is unwise to supersede these authors by a stroke of pen.

2. The authors of the Code have shaped it so as to bring the same in conformity with the Muslim and Christian Laws. Glaring instances of this are to be found in the provisions regarding (a) simultaneous succession, (b) civil marriage, (c) divorce, (d) right of inheritance to persons who have become non-Hindus, etc. All this is very objectionable.

3. Hindu customs and usages have their origin in religion. Even in the last thousand years no other Government has ever tried to pass a law affecting the Hindu religion of which marriage is an important part.

4. The Hindu Law Committee wishes that the Code should be acceptable to the general Hindu public. I dare say that the Code would not be acceptable to the general Hindu public. The first draft of the Committee underwent a change by the Joint Select Committee. While the Hindu Law Committee has in its turn made changes in the report of the Joint Select Committee, nobody knows to what extent the draft Code would be altered. In the face of diversity of opinion among the Hindu Law-givers it is useless to expect that the Code will get the support of the general public.

5. The members of the Central Legislature are there by sufferance. They are cosmopolitans; such an assembly should not try to force the view of their majority on the general public who have after all little knowledge of the draft Code. The published draft is in English. Perhaps even 5 per cent of the population might not be English-knowing. The draft is not translated in any Indian language.

75. Bombay Landowners' Association.

One of the objects, as stated, is to evolve a uniform Code of Hindu Law, but the need for such uniformity is never felt. India is such a vast continent that differences in habits and thoughts are bound to exist and that is exactly the cause of the emergence of the different schools of law. The basic texts of these schools are the same. But they have been interpreted differently to suit the needs of different parts of the country. The inclusion of the topics of the Code in the concurrent legislative list shows that the framers of the Government of India Act of 1935 contemplated separate legislation for different provinces. There is no other justifying reason shown for making such drastic changes in the existing laws and customs of this province.

The majority of Hindus in all provinces are agriculturists and the Committee wish that the Code should be extended

to agricultural lands by Provincial Legislatures. In fact such kind of legislation, if necessary, should have been left entirely to the provinces. The Committee, however appear to have begun at the wrong end by drafting a Code which would apply to a non-agricultural minority section of Hindus.

The Code makes provision for simultaneous succession and abolition of coparcenary on the ground that both these are corollaries of the Deshmukh Act. The Deshmukh Act was passed only in 1937 and is not beyond repeal. The Committee have not seen whether the Act is acceptable to the general public. The Act is forced upon the general Hindu Public without regard to their wishes to satisfy imaginary needs of the public. It should not be taken as Manu-given law. The Committee have not themselves approved of rights of succession given to son's widow who are placed amongst dependants.

The Deshmukh Act cannot therefore be considered a sufficient ground for the abolition of coparcenary and introduction of simultaneous succession. Coparcenary is an age-long dearly cherished institution of the Hindu and should not be abolished. It is founded upon the principle of subordination by an individual at his own interest to the interest of the family. Abolition of coparcenary means sacrifice of the family for the interest of an individual.

The idea of simultaneous succession is shocking to the rural Hindus. It is after the Muslim and Christian ideas. To a Hindu a son is nearer and dearer than his wife and daughter. If this were not so, he would have given a share to his widow or daughter by a will. Simultaneous succession will lead to fragmentation of land which is altogether undesirable from the economic point of view. It will create feuds amongst family members. The result of simultaneous succession is that the property in the hands of females will be almost changed to that in the hands of males, and further property of the family will be reduced to one-third in the third generation.

Marriage according to Hindu conception is a 'Samskar'. It is a union for life and beyond. The provisions of marriage in the Code proceed upon an entirely materialistic view. Even the sacramental form of marriage is placed on par with civil marriage which is purely a contract. Provisions for dissolution follow only from contractual relationship. Hence provisions as regards civil marriage and dissolution of marriage are highly objectionable.

A second marriage may be allowed under certain circumstances particularly when the first wife is barren. Remarriages, Sagotra marriages and Pratiloma marriage should be strictly prohibited.

The changes contemplated by the Code are revolutionary and there should be no enactment by legislation unless and until elections of the legislature are fought out of these specific items.

76. M. P. Mulay, Esq., Maliwada, Ahmednagar.

We humbly submit that the draft Code goes contrary to our ancient civilization and scriptures. It will efface the authority of 'Srutis and Smritis'. The Code will do away with our social laws and will destroy the ancient customary laws. We honestly feel that the draft Code should not become law.

77. Dr. C. D. Thakker, M.B.S., Bardoli, Surat District.

In connexion with divorce, I request you to put before the Committee a peculiar case of my daughter for consideration.

Soon after the marriage of my daughter, her husband's parents made a plot to extract money from me in the following way:—

The boy and my daughter were dismissed from the house by the boy's parents, on the ground that the boy stealthily ate some sweetmeats in the house. As the boy was dismissed, there was no use keeping the girl in the house, they said.

The boy left my daughter on the Surat station and himself went away to Bombay. My daughter came to me at Bardoli.

On inquiry from various sources, I learnt that for the interest of my daughter, I must support the boy also, paying him Rs. 5,000 to start a chomist's shop.

Under these circumstances, I request that divorce must be enforced without any consideration of the period of desertion.

I also urge the following points :—

- (1) Divorce to be granted on malicious desertion.
- (2) If a girl refuses to stay with her husband, the husband to be granted divorce immediately.
- (3) Time-limit for divorce to be three years instead of seven years. My object in suggesting the period of three years instead of seven years, is that under existing circumstances, and breakdown of the joint family system, the prolonged period will lead to immorality, specially in case of girls.
- (4) To members of the castes in which divorce is a custom, the Court should grant the divorce, instead of leaving it to the whim of the headman of the caste (Patel), to avoid injustice and malpractices.

78. Purushotham Vishnu Dev, Budhwar Gate, Poona.

1. No necessity exists at present for the draft Code.
2. Deshmukh's Act of 1937 has done enough.
3. Daughters should never have any share in father's property.
4. Customs of family and community should be observed.
5. Marriage is a personal matter. We should not object to inter-caste or even to Sagotra marriages.
6. Monogamy can never be admitted. It is not proper to have a law enforcing it.

79. V. B. Halbhavi, Esq., B.A., LL.B., Chairman, Lingayat Law Codification Committee, Dharwar.

I have to make only one suggestion as follows as far as the status of the 'Lingayats' (Veerashaivas) is concerned.

In the definition of 'Hindu' in the draft Code the word Lingayats (Veerashaivas) should be included along with Sikhs, Jains and Buddhists for the following reasons :—

As regards the name of the community it is generally known by the name 'Lingayat'. The Lingayat religion is an ancient one, being originally dealt with in Saivagemas and later developed in Vachana-shastra, a collective name given to the Vachanas (short and terse expressions of ideas) in Kannada written by Shiva-sharanas (Staunch devotees of the religion) in the 12th century and onwards. In the Shivagamas the name used for the community was 'Veerashaivas'. In the Vachana-shastra the word used is Lingi, Lingangi, Lingavanti, etc. In ordinary usage the word used by a great majority of the community and in current literature and law books is Lingayat. Hence, the two words Veerashaiva and Lingayat may be taken as synonymous and the word Veerashaiva inserted in brackets to remove any misconception.

There seems to be no doubt that Lingayats are Hindus though an argument was advanced in the case of *Tirakanagowda v. Shivappa Patil*, 45 B.L.R., 992, that they were not so. This argument found no favour with Their Lordships who decided the case for reasons which need not be repeated here. Though they are Hindus, they are not Brahmanical Hindus, having discarded the Hindu Varnas and Ashramas. They are a community of Hindu puritans having their own philosophy, dogmas, rituals, etc. Their distinctive characteristic is the wearing of an emblem of Linga on their body. This emblem is invested on a Lingayat by his Guru by a ceremony called Diksha embodying the eight-fold principles called Ashta varnas—Guru, Linga, Jangam, Vibhuti, Rudraksha, Mantra, Padodaka, and Prasad culminating in the ultimate goal called Linga-Anga—Samrasaya; i.e., unification of the individual soul (Anga) with the universal soul (Linga). This unification is attained by Shat-Sthala or six stages—Bhakta, Mahesha, Prasedi, Pravalingi, Sharana and Aikya—which the individual soul must climb to achieve realization. In all these stages Kriya (action) and Jnana (knowledge) go together, Kriya getting the upperhand in the first three stages and Jnana in the last three. It must, however, be remembered that though a Lingayat has to perform Kriya even in the last stage, he is not affected by the fruit of the Kriya and, further, the liberation from the cycle of births and deaths and the ultimate identification of the individual with the supreme soul takes place in this very life.

For these reasons, it is hoped that the definition of "Hindu" in the Code be amended as suggested above.

It has been already mentioned that Lingayats discard the four Ashramas. Therefore, the provisions made in the Code for succession to the property of a Naishitika, Brahmachari, a Vanaprastha, and a Sanyasi do not apply in the case of Lingayats. Instead of the orders represented by these three Ashramas, Lingayats have got separate

orders of priests called Pattadhikaris and Charamoortis and Viraktas. The institutions of these orders are a special feature of the Lingayat community and therefore a separate Act is contemplated to regulate the succession to the property of these institutions.

80. The Standing Committee of the All India Virshaiwa Mahasabha, Sholapur (S. M. Kalyanshetti—Hon. General Secretary).

The Lingayats are, in the national life of the country, an important element professing a distinct religion, culture and traditions as opposed to the Brahmanical Hindu religion, culture and traditions.

They have always been great sufferers in their legal status being degraded, owing to their not being effectively represented in the legislatures.

This standing committee notes with satisfaction the work so far done by the Lingayat Law Codification Committee and recommends that no stones should be left unturned to get the amendments, made in the draft Code of the Rau Committee.

81. Mr. M. S. Sirdar, President, All-India-Virshaiwa Mahasabha, Sholapur.

Government should have no difficulty in recognizing Lingayats as a religious minority community constituting an important element in the national life of India. Lingayats have never owned that they belong to the Brahmanical Hindu religion. In fact they have staunchly protected against Brahmanism since the time of Basav in the 12th century A.D. if not earlier, and they have always claimed equality; if not superiority to Brahmins themselves in every respect. Their religious rituals, social observances and some of the fundamental conceptions of life here and hereafter, show that they belong to a distant religion. But their protest against Brahmanism has resulted in their being held 'Sudras' even in law courts and the pity of it is that they never acquired strength enough in the legislatures so as to get their wrongs corrected.

82. All-India Veera-Shaiwa Mahasabha, Sholapur.

We wish to suggest the following amendments in the draft Hindu Code.

2. We are glad to note that an attempt has been made in the Code to define the word 'Hindu'. But we regret to note that the definition does not seem to remove the injustices done to the Lingayats. A 'Hindu' has been defined in the Code as a 'person professing the Hindu, Buddhist, Sikh or Jain religion.' There is no definition of the Hindu religion, and possibly no one could ever give one. We doubt whether Hinduism can be called a religion at all. There is not one god, one form of worship, or one set of principles recognised by the Hindus. But Lingayatism is essentially a religion, and like all true religions is based, not on caste or blood, but on faith. Shiva is the only god, according to the Lingayat scriptures. He is to be worshipped in only one form, namely, in the form of the *Linga* worn on the body, and all persons who become Lingayats by the *Diksha* (initiation) lose their caste and pass beyond and above the castes, that is to say, they become 'Ativarnashramins.' Here we may note the one characteristic of caste that it is based entirely on both. And it follows from this as a corollary, that a man can never ascend into a caste above the one which he is born. As observed by Their Lordships of the Bombay High Court in that unfortunate case of *Gopal Narhar Safray v. Hemant Ganesh Safray* and another, I.L.R. 3 Bombay, 273 at page 283. "It is an impossible task for a Hindu to rise from the class, whether it be Kshatriya, Vaisya, or Shudra, in which he was born, to any class above it. But Lingayatism is a religion and not a caste. It is based on faith, and anybody, whether a Brahmin or a Pariah, may become a Lingayat—and what is more important, on his becoming a Lingayat, he does not rise into a higher caste, but loses caste altogether. A Brahmin becoming a Lingayat is no longer a Brahmin and Pariah no longer a Pariah—they are both of them citizens of the kingdom of Shiva and are equals in every way. The Lingayats do not belong to any caste at all. They belong to a religion."

3. Now, the Code does not make mention of the Lingayat religion. This would mean that the Lingayat is a person professing the Hindu religion and it follows from section 5 (b) that he must be placed in one of the four *varnas* or castes. The Bombay High Court has without considering the question properly, placed the Lingayats amongst

the Shudras and in some cases the Madras High Court has, as improperly, held them to be Vaishyas. In the Bombay case quoted above, it is said that the Lingayats are trying to get themselves placed in a *varna* higher than that of the Shudras. We beg to submit that the view of the High Court is entirely wrong and due to gross ignorance of history and prices of Lingayatism. Since the expansion of our religion by Shree Basaveshwara, who was an *avatar* of Nandin, more than 800 years ago, a great literature both in Sanskrit and in the Dravidian languages has sprung up and we wish to bring it to your notice that all the teachers of our religion have consistently taken the stand that we are above and beyond the pale of castes.

4. What harm, it may be asked, is caused if the Lingayats are treated as belonging to one of the four castes—especially now, as the law applicable to all castes is being brought into uniformity? Our answer is that to treat them so would not be true to history and would, in a way, if such a thing could be done by legislation, be to negative the principles of the religion. To class the Lingayats even amongst the Brahmins would not be doing justice to the Lingayats and to Lingayatism. A Brahmin is a Brahmin because he is born of Brahmin parent. But a Lingayat is a Lingayat because he is initiated by the *diksha* into the mysteries of religion and his physical birth has nothing to do with his being a Lingayat.

5. Let us see how the Code will work injustice to the Lingayats and threaten the very existence of the Lingayat community. A Brahmin becomes a convert today to Lingayatism and Pariah also. In the Code there is no provision recognising Lingayatism as a religion and its caste-affecting efficacy. So the Brahmin would continue to be a Brahmin worshipping Shiva according to the Lingayat form of worship, and the Pariah would continue to be a Pariah worshipping Shiva according to the Lingayat form of worship. The Pariah has a son and the Brahmin has a daughter and a marriage is arranged between them according to section 3 (b) of Part IV Marriage and divorce, which provides that both the bride and the bridegroom must belong to the same caste; such a marriage would be against law and could be prevented by an injunction by a court. It is true that section 6 (a) Part IV says that no sacramental marriage shall be treated invalid after it has been completed by reason that the parties to the marriage did not belong to the same caste. But before completion, such a marriage could be prevented by an injunction. It is true that section 3 (b) says:—"If either party is a member of any caste, the other party must belong to the same caste." And it may be said that as a Lingayat does not belong to any caste, such a marriage would be quite valid. But the Code does not seem to recognize the casteless nature of Lingayatism as it seems to do in the case of Buddhism, Jainism and Sikhism. We suggest therefore that in the definition of the word Hindu, Lingayatism should be expressly mentioned as a distinct religion, thus—

"Hindu", in this Code, means a person professing the Hindu, Buddhist, Sikh, Jain or Lingayat religion, etc."

Such a definition would be recognizing the fact that the Lingayats do not belong to any of the four castes or *Varnas* and would not come in the way of a marriage like the one above.

6. That the fears expressed by us above are not unfounded, is shown by the recent case of *Inder Singh v. Sadhu Singh*, I.L.R. 1944, Cal. Volume I, page 233, where Their Lordships of the Calcutta High Court, though recognizing that according to the Sikh religion as finally taught by the great Govind Singh, there are no castes amongst the Sikhs, have yet held that a Sikh can belong to the Brahmin caste and validly marry a Hindu Brahmin girl according to the Hindu rites. We apprehend therefore that a conflict will arise between the Code and the Lingayat community unless it is expressly recognized in the Code that Lingayatism is a religion and that the followers of that religion do not belong to any of the four *Varnas*.—

7. We now come to clauses 4 and 5 of Part IV—Marriage and divorce. A reading of them would suggest that the essential ceremonies for a sacramental marriage are Panigrahana, that is, the holding of hands by the bridegroom and the bride before the *sacred fire* and the Saptapadi, that is, the taking of seven steps by the bridegroom and the bride jointly before the *sacred fire*. Here again we find a provision which would effect the Lingayats adversely. The Lingayats, as noted above, worship Shiva

only, and they worship Shiva only in the form of the *Linga* worn on their body. No fire is sacred to them, and it would be impossible to them to perform either the Panigrahana or the Saptapadi as defined in the Code. It is true that clause 5 provides that marriage according to custom shall be deemed to be a valid sacramental marriage. But to say that the Lingayat marriages are valid under clause 5 would be to say that they are mere customary marriages having no sanction in the Shastras or scripture. But the Lingayat marriage is not based on mere custom. It is inseparable from their religious tenets and has been evolved in consonance with those revealed tenets. Our community would feel profound dissatisfaction and resentment if they are told that their marriages are merely customary marriages. There is Panigrahana no doubt in the Lingayat marriage but it is not before the *sacred fire*; it is before the *Guru*, the *Linga* and the *Jangana*. And there is no Saptapadi at all. We suggest therefore that sub-section (b) of section 4, speaking of Saptapadi, and the words '*before the sacred fire*' in sub-section (a) should be dropped out.

8. In text-books of Hindu Law like that of Sir D. F. Mulla, sometimes an effort is made to equate the Lingayat *Diksha* to Upanayana. But it is not so. It is essentially different from the Upanayana.

83. Mr. V. R. Karavirshetti, President, The Lingayat Virashaiva Samaja Sudharana Sungha, Hubli.

We have considered the Draft Hindu Code thoroughly and find that it is objectionable both from the religious and economic points of view. However, our Sangha is primarily a religious one, and we therefore propose to consider the draft Hindu Code in this place only in so far as it affects the tenets of the Lingayat religion and the structure of the Lingayat community, reserving the economic aspects of the Code to be considered by us along with the other Hindu communities of this place.

2. We are glad that an attempt has been made in the Code to define the word 'Hindu'. But we regret to note that the definition does not seem to remove the injustice done to the Lingayats. A 'Hindu' has been defined in the Code as a "person professing the Hindu, Buddhist, Sikh or Jain religion." There is no definition of the Hindu religion, and possibly no one could ever give one. We doubt whether Hinduism can be called a religion at all. There is not one God, one form of worship, or one set of principles recognized by the Hindus. But Lingayatism is essentially a religion, and like all true religions is based, not on caste or blood, but on faith. Shiva is the only God, according to the Lingayat scriptures. He is to be worshipped in only one form, namely, in the form of the *Linga* worn on the body, and all persons who become Lingayats by the *Diksha* (initiation) lose their caste and pass beyond and above the castes, that is to say, they become *Atiwarnasharamins*. Here we may note that the one characteristic of caste that it is based entirely on birth. And it follows from this as a corollary, that a man can never ascend into a caste above the one in which he was born. As observed by Their Lordships of the Bombay High Court in that unfortunate case of *Gopal Narther Safray v. Hanmant Ganesh Safray* and another, I.L.R. 3 Bombay, 273 at page 283: "It is an impossible task for a Hindu to rise from the class, whether it be *Khastriya*, *Vaishya*, or *Shudra*, in which he was born to any class above it." But Lingayatism is a religion and not caste. It is based on faith and anybody whether a Brahmin or a Pariah, may become a Lingayat and what is more important, on his becoming a Lingayat, he does not rise into a higher caste, but loses caste altogether. A Brahmin becoming a Lingayat is no longer a Brahmin and a Pariah no longer a Pariah; they are both the citizens of the Kingdom of Shiva and are equals in every way. The Lingayats do not belong to any caste at all. They belong to a religion.

3. Now the Code does not make a mention of the Lingayat religion. This would mean that a Lingayat is a person professing the Hindu religion and it follows from section 5 (b), Part I, that he must be placed in one of the four *Varnas* or castes. The Bombay High Court has without considering the question properly, placed the Lingayats amongst the Shudras and in some cases the Madras High Court has, as improperly, held them to be Vaishyas. In the Bombay case quoted above, it is

said that the Lingayats are trying to get themselves placed in a *Varna* higher than that of the Shudras. We beg to submit that the view of the High Court is entirely wrong due to gross ignorance of the history and principles of Lingayatism. Since the founding of our religion by Shree Basaveshwara, who was an *Avatar* of Nandin, more than 800 years ago, a great literature both in Sanskrit and in the Dravidian languages has sprung up, and we wish to bring it to you that all the teachers of our religion have consistently taken the stand that we are above and beyond the place of castes.

4. What harm, it may be asked, is caused if the Lingayats are treated as belonging to one of the four castes especially now, as the law applicable to all castes is being brought into uniformity? Our answer is that to treat them so would not be true to history and would, in a way—if such a thing could be done by legislation—be to negative the principles of the religion. To class the Lingayats even amongst the Brahmins would not be doing justice to the Lingayats and to Lingayatism. A Brahmin is a Brahmin because he is born of Brahmin parents. But a Lingayat is a Lingayat because he is initiated by the Diksha into the mysteries of the religion and his physical birth has nothing to do with his being a Lingayat.

5. Let us see how the Code will work injustice to the Lingayats and threaten the very existence of the Lingayat community. A Brahmin becomes a convert today to a Lingayatism and a Pariah also. In the Code there is no provision recognizing Lingayatism as a religion and its caste effacing efficacy. So the Brahmin would continue to be a Brahmin worshipping Shiva according to the Lingayat form of worship, and the Pariah would continue to be a Pariah worshipping Shiva according to the Lingayat form of worship. The Pariah has a son and the Brahmin has a daughter and a marriage is arranged between them. According to the clause, 3 (b) of Part IV—Marriage and divorce—which provides that both the bride and the bridegroom must belong to the same caste, such marriage would be against law could be prevented by an injunction by a court. It is true that clause 6 (a) of Part IV says that no sacramental marriage shall, after it has been completed, be deemed to be over or to have been invalid merely by reason that the parties to the marriage did not belong to the same caste. But before completion, such a marriage could be prevented by an injunction. It is true that clause 3 (b) says: "If either party is a member of any caste, the other party must belong to the same caste." And it may be said that as a Lingayat does not belong to any caste, such a marriage would be quite valid. But the Code does not seem to recognize the casteless nature of Lingayatism, as it seems to do in the case of Buddhism, Jainism and Sikhism. We suggest therefore that in the definition of the word Hindu, Lingayatism should be expressly mentioned as a distinct religion thus:

"Hindu" in the Code means a person professing the Hindu, Buddhist, Sikh, Jain or Lingayat religion, etc. and that an addition of a new sub-clause, between the present sub-clauses (b) and (c) of clause 3 of Part IV—Marriage and divorce, should be made as follows:—

"If either party is a person professing a casteless religion, the other also must be a person professing the same religion."

With these emendations, the Code would be recognizing the fact that the Lingayats do not belong to any of the four castes or varnas, and would not be coming in the way of a marriage like the one above.

6. That the fears expressed by us above are not unfounded is shown by the recent case of *Inder Singh v. Sedhu Singh*, I.L.R. 1944, Calcutta, Volume I, page 233 where Their Lordships of the Calcutta High Court, though recognizing that according to the Sikh religion as finally taught by the great Govind Singh, there are no castes amongst the Sikhs have yet held that a Sikh can belong to the Brahmin caste and validly marry a Hindu Brahmin girl according to the Hindu rights. We apprehend therefore that a conflict will arise between the Code and the Lingayat community unless it is expressly recognized in the Code that Lingayatism is a religion and that the followers of that religion do not belong to any of the four varnas.

7. We now come to clauses 4 and 5 of Part IV—Marriage and divorce. A reading of them would suggest that the essential ceremonies for a sacramental marriage are the Panigrahana, that is, the holding of hands by the bridegroom and the bride before the *Sacred Fire*, and the

Saptapadi, that is the taking of seven steps by the bridegroom and the bride jointly before the *Sacred Fire*. Here again, we find a provision which would affect the Lingayats adversely. The Lingayats, as noted above worship Shiva only, and they worship Shiva only in the form of the *Linga* worn on their body. No fire is sacred to them, and it would be impossible for them to perform either the Panigrahana or the Saptapadi as defined in the Code. It is true that section 5 provides that a marriage according to custom shall be deemed to be a valid sacramental marriage. But to say that the Lingayat marriages are valid under section 5 would be to say that they are more customary marriages having no sanction in the Shastras or scripture. But the Lingayat marriage is not based on mere custom. It is inseparable from their religious tenets and has been evolved in consonance with those revealed tenets. Our community would feel profound dissatisfaction and resentment if they are told that their marriages are merely customary marriages. There is Panigrahana no doubt in the Lingayat marriage but it is not before the *Sacred Fire*; it is before the Guru, the *Linga* and the *Jangama*. And there is no Saptapadi at all. We suggest therefore that sub-clause (b) of clause 4, speaking of the Saptapadi and the words "before the *Sacred Fire*" in sub-clause (a) should be dropped out.

8. In text-books of Hindu Law like that of Sir D. F. Mulla, sometimes an effort is made to equate the Lingayat Diksha to Upanayana.

84. Mr. M. A. Sakhare, M.A., T.D. (Cantab), Prof. of Sanskrit and Education, Lingraj College, Bejgaum.

I beg to submit for your perusal and kind consideration the following on behalf of the all-India Veerashaiva Mahasabha, the Lingayat Samaj Sudharana Sangh, Hubli, and of myself, regarding the status of the Lingayat community, which is also called Veerashaiva community. Lingayatism founded by Shree Basaveshwar in the 12th century A.D. is an independent religion and Lingayats professing it are a separate religious body as will be evident from the following, which complements the statements submitted by the two bodies.

At the outset I may state that all that is contained in the discussion is precis, as it were, of the relevant chapters of my book, "The History and Philosophy of Lingayat Religion." I may point out that Chapter VII contains dissertation on agamas, the amalgamation of agamic and vedic thoughts on religion, and Hinduism as the ultimate result. In Chapter IX, it is established that the *Linga* worn on the body is not an image. Chapter XII contains the philosophy and practice of the Lingayat religion; Chapter XIV contains full discussion about the status of the Lingayat community and the last chapter (Chapter XV) is devoted to the scriptures of Lingayatism. I beg to present to you a copy of the book for your perusal that you may form a right idea about the religion and the community.

The question of Lingayats' status has cropped up in recent times since the constitution of courts under British Government of India and administration of civil laws. As there were no codified Hindu Laws and no clear conception of Hinduism and the people professing it, confusion unavoidably resulted in the application of civil laws by courts to the peoples of different communities that were promiscuously lumped together under the one general designation of "Hindu." Lingayats, like Jains, came to be included amongst Hindus so far as civil laws were concerned. But while applying civil laws to the people, promiscuously called Hindus, the courts applied Shudra Laws to Lingayats, who since then have come to be considered to be Shudras. However it may be said in fairness to the courts and to (at least most of) Judges applying civil laws to Lingayats that it was none of their intention or fault to insult them or lower down their status by classing them with Shudras by applying Shudra Laws to them, as there was no proper explanation or information placed before them about the status of Lingayats as a high class separate religious fold having nothing to do with Hindus as a religious body and Hinduism as a religion, even though the Lingayats may be called Hindus merely because they are like Jains, descendants of Hindus. Still the stigma of being stamped as Shudras stands, though the result of a side-issue is required to be removed.

While applying Hindu Laws to Lingayats the Judges concerned guided themselves by smritis and books on Dharmashastra like Manu smriti, Yajnavalkya smriti, Vyavaharashukha and similar ones, that were considered authoritative, though antiquated regarding the civil life of Hindus. All these prescribe a Code of conduct to all people divided into fourfold castes or varnas, the very basis of Varnashramadharmas, according to which the four castes of Varnas are (1) the Brahmans, (2) Kshatriyas, (3) Vaishyas and (4) Shudras. The first three are Dwijas or twice-born; while the last is not. The Dwijas enjoy various privileges of Varnashramadharmas, especially the sixteen Samskaras or religious sacraments. The Shudras are denied these privileges. Women also are denied these privileges, being considered Shudras (and being considered only a means of procreation). Shudras are mere menials to serve the three higher classes and women, the males. Later on, the caste system became so rigid that inter-marriages, even morganatic, came to be prohibited. The result was, as it is seen to-day, innumerable sub-castes growing out of inter-marriages that took place on account of erratic behaviour of various individuals. All these became lower castes, divided into watertight compartments, high and low.

To determine the status of the Lingayat community it is necessary to consider (1) whether Hinduism is a religion and what that religion is; (2) whether Lingayatism is a religion and whether it is different from and independent of Hinduism as a religion, (3) the relation of Lingayats to Hindus and their position amongst Hindus.

The Hindus are the most motley people composed of a very large number of castes or communities that are mutually exclusive and are mostly the result of the very rigid caste system as briefly noted above. They worship different Gods and Goddesses like Shiva, Vishnu, Ganapathi, Gauri and Lakshmi and various other male or female deities. Their faith, practice and dogmas greatly differ. The worshippers of Shiva are called Shaivas, of Vishnu are called Vaishnavas, and of Shakti, which is the most general female divinity, are called Shaktas. The Shaivas, Vaishnavas and Shaktas, the three main divisions of Hindus, have further subdivisions or sects distinguishable from one another. But the Shaivas, and their sub-sects, the Vaishnavas and their sub-sects and the Shaktas and their sub-sects have their respective common features and elements in point of religion. Still they are all mutually exclusive, not only the three main divisions, but even the sub-divisions and sub-sects. Hence it is not only difficult but almost impossible to find out the highest common factor or some common basic element or elements of all the sects and sub-sects that make these Hindus. Some scholars hold on account of the very difficult task of fixing up the highest common factor that Hinduism is not a religion, but only a culture or civilization. Hindus, they hold, are only a body social or political and have no one common religion called Hinduism.

In their opinion Hinduism as a culture or civilization includes in it all sorts and strata of culture and schools of philosophy inclusive of Buddhism and Jainism. These scholars give to Hinduism, a meaning wider than what is expressed by religion. But I differ from these scholars and am positively of opinion that Hinduism is a religion and not merely a culture. I feel sure that it is as much a religion as Muhammadanism is or as Christianity, Buddhism, Jainism or Judaism is. That Hinduism is a religion is incontrovertibly proved by the four fundamental basic principles of life of Hindus that active life consists of four objectives, namely (1) धर्म or duty, i.e., code of conduct in society, (2) अर्थ or acquisition of wealth, (3) काम or fulfilment or satisfaction of animal human desires, i.e., provision of comforts of life, and lastly (4) मोक्ष or attainment of final beatitude. Thus the last and the most important objective of life is, मोक्ष, which the Hindus have to attain by following Hinduism. That Hinduism is a religion can further be proved by the definition of religion which will be as follows:—

A religion may be defined as a system of belief in the super-human power, which governs the course of the universe and the human life in it, and is entitled to some form of worship from the human beings for their attaining eternal happiness. The system of belief connotes

doctrines concerning the relation of the universe and man to God, as the Almighty Power, Who creates, sustains and destroys or reabsorbs the universe. They also explain and lay down the procedure and methods of worshipping God for the human beings so that they may be free from the trammels of the worldly life and attain eternal happiness by the grace of God, which forms a special feature of God. Thus a religion has two parts (1) the philosophy and (2) the practice, the former explains the work of God with the universe and the latter the way of attaining the grace of God for liberation and final beatitude. The practice of a religion is based on the philosophy of the religion. Such is the idea of religion for all practical purposes, however perfunctory it may be. The Lingayat religion has both parts in it distinct to itself and can, therefore, claim to be a distinct religion.

I hold Hinduism as the religion of Varnashramadharmas according to which every individual professing it, excluding one of the Shudra class, attains मोक्ष in the last stage of life, when in his old age the individual retires from the worldly life by renouncing it and leads a spiritual life, pure and simple. It is during this stage that an individual Hindu is free from all dharmashastra, or the rules of worldly social life as opposed to spiritual life.

Lingayats are generally considered to be a sect and their religion a subdivision of Shaivism. This is a very wrong notion, which is the result of superficial thinking, merely because Lingayatism is a development of Shaivism or has grown out of Shaivism and because the Lingayats worship Shiva in the form of Linga. Lingayatism is no subdivision of Shaivism of the Shaivas of the present day, as all Shaivas like Vaishnavas have adopted Varnashramadharmas, if the criterion of religion viz., philosophy and practice of a religion is applied. I shall first show how it fundamentally differs from Hinduism as a religion in philosophy and practice and then show how it differs from Shaivism professed by Shaivas.

It is the general belief that Hinduism has grown out of the Vedas after the Aryans came and settled in India. This is not quite right. Hinduism is the result of the amalgamation of the Aryan culture and the Dravidian culture that existed in a developed form before the immigration of the Aryans into India. The Dravidian culture is contained in the agamas which are a voluminous literature in Sanskrit though they have failed to attract attention of scholars as they deserved and as noted by Professor Max-Muller. The agamas set forth the Dravidian view of life and religion. During the long and continued struggle of Aryans and Dravidians, the agamas rose in the time of the Aranyakas and continued to grow for centuries together. The teaching of the agamas is altogether different from that of the Vedas. The Vedists were a fire-cult; while the Agamists were a deistic-cult. The Vedists were the worshippers of Nature and forces of Nature; and the worship was for the propitiation or constraint of the forces of Nature; but the Agamists were the worshippers of the deity; personal or impersonal that controlled the forces of Nature. The Vedists performed sacrifices to please the powers of Nature in temporary sheds on the banks of a river; while the Agamists worshipped deities in the form of images in temples that they built. The two streams of thought, Vedic and Agamic, continued to run side by side for a long time acting and re-acting, on each other. They modified each other's philosophy and practice; and the result is the living faith of Hindus throughout the length and breadth of India. The rituals and practice of the religion are the embodiment of the methods and forms of image worship, as taught by the agamas. The Agamists adopted in turn the Vedic Varnashramadharmas which, combined with the agamic image worship, is the present-day Hindu religion.

Now it is to be shown how Lingayatism is different from Hinduism. The points of difference are fundamental (and not superficial) so as to make the two religions altogether different. They are—

(1) Hinduism is Varnashramic; while Lingayatism is not. The Varnashramadharmas is altogether discarded by Lingayatism so as to break violently away from Varnashramic Hinduism.

(2) By repudiating the Varnashramadharmas, Lingayatism has done away with the sixteen संस्कारs of Hinduism. The only संस्कार of the

religion of Lingayats is दीक्षा or the ceremony of initiation, when an individual devotee is introduced into the secrets of spiritual life and discipline.

(3) Lingayatism is not a close preserve of a few. It is open to all that wish to lead a religious life to attain liberation. Thus Lingayatism has abolished the sense of high or low. It is therefore a universal religion, i.e., a religion that is open to all.

(4) Lingayatism has extended the benefit of spiritual life to women, who according to Hinduism are denied that benefit, being denied the sixteen संस्काराः.

Women, therefore, of the Lingayat community wear Linga on their bodies and are entitled to the sacrament of दीक्षा.

(5) The Linga, that is worn on the body by the Lingayats is no image and its worship is no image worship, as is very wrongly understood. It is not the miniature of स्थानलिंग but Linga, the physical or phenomenal the Lord in the gross form. Therefore, आम्हान or विसर्जन of the deity is not only not necessary but a sacrilege. While in the case of Hinduism when the image is worshipped आम्हान and विसर्जन of the deity are necessary. An idol is merely प्रतिमा or अर्हप्रतीक.

(6) The devotee's worship of the Lord is called, प्रहापसना. The devotee worships the Lord in spirit that he is the Lord and the Lord is he. This is called खदमर्ग in the agamas, i.e., the Lord and the devotee are associate or invariable companions, the Lord being the friend and protector of the devotee.

(7) Lingayatism is a proselytising religion; while Hinduism is not.

(8) The practice of the religion is called शिवयोग the highest form of yoga, including the four or five subsidiary forms of yoga, namely, अक्तियोग, कर्मयोग, मंत्रयोग, ह्ययोग and ज्ञानयोग. These subdivisions of शिवयोग are suited to the four temperaments of human beings, the emotional, the active, the mystic and the rational.

(9) The method or technique of शिवयोग also called शिववृत्ति is termed चतुर्थल, which is the most distinctive feature of the religion (Lingayatism) and forms the differentia of the religion, the like of which is not to be found in any other religion.

(10) The चतुर्थल is the most scientific technique, being based on physiology and psychology of human beings. It is based on the six places or spots in the human body that are the abodes of and are occupied by the six Lingas. They are called the साधारा and are none else than the six specific regions of the सूक्ष्मशरीर taken along with their sympathetic counterparts or analogues, in the स्थूल शरीर. The sixfold places enable the devotee to attain liberation by extricating function from the clutches of the structure, the bodily mechanism, in sixfold stages gradually.

(i) Now about the esoteric philosophy of Lingayatism (1) It is monism and is called शक्तिविशिष्टाद्वैत. According to this the Lord (the Supreme Consciousness) is characterised and distinguished by शक्ति (शक्तिविशिष्ट). His शक्ति is also called विमर्श or संवित्. It is the inscrutable Power or Energy of the Lord who thereby works wonders of creating, sustaining and reabsorbing the Universe.

(ii) शक्तिविशिष्टाद्वैत is superior to केवलज्ञान of शंकराचार्य. It rejects the मायावाद or the theory of illusion as propounded by शंकराचार्य. According to शंकराचार्य (the Supreme Reality) is a mere sundered abstraction sitting apart from the phenomenal Universe. And the conception of ब्रह्मन्, the changeless unconditioned Reality (ब्रह्मन्) is tantamount to some inert Principle like the पुच्छ of the सांख्य School.

(iii) According to लक्ष्मणाद्वैत माया or the mischief-mongering अविद्या is the शक्ति of ब्रह्मन्. But its origin and abode are not explained. These are the two great defects in the theory of माया, as noted by Dr. Ghate, who remarks "But whence comes the primaeva माया the cause of ignorance, sin and misery? No satisfactory answer is given to this question." शक्तिविशिष्टाद्वैत is free from these two defects and satisfactorily explains the evolution and involution of the Universe as a reality.

It also rationally explains अविद्या, which it says, is the result of the human being thinking that ज्ञान and कर्म are two different things, though at bottom they are one and the same.

(iv) Final liberation is called लिंगम सारस्य in Lingayatism. This सारस्य is not ताहालय. It is सायुज्य मुक्ति or atonement with the Lord by the spiritual discipline as devised by and contained in the technique of चतुर्थल.

(v) The शक्तिविशिष्टाद्वैत stands the scrutiny of and conforms to Modern Physics, which holds that matter and energy are not different entities but are one and the same, or are two different phases of one and the same entity.

Now it is to be seen how Lingayatism is not Shaivism of the Shaivas. And therefore it can never be a subdivision of Shaivism, as will be evident from the following, which by the bye will be additional proof of Lingayatism being different from Hinduism.

(1) The deity शिव of the Lingayats is only another name of Linga. Linga is the primary Divinity which as the Highest deity is called ज्ञानलिंग or Linga the Highest. So the Lingayats start with Linga and end with Linga, which is the prima-causa or the Cause Causes of all that is seen in the form of the Universe. His शक्ति is called पराशक्ति with alternative names of अविद्याया, महामाया or सुद्धमाया as opposed to अधोमाया, which is अज्ञान of शंकराचार्यकेवलज्ञान. Linga (ज्ञानलिंग) is परमल, i.e., the ultimate abode of all that was, is or will be. It is described as "that in which this Universe (with all its objects animate or inanimate) has its source (स्थान) and to which it goes back (at the time of प्रलय)."

(2) This ज्ञानलिंग in its लीला (play or sport), technically called उपास्योपासक लीला, becomes two (1) Linga (2) Anga. The उपास्य is (Linga) and the उपासक is the Anga. Linga first becomes threefold (1) भावलिंग, Linga the Ideal or Intellectual; (2) प्राणलिंग, Linga the vital or Mental; (3) दृष्टलिंग, Linga the Physical or Phenomenal. Further these three Lingas are modified into (1) महालिंग and प्रसादलिंग; (2) चरलिंग and शिवलिंग; (3) गुरुलिंग and साचारलिंग. Anga also first becomes threefold and then sixfold as (1) योगेश or Anga the devotee (in the state of atonement) with its two further modifications of शरण and देव्य (2) योगेश Anga in the stage of enjoyment in company with Linga, with the two further modifications प्राणलिंग and प्रसादी. (3) योगेश Anga in the stage of abandonment of the world, with the two modifications of भ्रष्टर and भक्त. Along with Linga, His शक्ति also becomes first three and then six on account of her अविद्याभाव संबन्ध with the Lord, i.e., the invariable and inseparable association. She is then called कला or creative or evolutionary activity. (1) प्रकाशन with the two sub-phases शक्त्यतीतकला and शक्त्यतीतकला; (2) विमर्श with the sub-phases शक्तिकला and विद्याकला; (3) आभास with the two sub-phases ज्ञान and क्रिया. Bhakti (भक्ति) is the modification of शक्ति and goes with Anga, the counterpart of Linga. It is also three first and six afterwards as (1) विद्युद् भक्ति with the two fold phases समस and आनन्द; (2) विचार भक्ति with अनुभव and अवधान (3) and lastly विषय भक्ति with श्रद्धा and निष्ठा. The उपास्योपासक लीला of Lingayatism is all its own and is its most distinct and unique feature.

Anga is the individual human being fired with the desire of attaining मोक्ष. His form in the Yogic meditative posture in the form of Linga. Thus the human body is the individual jiva with lahtalinga working behind. The Cerebrum (शिरोमूला) or the central nervous system is योगेश with भावलिंग that resides in the सहस्रारचक्र. Its two sub-divisions are आज्ञा चक्र between the eye-brows and विद्युद्दि in the throat, the laryngeal nerve-centre. The autonomous nervous system is योगेश with प्राणलिंग, the vital Linga with its two sub-divisions अनाहन चक्र in the heart and मणिपूर चक्र in the naval. Lastly the two remaining charkas स्वाधिष्ठान and मूलाधार are of दृष्टलिंग. All this is very sketchy and cannot but be so and

is intended to show that the ~~sects~~, including all modifications of Linga, Anga, Shakti and Bhakti, is based on physiology. And the religious discipline prescribed for the devotee is the psychic and psychological culture.

The Shaivas have nothing of the kind. They are all Varnashramic Hindus. Lingayatism has thus nothing in common with the Shaivas. It follows that Lingayats and Lingayatism are not a sub-sect but an independent religious body with their philosophy, cosmogony and discipline, which last may be called the practice of religion.

Lingayatism is permeated with the spirit of ahimsa like Jainism, though it is not the basic principles of the religion but one of them. They are out and out vegetarians and teetotalers in the sense that they never touch alcoholic drink being religiously forbidden to do so.

Lingayats are therefore described in the religious treatise *अतिवर्णनम्* Brahmins or Super-Brahmins, that is, those that have risen superior to Varnashramadharm. They are also called the best explanation of which is as follows :-

* "The Virasaivas also say that according to the Sivavaralinga form of worship, which they call prakrit, man can attain mukti only after three births, which mukti I take to signify karma-mukti, by means of charya, kriya and yoga, the last straightway landing him in jnanam or Siva-sayujya. But the jangamalinga form of worship, which is a prakrit, is said to secure mukthi for man within the present birth alone, and no further need of wandering along the wearisome race-course of metempsychosis.

The true meaning, therefore, of the Virasaiva tradition is that the Adisaivas, who were the descendants of the Rishis like Kasyapa and others, slid away from the true aim of the temple worship or objective worship, which is Atma-puranam, Atma-darshanam and Siva-darshanam, whilst the flesh, entered on the never-ending path of pravritti, by worshipping Prakriti and Her modifications and evolutions and thereby became prakritic or worldly." Sir Radhakrishnan, therefore, says in his foreword to my book "Lingayat reform of Brahmanical Shaivism."

Enthoven rightly observes (in Encyclopaedia of Religion and Ethics) that "the Lingayats have been not inaptly described as a peaceable race of Hindu Puritans, though it may be questionable how for their rejection of many of the chief dogmas of Brahminic Hinduism leave the right to be styled Hindus at all.

One of the many reformists movements aimed against the supremacy of Brahmins, whose selfish exploitation of the lower classes led to the rise of new sects essentially anti-Brahmanic in origin." The traditional Lingayat teacher, Basava, proclaimed—

(1) All men are born equal

(2) Combined with the assertion of the essential equality of all men constituted the vital departure from the doctrines of orthodox Hinduism, the removal of all chief Hindu rites and of the ceremonial impurity."

The upshot of all the discourse as sketched above is that Hinduism is a religion of—

(1) Varnashramadharm and (2) Image-worship, which form the highest common factors of all Hindus. (3) It is the result of the combination of the two cultures (Dravidian and Aryan). (4) The Varnashramadharm is the development of Vedic Aryans, who were a first-cult. (5) The image-worship with all its details is the development of the religion of Dravidians that were a deistic cult. (6) The amalgamation of the two cults resulted in the fusion of the two main divisions of the ancient India's populace, the Aryans and the Dravidians. (7) The Aryan sixteen ~~संस्कार~~ or religious sacraments became the privilege of the three higher classes (i) The Brahmins, (ii) the Kshatriyas; and (iii) the Vaishyas, along with the image-worship. (8) The Shudras and women had only the image-worship left to them but were denied the privilege of ~~संस्कार~~ or the sixteen sacraments. (9) That different schools of religion grew with different names as Shaivas, Vaishnavas and Shaktas with a large number of sub-sects. (10) The philosophy and theology of these different schools also grew and became distinct from one another. (11) That the Lingayatism is quite a distinct religion, as it has its own philosophy and practice

different from that of other schools of Hindus, the Shaivas, the Vaishnavas and the Shaktas.

Even if it is taken for granted that Hinduism is a culture or civilization, though a combination of the Aryan and the Dravidian cultures and is not a religion, but a group of religious (Shaiva, Vaishnava and Shakta), still Lingayatism is altogether a distinct religion, distinct from all others (the Shaivas, Vaishnavas and Shaktas) as it has its own philosophy and practice as a religion, all its own and quite distinct and different from those of all others. All others being Varnashramic image-worshipping in matters, social and religious, Lingayatism is quite a different group or fold, being non-Varnashramic and non-image worshipping. Thus Lingayats form quite a different group or fold like Jains and Sikhs.

Lingayats again are out and out vegetarians and teetotalers like Jains and have their own high ethical code of conduct, which also is distinct from Lingayatism and Lingayats. The ethical code of conduct is called Kayak and means plain living and high thinking. It is socialistic in spirit and principles as it lays down mutual helpfulness of individuals of the Society. Individuals are for Society and Society is for individuals. Is it not, therefore, unjust to class them with Shudras who have no religious ~~संस्कार~~ no religious philosophy or practice of their own, and who eat flesh and take alcoholic drinks? To discuss the status of Lingayats in terms of Varnashramadharm is only to grope in the dark for a solution. Hence the information given above will, it is hoped, give you the right perspective to approach the solution of the theoretical question.

It may be noted here that the Aryans, the present Arya Samajists, are Varnashramic, but they deny the Varnashramadharm based on birth and not upon Guna-karma as in the case of present-day Hindus. They also repudiate the image-worship as being non-Vedic. (This bye the bye) proves the image-worship to be Dravidian. They are, therefore, classed as a separate group or body. If this be the case Lingayats have better reason and ground for being considered a separate group or body, as they have not only repudiated the image-worship but done away with Varnashramadharm.

It may be stated here in all sincerity that the status of Lingayats as a separate religious body as discussed and established above is purely from the academic point of view. It is all intended to clear off the fog of misunderstanding that surrounds the community and the religion and to wash off the painful stain and stigma that has resulted from the fog of misunderstanding that has fastened on to the Lingayats.

The Lingayats are Hindus in the sense that they are descendants of the Hindus and that they are no people coming from outside India like Parsis. They are Hindus as a race but not as a religion. They are a different religious entity, a distinct religious fold. In this particular respect they are like Jains, who are a different religious fold but are Hindus in the sense that they are descendants of the Hindu people, from amongst whom they violently broke away by discarding the Hindu religion and forming a different religion of their own.

Such being the case it is altogether unfair and unjust to call Lingayats Shudras and to class them with Shudras. To do so is the height of injustice and stigma.

The Law courts have always tried to determine the status of Lingayats, by applying the principles and test of Hinduism as given in the Smritis and Dharmashastras and arrived at a wrong conclusion as they were bound to do. Of the Judges Mr. Justice Likur of the Bombay High Court has done highest injustice, because in a judgment he has very recently delivered, he has tried to establish in a roundabout tortuous way that Lingayats are Shudras. But Justice Sir Davutia, after careful and dispassionate study of the question rightly understands where the shoe pinches the Lingayats.

He has, therefore, advised Lingayats to seek the aid of the legislature. I, therefore, pray you, Sirs, to give to Lingayats the status that they deserve by applying to them the laws that are applied to a high-class community and give them a place side by side with Jains and Sikhs.

85. All-India Veerashaiva Law Reform Committee, Davangere.

1. After the word *Jaina* in sub-clause (2) of clause 2 of Part I, the word "or *Veerashaiva (Lingayat)*" should be inserted.

Note.—The tenets of Veerashaiva religion are peculiar and different from the professed Hindu religion which comprises four primary *Varnas*. *Astavarṇas* (eight protections) and *Shataathalas* (six attainments) are the chief among those that distinguish Veerashaivism from Hindu religion. Veerashaivism is governed by its own principles and dogmas. The chief emblem of this religion is *Ishtalinga* worn on the person of Veerashaiva at all times. All the ceremonies are centred round this. This impartible *Ishtalinga* goes with the individuals and is buried with the dead. The path of their religion is according to Veerashaivas. The happy combination of action (*कर्म*) and knowledge (*ज्ञान*). The *Upanayana* of Veerashaivas is that they ever remain purified on account of *Ishtalings* being worn on the body. They have their (*संन्यास*) initiation. Remarriage, etc., ceremonies different from those that are performed by the people belonging to the four *Varnas*.

2. Part II, General Provisions clause 17. Below sub-clause 17, clause.

17-A shall be added with the following provisions:—

"17-A.—*Alienation of Stridhan property by wife.*—A daughter inheriting her share in the property of her parents shall not alienate without the consent of her husband after her marriage.

Note.—Many of the Indian women are not yet civilized. Especially rural women folk have not seen the light of civilization. Under the circumstances, it is not a happy thing at all to give full freedom to the women to deal with their properties as they like. Some restraint should be imposed upon the right of alienation Hindu Law contains some provisions regarding *sandayik Stridhan* which requires husband's consent for alienation. It is desirable that such should be maintained in the proposed Hindu Code.

3. *Proviso to Clause 19.*—"Even after the death of her husband, the heirs of the deceased, if any, may question her chastity even though her unchastity is condoned by her husband during his lifetime."

This clause should be inserted after section 19 and before the proviso begins.

Note.—To safeguard the family property, it is desirable to put a stop to the immoral life of the widow. Being influenced by the ill-advice of the paramour, there will be every likelihood of the widow squandering the property and leaving stigma on the name of the family. The widow should not be left unfettered to the mercy of bad advisers.

4. *Below Clause 19.*—Clause 19-A shall be added with the following provision:—

"*Clause 19-A.—Unchaste daughter disqualified.*—A daughter who has been unchaste shall be disqualified from inheriting her parent's property.

Note.—As there is provision for disqualification of the wife on the ground of her unchastity, it is also necessary that an unchaste daughter should be debarred from inheriting the property of her parents. Unchastity is a common factor applicable to each and every woman who is easily influenced by the persons who are in illicit connection with them. The property inherited by the women under such influence will be misused and be lost to the family on unfair grounds.

5. *Insert after sub-clause (a) in clause of sacramental marriage in part IV—*

(a-1) If a wife has contracted any uterine disease (barrenness, etc.), the husband may marry a second time.

Note.—Insertion of this clause is material. The lofty principle behind the marriage is that the line of the husband should continue. Ordinarily marriage of the two spouses takes place on the apparent approval of the bride and her family. The ordinary folk are not cognizant of the inner defects, if any, in the physique of the bride. If, after marriage, the wife proves to be barren or to have contracted such disease as does not allow her to carry, dependency will prevail in the whole family of the husband. She would become burdensome and an object of condemnation by the members in the family. If the husband is not allowed at all to get himself married second time during the lifetime of his wife, the husband and his kith and kin will have to wait her untimely death. In this way, sometimes, this unhappiness will lead to suicide, murder, poisoning,

etc. To promote the line of the husband is ever the predominant factor that commands the sympathy of all. To avoid this catastrophe, seven years' limit should be fixed to see whether the wife would be carrying in the meanwhile. Their District Civil Surgeon must certify that the wife is suffering from such disease as would not allow her to carry. After such certificate is obtained, the husband shall have another chance of getting himself married to another bride.

6. In sub-clause (2) of clause 29 in part IV, chapter III after the word 'to' and before the words 'High Court' the words 'District Court' should be inserted.

Note.—To be within the reach of ordinary people and to make it less expensive, it is desirable that the party aggrieved should at first approach the District Court and then the decree of order of the said Court must be subject to confirmation by the High Court, the decision of which is final.

7. After clause 30 before sub-clause (a) begins, insert the following sub-clauses:—

(a) If the husband is impotent,

(b) If he is in the habit of committing unnatural offences,

(c) If he has been addicted to the use of intoxicants for three years or more and thereby is unable to fulfil the marital obligations,

(d) If he is an idiot,

(e) If he has disappeared for three years or upwards,

(f) If he has become a recluse,

(a) If the wife commits adultery, (b) marries a second time in the lifetime of her husband, (c) was pregnant at the time of marriage by a person other than her husband and that fact was not known at the time of marriage.

Note.—The suggestions regarding the grounds for divorce by the husband or the wife are made here. They are copied from the Bill introduced in the Bombay Legislative Assembly in the year 1939. We find that the above suggestions are quite material and they deserve full consideration of the Committee. The provisions regarding divorce by either party appearing in the draft are not exhaustive. They do not comprise the necessary evils which either party is practically suffering from. There is no salvation at all for the party who is really aggrieved and whose life would be null if no proper belief is contemplated. Hence these suggestions.

8. Part VI, clause 21.—After clause 21, 21-A should be inserted—

"21-A. *Alienations by widow prior to adoption void.*—

If a husband dies leaving behind him his only widow surviving, she shall take half of the whole of the husband's property. She shall not alienate any property beyond her share unless for the satisfaction of her husband's debt, and the debts contracted for family necessity. The alienations made regarding the property beyond her share are not binding upon the son to be adopted subsequently.

86. Sri C. M. Mahadeviah, Agent, Oriental Life Office, Doddapet, Davangere, and certain others.

We, the undersigned, beg to acquaint you with the realities of the situation pertaining to the Bill called "*Lingayat (Veerashaiva) Mutis' Succession Bill*" drafted and introduced by Mr. V. B. Halabhavi, B.A., LL.B., retired Sub-Judge, Dharwar, for incorporation of the same in the Hindu Law. It is contrary to usage, custom and *sastric* injunctions of our community. The Bill is highly pernicious and suicidal to the best interests of our people for various reasons.

There are two principal divisions amongst Veerashaivas, namely, *Bhaktas* and *Maheswaras*. There are ever so many sects among *Bhaktas*, such as, *Banajigas*, *Panchacharas*, *Javalis*, *Oil-Millers*, *Potters*, *Weavers*, *Barbers*, *Washermen*, and even *Shoe-makers*, etc. Amongst *Maheswaras* there are five *gotras*, namely, *Veera*, *Nandi*, *Bhurungi*, *Vrushabha* and *Skanda*. There is inter-dining and inter-marriage amongst *Maheswaras*. They are one and united. Ever since the inception of our community, *Maheswaras* have been made the heads of *Viraktamaths* and *Pattadamaths*. Even the present heads of these classes of *Maths* are *Maheswaras*. There are clear and specific *sastric* injunctions that *Maheswaras* alone must be made the heads of *Viraktamaths* and *Pattadamaths*. This rule is not without practical wisdom, *Maheswaras* are universally respected by *Bhaktas* comprised of various sects narrated above. '*Lingayat*' referred to in the Bill is a wide and

comprehensive term. It includes both Bhaktas and Maheswaras.

Suppose a washerman, a barber or a shoe-maker becomes a Guru of any math in course of time according to the provisions of the Bill, there is every likelihood of that Guru or that math being treated with contempt both by Bhaktas and Maheswaras. Because you are well aware that caste feeling and ideas of superiority and inferiority have got into the very marrow of our bones. Feeling of caste is not a thing that can be easily effaced from the minds of the Hindus as a whole. That is the reason why our ancestors have made it a rule that candidates must be recruited for the posts of Gurus from the class of Maheswaras only. Everybody knows that even Mahatma Gandhi has not been able to tackle effectively the problem of untouchability in spite of his tremendous influence over the masses. You will see how strong and deep-seated is the feeling of caste among the Hindus. Has Mahatmaji sought the protection of law for the removal of untouchability? As a far-seeing statesman, he knows that reforms should be effected by evolution not by revolution. Similarly, you will kindly realize that it is a matter that does not necessitate the intervention of law but a matter for discussion and decision amongst ourselves.

Mr. V. B. Halabhavi and his friends have been entertaining some novel notions. They want the realization of their views by having this Bill passed, clandestinely keeping the community in utter ignorance of his move. We are sure he has not even consulted the heads of the maths under question. He has not published his Bill in any of the popular and widely circulated Kannada, Marathi, Andhra, daily papers. He has published it in English in his own quarterly journal called the Journal of Literary Committee, L.E. Association, Dharwar. It has a very poor circulation. The Bill is in English. A vast majority of our people are ignorant of English. Had the Bill been published in an Indian language either in Kannada, Marathi or Telugu, in widely circulated daily papers, you would have realized the magnitude of resentment the Bill would have evoked. The passing of the code will give rise to chaos, confusion, discontent, discord and internecine warfare. The community would have ventilated its feelings by way of mammoth meetings and monstrous petitions if it had known it. No such opportunity is given to the public.

Mr. V. B. Halabhavi and his friends do not form the community. We are fifty lakhs spread over Karnataka, Maharashtra, Andhra, and the Nizam's Dominions. There were Veerasaiyas even in Kashmere. They were called Shankaradharis. Now, they have dwindled there. Swaprabhananda Sivacharya, the celebrated author of Sivadvaita Manjari, is from Kashmere. The Bill has not got even an iota of support of the community.

In view of the fact that the Bill is contrary to the custom and sastric injunctions of the community and the measure is of a revolutionary nature, in all humility we beg of you to set aside the Bill.

37. Suggestions by the Chairman, Lingayat Law Codification Committee.

Lingayats are otherwise called Virashaivas numbering about fifty lakhs. They spread over Southern India except its southernmost, westernmost and easternmost strips as far as Central India, being thick in the Mysore State and the adjoining districts in the Madras Presidency and the Nizam's Dominions.

They are included among Hindus although opinions are now and then expressed that they are non-Hindus on the ground that they are beyond the pale of the Brahmanic Varnashrama Dharma. Even assuming that such opinions are correct, our present object is to ascertain what law should be made applicable to them. In the absence of any Lingayat authorities on the subject, it cannot be denied that the Hindu Law has to be applied to them. There is a Sanskrit text only as regards one part of the subject, viz., adoption. We will have occasion to refer to this text later on when we consider the question of adoption. As regards the other parts of the subject we have to rely on the general Hindu Law.

Now, coming to the draft Hindu Code we wish to make the following suggestions. These suggestions are few but very important to safeguard the status of the community among the Hindus.

The first suggestion has been already made to you by me in my letter, dated 21st September 1944, and by Mr. Sirdar, President, All-India Veerashaiva Mahasabha, in his memorandum already submitted to you and it is that the word "Lingayat (Veerashaiva)" should be included in the definition of the word 'Hindu' in the Draft. It has been pointed out in Mr. Sirdar's memorandum that Lingayatism is a religion. It has its own philosophy, practices and rituals quite different from those of the Brahmanical Hindu religion. It would be doing only justice to the community if this fact is recognized by the Committee and the definition of 'Hindu' is amended as suggested.

Mr. Sirdar has further shown in his memorandum how the present definition of 'Hindu' will work injustice by giving an illustration of marriage between converts of persons of different castes to Lingayatism. A similar situation will arise in the case of adoptions among Lingayats. According to clause 13 (ii) of Part VI of the draft a boy to be capable of being adopted must belong to the caste of which the adoptive father is or was a member. Unless the community is separately recognized, adoptions between converted persons of different Hindu castes are likely to be declared void.

There is an additional and a stronger ground about the necessity of the amendment. Lingayatism does not recognize the four ashramas. There are institutions among Lingayats of Gurusthala and Virakthinash which have nothing in common with the Brahmachari, Vanaprastha and Sanyasa ashramas among Brahmanic Hindus. Hence our request for this amendment.

Our second suggestion is that as there is provision in the draft for succession to the property of Brahmacharis, Vanaprasthas and Sanyasis only (clause II of Part II) and no provision for succession to the property of religious institutions among communities beyond the pale of Varnashrama Dharma.

Clause 11-A.—The succession to the property of maths and other religious institutions in communities not coming within the pale of Varnashrama Dharma shall be governed by the religious texts or customs or usages of the respective communities.

Our next suggestion is that a separate chapter should be added containing provisions about succession to Lingayat maths. I have drafted a bill containing such provisions with explanatory notes giving a short account of the origin of these maths, etc. A copy of this Bill is sent herewith for ready reference and its provisions may be incorporated in the chapter to be added.

We now wish to make a few general suggestions. In the explanatory note appended to the Bill to amend and codify the Hindu Law relating to intestate succession published in the *Bombay Government Gazette*, dated, the 25th June 1942, it is stated that the main factors of the Bill are—

(i) That it embodies a common law of intestate succession for all Hindus in British India.

(ii) That it removes the sex disqualification by which Hindu women in general have hitherto been precluded from inheriting property in various parts of India and

(iii) that it abolishes the Hindu women's limited estate.

By the addition of Part III-A in the present draft, devolution of property, survivorship has been abolished and this is an additional feature in the codification. All these features are revolutionary and we submit that, instead of simultaneously introducing these changes, it would be much better if they are introduced one after another after a sufficient interval so as to make the public accustom itself to the change, the changes being introduced in the order of their urgency and expediency.

As regards one point, however, we wish to make a definite protest. According to the law now in force

daughter comes after widow in the order of succession. In the draft she is included in class I with widow, son, etc. An example will make it clear how this will adversely affect the rights of the other sharers. Suppose a man possessing property worth one lakh of rupees dies leaving behind him a widow, two sons and two daughters. According to the draft each daughter would get property worth Rs. 12,500. Suppose further that one of the daughters marries and subsequently her husband dies leaving behind his widow (this daughter) two sons and two daughters by her. This daughter would get property worth Rupees 25,000 which together with that inherited from the father comes to Rs. 37,500. Even if there is a variation in the number of children, the daughter is likely to get a greater share than her brother or her sons. From this it appears that the Hindu Law Committee has been unnecessarily liberal in the case of a daughter. When it is remembered that it is the man who has the obligation to continue the line by setting up and maintaining the family and that there cannot be any rights without corresponding duties and responsibilities, it may be questioned whether the right to inherit allowed to the widow, mother and some other woman is beneficial to society. But it is certainly not so if daughter is allowed to inherit both to her father and husband. At the most she may be allowed to inherit to her husband.

In clause 5 of Part III A-II (Maintenance) the following may be added to the list of dependants :-

(x) A daughter whose marriage has been declared null and void under (I) and (IV) of clause 29 and a daughter whose marriage has been dissolved under (a), (b) and (c). This provision becomes necessary if daughter is not given the right to succeed to her father.

As regards adoption we have got a Sanskrit text as already mentioned. It is called Saprayoga-Datta-Vidhana published by Rao Bahadur Mallappa Basappa Warad of Sholapur in the year 1909. It purports to contain the rules of adopting a son prescribed in Vatula-gama. According to these rules one should adopt a boy of the same gotra, five years old, other than the eldest, perfect in all limbs, of good conduct, etc. (verses 20 and 21). The fact that there is no necessity of a son for the spiritual benefit of the adoptive father as, according to Lingayat religion, he becomes united with Para-Shiva at the end of his life is admitted in the eleventh verse. But it is stated in verses 14 and 23 that the object of adoption is the removal of any break in the continuity of the worship of Guru, Linga and Jangam and of the propagation of Shiva-Dharma. It is to be noted that no ceremony such as placing of five Kalashas as in diksha or marriage other than giving and taking is prescribed in the book. These rules are similar to those in the ancient smriti texts with modifications to suit the principles of the Lingayat religion. The restrictions about gotra, age and the boy to the other than the eldest are not generally followed in practice and we need not adhere to them. The provisions in the draft are generally acceptable. But the following suggestions may be considered.

Clause 5, paragraphs 1 and 8.—(i) The age limit in the case of one who adopts whether male or female is 15 years. It should be 18 years which is the age of discretion according to the Majority Act.

(ii) It is stated here that the boy to be adopted should belong to the caste, if any, of which the adoptive father, that is, the father by or to whom he is to be adopted, is or was a member.

The Lingayats have a number of sub-sections which are usually called 'castes.' The Lingayat religion recognizes no castes. Hence it should be made clear that this sub-section is not applicable to Lingayats nor what is stated in sub-section is not applicable to Lingayats nor what is stated in sub-clause (iv) of the same clause.

Clause 13 (iii).—In this clause the condition is that the son adopted must never have been married.

We do not see why marriage should come in the way of his being adopted. The wife being half of his body according to Hindu conception becomes transferred to the new family with her husband who has been adopted to it.

Clause 19.—Restrictions are placed herein regarding property to which the adopted son becomes owner, in case he is adopted by the widow after three years. He will then be entitled to only half the property according to this clause.

We suggest that the widow should have a right to adopt at any time in her lifetime and when she exercises this right the son adopted should become the owner of all the family property subject to the conditions accepted by him at the time of adoption, as is now the case.

If the view of the Rau Committee as stated in the foot-note to clause 20 is accepted, the family property will not remain intact but becomes divided and it may bring about complications owing to the law of succession that is being proposed by the Committee. We think that there should be no restriction direct or indirect on the widow as to when she should adopt.

88. Jain Association of India.

Our Association considered the draft Hindu Code in a Committee consisting of (1) Maknji J. Mehta, Esq., Bar-at-Law, (2) H. H. Dalal, Esq., Bar-at-Law, (3) P. S. Badami, Esq., Bar-at-Law, (4) R. K. Jhavery, Esq., Solicitor, (5) Hiralal M. Shah, Esq., Solicitor, (6) Mohanlal B. Jhavery, Esq., Solicitor and (7) Ranachhodbhai Raichand Jhavery, Esq.

Our association welcomes the codification of the Hindu Law as proposed. Without going into the matter of details our Association suggests the following alterations and amendments in the Bill. There is scope for other alterations consequential on the suggestions herein made. It is hoped that the Committee appointed for the purpose would do the needful.

PART II.—INTERSTATE SUCCESSION.

We have to point out that predeceased son's daughter should either be provided for as an heir in class I, entry I, or suitable provision for her maintenance should be made which is at present not made in the Bill.

Regarding 'sister' who is (3) in class III in the draft Bill she should be included in class II and placed immediately after (2) daughter's daughter. Having regard to the prevalent sentiment for the sister, she cannot be postponed as is proposed to be done in the Bill.

Clause 7 (b).—At present an undivided son as well as reunited son alone takes a share excluding the separated son. That right should be continued to him for a reasonable period, say, ten years from the date of the coming into force of the present Act.

Clause 14 (c) (i) and (ii).—Sons and daughters and grandsons and grand-daughters should take equally because now daughters get a share in the father's property so the sons and grandsons should be equally entitled in the stridhan.

Section 19.—An unchaste widow if she reforms her ways is entitled under the present law to maintenance which right she should not be deprived of.

PART III.—MAINTENANCE.

Add a proviso that if the father is not living father's father and father's mother, if not heirs, shall also be maintained.

Clause 5 (5), Sub-clauses (viii), (ix) and (x) should be deleted.

Section 7.—This is an unnecessary restriction on the widow and should be deleted.

Section 3 (a).—While approving the principle of monogamy, we suggest that under well-defined circumstances, liberty should be given to males to marry a second wife, during the lifetime of the previous wife, viz., barrenness, incurable disease or permanent disability, insanity, etc. The previous wife or wives should be entitled to dissolution of her marriage on such a subsequent marriage of her husband

PART V.

Section 9.—It should be provided that during the guardianship of a Hindu minor, the minor should be brought up by the father.

PART VI.

Section 22, sub-section (4).—Where a bachelor adopts a son his subsequently married wife should be treated as an adoptive mother and not a step-mother.

The person giving in adoption should also be entitled to make an application for registration of adoption as he is equally interested in adoption.

89. Bar Association, Lakhtar (Indian State).

The draft Code of Hindu Law as introduced in the Central Legislative Assembly is considered and it is resolved unanimously that the draft Code is wholly unacceptable to the Hindu community though there might be some strong provisions which are necessary, yet the draft Code if enacted will strike at the very root of the structure on which the Hindu community and the Hindu law is based and as it is feared that the draft if enacted into law at all will revolutionize the entire Hindu society. The draft is thus opposed by the members of this Association.

90. Pandit Vinayaka Sakbarm Sastri, Tiloo, Vyakarna-charya, Dharma Shastra Shastrī Mimansa Tīth, etc., Vyakarna Dharma Shastra Teacher, S. M. Vidyalaya, and Professor Vipradasa Sastri, M.A., Holkar College, Indore.

Some of the salient features of our views on the draft Code are given below, although we believe the conclusions we have arrived at cannot be brought home to any one, unless they are put forth in their full-fledged form with the necessary argument.

The following are some of the main points :—

1. The uniformity of law contemplated by the Committee will be unpalatable to those provinces at the cost of whose traditions a particular province is going to impose its school on them, and so undesirable and impracticable.

2. The Central Legislature is a cosmopolitan body. We believe non-Hindu members cannot competently appreciate the interests of the Hindu society. We can show, at least, in one case, how other societies object to new legislation, interfering with their religion.

3. We are definitely of opinion that the present war time is by far the most inopportune occasion to expect India to devote herself to legislation of this type.

4. The history of the Swiss Civil Code more than convinces us that the codification of Hindu Law in India cannot and should not be hurried through so rapidly.

5. It is detrimental to follow in the footsteps of other societies.

6. Experts in ancient Dharmashastra should have a voice in legislation.

7. The great Tilak opines that religion is not a matter to be interfered with by others; but, perhaps, it would be styled as a backward thought.

8. Much of the difference of opinion seem among the old commentators or Nibandhakaras is due to a desire on their part to display their talent in various interpretations of a particular Smriti text.

9. Ja mini is not in favour of equality between man and woman with respect to property.

10. Boudhayana cannot justly be accused of a wrong interpretation of the now well-known Vedic Text—“Nirandriya.”

11. The Rig-Veda and Yaska both agree with Boudhayana.

12. Inheritance in ancient Indian Dharma Shastra was based upon the principle “He who has the right to perform the Shraddha has the right to property.”

13. Another fundamental principle is “That is the basic principle now misunderstood and always made light of by all who are dazzled by Western culture.”

14. That a woman should be considered to be of same “Gotra” as that of her father is radically wrong.

15. It is wrong to amalgamate “and property that is got by inheritance.”

16. If a wife gets a share, it is not of the nature of or inheritance, but a right, except when there is no son.

17. If a mother gets a share in common with her son, it is again not as . . . She may get a reasonable portion for religious purposes.

18. The one-fourth share of the daughter sanctioned by Smritis actually amounts to something much more if the whole text be considered and is restricted to marriage expenses.

19. So, the mother's so-called equal share actually should amount to something much less.

20. The distribution of property as contemplated by the Committee is bound to result in the dire dissipation and destruction thereof.

21. From the social point of view, this distribution is fraught with more danger than can be thought of.

We are studying the remaining sections of the draft Code and hope to present our views there on in our actual meeting. It may be added that ours in not an attitude of mere opposition; but, we have some constructive proposals to make, too.

91. Rao Bahadur Sardar M. V. Kibe, M.A., M.R.A.S., F.R.S.A., Indore.

I

I object to the definition of “Hindu” on the following grounds :—

(a) It will lead to the disruption of the Hindu culture based on Varnashrama Dharma,

(b) It allows both Anuloma and Pratiloma marriages which is a violent change and a retrograde step even according to eugenics,

(c) It will hasten the results of the registered marriages,

(d) in the present weakened state of the Hindu society, it will introduce so many complexities as well, and its separate existence, and

(e) lastly the measure is premature.

2. The provision for monogamy is commendable but some exceptions are to be provided for it—Vide draft clause 3 (a)—e.g., second marriage be allowed when a wife is proved to be barren and other provision, which without prejudice to divorce, may be provided for, as sometimes it would be merciful.

II

In almost all the Indian States the culture, tradition and manners of the Hindu race are preserved almost unaltered. Under the influence of the compact with the paramountcy of a western power, some of the base things which had soiled the surface of the culture, have been obliterated, but the structure of the society is mainly preserved. The expression oriental splendour is applicable to happenings in the Indian States only. The best in the oriental culture can be found only in them.

The draft Hindu Code prepared for the Central Assembly is the greatest conceivable attack on the Hindu culture. It will not only affect the subjects of the territories over which it is intended to prevail, but it will govern subjects of the Indian States. Its authors and protagonists are ignoring this patent fact.

Hindu Law is not a law made by any legislature. It has no political or State boundaries. It is a personal law. It has been evolved. Any revolutionary change in it is bound to dislocate society and undermine culture. Like the Muhammadan law, Hindu law is a traditional law governing the lives, property and culture of the persons and families of the people. The latter has no single authoritative book, the former is based on the Koran and the old traditions. Although it too has been modified by legislatures in some respects, no fundamental departure has been allowed. The culture of the Mussalmans, to whatever nationality any follower of Mohamad may belong, has been uniform, outward changes in matters like

dress and the growing of hair on the face being overlooked.

There being no one single book on which the Hindu Law is based, changes have been easier to make in it. The British Ruler proceeded boldly to interfere in it. But as in the abolishing of Sati, it was shown that the practice was opposed to the Vedic text. But the greatest agitation was raised against the age of consent Bill. The opposition maintained that it was a direct interference in the custom of the people, which would affect its culture and was opposed to the injunction of the Smritis. Although the apprehensions of the opposition as regards the culture have come out true, yet the supporters of the measure succeeded in showing that the injunctions in the Smritis were not uniform and the practice as disclosed in the Vedas did not favour consummation of marriages in the early age. The Sharda Act enacted later had no such support, yet it did not raise a storm so strong as before.

The framers of the Hindu Code, have been at pains in showing that the changes in the law which they propose to effect have the sanction of the texts, prevalent before, or even now, in one or other part of the country. The introduction of uniformity is their main aim and their potent claim in favour of the changes.

A question is, is this uniformity desirable, in view of the long standing different cultures existing in the Eastern and Western parts of India? But the more important question is it possible, in the present political jurisdictions of India, to have one uniform law? As has been pointed out, Hindu Law is not territorial but personal and yet the application of it may be and is different in different jurisdictions. To demonstrate by a glaring instance, the adoption of a daughter's son has been declared to be illegal by the Privy Council, but is allowed in Indian States. Here both territorial and personal application of the law combines. Courts in British India do not disallow a boy so adopted in an Indian State from claiming property situate in British India. Perhaps the question has not been tested or probably it is covered by the doctrine of *factum valet*.

But will the law of inheritance now sought to be changed by the Code, prevail in Indian States? It does not seem to be so. Apart from its merits or demerits to make it effective the Hindu Code has made such fundamental changes as would not only affect the culture of the Hindus but would completely annihilate it. Besides, instead of making the law universally applicable in India, it will create islands throughout the country. Even taking inheritance, at present there are two broad schools, the Western India and the Eastern India known as the Bombay (including Gujerath and Southern India) and Bengal, respectively. No political or administrative divisions or jurisdictions come in its way. The Hindu Code, as envisaged in the draft, will not be so because it will be a legislation by a Government, paramount though it may be.

The Code begins with a definition of the Hindu, which in the present weakened state of the Hindu culture and its inherent weakness is bound to destroy what remains of it. The definition lays down that any child brought up in the Hindu culture will be Hindu. It is obvious that this will be without any regard for the parentage. The Code allows both Anulom marriage, which is held to be legal by some High Courts, as well as the Pratilom form of it, which has stood condemned for centuries. Nothing is more sure to destroy the culture than this legislation. Along with the definition this will be a death blow to culture and the religion, supported by authorities hitherto, from the Vedas downwards.

The proposed enactment that the gotra of a girl shall not change on her marriage which is laid down to justify the giving of a share from her father's property, shows the mentality of the framers in playing ducks and drakes with the fundamentals of the Hindu Law. If they wished to be logical they should have proposed that there will be no change in the Gotra of a boy on his adoption into another family. Had they proposed it, it would have meant the end of the custom of adoption.

Perhaps the greatest distinguishing fact between the Mitakshara and the Dayabhag schools was that the former laid restrictions on the disposal of the ancestral property, while the latter allowed freedom to the headman in that matter. This distinction has affected the lives of the people in these two different parts of India, which are governed by the two abovementioned schools or systems of law or their off-shoots, such as Mayukha under Mitakshara, and to abolish the difference for the sake of

uniformity will be a violent change and such a previous attempt has led to difficulties. Since the subjects under jurisdictions of the Central and Provincial legislatures are defined and are separate, difficulty has already arisen with regard to the succession to property by the Central legislature, which can only legislate for a particular sort. The law does not govern agricultural property. When this is so for British India, where such a consequential complication can be remedied by enactments in provincial legislatures, what about States? No such remedy exists in the case of Indian States, except the distant eventuality of all the hundreds of states enacting the same law.

The subjects of Indian States, the rulers of which have not interfered in the Hindu Law, will be governed by it and not by this Code. But the subjects of states have close relations, links and properties in both the places. What will happen to them is a question which had better be imagined than described?

The State of Baroda as a Code governing the Hindus but it has not made such a violent change as the abolition of the joint family system. It has no doubt legalized Sagotra or Sapravara marriages, but although the prohibition regarding them has the support of some texts, yet it is clear that the prohibition is more based on superstitions and sentiments than on any scientific truth. What are Pravaras has never been convincingly explained, while that gotra has nothing to do with descent of lineal family, or blood, is clear from the fact that a person from another gotra can be adopted in a new gotra. If there are any eugenical reasons, they are safely guarded by the rule approved by Yajnavalkya, to give up seven generations from the father's and five from the mother's line.

Justifiable changes have been effected in the Hindu Law as the Right Hon'ble Dr. M. R. Jayakar's Gains of Learning Act or Dr. Deshmukha's Acts, but even though they do not prevail in Indian States, they do not cause such complications as would this Hindu Code. Above all they do not violently or drastically affect the Hindu culture.

Similar changes have been made in the Muhammadan Law too but no Government would dare to change the fundamentals of it or their culture as is proposed to be done in this Act with regard to the Hindus.

If a Code is required Dr. Sir Hari Singh Gaur's book could be utilized and it is utilized by the Courts even in Indian States.

The draft Hindu Code, because it cannot bring in any uniformity, even if, it was conceded for the sake of argument that it was desirable, and especially because it will destroy the Hindu culture should not be proceeded with and should be resisted by those wishing to preserve their culture.

92. The All-India Women's Conference, Indore Branch.

As there is a lot of agitation from the orthodox side against the draft, we wish to draw the Committee's attention to the fact that it is only the men's point of view. We beg that the Committee will also consider the view-point of women who consist of half the population of the country. There are many women who feel that the present Hindu Law is very unjust to them. But they being ignorant and in poor circumstances, their opposition to the present law is not vocal. Moreover, most Hindu women cannot express their opinion on any matter without the consent of the men-folk of their family and their consent is not at all likely to be obtained in this matter. We think that most of the women who have protested against the draft Code are instigated by selfish men and are convenient tools in the hands of the latter.

We can understand orthodox people being against the provision of divorce. But there are certain people who oppose giving the right of inheritance to women also. We request the Committee to ask them why they object to this. According to our humble opinion, men oppose this only because by giving a part of inheritance to women, they lose that share of property. This is a very selfish reason, and we beg you not to pay heed to opposition inspired by such motives. "There is no justification for such tremendous opposition to women's right to inheritance except that wherever vested interests are touched, the collapse of society is always foreshadowed."

The opposers of the draft Code say that it gives a death-blow to the joint Hindu family. Our argument is that the present system of inheritance in the joint-family property has dealt a death-blow to women's independence for years.

According to the newspaper reports, the memorandum submitted by All-India Varnashram Swarajya Sangh at the sitting of your committee in Bombay contained the following words:—"The proposed innovation (of giving property to women) would seriously affect the wealth and prosperity of Hindu males." This supports our argument. In reply to this we say that the present Hindu Law has seriously affected the wealth and prosperity of Hindu women, not only that, but it has placed woman entirely at the mercy of man throughout her life.

As far as the reports go, the same Sangh in its memorandum says that "there was no justification or basis in the sacred law for including a widow and a daughter as heirs along with the son and other male heirs." This is naturally so, because all the books called the 'sacred law' were written only by men, and we think that women were never consulted while making those laws. Besides that, they were kept ignorant, so that they may never protest against the man-made law. Woman's complete economical dependence on man has given to the latter perfect mastery over the former in home and society. Now men are afraid that this state of affairs is not likely to continue for long. Women are asserting their rights and the reform in law would make them independent and free from men's servitude to some extent. Hence all this protest against the Code by men. This is at the root of the Sanatanists saying that Hindu religion and sacred Shastras would be in danger if the Code came into force.

In our opinion, it is necessary to have a uniform law for the whole of India, especially in view of the large number of inter-caste and inter-provincial marriages taking place nowadays, and in view of the fact that if the recommendations of the Code come into force, sons and daughters would inherit property both from father and mother. "The Code gives to Hindu women the same rights of inheritance that Muslim women have enjoyed for ages and Parsi women for several years."

As regards the chapters on marriage and divorce in the Code, we believe that polygamy is obviously one-sided and unfair to woman. The most common argument advanced against divorce is that Hindu marriage is a sacrament and should not be lightly treated like contract of Western marriage. We have to say that Hindu marriage is considered as a sacrament only on one side, i.e., the woman's side. Man has always treated it very lightly. There are instances of several men who have deserted their innocent wives and married a number of times. The system of concubine is common among certain sections of society. If marriage was sacrament on both sides, this would never have happened. Moreover, among certain castes, there are open bargains of money at the time of marriage. This seems like contract and not sacrament. Young innocent girls are victimized in bargains of unhappy marriages which are binding to them lifelong—may even after the death of the husband. The reluctance of the orthodox party to agree to the provision of divorce is entirely due to different standards of morality for men and women. We want equal standards for both. Just as prohibition of widow-remarriage has led several women to immorality and prostitution, the same thing happens in cases where you have recommended divorce. We should like to add two more grounds for divorce and that is—

- (1) When one party is sentenced to life imprisonment or
- (2) When one party is a habitual drunkard or gambler and squanders away the property.

When a woman finds that married life is impossible, and when she has no means of livelihood, she is likely to resort to prostitution. Who can say that the sacredness of such marriages is preserved in these circumstances? Those Sanatanists who are vehemently opposing divorce have made no provision in society for the betterment of these unhappy women. It is only their conservatism and one-sided policy which makes them protest against any change that would give freedom to women. They never raise their usual cry of Hindu religion being in danger, when scores of women accept Islam or Christianity owing to men's atrocities which are encouraged by the present unjust law. We heard that one gentleman had gone on hunger-strike in protest against the recommendation of divorce by the Committee. We hope that you will not be led away by such threats, when the reform is likely to relieve the suffering of millions of women who are mutely undergoing deep pangs.

To quote from a pamphlet published by our Association "the fear expressed in many quarters that once divorce is put on the statute-book, large sections of men and women will want to divorce their partners in life seems quite ridiculous. Divorce is permitted in various other communities (e.g., Parsees and Muslims) and even among certain sections of Hindus. But there are no signs that family life has been disrupted and broken up as the result . . . Large sections of society will welcome this provision, not necessarily because they want to avail themselves of it, but because they tend to make the law just and adequate, and put women on an equal footing with men."

As for guardianship of children, we think that the mother should be given preference to the father, because naturally the mother's love for children is greater than that of the father. The children are likely to be happier even with a poor mother than with a rich father and a step mother or a concubine of the father. This is proved by hundreds of concrete instances. When the wife lives separate from her husband, under certain circumstances, the Code provides that the husband should give her maintenance. In such cases we would recommend that the husband should be bound to provide for the maintenance of the children as well. When such cases come to the Court, the stock argument of the husband is that the wife's moral character is bad and that the children would be adversely influenced by her. The wife could make a similar statement for the husband. But it is her ingrained idea of devotion to husband which prevents her from accusing him in public, although more frequently the husband is guilty of infidelity to the wife. For the same right of mother over her children, we would recommend that, no man should have a right to give or take in adoption a child without the consent of his wife.

Finally for the opposition to the Code in general we would again quote the pamphlet of our Association; "A new idea or a new reform all over the world and at all times has met with the opposition of those who had vested interests to guard, or to whom a new conception was abhorrent. . . . In India when Sati was abolished, the cry was raised that Hindu society would be destroyed if widows did not burn along with their dead husbands, and the pandits sent a petition up to the Privy Council which rejected it." Hence we would request the Committee not to be carried away by the opposition of vested interests or conservative mentality, and to take into consideration the viewpoint of women who have been treated unjustly for ages.

93. Mr. Tatyia Bhau Nile of Radhanagari, Taluka Radhanagari, Kolhapur State, S.M.C.

1. A widow from a joint family having no male issue should not have a right to adopt.

A boy whom a widow in a joint family will adopt is very likely to be her brother or a son of her brother or sister, and therefore, her brothers-in-law, or her nephews or her father-in-law will not willingly give a share from their estate to this boy who comes from another family. People who are rich will file civil suits and will not hand over possession of the property till their case is decided by the High Courts or the Privy Council, while the poor people will not relinquish the possession without fighting with each other or murdering anyone.

2. A widow from a joint family having no male issue should not be given a right of inheritance. If the law grants her the right of inheritance and allows her to sell movable and immovable property of her husband, she is likely to sell it to her parents or brother or sister. In such cases also there will be litigation and altercation as described above.

If the right of adoption or the right of inheritance be granted to widows, it will prove beneficial to a few selfish persons. These persons will give their sons in adoption to their daughters and, after securing possession of the share of the adopted boy in the joint property, bring about the re-marriage of their daughters. While in the case of widows acquiring property, under the right of inheritance, they will settle their remarriage first and will execute a sale deed of the property of the deceased husband in the name of the prospective husband and then celebrate the remarriage. Thus these selfish persons will acquire the property of their deceased sons-in-law by giving their sons in adoption to, or by purchasing it from their daughters. But the persons in the family of the deceased husband of

the widow—such as her brothers-in-law or nephews, etc., will not willingly part with the share of the widow without litigation and altercation until both the families one which gives a boy in adoption and the family which takes the boy in adoption are totally ruined. For these reasons I suggest that if there be provisions in the draft Hindu Code regarding grant of rights of adoption and inheritance to widows, they should be deleted.

3. A provision should be made in the law to the effect that a widow from a joint family is entitled to get possession of the share of the immovable property such as lands and houses of her deceased husband and to enjoy the income of the said property by way of maintenance till her death or remarriage and that after her demise the said property should go to the lineal heir in the family of her deceased husband.

Like sons, daughters should also get an equal share in the property of their father.

Some persons think that the women should also have some rights, that they should not be kept in slavery and that, therefore, the right of adoption and the right of inheritance should be granted to women, so that they may have equal rights with the men. For this reason like sons, daughters should also get a share in the property of their parents. This provision of law will entitle all the women in India to own movable and immovable property and thus give them equal rights with men. This provision will give right to nearly 20 crores of women while the right of adoption and the right of inheritance if granted will apply only to a widow having no male issue, and such a woman might be only one in a thousand. In the latter case possession of the share will be given to such a widow only after litigation and altercation. So instead of granting a widow having no male issue a right of adoption and the right of inheritance, it will be advisable if the law provides that daughters will get an equal share with sons in the property of their father. The reasons for this are as follows:—

(1) Parents (or brothers) will willingly give a share to their daughters (or sisters), for though they will have to give a share to their daughters (or sisters), they will in turn receive through their daughters-in-law a share of property belonging to the parents of their daughters-in-law. So a majority of the people will have no objection to such a provision.

(2) If a daughter from a rich family gets a good share (in property) and if she is married to a learned and clever boy from a poor family, the latter will not object to stay even at a place where the property is situated.

(3) A bridegroom with a large estate may marry a girl from a poor family and her share though small will belong to her.

(4) If both the husband and the wife are from poor families then both of them will live happily with the little share which each of them may get from their respective families.

(5) The husband should not have any right to the property thus acquired by the wife and vice versa. If they have any legitimate children then the right of heirship to this property directly goes to them. In case any of them dies without having a male issue then the property should go to the heir in the family from which the property was acquired.

(6) In case husband and wife are not on agreeable terms, they should seek aid from the law court and obtain a divorce. The wife should retain the estate she may have acquired from her father and re-marry. She may enjoy this property till her death, after her death her sons should get it. Her husband should not have any right to this property.

STATEMENTS SUPPLEMENTING OR CLARIFYING ORAL EVIDENCE GIVEN BEFORE THE COMMITTEE.

94. Mr. Manubhai C. Pandya, Secretary, All-India Varnashram Swarajya Sangha, Bombay.

Supplementing the evidence given by him at Bombay on the 30th January 1945.

I have made it sufficiently clear and I hereby confirm that my association scrupulously stands by and upholds to the letter the rules of law laid down in the Dharma Shastras based on the Vedas, Smritis, tradition and ancient usages as interpreted by the Synod of Pandits

in the manner stated in Manu Smriti. My association is therefore opposed to the proposed codification of Hindu Law on principle and denies the right of any secular authority to make one uniform code of laws which it is impossible to do for diverse persons or groups who are governed for several centuries past not by local law but by diverse personal laws applicable differently to persons occupying different places, different classes (Varnas), different orders of life (Ashramas) and different families. My association is further opposed to the above Code inasmuch as it not only does not purport to be based on the above recognized authorities governing the Hindus in their socio-religious affairs but it thereby repeals them and vests the Supreme Authority in the heterogeneous central Legislature deriving its authority from the State, to lay down the personal laws affecting the socio-religious relations of the Hindus of British India on novel principles, subversive of the textual and the customary law and it further seeks to interfere with the religious liberty of the Sanatan Hindus of British India belonging to the different and divergent schools of law to follow the diverse laws laid down for them in the Dharma Shastras.

I beg to state below, in short, the substance of the evidence given by me before the Hindu Law Committee clarifying therein the viewpoint of my association, without prejudice to the above preliminary objections.

I. Adoption.

Clause 5.—The minimum age fixed for capacity to take in adoption should not be limited to any fixed age.

Clause 13.—As regards the conditions for taking a boy in adoption, those in sub-clauses (iii), (iv) and (v), are unnecessary.

II. Minority and guardianship.

Clause 6, sub-clauses (2) to (6) should be deleted as it restricts unnecessarily the rights of the natural guardian to alienate without Court's permission minors' property for legal necessity or for advantage of the minor as at present.

Clause 10—*De facto guardian*.—If he happens to be a relation of the minor (as a brother, brother's son, maternal or paternal uncle, son of the latter, paternal or maternal grandfather and grandmother), he should be allowed a power to deal with the minor's property for the benefit of the minor.

III. Marriage.

1. *Sacramental marriage*—Clauses 3 to 5.—Subject to the general objection of my association as above, the alternative clauses mentioned at page 21 of the draft Code are preferred with the variation that the first condition of monogamy made requisite to a sacramental marriage should be deleted.

Monogamy and polygamy.—I have given my personal opinion that monogamy which governs the Vadnagra Nagar Brahmin Community to which I have the honour to belong is a better ideal than polygamy. But certain exceptions to the said rule ought to be made as stated by me to you, viz., (a) when the wife is barren, (b) when no male child is born or likely to be born to the wife, (c) where the wife is suffering from an incurable sexual disease, (d) where she is leading a bad life, (e) or where she consents that the husband should marry a second wife. I have however made it clear that so far as my association is concerned, it is opposed to any legislative interference with the liberty of individuals to marry a second wife in certain peculiar circumstances applicable to them and which was enjoyed by them since time immemorial and which is recognized by the Dharma Shastras as also by the British Indian Courts. I may be permitted to observe here that the right to marry more than one wife allowed to Hindus is not an unrestricted right exercised in practice as in some other systems of law. The permission to marry a second wife owes its origin to a religious injunction to beget a male child to offer pindas to the ancestors and thereby redeem the debt that a man owed to them being the object of a sacramental marriage, more than sensual enjoyment. Monogomy though a better ideal is not an unmixed blessing in all cases. The great philosopher Schopenhauer has honestly confessed that the marriage institutions of Asia are better than those of Europe. He observes, "Asia shows a finer honesty than ours in its marriage institutions. It accepts as normal and legal the custom of polygamy which though so widely practised among us is covered with the fig leaf of a phrase. Where

and are there any real monogamists?" (See story of philosophy by Will Durant, page 372.)

Dissolution and nullity of marriage.—A sacramental marriage being prompted by religious considerations is indissoluble while a civil marriage being contractual may be dissolved in certain circumstances. I pointed out from three texts of the Dharma Shastras that divorce of a sacramental marriage in Brahma form is not permitted. I cited the following texts:—

(1) Manu in express terms says that a wife cannot be released from the marriage tie either by sale or by abandonment (M.S. 9—46).

(2) The second text cited by me was from Narada. It provides that in the five cases mentioned therein, viz., in cases in which the husband is (a) lost, (b) dies, (c) a recluse, (d) impotent and (e) or degraded as a sinner, the wife is allowed to have a second husband (N.S. 12—97). This text applies to Niyoga only as verse 12—96 shows and it is meant to provide for begetting a son by a near relation in a married girl in the above cases by a holy commission called Niyoga or appointment for religious purposes only and it does not support a wife's divorce and remarriage which are for sensual enjoyment. The son born by Niyoga inherits the property of the person in whose wife the child was begotten by her appointed relation, while the son born by remarriage is disqualified from inheriting the property of the former husband of the woman who remarries and he inherits the property of the person marrying her a second time. The text of Narada therefore cannot be relied on to justify the divorce and remarriage of a married girl in other cases.

(3) The above text of Narada is repeated verbatim in Parasara Smriti. See Parasara Smriti 4—30. Here however the text does not apply to Niyoga because it is condemned in Kali age but it applies to a betrothed girl who is allowed permission to remarry in case her betrothed husband is suffering from the above five defects and not to a married girl as indicated by the word, 'Patau' locative of Pati (husband) instead of 'Patya' by a rule of Pāṇini as was explained by our Shastri Shyamanand Jha. The first word pati or husband therefore means one similar to husband that is a betrothed husband. Nand Pandita the well-known commentator of Parashara and Bhattaji Dikshit have also given the same interpretation.

(4) An alternative meaning of the above text is given by Medhatithi, the renowned Mimamsaka commentator on Manu Smriti, under verse 9—76 where he says that if the husband of a married girl has gone out of the place without providing for her maintenance, the wife in the five cases mentioned above should seek another master and maintain herself by serving under him. He interprets Pati as one who protects (palayati) another. Therefore it follows that from none of the above texts one can deduce the rule of divorce, remarriage or nullity of sacramental marriage sought to be introduced into proposed Hindu Code even amongst the three higher castes, viz., Brahman, Kshatriya and Vaishya. My institution is opposed to widow remarriage in the three higher castes except where allowed by custom. Hindu society also in general would always look down upon such remarriages of widows as also divorce of sacramental marriage because sacramental marriages are treated as indissoluble. The disability of Hindu women to have divorce or remarriage is not the real cause of their conversion to other faiths as suggested by the supporters of the proposed reform but it is because men are deprived of the necessary freedom and power of giving due protection to women as enjoined by the Dharma Shastras.

Sagotra and sapravara marriages.—I have stated that the bar of sagotra and sapravara marriages was an essential requisite to a sacramental marriage and cited the text of Smritiarthas which laid down that a person who through mistake might have married a sagotra girl should protect her as a mother. I further cited the text of Mitakshara which provides that, "if marriage with a girl of the same gotra takes place, the girl cannot attain the status of wifehood (Y.S. 1—53).

Clause 4.—This clause has failed to include two other ceremonies, viz., a Kanyadana and (b) Pani-grahana which are essential requisites for a sacramental marriage in respect of those persons who follow the said ceremonies as essential. These should be therefore added as sub-clauses (c) and (d) for such persons and the present sub-clauses (a) and (b) should be changed to (c) and (d).

Clause 6.—This whole clause should be deleted as it makes nugatory the necessity of having the same caste (Varna) and different gotras for the two parties as essential conditions for a sacramental marriage. Consent of the bride's guardian should be also necessary as a check to young and inexperienced girls being induced to contract marriages with undesirable persons or seduced by them.

Clause 24.—Should be deleted as it is a serious encroachment on the liberty of individuals to marry a second wife in the lifetime of one wife in certain cases as to beget a male child for the religious purpose of offering Pinda to the father and forefathers on their death and other cases of necessity.

Savarna marriages.—The rule of marrying within one's own main caste (Varna) is an ingredient of sacramental marriage equally essential as the rule of bar of sagotra and sapravara marriages. It is laid down explicitly in Manu (M.S. 3—3) and it is observed by all the Sanatan Hindus till to-day. There is therefore no justification for abolishing the said rule as one of the essential requisites of a sacramental marriage. Inter-caste marriages are disapproved by the Hindus in general. My Association is therefore opposed to the proposal of the Committee to treat inter-caste civil marriages on a par with sacramental marriages, the object of the Committee in eliminating the rule of savarna marriages as an essential requisite of sacramental marriage being apparently to favour the reformist section of Hindus who are out to destroy this ancient institution of caste (Varna) which has lasted for thousands of years and maintained itself in the face of strongest opposition. It is an integral part of the Hindu social, religious and economic system. Vincent Smith in his history of Ancient Hindu India gives his considered opinion that "talk about the abolition or even the automatic extinction of caste is futile. Caste within India cannot either be abolished or extinguished within a measurable time." (The Oxford History of India by Vincent Smith, page 42.)

Civil marriage.—My Association is opposed to the underlying idea in the Code to raise civil marriage to the level of sacramental marriage and degrade the latter by abolishing the rule of savarna marriage and bar of sagotra and sapravara marriages and several other existing distinction between the said forms of marriages as suggested in the Code. My Association is of the opinion that persons contracting civil marriages should have no rights in the ancestral property or the property left by any of their previous relations before contracting civil marriage. The ancient law-givers have generally with a view to preserve the purity of caste Hindus and their ancient religion viewed with disfavour all inter-caste marriages and in particular they have condemned Pratiloma marriages of Shudras with girls of three higher castes as null and void and sinful and the children of such later marriages as Bastards. My Association demands that the Sanatanists should not be disturbed in following their own social and religious rights by legislative interference in religious matters and suggests that persons contracting civil marriages should be treated as a separate group governed by separate rules.

IV. Succession.

Clause 5—(1) Daughter.—Treating daughter as a simultaneous heir along with son and widow has no basis in the textual law. It is sought to trace her heirship to a text in Manu (9—130), which runs as follows:— "A son is even as one's own self and the daughter is equal to the son. So long as she is there, how can other person take the property?" The word Duhita in the text is interpreted by Kulluka and Medhatithi to mean a Putrika, an appointed daughter by reference to the context and all the previous verses from 127 up to 130 deal with an appointed daughter and not any daughter. Again an appointed daughter is to inherit only in absence of the male issue. She is mentioned in the compact series of heirs who take only in absence of sons and her rank is after wife. See Mit under 2—135, 136. Further reliance is placed on the texts of Manu (9—118) and Yajnavalkya (2—125) which provide for giving a one-fourth part of the share of a son to a daughter. These texts relate to the subject of partition and have nothing to do with the right of a daughter to inherit simultaneously with the son. They have thus been taken out of their context and mis-interpreted.

so as to create a new right of inheritance for them simultaneously with the son but for which there is no basis in the ancient texts. The texts only mean that while the sons divide their father's property they shall provide the daughter with one-fourth part of a share equal to that of sons for suitable marriage expenses if the partition takes place. This share is to be given only to an unmarried girl as the text of Manu uses the word 'Kanya' and the text of Yajñavalkya also relates to the marriage sacrament of the unmarried daughter and not to a married daughter to whom also it is proposed to give a share under the proposed Code without any justification. It seems the Committee has evolved a new rule of its own without any textual basis whatever only to please a small section of reformist ladies. But this is doing great injustice to the son. Again the text of Manu even if it is stretched by a false interpretation to deduce the right of a daughter, provides to give her only a one-fourth part of the share of a son and still the Committee has thought it proper to give her a half share with a son but for which there is no justification whatever.

There is also one anomalous position created by the Committee by treating the daughter as an agnate of her father's agnates and entitled to inherit their estate but not as an agnate of her husband's agnates and not entitled to inherit their estate. This is nothing but a paper falsehood and it is in clear contravention of the religious position based on the Vedic law according to which the girl on marriage becomes an agnate of her husband and his agnates and she ceases to be an agnate of her father and his agnates. This is flouting the religious principles of law applicable to the Hindus and it has created a serious disaffection amongst the religiously-minded Hindus all over India who cannot tolerate such injudicious interference with their religious doctrines.

(2) *Widow*.—A revolutionary innovation is sought to be made in the existing law by abolishing the widow's limited estate and giving her an absolute right of ownership and power of disposal of the share inherited by her from her husband. I have tried to satisfy you in my evidence by citation of several texts that a widow has only a limited estate in the property inherited by her from her husband and not an absolute estate. There is no foundation in the Mitakshara for such right as assumed by the Committee on preconceived notions and bias in favour of a small section of reformist ladies. I have cited in my examination the following texts in support of my above contentions:—

(a) Females are under permanent tutelage and protection of males and never independent of males (M.S. 9—2, 3).

(b) Yajñavalkya has literally accepted and followed the above dictum of Manu. Thus he lays down: "The father is enjoined to marry his daughter before puberty (Y.S. 1—63, 64).—After marriage a girl is enjoined to obey her husband (Y.S. 1—77) and the widow is enjoined to be under the protection of her sons or relations (Y.S. 1—86).

(c) Mitakshara follows Manu and Yajñavalkya and enunciates a definite rule that at no time in life woman is independent (Mit. on 1—85) and that if she separates from man and acts independently she is censured by the people (Mit. on 1—86).

Right of holding property does not give a power of absolute disposal.—Mitakshara has only allowed to woman a right to hold property but she has to enjoy the property not independently but under the direction and control of men except in certain cases when a woman has absolute right of enjoying certain kinds of stridhan property and other properties by custom as in the case of a daughter in Bombay school governed by Mayukha. In fact, Mitakshara quotes and follows the text of Manu which says:—"A wife, a son (minor) and a slave (dasa), all the three are held incapable of holding property. The property belongs to him to whom these three belong." (M.S. 8—416.)

The Mitakshara commenting on Yaj. S. 2—49, says:—"The incapacity to be owner of the property in the above text of Manu does not mean that they have not to hold the property. The import of Manu's text is to lay down that the holding of the property by these three persons, viz., wife, minor and slave is subject to control by others on whom they are dependent as regards the power of disposition." Thus in the view of Mitakshara the woman's right to free disposal of the property held by her is on a par with the right of a minor or a slave. Even as regards

stridhana, the woman has full right to dispose of that kind of stridhana only which is Sautayika or technical stridhan. It is therefore wrong to deduce from the Mitakshara the rule assumed by the Committee that the woman can dispose of all kinds of stridhan property held by her including that inherited by her from a male or obtained by her on partition. It is a pure misconception nay even perversion of the text of Mitakshara as regards the power of woman over stridhan property held by her. I do concede that on partition of joint family property shares were given to widow and mother but they were given only in lieu of maintenance as repeatedly ruled by the High Courts of British India and even by the Privy Council. Thus it has been held by the Privy Council in *Devi Mangalprasad versus Mahadeo Prasad* (39 I.A., page 121) that in cases governed by Mitakshara the immovable property given to a widow as her share on partition of the joint family property is not her stridhan and that on her death it passes not to her heirs but to those of the person out of whose share it was given. The author of the Mitakshara has gone to the length of laying down there is the restrictive rule that even a male has not full dominion over his self-acquired immovable property and over property inherited by him from his father but is dependent on and subject to the wishes of his male issue in alienating the said property (see Mit. on 2—113). The whole scheme of the Mitakshara proceeds on the basis of jointness of family property for the benefit of the members of the joint family including minors and not on the basis of a division of interests of the different members as sought to be made out in the proposed Code. It cannot therefore be understood how the Mitakshara could give an absolute power to a widow to dispose of the property inherited by her from males as express restrictions and limitations are placed on widow's authority as regards power of disposition. Such absolute power cannot be inferred merely because such property is enumerated as an item in stridhan which word is used in a loose and comprehensive sense. The absolute power of disposal sought to be given to widow over property inherited by her from males is without any foundation or basis in the Mitakshara to whose author a warm tribute in glowing terms as a champion and emancipator of Hindu woman has been paid by the Committee but without any justification whatever. I have submitted to the Committee a further text of the Mitakshara which in clear and unmistakable terms lays down that women in general are incapable of entering into any property transactions independently of males on whom they are dependent and such transactions if any should be rescinded or treated as null and void (see Mit. on 2—31).

The theory of equal rights incompatible with the Hindu view of family life.—The right of women to absolute dominion over property and power of disposal thereof as wrongly assumed by the Committee has no foundation or basis whatever in the Dharma Shastras or the Mitakshara as shown by me above by a number of texts. Apart from the ancient texts, the reformist section of a few educated Hindus and pioneers of the feminist movement imbued with western notions of equality of man and woman while supporting the proposed Code have time and again inquired why the Dharma Shastras have shown a differential treatment towards woman and not treated her as equal to man in respect of right to property and power of disposal. The answer is because nature has created them unequal. Nature abhors equality. It loves differentiation of individuals, classes and species and nature is full of infinite variety of them. The theory of equality of man and woman is antibiological. The very constitution of woman is different from that of man and God has created man and woman with different functions and capacities from birth as stated in the Dharma Shastras. It is this fundamental difference of woman from man, both physical and mental, that is the cause of love between man and woman. Marriage is a most important social institution for maintaining the solidarity of the patrilineal family in which the man plays more important part than the woman according to the Hindu theory of family life. Manu has stated that the seed is more important than the soil (M.S. 9—34). Woman who is lacking in firmness of mind and body is likely to fall an easy prey to evil designing and scheming persons and particularly if she is possessed of large property and wealth she is likely to be seduced by temptations held out to her by crafty and cunning rogues flocking around her to squeeze the property possessed

by her by all sorts of tricks. Hindu law-givers have therefore not accepted the western theory of equality of rights of man and woman in respect of property and they have refused to give equal property rights to man and woman. The above principle of the ancient law-givers of the Hindus is fully endorsed by the great philosopher Schopenhauer who observes in this connection as follows :—
 "All women with rare exceptions are inclined to extravagance. Women think that it is men's business to earn money and theirs to spend it. This is their conception of division of labour. I am therefore of opinion that women should never be allowed altogether to manage their own concerns but should always stand under actual male supervision, be it of father, of husband, of son, or of the State, as is the case in Hindustan and that consequently they should never be given full power to dispose of any property they have not themselves acquired." (In Wallace's *Life of Schopenhauer*, p. 80.)

High status of Hindu woman.—From the above, it would be hazardous to infer that the status of woman in the Hindu social order was in any way low. Glowing tributes were paid to woman and her virtues by Manu. He has therefore enjoined that women should always be honoured by their husbands and relations and thereby the Gods are pleased, otherwise no sacred rite yields fruits and where the females live in grief, the family soon perishes. (M.S. 3—55 to 60.) According to the Vedic theory a man is incomplete until he marries and a woman is considered half the body of the husband and she is his help-mate in all religious rites and her co-operation with her husband is essential for the purpose. The Vedic sacrifice is incomplete and becomes fruitless without the co-operation of the wife. Thus it will be seen from the above that the restrictions that are placed on the conduct of woman in her marital, domestic and social relations are not intended to keep her in serfdom but they have a high and noble religious purpose of developing the highest innate traits in her as a perfect woman so as to be a help-mate to her husband in all social and religious affairs. The demand for equal property rights to woman on the part of the reformist section of the Hindus seems to have been based on modern, western notions of life and it shows their colossal ignorance of the basic principles of the Hindu view of life.

V. Devolution of joint family property.

Part III (A)—Clauses 1 and 2.—My Association does not agree with the view of the Committee that the Deshmukh Act has repealed the principle of survivorship of a Mitakshara joint family in all cases. If such is the state under Deshmukh Act, my Association disapproves of the same and suggests that necessary changes may be made in the Deshmukh Act in conformity with the ancient law laid down in the Dharma Shastras. Joint family system is still found prevalent in all parts of India and particularly in villages as it is an economic expedient to enable a large number of persons belonging to the same family to live together under one roof and maintain themselves out of the joint income earned by them. The destruction of the joint family system would add to the existing poverty of the country. If a joint family possesses property in common, it is presumed by law to be joint family property and the devolution is by survivorship and not succession. There is nothing like succession, permanently in Hindu family as property inherited by a son from his father by succession would become ancestral as soon as a son is born to him and the right of the latter in such property is vested by birth and he is entitled to prevent alienation of the joint family property by his father if it is against his interest. By abolition of the above vested birth-right of minor sons in ancestral property, they would be born paupers and they would have no remedy to prevent improper alienation on the part of their father living a luxurious life. There is therefore no justification for the Committee to destroy such a beneficent institution which is based on religious principles. Joint Hindu families are the component units of the Hindu community and they contribute to the solidarity and strength of the Hindu community as a mighty nation. If they are divided by compulsory partition it would lead to a complete disintegration of joint families and thereby of the Hindu community in course of time.

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Supplementing the oral evidence given by her at Poona on 3rd February 1945.

Although the most desirable form of the Hindu family, the responsibilities of the men and women, especially the bread-winner in that family, and other similar questions are not directly dealt with in the draft Code, it is quite clear, that a person's attitude to these questions will ultimately determine his or her attitude to the various provisions of the Code. In fact one cannot consider individual sections of the Code in a detached way; the Code shall have to be dealt with as a whole.

At the very outset, one must remember that this Act is to regulate the lives of all Hindus, living in the remotest corners of British India. Even if one takes only the customs based on the Smritis, we find very large differences in the different provinces and in several cases the very customs condemned by the Smritis are practiced in many communities. One must therefore pause and consider the very fundamental question as to whether it is desirable and possible to have a uniform law for all Hindus? Even in the draft Code, it will be found that it is practically impossible to have a uniform law for all parts of India and further that if one insists on having it, we shall be doing a great injustice to a large part of the Hindu population. In some cases, even when it is desirable to change a particular custom, the framers of the draft Code have been prevented by public opinion, especially orthodox Hindu opinion, from making the Act progressive enough. For example, in the provisions regarding the persons with whom marriage may be contracted, the main principle taken into consideration is that of Sapindya. If the table given in this connexion is alone to determine legal marriages all the cross-cousin marriages common to the south of Narmada and in some parts of Kathiawar and Gujarat would become illegal. The draft however says that as an exception, cross-cousin marriages may be considered legal in those communities in which they are customary. Now it is rather strange that a custom which is prevalent in half of India should be allowed as an exception. To try to have a single uniform law for all Hindus and then to make an exception of half the country is, in my opinion, merely to deceive oneself. Instead of this mirage of uniformity and consequent unity, I would prefer to accept the different groups among Hindus with their different customs, which should all be treated on a footing of equality. This would be certainly in accordance with the course of History.

In certain parts of South India, marriage between maternal uncle and niece is allowed. The draft Code has completely banned such marriages, presumably because they are considered immoral or undesirable by the members of the Committee. Now morality or otherwise of social customs is solely dependent on tradition. Such marriages are being celebrated in considerable numbers to-day. Biologically the children of brothers are similarly related to each other as the children of sisters or those of a brother and sister. However custom allows and considers legal only some of the marriages among these. Therefore before we declare any particular type of marriage as illegal, we cannot merely depend upon our individual likes and dislikes. A thorough investigation regarding the social and biological effects of such marriages can alone be the test for arriving at a final conclusion. The question of the maternal uncle-niece marriage must be thoroughly studied. Is the husband very much older than the wife in such marriages? Are such marriages more infertile than others? Are children born of such marriages short-lived or unhealthy? Are such marriages compulsory in certain communities or are they merely permitted? Only when these and similar questions are objectively studied can we be in a position to express disapproval or otherwise. One cannot, in social matters, merely say that a particular custom is unusual, or not sanctioned by the scriptures and therefore fit for condemnation.

The Committee does not seem to know its own mind in the matter of marriage. It starts by saying that a marriage between any two Hindus should be legal if: (i) neither of the parties is insane, (ii) neither has a husband or wife living and (iii) if there is no Sapindya relationship between them. It proceeds further however to say that the two should belong to the same Varna (i.e., Brahman, Kshatriya, etc.), and should not belong to the same Gotra and

Pravara if they belong to the same caste. Both these conditions appear to me entirely reactionary and a concession to orthodox Hindu opinion. They go against the Committee's own intentions to legalize all non-Sapindya marriages. Even in the same caste, having the same Gotra does not mean any blood relationship in most cases. Pravaras are still more insignificant. Why then the Committees should want to ban Sagotra marriages is a puzzle. Finally the Committee again restate that no marriage, once celebrated can be declared void on the sole ground of the parties belonging to different Varnas or to the same Gotra if they belong to the same Varna. Apparently the Committees have been unable to make up their mind at all.

It is thus clear that the aim of having a uniform law for all Hindus can either not be achieved, or if achieved, will be unjust to large sections of the Hindu population or, if an attempt is made to please all sections, the law is bound to be retrograde and reactionary.

Some of the provisions regarding marriage have already been referred to above. The others may now be discussed serially. There is a provision to prevent marriages between persons whose husband or wife is living and thus to introduce legal monogamy. Monogamy is legally enforced in all Christian countries. One must now see whether the new provision will be just and socially desirable and conducive to the happiness of individuals and families. Similarly one has to consider not only this provision for monogamy by itself but also the conditions under which a dissolution of already contracted marriages is contemplated. In the first place one must admit, that although large societies allow polygamy, the number of such households is very small. Further, if a man marrying a second wife is compelled to maintain his first wife, this number will be further reduced. Such an arrangement exists in the Muhammadan society. Although divorce among them is comparatively easy, the marriage contract provides for a relatively high sum of money to be paid to the first wife as compensation, that very few men ask for a divorce. But it is possible, that in some cases the first wife herself persuades the husband to marry a second wife and the law should not prohibit such marriages. Polygamy is certainly not immoral like murder or theft so that it should be prevented by law. If one can remove all the bad consequences of this custom, then it would not be proper to make a law against it. A woman can demand maintenance for herself or her children but love is certainly not a thing that can be demanded with the help of a law. Once the husband has ceased to love the wife, I do not see the advantage in binding them together by law. Which woman can consider it desirable to have such a husband tied down to her by law and prevented from marrying a second time? Further, what advantage shall the children derive from being raised in such a household? Under these circumstances the woman can have either separation or divorce and it should be free to her to have recourse to either of them as suits the particular case. Why should one insist that such marriages must be dissolved?

I am often charged that I do not take into account how unhappy women, who have to live with a co-wife, become. I am afraid this is entirely due to a misconception about my attitude. If the new law makes proper provision for divorce, a woman whose husband marries a second wife shall have three alternatives before her: (i) separation with maintenance, (ii) divorce with maintenance as long as she does not marry a second time, and (iii) to live with the co-wife in a joint household. I do not understand why she should be prevented from accepting any one of these. At present she has to live compulsorily with her co-wife in a joint household. If that compulsion is removed, compulsory monogamy would be found to be unnecessary in most cases and unjust in some. I am giving below a few examples, none of them imaginary.

In the India of to-day a change of religion has become even easier than a change of dress. A Christian woman, who could not marry a man she loved because he had a wife living, became a Hindu in order to marry him. As long as there will be in India many religions which permit polygamy even after the Hindus have been compulsorily made monogamous, a change of religion will be a very easy way for enabling polygamous marriages to be made possible. Further, if a Hindu husband becomes Muhammadan and marries another woman, the first (Hindu) wife may even be deprived of her maintenance.

A woman, who could not get a child succeeded in persuading her husband to marry a second time and is now happily bringing up her co-wife's children. If there was compulsory monogamy, her husband would have been compelled to divorce her on the ground of sterility (if that was permissible) or to adopt a child. Why should it not be open to the woman to follow the third course of bringing up if not her own children, at least her husband's children born in the same house and therefore dearer to her?

In another case, a woman was found to be incapable of normal sex relations. The husband married a second wife and the two are living quite amicably together. Under compulsory monogamy the woman would have been publicly declared to be defective and divorced.

In the present war a huge number of young men have been killed in all combatant nations, while the number of young women has not diminished. The women will thus be forced to remain compulsory celibates or to resort to sex relations outside marriage. A large number of women leading unnatural lives, dissatisfied with their lot will cause and has caused to a certain extent a disorganization of society. Many earning women are insisting upon their right to have children and to lead a full life even though they are unable to get a husband because of the smaller number of men. After the last war also conditions were similar in many of the European countries. In Berlin, for example, the number of illegitimate children was greater than legitimate children born. In Russia a man who was proved to be the father of an illegitimate child was forced to pay for its maintenance.

The law of monogamy is in existence in Christian society for two thousand years. Can one say that because of this law women in Christian societies are happier, family life is purer and better? I do not think that there is any justification for coming to that conclusion. The large amount of literature on divorce, degradation of family life, remedies for the dying institution of marriage and family is enough to prove my contention. Of course, I do not wish to attribute all evils to the present custom, but there is no ground for assuming that compulsory monogamy shall insure a nobler family life.

The community who shall be hit most severely by compulsory monogamy will be the Nambudris, and especially the women. The Nambudri marriage customs are very peculiar. Among them only the eldest son inherits the property and he alone is entitled to marry. The Nambudri younger sons are legally unmarried, but they keep relations with women of the Nayar caste under the name of "Sambandham." (Recently these Sambandhams have been legalized, although the children of such unions have no share in joint family estates.) The children of these unions remain with the mother, who belongs to a matriarchal caste. These customs make it necessary for a Nambudri eldest son, who wishes to get his sister married-off to another eldest son, to consent to marry his future brother-in-law's sister as a kind of mutual exchange. Thus an eldest son of a Nambudri family having a number of sisters, will have to marry the sisters of the husbands of all of them. Orthodox Nambudri fathers still refuse to give their daughters to younger Nambudri sons, even if they are carrying on independent professions and earning good wages. Many Nambudri daughters of marriageable age have perforce to remain unmarried and the Nambudri population is bound to become smaller and smaller. Now if in addition to all these disabilities, compulsory monogamy is forced on this community, they will soon die out completely. The provisions regarding inheritance in the draft Code are not applicable to the Nambudris so that even in future, only the eldest son will inherit the property. It is tantamount to destroying this community if only the marriage custom is changed while the inheritance is not touched.

Any modifications of their customs by law should necessarily be preceded by a thorough study of this society, by vigorous propaganda and by consultation with social reformers among them.

The new family that comes into existence by marriage, should continue, in an ideal society, as a loving and permanent unit. The children growing in such a unit are always under the loving care of both parents and a society can be considered progressive if it has a large number of such happy families in it. However, death, ill-health, poverty and unsuitability of the husband and wife to each other because of several reasons make many families far

from the ideal and happy unit described above. To insist that the man and woman must continue to stay together in spite of continuous friction would be harmful to society. Therefore if the husband and wife find it impossible to live together for any reason whatsoever, they should be permitted to separate. The present courts and system of giving justice are however entirely unsuited to decide questions of divorce. Whenever divorce cases go into the ordinary courts, they merely bring about further estrangement between the parties, helped many times by lawyers and prominently featured by the press. The provisions for divorce in the draft Code are so distorted that no couple can get a divorce without defaming each other. To provide for divorce if one of the partners is suffering from a dangerous and communicable disease for seven years, provided it has not been communicated by the partner, is indeed shocking to any reasonable individual. Instead of laying down the specific grounds under which alone divorce could be granted, the law about divorce should be of an entirely different nature. Divorce, maintenance, separation, the custody of children are all questions very closely related to each other, and must be solved as one complex. If a couple do not want to stay together, their quarrel should not go to one of the usual courts, but to specially constituted "marriage courts." In these courts, the stipendiary magistrate should have the help and co-operation of experienced men and women of wide outlook. Lawyers and newspaper reporters should have no access to these courts and the procedure should be *in camera* as far as possible. Only the order about divorce or maintenance, etc., should be published. All domestic quarrels should be brought before such courts and if the magistrate and the assessors, after making every attempt to arrive at a compromise fail in their efforts, the man and woman should be allowed to live separately or be granted a divorce. Further, orders regarding payment of maintenance should be executed through such courts and the money paid without both to the woman. Thus even if a husband and wife are perfectly healthy if they cannot pull on together and are continuously quarrelling with each other, they should be given a divorce if all attempts to reconcile them prove fruitless. Further, the question as to who is best fitted to take the custody of the children should also be decided by the marriage court on its own merit. In some cases the court may succeed in reforming one or both the partners even if he or she has erred or is suffering from a disease by arranging for temporary separation, treatment in a hospital, etc. Where divorce is the only remedy, it can be obtained without undue publicity. It will thus be possible to arrange not only for divorce but also for adequate maintenance for a woman and her children if her husband embraces another religion or plans to marry a second wife or is addicted to drugs or goes about with other women, etc. Thus if it becomes possible for a woman to get herself freed from an unwanted marriage tie, compulsory monogamy will become unnecessary and impracticable. At present a woman must remain bound to the man she marries. She has to stay in the same household even if her husband marries a second wife, because she has no means of livelihood. Thus the present state of affairs is unjust to her. But if there is a provision for separation and maintenance or divorce, it will be a matter of her choice if she lives in a polygamous household. Thus my suggestion will remove the social injustice of the present custom of polygamy and where a husband and two or more wives will stay together, it will be only because they desire to do so. Why then should that be prevented by law? Any wife in such a household can ask for a separation or divorce as soon as conditions become intolerable for her.

Considering all these things, and after giving protection to those who are likely to suffer injustice under the present custom of polygamy, the only reasonable conclusion is that the whole of Hindu society should not be subjected to compulsory monogamy. Further, those women who would wish to prevent their husbands from marrying again during their lifetime, can still register their marriages according to the Civil Marriage Act and still retain their status as Hindus. There does not therefore appear to be any cause to change the present customs at one stroke.

The provisions of the Code regarding inheritance of a Hindu who dies intestate, start with a fundamental exception. It is not applicable to self-governing provinces in the matter of agricultural land. The regions under the Government of India are in general backward and shall

have the advantage of this slightly progressive law. Certain provinces may apply the provisions of this law to agricultural land and there shall thus be the possibility of great diversity between the different parts of the country. Thus this law, which purports to be a uniform set of provisions applicable to all Hindus in British India shall bring about a new diversity.

The widow, sons, daughters, predeceased son's sons, etc., have been enumerated as heirs of the compact series, then in their absence there are enumerated other descendants. I would like to suggest, that if a predeceased son's son is to be considered as belonging to the first series, the son of a predeceased daughter should also receive the same treatment. Further in the absence of an heir in the compact series, the daughter of a son and the children of a daughter should be given preference over nephews, uncles, etc. Considering that this deals only with the estate earned by the deceased, it is unjust to allow it to go to other relatives in preference to the son's daughter and daughter's children. Similarly nowhere does one find the mention of the children from a concubine. Whenever a man keeps a woman as a concubine and children are born from such a union the man must assume the responsibility of their maintenance. Otherwise the man's estate will go to his relatives and the maintenance of his children from the concubine shall fall upon public funds, which is certainly unfair. Just as daughters are given a slightly inferior position in inheritance as compared with sons, some position, even inferior to that of the daughter, must be given to the children from a concubine.

The provisions about adoption must be discussed in one or two points. Personally I am in favour of entirely removing from the Code all provisions regarding adoption. But this custom is so deep-rooted in Hindu society and so many Hindus desire to have their after-death rites performed by a son, that it will be very difficult to do away with this custom so quickly. Only educative propaganda and the non-practice of this custom by the educated people will gradually lead to its death. The draft Code gives the right of adoption to any male of 15 years age. Now a boy of 15 is not even allowed to marry according to the present law; it is doubtful if he is physiologically capable of becoming a father. To permit therefore a person who cannot even be a husband to become a legal father appears to be very strange. I was told, that it may happen that a 15-year old boy, who is the heir to a great estate may be on the point of death and it is to provide for an heir to that estate in case of his death that this act is proposed. I do not consider this explanation at all satisfactory. After all such an heir may die below 15 also. Then the draft should have allowed the adoption of a son to any male of any age whatsoever. In any case the lower limit should not be different from the minimum age of marriage according to the existing law.

The draft Code has made some provision of the inheritance of a part of the father's property by the daughter. Further a growing number of women are leading independent lives and earning money. I do not understand why such unmarried women should be debarred from adopting a child. The draft Code allows only widows to adopt sons. Further, why should the adoption of a daughter be not permitted? It is true that the permission to adopt a son only is in accordance with the general Hindu tradition. But in those Hindu communities where inheritance is according to the Marumakatayam or Aliyasanthanam systems, the line cannot be continued except by the adoption of a daughter. Thus the throne of the Travancore State goes to the son of the sister of the previous King. Now if a King has no sister, the problem cannot be solved by the King adopting a son or the King's mother adopting a son, for he cannot come to the throne. It is only by the mother of the King adopting a daughter (whose son is to get the throne) can the line be continued. The same is the case with the Hindu Khasi States in Assam. Thus if the law were to permit the adoption of a son or a daughter by any Hindu adult, it would be suited to all requirements.

Hindu society is one of the oldest in the world and innumerable communities, races and cultures have been unified under the name of Hindu. This process has been going on at least for 4,000 years. The customs and traditions of the communities are different. Some are patriarchal, others matriarchal. Some do not marry Sapinda-relations, others marry quite near relations like cross-cousins. In some the bride receives money, in others

the groom receives it. The eldest son is the sole inheritor in some, all sons get an equal share in others. Widows are allowed to marry again in some communities, they are not so allowed in others. Some are highly civilised, others are quite primitive. To aspire to make a single uniform law for such a heterogeneous society is difficult—well-nigh impossible. It is proper that the injustices in the present customs should be removed and that part of the draft Code should be applicable to all Hindus. But in other cases, e.g., cross-cousin marriages or uncle-niece marriages, a good deal of study is necessary to determine which are anti-social. It is possible that the final outcome of study is that no particular custom among those prevalent can be marked as good or bad. It would then be unnecessary to have uniformity merely for the sake of uniformity. A society which is characterised by such diversity need not necessarily be considered weak—in fact it may derive its strength from its diversity. This wide diversity in custom makes for mutual tolerance and represents a range of adaptations in novel circumstances not possible to a rigidly uniform and dogmatic community.

96. Messrs. L. M. Deshpande, M.L.C., N. B. Budkhar, B.A., LL.B., Pleader and N. A. Deshpande, B.A., Pleader.

Supplementing oral evidence.

We were examined on 6th February 1945 at Poona. In connection with our examination we have the honour to state as follows:

It was argued by the members of the Committee at the time of our examination that—

(1) It was necessary to legalise pratiloma marriages in view of the fact many such marriages are taking place among educated boys and girls.

(2) Divorce was a necessary corollary of monogamy and that for want of provision of divorce under the Hindu

law parties secure it by conversion to another religion and thereby 2 per cent of the female population goes out of the Hindu fold in every decade.

(3) There was a cry among educated women for equal rights of inheritance and absolute power over property.

We had already submitted our written statements and have given answers to the questions put by the Committee. We, however, think it necessary to amplify our answers to the above arguments and so we do *ad serialim*—

(1) If pratiloma marriages are bad in principle it is no argument that it should be legalised because educated few take to such marriages. Because few people commit thefts none thinks to legalise them. Legislators should, in the interests of society as a whole, impose restraint on the passion of an individual and not encourage it. If the provision for pratiloma marriages is meant to keep the couple in the Hindu fold, then such provision is insufficient for that purpose because there are instances of marriages between Hindu and Muslim boys and girls. We therefore maintain that pratiloma marriages should not be allowed.

(2) Divorce is not at all a necessary corollary. Monogamy is a rule among Hindus and polygamy is an exception. It is difficult to find even one instance in a thousand and yet there is no divorce. If monogamy with divorce is insisted upon to check the outgoing of 2 per cent females to another religion, then it can with equal force be said that males who want polygamy will resort to Muslim religion.

(3) The Committee wish that the Code should be acceptable to the general Hindu public. We maintain that if elections are fought out on this issue they will go against these provisions. Even if the matter is referred to women we feel confident that, barring the few educated, the general opinion will not support the Code.

II. DELHI.

1. The Anti-Caste Association, New Delhi.

In the opinion of the Hindus of New Delhi, Clause 3 (b), viz., "If either party is a member of any caste, the other party must belong to the same caste" suggested for purposes of marriage as an alternative by the Hindu Law Committee appointed by the Government of India for framing a Code of Hindu Law should be deleted as it is out-of-date and anti-national and strikes at the very root of solidarity of the Hindu community and be passed in its original form as suggested, that is, inter-caste marriages among Hindus are valid.

2. Jaichandra Sharma, Esq., General Staff Branch, General Headquarters, New Delhi.

Rau Committee has added a magnificent chapter to Hindu history by modifying Hindu Law in its essential form. The womanhood which is the better half of our community and without whose betterment the advancement of our whole community is in abeyance no doubt deserves justice. The noble sacrifice which this sex has made for the nation building work in general and Hindu cause in particular in the past, strengthens the demand of such rights.

All rights are reasonably mentioned in the draft and every impartial Hindu will be proud to support them.

Take for instance the right of succession of a Hindu widow who is left helpless in this world after her husband's death and who is treated horribly by her relatives. She cannot knock at the door of Courts for justice. She cannot compete with men. She is helpless in every manner. Imagine her fate. It is, therefore, but fair that she should get a share from her deceased husband's property.

The next sufferer is the surviving girl of the deceased. This is well-known to every Hindu that father's responsibility does not end just after marrying his daughter. Till her death she forms a part of her father's family. In the absence of her father this gap is filled by her brother who does not lag behind in affection and kind treatment and is proud to have sisters. Morally and financially she is helped. And thus her destiny is secured.

But in the absence of these both, the property is shared by those who were actively hostile to the deceased father and what sympathies at the hands of the usurpers can be expected for the surviving (a true heir) girl to whom her brother and father were pledged according to existing Hindu customs. The girl is deprived of even seeing her birth place and passes her life through moral annihilation.

Now it is the earnest call of the times to enforce the law as soon as possible. In case of intestate property, the law should be modified so that the surviving girl or widow is saved the trouble of going to Court. There are so many difficulties in the way of a Hindu woman seeking the Court's assistance.

Hundreds and thousands of sufferers will bless, and the souls of the deceased in heaven will hail, these efforts of Rau Committee.

3. International Aryan League, Delhi.

(i) Without commitment as to details and speaking broadly the Sabha welcomes the attempt of the Hindu Law Committee to evolve a uniform Code of Hindu Law for Hindus by a reasonable compromise among the various schools of law prevailing in the country. The Hindu Law had become so much overridden by case-law that its codification was overdue. The production of a uniform code which will apply to all Hindus is a distinct advantage.

(ii) In the matter of intestate succession the Sabha strongly disapproves of the inclusion of daughters among 'simultaneous heirs' in clause 5 (i). In its opinion the daughter should not be an heir when the intestate has also left a son or sons.

(iii) Regarding marriage, the Sabha notes with much satisfaction that the marriage between the children of two brothers to which strong exception was taken in my previous note has been absolutely prohibited in the Draft Code and that sacramental marriages between agnatic sapindas have also been prohibited. The provision of optional registration for sacramental marriage is also a great improvement.

1. This Sabha welcomes the work of the Rau Committee because the Hindu Law has become so much overburdened with case-law that its codification has become very necessary.

2. The endeavours of the Hindu Law Committee also deserve much commendation for the attempt to evolve a uniform law for all Hindus living in various parts of India by a reasonable compromise among the several schools of law prevailing in the country, chiefly Dayabhaga and Mitakshara.

3. The Sabha regrets that this very important legislation has been placed before the Legislative Assembly at a time when a large number of eminent leaders of the Hindu community including many expert lawyers are in detention inside jail, and consequently unable to take part in

this work or to express their opinion on it. The Sabha will be glad if consideration of this Draft be postponed till the abovementioned leaders are released from jail, and an atmosphere suitable for consideration of such important subjects is restored.

4. The postponement of the consideration on this Bill will in the opinion of this Sabha also be expedient on the ground that having been published only in English the ordinary Hindu public have not had an opportunity to consider it properly. The Sabha is glad that the Government of the United Provinces has recently brought out a Hindi translation of this Code. It will be advisable to have it translated into the vernaculars of other important provinces also and this will require time.

5. This Sabha also emphasises the view that when this Draft comes before the Legislature for consideration, only Hindu members of the Legislative Assembly be asked to vote thereon as has frequently been the practice in such cases. This Sabha also considers it proper to emphasise the principle that only Hindu expert lawyers should as a rule, take part in the preparation of such important Bills touching religion.

6. The Sabha considers it sufficient to express its opinion only on some important aspects of this Bill without venturing to go into details.

7. In the matter of succession, this Sabha welcomes with gratification the fact that efforts have been made in this Code to raise the status and rights of women. The limited estate of woman in property is merely a creation of judicial decisions, and no basis for it is found in the Vedas and Smritis. It is a matter for congratulation, that it has been totally omitted in this Bill, and absolute rights over their property have been provided for women as in the case of men. It is also satisfactory that several near cognate relations who were not heirs previously, have now been made heirs.

8. This Sabha however strongly opposes the provision made in this Bill for making the daughter a simultaneous heir with the son and grandson and giving her a share in the father's property equal to half the share of a son. It is only proper and equitable that the daughter or her sons should succeed in the absence of a son or grandson. But to make her a simultaneous heir with the son or grandson is neither just nor advisable. It is clear that she gets a share in the property of her husband's family. To give her a share also in the father's property would be an injustice to the son or grandson. This provision is also very likely to embitter family relations among Hindus for sisters who are hitherto looked upon with great affection in Hindu families will become objects of aversion on account of the rival claim in the matter of succession. It will also lead to needless litigation among brothers and sisters. In the case of families living on trade the sharing by daughters and their husbands in the family business is also very likely to be injurious to continuity of established firms.

9. In Part II, clause 21, provision has been made for disinheriting the children of converts to other religions. In the opinion of this Sabha the converts themselves should also be disinherited.

10. In respect of the Marriage Bill this Sabha expressed its gratification that no bar has been placed on inter-caste marriages. They are freely allowed in civil marriages. In the case of sacramental marriages, it has been provided that if the husband and wife are of different castes or sub-castes no marriage will be invalid on that account; and this is calculated to encourage inter-caste marriages. This Sabha particularly welcomes this reform; for the Arya Samaj holds that the hereditary system of castes is opposed to the Vedas and Sastras, and is highly injurious to society. For this reason it made special efforts to get the Arya Marriage Act of 1934 passed by the Legislature.

11. In respect of Sagotra Marriages, this Sabha holds that such marriages are not supported by Sastras.

12. This Sabha considers it highly commendable that bigamy has been prohibited in this Code both for men and women.

13. In respect of divorce, the Sabha holds that it has been given no place in the Vedic marriage and it does not, therefore, consider it proper to encourage divorce. But in view of the present social conditions the Sabha suggests that remarriage may be allowed in the cases mentioned in clause 30 of Part IV of the Bill by making an exception to the provision for monogamy in clause 10.

An identical opinion has been submitted by the Arya Samaj, Delhi.

4. Sri Chatar Behari Lal, Senior Advocate, Delhi.

The subject of Hindu Law is a vast one and requires considerable time, learning, industry and research for overhauling and superseding the law which has been governing the Hindus for generations and ages.

Hindu Law is not like the Common Law of England; nor is it a statute law framed by any monarch, any authoritative body or legislature.

It owes its origin from: (1) Sruti, (2) the Smriti, (3) the approved usage, (4) commentaries, (5) digests and (6) Judicial decisions.

In India as in other oriental countries the law is an integral part of religion and ethics (Dharma). The Vedas should be regarded as its first and foremost source. There have been many commentaries of the Hindu Law which it is unnecessary here to detail.

Manu Dharma Sastra is the text which governs the Hindus in matter of succession, property and marriage, etc.

Mitakshara is the supreme authority which is followed throughout India excepting Bengal. It was written in the latter part of the eleventh century.

The Hindus of this part of India follow Benares School.

The Hindu Law deals with—

- (1) Inheritance.
- (2) Woman's property.
- (3) Coparcener and coparcenary property.
- (4) Marriage.
- (5) Adoption.
- (6) Minority and guardianship.
- (7) Debts.
- (8) Partition.
- (9) Gifts.
- (10) Wills.
- (11) Religions and charitable endowments.
- (12) Impartible property.
- (13) The Law of Damdupath, etc.

Some of the said topics can only be dealt and legislated by the central Legislature at present and consequently the present Hindu Code is not and cannot be called exhaustive Hindu Law, more so, this Code extends to the whole of British India, it means that the Hindus of the States shall follow Manu Dharma Sastra, i.e., the present Hindu Law. If the intestate was not domiciled in British India at the time of death, a different law will govern his movable property, vide 3, sub-clause (a) of Part II.

We will have to consult and refer the present Hindu Law in matters outside the scope of the subjects which are dealt with by this draft Code; we shall have to refer to the Hindu Law for the definitions of "Gotra" and "Pravara," vide 5, sub-clause (g) of Part I and also for the meaning of expressions "Dattaka son," "dwayamushyayanana" son, "Kritrim son" and "dasputra," vide (2) (c) of Part II.

Hindu Law is the present Law of the Hindus. It has been codified by enactments that Hindus will be governed by their personal law in matters of succession, inheritance, marriage and adoption, etc. The overhauling and changing the Manu Dharma Sastra as commented by several schools is an interference with the personal law of the Hindus. Even the nature of the property of the Hindus is changed by the Hindu Code which is not only unacceptable to the Hindus of this part at least but is harmful and damaging for the Hindu Society. This Code is superseding the law that has been governing the Hindus for centuries and that has been handed down to us from the Rishis of old almost unimpaired by the Vandalism of ages.

Intestate succession.

1. The law of survivorship and the law relating to inborn rights are altogether repealed. Classification has been made adopting the Islamic Law which is not congenial.

2. It is very easy to violate this Law if a Hindu male not accepting the Hindu Code makes a will and makes a testamentary succession of his own. A law liable to be so easily broken as a matter of fact has not the force of a law. Hindu people not approving the Hindu Code would like and prefer the present Hindu Law, to follow which they under the circumstances would make the law of succession for themselves by their own testaments thus deviating from the Hindu Code.

Amongst the various reasons for my view I place some of them to be considered :

(1) There is a system of dowry at the time of the marriages of the daughters. Hindus whether rich or poor or of whatever status they may be, at the time of marriages of their daughters present everything of ordinary use just as furniture, utensils and very often silver jewellery and in many case precious jewellery, clothes of every description and beddings according to their capacity, which is made permissible by Parts III (a) and II, clause 3, sub-clause (3) in the draft Code.

(2) A daughter-in-law gets her share and is entitled to have partition under the provision of Act XVIII of 1937 amended by Act II of 1938. According to these provisions in the case of Mitakshara joint family the widow takes the place of her husband.

(3) The son does not succeed to the father-in-law as his son-in-law according to the codified law of succession. In this way the son is at a loss who has the right to offer "oblations and pindas." In Hindu religion and according to the principles of Dharma Sastra something is always offered to the person who performs his *kriya*. On the other hand we are taking that right even from the son and thus his share is reduced.

(4) In India amongst Hindus generally something is also presented on the occasions of different ceremonies annually. Really the father of a daughter has to pay something to his son-in-law and daughter occasionally as a "Jazya."

3. The present Manu Dharma Sastra allows a father to make a gift of immovable property even in cases of Hindu joint family.

The suggested Code is confined to heritable property of a Hindu dying intestate, *vide* clause 3 of Part II. We understand that no Hindu would like to die intestate under the provisions of this Hindu Code. This will make the Code nugatory.

4. The father having heritable property may will away the whole or any part of his property to his daughter.

5. Nowadays high education is given to girls at a great expense. The girl if uneducated or illiterate never gets a proper and good husband.

6. We find that throughout India particularly in United Provinces, Bihar, Orissa, Karachi, Rajputana and other provinces which need not be mentioned, a custom called "Qarardad" has spread and the fathers of the educated sons demand very high price for their sons. We may remind that if the sons are sold in this way a father-in-law must get earnings of his son-in-law.

7. If the daughter is educated or is in service her father does not accept anything from her but rather even in that case pays something out of his pocket to her. Her whole earnings go to the husband's side.

On the above suggestions which are a very few, would any Hindu like to adopt the Hindu Code in this respect unless and until the offer and acceptance of the dowry the "jazya" called the presents to the relations of the husband, the presents at the time of the birth of child to the daughter, at the time of the marriage of her children and so on and so forth are obliterated; and unless and until the investment of the father in the daughters bringing up education, etc., yields profit to him.

It is always the rule that at the time of trouble, illness or other calamities to a father, sons, daughters-in-law do serve more and are found more useful than the daughters and sons-in-law. It is also seen and experienced that daughters' children do not love or have regard to their mother's parents as they have towards their paternal grandfather, grandmother and so on.

A Hindu considers it very obnoxious to take anything from his daughter, even to dine at her house.

A daughter is an heir and is given rights under the Manu Dharma Sastra. She is not overlooked and has a proper place, but she is not reckoned in the same degree with the son.

The sons are staying at the house of their parents and living with wives, increase the number of family members and serve them while the daughters are taken away from the house, reduce the number of the members and serve others who do not belong to the blood of the father.

This change will create trouble, dissensions in the family and litigation after father's death and will also take away the filial love from this world.

8. If the tendency of the framers of the Hindu Code is to give an equal status to the daughter with the son or to favour the daughters, why is it so that in clause 5, class I [No. 5] brother is the only heir and not sister as in the case of (i). Similarly there is an objection in (6). Why not sister's son be mentioned in clause 1 (6). The sister and sister's son are given lesser class No. 3 (2 and 3).

9. A similar objection can be successfully raised in clause 9, rule 3 where it is ruled "the heir who is in the male line is preferred to the heir who is in the female line at first point."

Rule 4 also makes a distinction between a male and a female heir. This appears to be inconsistent with the trend of clause 5, class I.

10. In rule 10 of clause 9 the fellow student comes after the intestate's disciple.

In rule 14 of clause 9 distinction is made in respect of property inherited by a woman from her husband and other property *vide* (a) and (b) of rule 14.

Again to succeed to the other property of a woman not inherited by her from her husband, son's son, son's daughter and even daughter's son and daughter's daughter are preferred to her husband and in clause 14 (c) (i) a son is made to take half the share of a daughter.

It is unintelligible whether this allotment of share is made on any principle or on the sweet sheer will of the framers of the Code.

11. The sanctity of Hindu Law and the exceptional and special item of Manu's Legislature, i.e., right by birth is altogether taken away. This is the right which has saved Hindu families from ruin and destruction for ages and ages. Parallel to this the Mussalman's Wakf Property Act of 1943 is adopted.

12. The law of survivorship which is the noble and special characteristic of Hindu Law is abrogated.

Marriage and divorce.

I do not find any definition of marriage in this Code.

According to Hindus it is a religious and sacred tie between a man and a woman while Muhammadan Law defines marriages as a contract which has for its object the procreation and legalising of children.

While Christian Law says it is a union of one man and one woman at one and the same time; so according to Muhammadan and Christian laws it is contract while to Hindus it is a sacred tie which cannot be severed.

I shall here quote an article published in the "Kayastha" August 1944, by Mr. Rukmani Kumar Mathur. The article is headed "Marriage—A contract or a Sacrament," giving the up-to-date views of Indian ladies; the article is here given below in extenso:

"In the materialistic west, as it actually exists to-day, the contractual aspect of marriage is very much to the forefront, and its natural corollary, divorce, is rather freely resorted to specially in America, to counteract the error of judgment, want of tact, indiscipline and lack of self-control. In India on the other hand, where the spiritual side of this ceremony is not yet lost sight of, marriage is still regarded as a sacred relation between the two parties immeasurable above the mundane and secular world of ordinary life. To those however, in India who have been dazzled by the meretricious glamour of the western mode of existence, this spiritual and religious aspect makes no appeal and other individual and social sides only are the real factors that count."

We see both these sides faithfully represented in the resolution and the subsequent discussion on the subject in the All-India Kayastha Conference Session held in Delhi in the month of April 1944, and the original mover of the resolution Mrs. Varma, has actually proposed both the contractual marriage and its natural consequence, the divorce. The opposition has been very ably led by Mr. Tara Chand Mathur, Public Prosecutor, Delhi, with considerable vigour, legal acumen and forensic foresight. All honour and credit are due to both these parties for having focussed the attention of the community on this important question in such a highly creditable manner.

This discussion reminds me that I had once an occasion to put a similar question to an Indian lady of rather up-to-date views in order to see what her personal reactions were in this respect. To my utter surprise she gave vent to her feelings in a very vehement and forceful manner

deprecating the western point of view and suggesting the *status quo* to be maintained in our community. Her remarks were rather strong, but there were three points which were particularly prominent in the decision she arrived at.

Firstly, the contract basis of marriage (with its natural accompaniment, divorce, as both of them go together) will at once drop down our community from its present cultured and civilized level to that of the Harijans—and social out-castes—the cultured and educated class of Kayasthas will at once begin to rank alongside the uneducated, illiterate Sudras, and not with the Western nations.

Secondly, the lot of the womanfolk will be infinitely worse than what it is now throughout the entire community at the present moment in well-ordered and properly regulated families, rich, middle class or poor, which constitute practically the whole community. The lady is the sole receiver and unquestioned dispenser of the entire income of her husband. She has the roots of her existence very deep down in the constitution of the household and the interests of the family are co-terminous with her own interests—she is a very vital and almost the most important member of the family, standing of course next to her husband in the general estimation, respect and authority in the family sphere—very particularly it is so where daughters and daughter-in-law are concerned—in which case her discipline is the only discipline in vogue and her word is the last word on any subject.

If, however, the marriage is reduced to a purely social contract and the woman is allowed to go in and out of it as her fancy dictates, all this prestige, esteem, respect authority and some times dictatorship automatically disappear altogether and she will have to live entirely at the mercy, choice, and discretion of the man she will happen to be living with at the time—these prospects are not at all very exhilarating, as the conditions are at the present time. In Europe no doubt the divorce system exists and yet the disintegration of the families is not very much to be found. But this is due not to the existence of the divorce system but to the fact that the marriages there are founded on religious and spiritual basis and not on contract basis. For an out-and-out contract system of marriages one must go to America and their conditions will be found which will not be palatable to an average Indian, be he male, female, man, woman, boy, girl or child.

Thirdly, when we come to consider her position in so far as her relations with her husband are concerned, we do not find any bright visions awaiting her under the new order of things: Now her husband knows that she is her life-long companion and both have to carry on together as best as possible until "death do us part." But under the altered conditions the husband will not pay more than the most necessary attention to her knowing full well that if she goes he can easily have another one to take her place. In fact once a man feels himself tired, or bored of her, he will at once begin to take measures to get rid of her one way or the other, a thing which he cannot possibly do now when they are irrevocably tied down together for ever and ever.

Lastly it was urged that if some few men are brutes enough to make the lives of their wives so very miserable as there equally not women also, who have by their habits, their thoughts, their tempers, their disposition, made the lives of their husbands one continuous act of torture? and when men of our community are patient enough to bear with such mates, it is the duties of the ladies too to bear with their husbands however bad they may chance to be.

Nullity and Dissolution of Marriage.

This idea of sacred marriage which is inherent in the minds of the Hindus and which has throughout the ages made Hindu wives more faithful to their husbands; experience proves—it never leads to litigation nor to disputes, while on the other hand we see everyday that amongst those communities where marriage is only a contract the doors of the courts are knocked.

This will spoil the happiness of the house and create discontentment and dissensions amongst the husband and the wife.

This is absolutely wrong and incorrect; in any case particularly so far as Rajputana, United Provinces, Delhi

Province, Central Provinces and Central India, etc., are concerned that there is a growing demand for provision of divorce.

There are ample provisions in the present Hindu Law for dissolution of marriages in the proper cases. As remarked by Mr. Srinivāsa Iyengar, "That dissolution of marriage should be allowed to a minimum extent where justification for it is of the plainest description and where it will raise the standard of morality, but not to such an extent as will lead to a general loosening of the marriage tie and promote immorality and the ruin of the Hindu family ideals." The provision for divorce (a word which by itself is heinous to the Hindu civilization) will lead to immorality and loosening of the marriage ties.

The provisions as defined in clause 29, sub-clause 2, invites litigation.

Adoption.

The case of a son born after taking a boy in adoption is not considered and dealt with by this Code.

In this case also all sacramental and spiritual ceremonies are dispensed with. Even Datta Homam is superseded.

General.

The Pinda decides the heirs amongst the Hindus.

The recommended law of heirship forces the Hindus to erase out the idea of Pindas, funeral oblations and Shradh which has been so far held to be the principle of succession.

A great author on Hindu Law says "He who inherits the property offers also the Pindas." He who also offers the Pinda is frequently regarded to be the heir to the deceased according to popular notions.

Daughters are not overlooked by the Hindu Law but take a proper place in it as an heir and therefore no change is needed.

The changes suggested in the draft code are more complicated. In each and every case and on every step either in the matter of succession, marriage or adoption redress shall have to be sought from the law courts. The homely happiness will disappear and dissensions, disputes and disaffection will come in its place and house of every Hindu shall be miserable and troublesome. Filial love will go away.

The sanctity of the Hindu property will say good-bye to the Hindus. The Hindu families which are saved from ruin or disaster by Manu Dharma Sastra and usages will go to hell and will be shattered to pieces.

It must be remembered that the inalienable nature of Hindu Coparcenary property suggested the Muhammadans to legislate Wakf Act of 1913 for themselves in comparison and parallel with the Hindu Law.

Excessive fragments of the Hindu property which is unwholesome and unpleasant shall be the natural result and thus shall destroy the status of the family.

I, therefore, most humbly submit that a Code like this cannot be acceptable to the Hindus in general and particularly to the Hindus of this part.

I may here add that to go with times and modern civilisation some additions which may be acceptable and congenial to the Hindus may be made as hitherto they have been made, but the changes in our Hindu Law which is a part of religion and morality will shock and shatter Hindus' minds.

5. Ganpat Rai, Esq., B.A., LL.B., Convener of the Opinion Committee, Delhi Provincial Hindu Sabha.

1. A study of the draft discloses that principles have been made to yield to other considerations and novel doctrines have been propounded running counter to natural reason and principles of justice.

2. Let it not be forgotten that it is the fundamental principle of the British rule in this country that in matters of succession, marriage, and guardianship the personal law of the subject will not be interfered with. It may be true that the progressive elements in society, and the educated women of the country may desire certain reforms in the existing law; but it is to be distinctly remembered that the law of the Hindus is based not only on legislation, but on texts and commentaries that form a part of the Hindu religious scriptures. Even in the Hindu Law Committee appointed by the Government there has been a sharp divergence of opinion. The Government should also take into consideration the poor percentage of this advanced section of the Hindus as against the vast majority of the mute millions who have had no say in this matter.

They will never be reconciled to any radical changes in their personal law which is a matter to them of their religion.

3. This is an inopportune time during the War to introduce any piece of legislation affecting the socio-religious conditions of a society. Although actual war has not come to India, it is as much at war as other Allied Nations are. More than a million Hindus who would be affected by this Hindu Code are on active service listed in the Army, Air Force and Navy, consequently out of India. They are unable to express their opinion through any Society and representative body of their own. It is, therefore, unjust, on the part of the Government to put this legislation on the anvil of legislature and get it passed before the War ends and debar those Hindus who are serving in the Army, Navy and Air Force to express their opinion on the vital matters affecting their property right to succession and other matters covered by the draft Hindu Code.

4. The British Indian subjects of His Majesty generally and the Hindus particularly who form bulk of the India's population are struggling to win Swaraj (complete political independence and self-government) and so long this struggle for freedom continues such matters as the present Hindu Code are considered secondary in importance and to be considered after Swaraj is established in a free atmosphere. This view point is borne out by the fact that Congress members of the Central Legislature who are mostly Hindus have been absenting themselves ever since the War began in 1939 and do not want to take interest even in such matters as the Intestate Succession Bill, Hindu Marriage Bill which were before the Central Legislature as a result of previous labour of the Hindu Law Committee.

5. Such a piece of legislation as the present draft Hindu Code should be circulated amongst the voters of the central legislature just before the general elections take place so that the voters may return members with an express mandate on the issues involved in this Code. The present two chambers of the Central Legislature were constituted long before their statutory period in 1934 for the Assembly and in 1937 for the Council of State and their electorates had no idea as to whether these revolutionary changes would be brought before the Central Legislature to express their views at the time of elections in 1934 for the Assembly and in 1937 for the Council of State and take promises from those members to support their view point for whom they voted.

6. The communal atmosphere in the country is such that the Hindus and Muslims exploit each other's difficult circumstances and harm each other. Under such circumstances the Hindus apprehend that the Muslim members of the Central Legislature would harm them by getting such measures placed on the Statute Book which would go ultimately to weaken the Hindu society.

Criticism of the Draft Code in Details.

1. *Part II—Intestate Succession.*—(a) The Sabha is of opinion that women should have only a life estate as they have up till now and no right of partition as provided under clause 12 of this part be granted to a woman under the Partition Act of 1893.

(b) As a natural corollary of paragraph (a) above contrary to right over Stridhana should be restricted to her life estate if the property has been succeeded to by her and is not her own Stridhan.

2. *Part III—Testamentary Succession.*—(a) The abolition of survivorship which has been a unique system of Hindu Law of Succession is a revolutionary change which would lead to the disintegration of the joint Hindu family, and so the provisions of section 1 of this part are vehemently opposed.

(b) The effect of Chapter I of Part III-A doing away with survivorship and right by birth is tantamount to its destruction. A unique contribution of Vignaneswara which had survived the passage of many centuries despite persistent inroads made into it and which had fitted very well into the rural economy of the country will thus cease to exist. Whether the institution has outlived its purpose is certainly controversial. Bengal has done away with it. Has it saved Bengal? Cases can be proved to the contrary that the Hindus of the other provinces have benefited by the institution of coparcenary.

3. *Part IV—Marriage and Divorce.*—(a) Sub-section (a) of clause 3 regarding monogamy is opposed. The Sabha believes that this is a political move to decrease the population of Hindus as compared to that of the Muslim community whose men will continue to marry more wives. If monogamy can be a rule of law for the whole of India the rationalistic section of Hindus may not oppose it; but under the present circumstances it is opposed by both the rationalists and the religious minded Hindus on account of the political motive behind this move, such a legislation being for the Hindus only.

(b) As a natural consequence of the opinion expressed above in paragraph (a) the provisions of clause 24 regarding the punishment of bigamy is also opposed.

(c) Clause 30 of this part is opposed generally and sub-clause (d) particularly where Hindu men and women have been entitled to obtain dissolution on conversion.

6. All-India Digambar Jain Parishad and All-India Digambar Jain Maha Sabha.

In view of the suggested applicability of the Hindu Code to the Jains the Digambar Jains beg to express their opinion and suggest changes or amendments in the Code in conformity with their ancient religious custom and usage. Hindu Law is not applicable to the Jains in entirety and in some matters they follow their own customs and religion and therefore it is desirable that their customs or provisions of the Jain Law should be expressly saved and provided in the Code. The Jains do not believe in sapinda theory, nor in offering to the ancestors and thus the present Hindu Law differs from the Jain Succession Law mainly in two respects amongst other things as given below:—

In case of adoption a Jain widow has a right to adopt a son to her deceased husband even if no authority by the husband or permission by the sapindas is given. The suggested clause 6 (1) of Part VI gives a right of prohibition to the husband to adopt a son. This takes away the absolute right of a Jain widow, and it also becomes inconsistent with the suggestion that under the draft Hindu Code the widow is an heir of the deceased and gets an absolute estate. If the widow gets an absolute estate she may dispose off her property, husband's property in any way she likes by a testament. If she can do this why a restriction in matter of adoption is made. Here it may be mentioned that the Sanatan Hindu idea of succession is based on Pinda theory. One who has a right to offer Pindas to his ancestors has a right to succeed the property having a prior right of offering Pindas and oblations to fire. The Jains do not believe in the Pinda theory and their succession is merely a secular one as recognized and permitted by the Jain religion. The other changes in the Law of adoption in the draft code is in clause 13, sub-clauses 3 and 5 of Part VI. Amongst the Jains it has been customary for ages that a Jain can adopt even having children. There is no limitation regarding age while in the suggested clause the two important rights of a Jain which have been in vogue for centuries are taken away. (See Sir D. F. Mulla's Principles of Hindu Law, paragraphs 617 and 624.)

Succession.

Coming to the law of succession it will suffice to say that the recommended law tends people to make wills to avoid the unwholesome change in it which changes the directions of the law of succession in vogue for many centuries ever since the time of Manu and the framers of Jain Law.

In respect of Intestate Succession, Part II, clause 5, we the Jain community do not approve of the daughters being given class I, with the sons and others. We would like to follow pure Hindu Law in this respect which is in conformity with Jain custom and usages. It may be remembered that if your Committee does not agree, we may tell you once for all that we are bound by custom and our custom does not allow daughters equal status with the son. Even amongst many communities of Muhammadans most probably amongst those who are converted to Islam, daughters do not get any right in face of sons.

Amongst the various reasons for our view, we place below some of them to be considered:—

(1) There is a system of dowry at the time of the marriage of the daughter. Hindus whether rich or poor or of what status they may be at the time of the marriages of their daughters present to them all they require for establishing their new home, e.g., furniture, utensils,

silver jewellery and in many cases precious jewellery, clothes of every description and beddings according to their status. This is made permissible by Part III (a) II, section 3, sub-clause 2.

(2) A daughter-in-law gets her share and right of partition under the provisions of Act XVIII of 1937 amended by Act II of 1938. According to the provisions in the case of Mitakshara Joint family the widow takes the place of her husband, there cannot be any question of daughter.

On the other hand the son does not succeed to the father-in-law as his son-in-law, according to the codified law of succession.

Generally in India amongst Hindus something is also presented to daughters on the occasions of different festivals and ceremonies throughout the year. Really the father of a daughter has to pay to son-in-law and daughter a regular "Jazya."

(3) The present Manu Dharma Sastra allows a father to make a gift of immovable property even in cases of Hindu Joint family.

The suggested code is confined to heritable property of a Hindu dying intestate *vide* section 3 of Part II. We understand that no Hindu would like to die intestate under the provisions of the Hindu Code. This will make the code nugatory.

(4) A father having heritable property may will the whole or any part of his property to daughter.

(5) Nowadays high education is given to girls at a great expense. The girls if uneducated or illiterate never get a proper and good husband.

(6) We find that throughout India particularly in United Provinces, Bihar, Orissa, Karachi, Rajputana and there are other Provinces which need not be mentioned, a custom of "Qarardad" has spread and the fathers of the educated sons demand very high prices for their sons. We may remind you that if the sons are sold in this way a father-in-law must get earnings of the son-in-law.

(7) If the daughter is educated or is in service her father does not accept anything from her but rather pays something out of his pocket to her. Her whole earnings goes to the husband's side.

On the above suggestions which are very few would any Hindu like to adopt the Hindu Code in this respect unless and until the offer and acceptance of the dowry and customary annual presents to her, her husband and to the relations of the husband, the presents at the time of the birth of child to the daughter, at the time of the marriage of her children and so on and so forth are abolished, and unless and until the investment of the father in the daughters bringing up and education, etc., yields profit to him.

It is always the rule that at the time of troubles, illness or other calamities to a father, sons and daughter-in-law are found more useful than the daughters and sons-in-law. It is also seen and experienced that daughter's children do not love or have regard to their mother's parents as they have towards their paternal grandfather and grandmother and so on.

A Hindu considers it very obnoxious to take anything from his daughter, even to dine at her house.

A daughter is an heir and is given rights under the Manu Dharma Sastra, but not with the sons.

The sons and their wives live in the house of their parents and serve them and go on adding to the number of members of the family; while the daughters are taken away out of the house and reduce the number of the members and serve others who do not belong to the blood of the father.

This change will create trouble and dissensions in the family and litigation after father's death and will also take away the filial love from this world.

(8) If the tendency of the framers of the code is to give an equal status to the daughter with the son to favour the daughters why in clause 6, clause 1 (No. 5) brother is the only heir and not sister as in the case of (1). Similarly is an objection in (6). Why is not sister's son mentioned in clause 1 (6). The sister and sister's son are given a lesser class No. 3 (2 and 3).

(9) A similar objection can be successfully raised in clause 9, rule 3 where it is ruled "the heir who is in the male line is preferred to the heir who is in the female

line at first point." Rule 4 also makes a distinction between a male and a female heir. This appears to be inconsistent with the trend of clause 6, clause 1.

(10) In rule 10 of clause 9 of the fellow student comes after the intestate disciple.

In rule 14 of clause 9 a distinction is made in respect of property inherited by a woman from her husband and other property—*vide* (a) and (b) of rule 14.

Again, to succeed to other property of a woman not inherited by her from her husband, son's son, son's daughter and even daughter's son and daughter's daughter are preferred to her husband and in clause 14 (c) (i) a son is made to take half the share of a daughter.

It is unintelligible whether this allotment of share is made on any principle or on the sheer sweet will of the framers of the code.

(11) The sanctity of Hindu Law and the exceptional and special Mann's law, i.e., right by birth is altogether taken away. This is the right which has saved Hindu families for ages and ages. Parallel to this the Mussalman's Wakf Property Act of 1930 is adopted—*vide* Part III, clause 2.

(12) The law of survivorship which is the noble and special characteristic of Hindu Law is abrogated.

Marriage and divorce.

It is surprising that marriage is not defined in this draft code.

In clause 1 (a) (1) the word "sapinda relationship" is used. The framers of this code do not attach any importance to "Pindas" and it is again unintelligible why sapinda relationship is made use of in the marriage tie which according to this code is merely a social union. "Smritis" are set aside by this code and Hindu Sentiments are also not cared for, but still on page 20 of this draft code "Smritis" and strong "Hindu sentiments" are mentioned.

According to Hindu ideas and religion, marriage is a sacred tie between a man and a woman which is altogether overlooked by the framers of the code.

Nullity and dissolution of marriage.

The idea of sacredness of marriage which is inherent in the minds of the Hindus and which has throughout the ages made Hindu wives more faithful to their husbands, and which as experience proves never leads to litigation is being disputed.

We see every day that amongst those communities where marriage is only a contract the doors of the Courts have to be knocked every day.

This will spoil the happiness of the home and create discontentment and dissensions amongst the husband and the wife. It is absolutely wrong and incorrect, particularly in Rajputana, United Provinces, Delhi Province, Central Provinces and Central India, etc., that there is a growing demand for a provision of divorce.

There are ample provisions in the present Hindu Law for dissolution of marriages in proper cases. As remarked by Mr. Srinivasa Ayyangar, "that dissolution of marriage should be allowed to a minimum extent where justification for it is of the plainest description and where it will raise the standard of morality, but not to such an extent as will lead to a general loosening of the marriage tie and promote immorality and ruin of the Hindu family ideals." The provision for divorce (a word which by itself is heinous to the Hindu ideals) will lead to immorality and loosening of the marriage tie.

The provisions as defined in clause 29, sub-clause 2 invite litigation.

Minority and guardianship.

This community approves this part of the code.

Adoption.

Some observations about this part have already been made in the early part of this representation.

Dattaka son is nowhere defined in the draft code.

A Jain widow has got more extensive rights of adoption than allowed in this draft code as is already observed.

The conditions mentioned in clause 4 of Part VI are also averse to the prevailing customs approved of by the rulings authorities of all High Courts of India and the Privy Council.

Clause 5.—A Jain widow is capable of taking a boy in adoption after her husband without any express permission, etc., and therefore an express or implied prohibition in sub-clause 2 (a) of clause 5 is uncalled for.

It is astonishing to find the words "spiritual benefit of the deceased father" in respect of adoption used in left foot-note to clause 5.

Clause 6 of this part invites litigation again, particularly sub-clauses (a) and (d) of clause 8.

Capacity to give in adoption.

Amongst Jains even an orphan can be legitimately adopted. The clause 12 of this part contravenes the Jain customs recognised since immemorial times.

Who is capable of being adopted.

Amongst Jains there is no restriction of age of the boy to be adopted; even married men can be adopted. Jains do not believe in "Upanayanam" ceremony which is neither observed nor recognised by them. And accordingly clause 13 of this part is entirely against our customs and usages and Jain Law and we under no circumstance are ready to adopt it. This community objects to sub-clause 1 of clause 14 that the only son of a father can be adopted. We happily approve of sub-clause 2 of clause 14 of this part and this is already recognised by our community.

We further say that all sacramental and spiritual ceremonies are entirely taken away in the draft code and spiritual and sacramental ceremonies are neither respected nor considered. And it is for this reason that "Datta Homam" is superseded.

It is again surprising that the case of a boy born to the parents after taking another boy in adoption was not thought of and it is not provided what share the natural born son gets and what share the adoptive boy should take, in this case.

General.

The changes suggested in the code are more complicated and require legal help. In each case and on every step whether in the matter of succession, marriage or adoption, the doors of the courts shall have to be knocked. They will make the life of Hindu miserable and troublesome, the homely happiness will go away and dissensions, disputes and disaffection will be created, and will have to be faced in every Hindu family.

The sanctity of the Hindu property will say good-bye to the Hindus. The Hindu families which are saved from ruin or disaster by Manu Dharma, Sastra and usages will go to hell and will be shattered to pieces. Fragmentation of Hindu's property which is unwholesome and unpleasant shall be the natural result and thus shall destroy the present status of the Hindu family. And whatever sanctity and security of Hindu married life is left will be destroyed by the right of divorce given to wives by this code.

We therefore beg to submit that the present Code is not acceptable to Jains and even Hindus of other sects and religions are strongly opposed to it. If the suggestions made by us are incorporated in conformity with our religion and ancient customs and usages, we would support the bill in other respects.

7. Shri B. D. Jain Maha Sabha,
Nal Sarak, Delhi.

The Act, which is to be based on the memorandum prepared by the Rau Committee appointed by the Government of India to amend the Hindu Code, will also be applicable to the Jain community. Accordingly, keeping in view the Jain interests and view point efforts are being made to amend it suitably.

We should not deny the fact that the Jains are a part of the Hindu society, and that so far Hindu laws have been applicable to them. We, in the light of our traditions and customs, should try to safeguard our social interests which have not been given due consideration in the memorandum prepared by the Rau Committee. It is necessary that the Jain traditions and sectional customs in regard to inheritance, succession rights and other matters pertaining to these, e.g., the maintenance and bringing up of heirs; their marriage, divorce, minority, guardianship and adoption, etc., should be safeguarded. Their disregard will be considered as an interference in religious matters which is also against the declared policy of the Government. In regard to inheritance the existing Hindu Law

and the Jain Law differ from each other in two important respects. According to the Jain Law a Jain widow in the absence of any instructions from the husband can adopt even without the consent of relatives. According to sub-clause (1) of clause (j), Part IV, a husband is empowered to restrain his wife from adopting a child even after his death. This deprives a Jain widow of her right in this regard and the provision in the Hindu Code by virtue of which a widow becomes the sole heir to her husband after his death, is thus rendered meaningless. From the Jain point of view it is not desirable to restrain a Jain widow from exercising her right of adoption. Oblations to the dead are not considered obligatory amongst the Jains. Hence the condition that only those who are entitled to offer oblations can be adopted, cannot be imposed on them. The other point is that according to Jain religion one who has issues can also be adopted and there is no restriction as regards age, etc. But according to sub-clauses (3) and (5) of clause 13, Part III, this would not be possible. A Jain widow can adopt an orphan even. The right of adoption as observed by the Jains has altogether been ignored in this Code.

The provisions made in the Code in regard to inheritance rights will change the existing law in this connexion altogether. To treat the daughters on an equal footing with sons in the matter of inheritance is not in accordance with the principles of Jain religion. This is contrary to our tradition. It is not so amongst all the Muslims even. The daughters get a good deal in the form of dowry. It has also been admitted in sub-clause (2) of clause 3, chapter 2 of Part III of the Code. The question of the share to a daughter does not arise at all when once a daughter-in-law is recognised a partner in the property and a widow a legal heir to the property of her husband. The son, being deprived of his right to inherit the property of his father-in-law will always be a loser. According to the existing customs it is obligatory to pay something during the course of a year to the daughter and her husband on various occasions which is after all a sort of tax. Even in the case of a joint family a father can give, as a part of dowry, a portion of immovable property to his daughter.

There is apparently no particular necessity for making a provision in law for cases in which a 'Will' has not been made, as obviously every Hindu will execute a 'Will' before his death. He can still bequeath his property or a part of it to his daughter. A good deal of expenditure has also to be incurred on her education. A good deal has also to be given in Qarardad, but a father-in-law does not get anything from his son-in-law. He cannot even take water at his place. At the time of sickness or other troubles sons and daughters-in-law are more helpful than the daughters and sons-in-law. Even according to Manu Sastra after the birth of a son, a daughter is not considered entitled to her father's property. In spite of all this if a daughter is still recognized as a co-sharer in the property of her father, the peace and happiness of a family will be threatened and litigation will increase.

Even a brother has been recognized as a legal heir in this Code at several places, but not a sister or her son. This shows that even in this enactment even that importance has been given to a girl as to a boy. This would lead to a disruption of the Sacred Hindu Law which would in due course also undermine that foundation of the Hindu society on which the entire Hindu nation stands to-day. It is no less surprising that the term 'marriage' has not even been defined in this Code and treating it as a 'social contact' all its religious sanctity has been entirely ignored. In addition to making all the various rites in connexion with marriages more expensive new difficulties have been created. Opportunities for litigation have been created at every step. The suggested changes in connexion with marriages are, for the reasons stated above, not at all welcome. The existing customs are simple and do not require consultation with lawyers whereas in accordance with the provisions in this Code, consultations with lawyers at every step will be indispensable. While making the presence of a guardian obligatory at the time of a marriage, greater importance has been given to an uncle as compared with a maternal grandfather, whereas in actual life the latter is more attached to the children than the former. This will also encourage litigation.

Those who consider marriage as a social contract are resorting to civil courts much more than those to whom it is a religious sacrament. That there is an intense demand for divorces amongst the Hindus, is a lie. Ample provisions have been made for this in the Code. This will encourage immorality and loosen the bonds of marital life. Litigation will also be encouraged.

While appreciating the provisions made in the Code in connexion with the 'Minors' it is necessary to point out that it is essential to appoint a guardian in those cases even when the interests are not different. It has been noticed that even in the cases when property is joint, the owners with a view to benefit themselves do not look after the property of minors with the same care as in their own case.

In regard to the person who can be adopted, the Jain tradition and custom has been absolutely ignored. A married man and one with issues can also be adopted. There is no restriction as regards age. 'Sacred thread' ceremony is also not obligatory in accordance with the Jain religion. No consideration has been bestowed in the Code on the religious and customary ceremonies. The proportion of share which the issues, who are born after adoption, will get has not been indicated in the Code. The changes contemplated in the Code will lead to difficulties and it would be essential to take the help of law in solving them. Recourse to law courts may also have to be taken. The normal happiness of a Hindu house will be disturbed and peace will disappear. The sacredness of Hindu property will be destroyed and the Hindu families will also be disrupted.

The greatest defect is that those who have framed it have taken into account the customs and traditions followed in Madras. No consideration appears to have been given to the customs followed by the Jains. Only the decisions given in the Madras courts have been quoted. Such a Code cannot be acceptable to the Hindus even, far less the Jains. At least six months should be allowed for its consideration.

S. Mr. Wazir Singh, Manager and Organizer, Singh Marriage Bureau, Delhi.

First of all I would mention here the evil effects which have been created among Hindu ladies by higher education. Till the time they attain higher education they are growing up above twenty and some between 23 and 25 and when they attain such higher ages the question of their marriages become a most complicated one. I think it would not be exaggeration if I may mention here that such educated ladies remain unmarried to a greater extent. In this case Punjab have been superseded over other Provinces but as a matter of fact Punjabi ladies are most bold than any other Provinces as when they become most educated they are going for service and as such they serve mostly in Education department in the Punjab and some join Education department in other than the Punjab Province. However, by bringing this matter to your notice it is my only purpose that previously we were repenting over widows who remained unmarried but we are now weeping by holding our heads by both hands that poor virgin girls cannot be married which daily increase our anxieties and worries.

The second evil which is going on among Hindus is the hardship which is imposed on poor Hindu ladies by Hindu husbands who desert from their homes only on this ground that such ladies are not approved of by their husbands as they were married by their parents without their consent. Do you know the result of this hardship? These poor Hindu ladies become widows in the presence of their husbands and there is no alternative for these widows to depend upon their fathers where they are passing their miserable lives. In the long run I would mention here that widows are weeping for their dead husbands whereas these widows are weeping for living husbands. However I would mention here that without passing any divorce law husbands are deserting their wives but as such now you are passing a divorce law which means that you are putting fire into the fuse and thereby you are increasing Hindu ladies troubles. In the long run this would be the result of your new law that there would be a great deal of accumulation of Hindu widows which would largely be increased owing to the death of their husbands and considerably more which would be divorced by their

husbands and such as mentioned above many Hindu virgin girls would remain unmarried owing to attainment of high age which means in the long run neither boys would be married nor girls. Therefore taking these whole circumstances into consideration I would most respectfully request the Committee to make out only such a law which would decrease our troubles but may not increase our anxieties.

Under these circumstances I consider it my bounden duty to bring this matter to your notice that the following laws if approved of by the Public and by the Committee, would help in removing our difficulties in its entirety.

I read with great interest "Part IV, Marriage and Divorce" and as such I came to know that the Committee have divided the marriage into two parts, viz., Sacramental Marriage and Civil Marriage and under these both heads the Committee has not mentioned any new things except under Sacramental Marriage where they have defined Hindu Laws under which marriages are generally performed and under Civil Marriage they have revised those rulings which are already enacted in Civil Marriage Act. However as the Committee have been good enough to take Hindu ancient laws as strictly binding upon Hindus therefore I am emboldened to request the Committee that the following Hindu Laws should be strictly binding upon them and that on any violation of these orders serious punishment should be imposed upon those persons who are guilty of violating these orders.

(1) This should be the general Law in India that no bachelor more than 25 and virgin girl more than 16 should remain unmarried and any contravention of these orders should be met with punishment in which a fine can be imposed of one thousand and not less than rupees five hundred. Any how in the long run the Presiding Officer should not impose this fine blindly but they should be lenient in this case and the defaulter should be given time at least two months so that he may arrange a marriage. However if he still cannot arrange marriage, then the Presiding Officer may give him one more chance and lastly failing this fine may be imposed upon defaulters.

(2) There should be a general law in India that bachelor should be married with virgin, and widower with widow and any one violating this order should be fined heavily and in this connexion I am leaving the question of punishment into the hands of the Committee which is competent enough to frame a law. However law should be framed in this manner that any widows up to the age of 30 may remain unmarried the relatives of the widows should be fined heavily and similarly if the widower may marry with the virgin he should be fined heavily and in case the virgin may object to widower the marriage should be dissolved otherwise if the girl agrees it may stand as it is. However those widowers and widows who have issues should not be compelled for their marriages but they can do so upon such arrangement, which satisfactory arrangement of their boys and girls could be made.

(3) No person can marry till he retains his previous wife, he should first legally be separated from his previous wife and after this when it has been done both husband and wife would come under the category of widowers and widows; therefore accordingly they should marry among widows and widowers, but in no case should the widower marry a virgin girl. Anyone violating this order should be fined heavily and the ruling for the nature of punishment should be framed by the Committee which is competent enough to frame laws.

Further I would mention here that our Swami Dayanand Saraswati has clearly mentioned in Satayarth Parkash that in those countries where the marriages are performed against rules, viz., if widower may marry a virgin and the widow may marry a bachelor then those countries are always involved in miseries and are surrounded with many evils and worries. For example you would kindly take note of this that in India as there is no binding of any such law this becomes the general practice that the father of virgin girls are taking higher amount of dowry and are marrying their girls with old chaps and this becomes the result that they immediately soon after the marriage become widows.

In conclusion I would mention here that if the Committee may frame above laws the practice of marriage by spending dowry and divorce which among Hindus is contemplated with the attempt of merely getting a virgin girl would be abolished in its entirety. I think

Hindus always prefer new goods but they care very little for second-hand goods. In case there is a widower of 40 or 45 years then this would be always his desire that either he may have a virgin not more than 20 or 25 or a virgin widow of similar age but he should never accept issueless widow of 25 or 30 although she may be healthy and good looking. Any how it is my candid opinion that if the law may be framed as mentioned by me then there could be real remedies for preventing evils and miseries.

9. Delhi Provincial Varnashram Swaraja Sangh.

2. Neither the Emperor of India, nor ever any one of his other subordinate political authority as well, is morally justified and rightly entitled to meddle ever with the religious *Dayabhad* or *Mitakshara* and similar other *Nibandhas* dealing particularly with division of property, to be inherited by most deserving and real heirs to an individual and which have not only been accepted but also followed faithfully so long by men of good disposition and philanthropic nature, and thus to abrogate and to replace them for good by the innovation of an arbitrary Hindu Code in English, framed by the Hindu Law Committee appointed by the Government of India of its own accord and at its own instance. Nor did any one of the Hindu Sovereigns so far, ever since the beginning of the creation, venture to effect any change in Divine made Hindu Dharma Sastras; but, on the other hand tried wholly to mould his rule by following literally the tenets depicted therein. Nor has any one of the Muhammadan foreign rulers ever thought it a wise policy to interfere with the scriptural authority of the Hindus. If ever, unfortunately the Government does so forcibly against the legitimate consent of those for whom it is originally intended, it is thus no actual display of good statesmanship on the part of the so-called sagacious Government ever to act up to its own sweet will against the general trend of public thought, which will in the long run be detrimental to the interests of the Government especially at this war juncture, and how far the Government by such unsound and partial activities may be able to hold a full sway over the minds of the people is doubtful. Moreover, the method of taking and collecting public opinions in vogue by the Government now-a-days indiscriminately taking opinions of those who do not even possess the rudimentary knowledge of the Dharma and specially in such serious matters that may to all appearances cause their sure death in life is not only partial but also injudicious and incompetent. An example, I think, may elucidate the whole thing. When a man is suffering from some malady, would ever the opinion of either passers-by on the thoroughfares in his case have any real value or of medical men alone may be considered by thoughtful persons as well as representatives, of the British rule in India.

4. An attempt to rescind the *Dayabhad* or *Mitakshara* and similar other subsequently recognized works, treating, at length, the same subject and not totally differing from it and all being originally in *Sanskrit*, the perfect language and mother of all the languages of the world, and to replace them by a code independently prepared and rendered into *English* at the same time, which has not got and never can have equivalent words for *Sanskrit* terms. Therefore the *English* rendering of the Hindu Code can never convey the exact sense originally meant by *Sanskrit* text, and, therefore, its *English* translation must be defective and must do no real good to persons for whom it is assiduously being prepared. As generally *vakils* and *Judges* who are the chief instruments in having justice administered to litigants, are not profound scholars of *Sanskrit*, therefore, they can never detect the drawbacks of their *English* renderings and must thus wholly depend upon them. What is being done now-a-days in courts owing to the defect in question of the enforced law, is that under the guise of justice, injustice is being done in a majority of cases and that this very selfsame mistake is again going to be committed evidently by those who decide the general destiny of the people, e.g. *Sanskrit* word '*Vastra*', has got no equivalent rendering into *English*, though it is daily translated generally by *cloth* the etymological meaning of *Vastra* and *cloth*

differ as poles asunder. Therefore, it is quite unjust and improper to prepare a Code in *English*.

5. In *Hindu Law* the term '*Hindu*' is used to all intents and purposes particularly to denote all those Hindus that are by birth Hindus and always adhere strictly to the caste restrictions observed so long and followed faithfully by their predecessors, and thus not only feel deep veneration for the authority of Hindu Dharma Sastras collectively, commencing from *Vedas* down to the authority of *Puranas*, but also follow their injunctions quite earnestly and unconditionally. Really speaking, according to its *Shastric* sense, it is applicable strictly to those Hindus alone that never fail to perform meritorious and befitting deeds, and never have recourse to the performance of ever degrading misdeeds in life. As is clearly depicted in (*Merutanta*) in the dialogue between *Mahadeva* and *Parvati* हीनं च दुष्पत्येव, रिपु रित्युच्यते मिये. This sense leaves now no room for doubt that *Aryas* differ from *Hindus* that have at times performed deeds of great honour and enviable renown. But owing to their hypnotized brains under the influence of western culture and spell of Modern Godless *English* education as imparted in all seminaries throughout India, people, on occasions, may be heard to prattle quite irrelevant things. In its broader and present day commonly admitted sense, it comprehends within its fold all those persons that have got *Sikha* on their heads, and thus under its current general sense may as well come, *Jains*, *Sikhs*, *Budhists* and *Arya Samajists*, as they are all supposed to have at least *Sikha* on their heads.

6. In the opinion of final decision given, viz., established authorities on property share holders, i.e., *popular recognition*, means to denote without the least shade of doubt all those persons that in obedience to *Sastric* injunctions are rightly entitled to perform and actually do perform obsequies of the deceased. If a person is unfortunately a man of loose character he can thus no wise be expected in the considered and thus valued opinion of the *Dayabhad* authorities to perform quite faithfully all religious duties, rites, and obligations thus devolved on his shoulder.

7. '*Stridhan*' paraphernalia or *personal belongings* to a woman signifies all those gifts in shape of ornaments and it will not be out of place if I may mention here that it is the jewels, cash, etc., that are actually presented to the bride by her parents, their other relatives, friends, wellwishers, father-in-law, bridegroom's other members of the family, relatives and so on. Or even announced, strictly in presence of the *sacred fire* with whose help their marriage which is observed amongst the Sanatanists Hindus, particularly when a *religious sacrament* was performed, e.g., 'सिन्धुमृपति भ्रातृदत्तमभ्युपगतम् । आश्विनेद्विकार्यं स्त्रीधनं परिकीर्तितम् (मिताक्षरा धनधरा ध्यायदापविभारमकरण श्रौ. १४३ वा. सू.) कात्यायन विवाह काले येस्त्रीभ्य दीपते द्युतिसन्निधौ । अश्विनवर्षेनकं नाम स्त्रीधनं नद्धारतम् । etc., later authorities on '*Stridhan*' have included therein all presents given to the bride either at her father's or father-in-law's house, even after her aforesaid religious sacrament is over, whether she is at her father's or father-in-law's house, of which she is the sole owner to make its free and proper use with her husband's consultation with the main object of ever preserving his prestige. None else can take it from her except her husband under the dire necessity of special critical circumstances, as given in *Shastras*, but he is as well required, to the best of his ability, to make it good when the crisis is over.

8. Those who have fallen down in their social scale and have thus become *Patil* from their pre-historically established social status, through the performance of their inconsiderate and unconscious evil actions, that are not ordained any where and sanctioned by any one of the *Dharma Sastras* collectively, have not the possibility of inheriting a property and which religious prohibition seems to be quite justified to open for good the eyes of either their accomplices or men of similar type, who have ever recourse to perform still wrong actions, thus saving them at least from the indescribably horrible and sure pangs of infernal regions and thereby trying their utmost to establish and maintain in the world permanent peace and order. Hence, whatever has been described in the

Hindu Dharma Shastras is so done not only with the main object of considering daily occurrences of the subject's present day worldly life alone; but also with the considerations of their life to come after death and thus making their authority more binding and obligatory and which goes to show the far-sightedness and great wisdom of their Indian Sage authors.

9. In a joint Hindu family system, a natural product of the Hindu Law-giver's brain and in vogue from time immemorial, all sons are equally entitled to inherit their father's property and to get their proportionate respective shares after his death. But if any refractory and ever quarrelsome son compels his father to divide the property of which he being the head of the family, is the sole and legitimate proprietor during his life time, to give his due share and if he then considerably to end once for all future brotherly dissensions does so, and other sons still live with him as before and serve him in every respect so long he lives and are unconditionally obedient to him, then after his death his head-strong son has got no moral obligations to have the already divided ancestral property further divided, and thus to get his unjust and unlawful share again therein. If any unwise and shrewd Government still makes any legal provision for the share of such sons, apparently to oblige them, it is then clearly implied that that Government is secretly anxious to multiply constant mutual quarrels and thereby trying imperceptibly to scatter the thoughts of the general public by such devices from the actual accomplishment of the real aim of their human life and thereby also encouraging people to squander their father's property and therefore, to become indigent in the long run. Such actions are, no doubt, unbecoming a true ruler. If a mother has got only one son, under no circumstances, is she entitled to beg her share in the property. As her son is religiously presumed, to look after her, to take every care, and to maintain her. And if he is a minor and has not yet been major, then both he and his widowed mother are bound to be maintained by the surviving head of the family. As in Hindu Dharma Shastras the independence of a woman is incompatible with her status and when she has once been infused with the obnoxious idea, of freedom, her female character becomes spoiled is a natural phenomenon; she can no longer remain chaste and there are profound scientific reasons therefor, which are not to be easily understood by materialists and hence men of ordinary calibre. No matter they may be polished degree holders of any university even.

10. If a virgin has got brothers, she is not, therefore, entitled to inherit any share in her father's property, as she is not entitled to give *Pind Dan* and *Jal Dan* to her deceased father and as she is to become before long *पुत्रवती* (Goddess of wealth) in her father-in-law's house and is at full liberty to spend as she likes on any thing profusely, but with the full consent of her husband and through him other elderly male guardians of the family. Those who stubbornly and inconsiderately still legally provide for her unjustified share in her father's property, apparently with the fair motive of doing good to the fair sex, have not really been able to appreciate the underlying duty of the far-sighted joint Hindu family system. They seem, therefore, surreptitiously determined to break up the existing pure love ties between sisters and brothers from time immemorial in Hindu India generally, and thus to make Hindu women wage war against their natural affinity and to become immodest like European countries by giving them this apparent freedom and thus indirectly alluring them to spoil their lives to come after death and thereby to lay good foundations of constant litigations between sisters and brothers so long unknown in Hindu Society. The naked dance of giving freedom to women in European countries must no longer be hidden from the eyes of the apparent sympathisers and advocates of female cause in the form of daily occurrences of innumerable divorce cases there in courts, where marriage takes place after the lengthy course of courtship is over, while marriage of girls in India clearly depends on the will of parents. In order to envy the unique fate of Hindu parents, the Government not only knowingly passed, but enforced as well the 'Child Marriage Restraint Act' commonly known as the Sarda Act, and thence forward thereby to reduce the Hindu society to her present plight, as regards the indescribably bad fate of Hindu

girls. And further to make India Europe in every respect against the irrevocable laws of nature, the wise Government of the India left no stone probably unturned to fulfil before long her long cherished wrong notion at heart. Consequently it not only began to preach the gospel of giving female education in India, but also at last made it a common place thing. The immediate and pernicious effect whereof is before the eyes of all sane and far-sighted Indians and needs no further comments.

11. It is evidently the practice of European countries to go to courts to make complaints either against husbands or wives generally, and thus to seek their respective divorces. But neither Hindu ladies, nor ever purely idealistic Bhartiya Hindu would consider it a wise act to seek the help of the court to settle their domestic affairs when they know full well that the marriage tie of Hindu males and females is in no way dissoluble as given in *Veda* प्रणेत्ये प्राणान् सदधानि अस्थीरिस्त्रीनि मांसिमांसानि चक्रचमिनि. The evanescent pleasure and pain of their present life is the outcome of their own good and bad deeds in past life, as they do believe in transmigration of soul. Their life can thus in no manner be bettered by having recourse to worldly remedies to ameliorate it. The case of apparently westernized Hindus through his or her Godless modern English education forms an exception to the general Hindu ideals. Hence he or she alone may have their solitary cases tried as they please, but their example must not hold good in cases of other Hindus. Truly speaking the so-called Hindus are really a bane to Hindu society.

12. In the first place inter-caste, Sapraver, Sagotra, and Sapinda marriages are strictly forbidden in Hindu Dharma Shastras and hence they are invalid. If contracted, unconsciously by the parties of the aforesaid facts, the married women then is always not only treated, but also respected like one's own mother as an expiation of their sin, and maintained throughout her whole life, if their mistake is known shortly. If otherwise, their issues are pronounced to be *Charudalas* how can they then inherit property amongst *Durjatees* still forms a mystery Manu Chapter III, Verse V सपिरागच यामाल रसगोय च पिलः। प्रापस्तन्वः समानगोय यवरासयुद्धपगम्यचन्द्र, सत्यामुन्याचारादाहं प्रहाणवेव धीयत about *Sapindata* definite and express orders are given in Hindu scripture: as पञ्चम। सहमादूर्ध्वमाकृतः पितृतः क्रमान्। सपिदादना निवर्तत सर्वे वरोस्त्रिय विधिः

13. The question of inheritance of property, accepted and admitted by *Mitakshara* and its later followers depends chiefly on the incidence of birth, of which fact the wisdom is based not only on *Vedas*, but also on *Puranas*, *Smritis* and other Shastras, made solely on the authority of the *Vedas*, and thus can no wise be rejected by men made laws, going to be substituted in the form of the so called Draft Hindu Code in their place and which can never be accepted by the overwhelming majority of Sanatanist Hindus.

14. So long the Brahmin is not degraded and lowered down in his social scale, he has every legitimate right to inherit Brahmin property and under no circumstances possibly the Government has any right to lay hands thereon to snatch it from the possession of its right heirs.

15. There is no such rule as to help a *Sanyasi* to inherit his ancestral property, when he has for good retired from the world to lead the life of a recluse. All his hereditary rights must also cease at the same time. His share of property should therefore naturally fall to the lot of his near survivor in the family.

16. Besides the question of maintenance of the Progeny of one's mistress, the question of other sons, though born of him, through his unlawful sexual commerce with a woman, commonly known as adultery, can never legitimately be raised and he is not, therefore liable to maintain them. If any Government unreasonably ever makes legal provision for the maintenance of such hybrids, then that Government is not wise and is indirectly encouraging the exuberance of adultery which is taken to be a moral sin by all religionists of the world.

17. If widows, in case, they are not supported as usual by the relations of their husbands and they are thus obliged to invest their *Stridhan* on interest and thereby are thus able to get sufficient amount monthly to defray their maintenance charges, then they do no longer stand in need of applying further for their maintenance allowance from other male co-parceners in the ancestral property, and thus making those selfish creatures their enemies for no material good to them at the instigation of their self-interested advisers. If they could ever have rendered them any financial assistance, even that they would no longer do to them. Hindu *Dharama Shastras* have exhorted Hindu widows to minimise their expenses as much as they can, and to remain ever pleased and satiated and devote their time constantly in meditation of God. The daily multiplication of man-made enactments and their occasional enforcement, has, to all appearances, made India the holy land of Sages, a miserable place of regular discords and agnostics, which fact is really responsible, to a great extent, for the present day plight of Hindu India.

18. Hindu *Dharama Sastras* unanimously declare all such marriages if ever performed quite invalid and in their most considered opinion, females so married do not deserve to be called wives at all, as already hinted above in reply to question 12th.

19. It is also the same fate of inter-caste married ladies as related in reply to question 18th.

20. Under no apparent circumstances the marriage of impotent, insane and degraded person is permitted by *Hindu Shastras*. These are the preconsiderations to be strictly and seriously insisted upon before betrothal is contracted. If a person does not quite exercise his discrimination and thus does act carelessly, he is then to be punished to open the eyes of thoughtless persons of his type, but marriage once performed with Vedic hymns and incantations can never be considered dissoluble.

21. During the lifetime of a previous wife, another marriage is invalid and those who perform it knowingly in contravention of exceptions profusely given in *Manu* verses 80, 81 and 82, Chapter IX and without obtaining full consent and consultation of the previous living wife, no doubt, are liable to exemplary punishment to open for good the eyes of incontinent persons, since marriage amongst Hindus is purely a *Dharmic Sanskar* and the issues of such wives alone are entitled to perform religious rites and none else.

22. Under no circumstances a Hindu wife can ever even dream of dissolution of her marriage bond with her husband, when she has got an indelible impression upon her mind from her very infancy of *Pativrata Dharam* and *Parlok*. Therefore, she never cares for anything else and habitually ever thinks it below her womanly dignity even to think ill of her husband in any manner and never murmurs over her bad luck and she consoles herself with the exhortations as given in *Ramayana* and *Manu*, Chapter V, verse 154.

23. If a widow being born of poor parents, and having thus no sufficient *stridhan* amount about her wherewith to maintain her properly and being of mostly good character if she wants to live separately from her father-in-law's relations of evil propensities, so that her chastity may no wise at any time be by surprise and forcibly violated by them, she is not only justified but also religiously entitled to ask them to provide for her maintenance. Under no other circumstances she is ordained to live separately and thus to accustom herself to lead an independent life, detrimental to her honour.

24. The idea of 12 kinds of sons out of which दत्तकपुत्र | an adopted son, also forms one, originally sprang out from the fertile brain of Hindu Sages (occult seers). As *Dharm* forms the main part of a Hindu life it being a religious ceremony as well, should therefore be performed in the presence of visible God *Fire* अग्निदेवताप्रति: for sake of its permanence. Hence Holoocast (होम) forms an essential part thereof, without which it is religiously invalid and has no solidarity, and may be broken at will, and its *modus operandi* may but be known with the help of learned Pandits, Masters of Sanskrit lore, and the actual study of original *Dharm Shastras*, but never through their English renderings;

as there are good many Sanskrit technical terms which can never exactly be translated into English having no equivalent words therefor.

25. Without obtaining the legitimate permission and consent of the deceased husband, in case, having no issues, a Hindu widow is not entitled to adopt a son of her own accord, as she being unable to discriminate thoroughly which son would be a fit person for the actual redemption of the dead stock of her family ancestors from their (*Pretatwa*) by performing religious rites.

26. In order to obtain full powers to utilize the inherited property of the adopting father for whom he is being adopted, the restriction of a particular limit of time for adoption purpose by the deceased husband for his widowed wife is essential. It being over she has no right to adopt a son. When she failed to obey the express injunctions of her deceased husband, she may as well disregard other *Dharmic* orders and thus to spoil thereby her female life.

27. A widow after the death of his only married son and having no begotten and alive grandson even, no matter whether her daughter-in-law is either dead or alive, is not entitled under *Shastric* reasons given above to adopt a son.

28. The only son of a man is not entitled to be given in adoption, if ever given through worldly temptations, who else is the right man to perform the obseques of his actual father seems to be the foremost and just thought, the then prevailing in the minds of the adoption law expounders to prohibit his adoption.

29. Adoption even amongst the lower strata of Hindu communities, is made generally from within the circle of their own respective groups and never from beyond it. Therefore, the consideration of self-same caste by adopting persons seems to convey essentially the primary significance.

30. Whereas the question of adopting daughters and sister's son is taken into consideration, they are positively conditioned to be adopted only if they are of good moral character. If otherwise, even after adoption they are to be rejected seems to be the sole intent of the *Dharm Shashtra* Authorities it has an ample justification therefor.

10. Lord Krishna Salvation Mission, Delhi.

From our wide experience in this work for last few years we have concluded that the items of the Hindu Code as divorce Bill and the Bill for equal claim in the property to the daughters are very important and both should be passed for the betterment and uplift of the status of ladies.

11. Bari Panchayat Vaishya Besa Agrawal (Registered).

1. Our institution takes very strong objections to the present Bill as regards to (1) Inheritance, (2) Divorce, (3) Sagotra marriage, (4) Adoption; as it will destroy the harmony, love and status of the family; and in the long run the name of the Hindu will disappear from the pages of the history and my institution therefore respectfully submits that as regards the above four points the old Hindu Code Law should remain in force, except that a Hindu widow should, of course, be given her full rights in the movable as well as in immovable property and also the right of adoption.

2. As regards 'Bigamy' mentioned in section 24 of the draft, this institution fully endorses the views expressed in the said section and strongly supports it.

3. This institution subject to 2 above, endorses the views of Mr. Chatar Behari Lal Sr. Advocate, Delhi, which he has submitted to your Committee, as a personal memorandum of his own.

12. The South India Club, New Delhi.

General.

Hindu Law in all its variations is derived from the same original sources and the variations are due to the lack of political unity and the prevalence of local customs. That these variations are obstacles to the solidarity of Hindu society cannot be doubted. It is, therefore, eminently desirable that it should be codified as far as possible.

It is obvious that no codification is possible without changing some parts of the existing law due to custom and choosing the most reasonable of the existing versions. It is also desirable to take the occasion of codification to bring about some reforms which will make Hindu society abreast of the time-spirit. The present draft, though on the whole a conservative measure makes some liberal departure from Hindu tradition.

Definition of 'Hindus'.

While the definition in the draft code is fairly comprehensive, it is doubtful if it will be applicable to hill tribes who are trying to become Hindus. So the definition may be extended to include the members of such tribes which may be declared to be Hindus though hitherto they may not have been governed by Hindu Law.

Intestate Succession.

The main changes made are the abolition of survivorship and of limited estate for women and the provision of a half share for the daughter. All these changes are desirable.

It may be objected that when the provisions are applied to agricultural property, fragmentation of holdings will be increased and that the land brought to the family by the wife will be situated in a different village from the landed estates of the husband. These are mere administrative problems which ought not to weigh before the essential injustice of depriving the daughter of a share in her father's property. There should be no difficulty in enacting provisions by which the share of the daughter in landed property may be paid in cash by the brothers if they so choose. The problem of consolidation of holdings has to be tackled in any case and if holdings of a certain size are legally made indivisible, the daughter's share will fare in the same way as the son's.

The Bill prescribes separate modes for the devolution of *stridhana* for property inherited from the husband and other property belonging to a woman. This is inconsistent with the abolition of the limited estate for women. The provisions can be evaded by other means of disposal. It may be objected that on remarriage, the heirs of the husband should get the property derived by him. If daughters are to get shares, the number of husbands who will inherit property from their wives will be approximately equal to the wives getting property from the husbands. The logical thing is to make the husband the co-sharer of the wife's property as the wife is made the co-sharer in husband's property. The present distinction only adds to the complication of the law without achieving any desirable objective.

Maintenance.

In clause 6, the amount of maintenance to be allowed to a widow of a deceased is made to depend on her *stridhana* income but not on her income from her earnings or other sources. There is no need to make this distinction between

the widow and other dependants. Originally, this distinction was made because the widow had only a right to maintenance and had no right to a share in the property. But she is now put in the same position as the son and her right to maintenance may also be put on the same level.

Marriage and Divorce.

The provisions of this section are likely to prove the most contentious. According to the Draft Code all Hindu marriages are to be monogamous, and marriage may be declared null and void in certain cases and dissolved in certain other cases. Though it may be said that divorce or dissolution of marriage is against the Hindu action of a sacramental marriage, the circumstances in which the dissolution may be granted are so limited that the spirit is preserved while provision is made for very hard cases.

Monogamy is a necessary reform but without safety-valves in such cases, it may prove oppressive.

Sapindas are prohibited from intermarrying 'unless the custom or usage governing each of them permits of a sacramental marriage between the two.' As the object of the Code is to do away with the uncertainties of the customary law, it is desirable that the clause should be deleted.

Prohibitions on the score of *Sapindas*, *gotras* and *pravaras* may be left to voluntary observance of customs and the law may be confined to the absolutely necessary prohibited degrees.

The children of two sisters may also be prohibited from intermarrying as children of brothers to bring the law into conformity with generally accepted Hindu ideas.

The provisions bringing the law of civil marriage together with those relating to sacramental marriages and making succession and inheritance the same in both cases deserve support.

The chapter on adoption is unobjectionable.

13. Sir J. R. Goyal, Editor, "The Medical Review of Reviews", Delhi.

1. A married daughter should not be given any share in her parents' property. A daughter's sharing of parental property will lead to great disharmony and disputes in Hindu homes.

2. An unmarried daughter, I mean who does not want to marry throughout her life she should get share in paternal property equal to son.

3. A widow who does not want to marry subsequently she should get share in parental property half as much as the son gets. A widow should get share in her husband's property equal to son.

4. A daughter should also be adopted if any body so desires.

I agree with all other clauses about marriage and divorce.

III. AJMER.

1. Mannal Jain, Esq., Editor, "Oswal", Ajmer.

I am in full agreement with the draft of the Hindu Law Reforms published by you and admit that with the change of times, ancient Hindu Laws which do not conform to the present day conditions, must change.

Keeping in view the modern conditions of the Hindu Samaj, I very much appreciate the contemplated changes in its structure, though some of its clauses require clarification and mature consideration before they are made law. I hope that whatever the final result and decision may be, it would be in the best interests of the Hindu Samaj.

I also venture to give one suggestion on the rules and regulations relating to marriage and I hope it would be added to it.

My suggestion is that some age-limit must be imposed on the respective ages of the bride and bridegroom, i.e., there must be some co-relation between their ages. If this kind of age-limit is imposed by law, it will result in putting an end to unequal marriage child and old age marriages. The atrocities which are perpetrated by such undesirable marriages can be stopped only by imposing age limits. In my humble opinion, the following age-limits may be prescribed between which both the bride and bride-groom should marry.

(1) No girl of age less than 14 years and no boy of age less than 18 years should be married as Sharda Act lays down.

(2) The boy should be older than the girl.

(3) There should be a definite difference of years between their respective ages on the following lines:—

Girl's age.	Boy's age.	Difference.	
		Minimum.	Maximum.
14 years.	18-21 yrs.	4 yrs.	7 yrs.
15-16	21-24 "	5 "	8 "
17-18	26-30 "	7 "	10 "
19-20	31-35 "	10 "	15 "
21-22	36-40 "	15 "	21 "

(4) Girls of 21 years should be generally married. Therefore every father should marry their daughters of 21 years. Exceptions may be made in unavoidable circumstances.

(5) Difference in ages after the above should be as under:—

Girl's age.	Boy's age.
25-30	40-45
31-40	45-50
40-45	50-55

In the above ages, there should be the least possible difference between their ages, but the difference should not be more than 15 years.

I hope you will give your full consideration to the above views and incorporate a clause more or less on the above lines so that unlawful marriages may be prevented.

2. Rai Bahadur Pt. Trilokinath Sharma, Railway Magistrate, Ajmer.

The tentative Draft Hindu Code has been prepared by the Hindu Law Committee which have been appointed by the Government of India. It aims at codifying Hindu Law. The principal sources of existing Hindu Law are *Smriti* and custom. *Smriti* literally means that which was remembered. It is the recollection handed down by the Rishis or sages of antiquity of the precepts of God. The fact that *Smritis* do not agree with each other has given rise to commentaries. The authority of the several commentators varied in different districts and thus arose the various schools of law which are operative in different parts of India. Though the commentators proposed to interpret the law laid down in the *Smritis* in fact, they recited the customs and usages around them and on this ground their interpretations have been accepted as authoritative. The duty of courts has, therefore, been to recognize the rules of the laws enumerated in the commentaries, even if they appear to proceed on a wrong interpretation of the *Smritis*, the reason being that under the Hindu system of law clear proof of usage, as held by the Privy Council in Collector of Madura vs. Mootoo Rama Lingh (1868) 12 M.L.A. 397, 435, 436, outweighs the written text of the law. It, therefore, follows that customs and usages are the chief basis of the present Hindu Law. Almost all the important points of Hindu Law are now to be found in the law reports and to this extent it can safely be said that judicial decisions have superseded the commentaries and have assumed the position of source of the present Hindu Law. The Draft Hindu Code expressly supersedes the customs and usages so far in vogue which have descended from one generation to another. Practical abolition of the *Mitakshara* Rules of inheritance and woman's estate, recognition of even sacramental marriage between the Hindus irrespective of their caste and declaration of adoption of a boy, whose mother the adopting father could not have legally married, as valid are the glaring instances of the revolutionary changes that are proposed to be made in Hindu Law. The practical effect of the supersession of customs and usages will apparently be that judicial pronouncements on Hindu Law will no longer be good Law. The draft aims at uniformity in Law. It has framed one set of, rules for all persons to whom it is intended to apply. Uniformity in Law is *prima facie* desirable but I am afraid such revolutionary changes as are contemplated by the draft will not be acceptable to the Hindu public in general. Those who still rely upon *Smriti*, *Smriti*, caste and family customs and usages will find it very difficult to reconcile themselves with the changes proposed to be introduced.

The joint and undivided family is the normal condition of Hindu society. An undivided Hindu family is ordinarily joint not only in estate, but in food and worship. Survivorship and acquisition by birth of an interest in the joint coparcenary property are the two main features of the *Mitakshara* system of law. Clauses (1) and (2) of Part III-A of the draft will in course of time abolish the system of jointness in estate and the rules of survivorship and acquisition of an interest in the joint or coparcenary property by birth. This will apparently result in hardship to the son, son's son and son's son's son who acquire interest in joint family or coparcenary property by birth. The "simultaneous heirs" referred to in clause 5, class I of part II of the draft should be allowed a share only in the self-acquired or separate property of a deceased Hindu and not in the interest that he possessed at the time of his death in the joint family or coparcenary property. A Hindu should not also be allowed to dispose of his interest in joint family or coparcenary property by transfer *inter vivos* or by will unless and until there is an actual partition among the coparceners and such an interest practically acquires the status of self-acquired or separate property.

It seems undesirable that a father may inherit his father's property to the entire exclusion of his son, son's son or son's son's son. This will leave the son and his descendants completely at the mercy of his father. An

indiscreet father will waste his property and will leave his sons in a state of destitution. His creditors also will be able to proceed against the ancestral property. Under the existing law sons are at liberty to contest the alienation of ancestral property made by their father by urging that there was no legal necessity to make the alienation. They can also plead that the debts were illegal and immoral and are not binding on them. But when the father will be exclusive owner of ancestral property all such objections will not be tenable.

One of the objections to the joint select committee Bill relating to intestate succession was that a married daughter obtaining a share in her father's immovable property is likely to sue for partition and thus create trouble in the family. This objection seems to have been wisely met by providing for the application of Partition Act, 1893, to such cases and giving such married daughters the status of a transferee. This will enable the other heirs to buy the share of the unmarried daughter.

The other important change that the draft seeks to make in Hindu Law relates to the rights of women over *stridhana*. Under the existing law every female who succeeds as an heir, whether to a male or to a female, takes a limited estate in the property inherited by her and at her death the property passes not to her heirs, but to the next heir of the person from whom she inherited it. The term "limited estate" does not mean that a female heir is only a tenant for life. She is the owner of the property, subject to certain restrictions on alienation and subject to its devolving upon the next heir of the last full owner. The draft confers upon her an absolute right over the property howsoever acquired by her. It dispenses with the restrictions that are hitherto imposed upon her ownership. It empowers her to part with the property by transfer *inter vivos* or by will and provides a different mode of succession if the woman dies intestate. In view of the fact that women of to-day are more educated and can manage their affairs more efficiently than the women of old times, I think the changes suggested by the draft are sound and will have wholesome effect on society. Evidently most of the underhand dealings on the part of reversioners and litigation arising out of women's estate will be avoided.

Part IV of the draft deals with Marriage and Divorce. Clause (3) of this part lays down certain conditions as requisites of a sacramental marriage. One of the most important requisites of a sacramental marriage is if either party is a member of any caste, the other must belong to the same caste. There was such a condition in the Bill introduced in the Assembly but it has not been embodied in the draft. To my mind such a condition is absolutely essential for the validity of a sacramental marriage and should be introduced. The principle of *factum valet* also should not apply to a case in which such a condition is contravened. Violation of such a condition should also form a ground for having the marriage declared null and void at the instance of any of the parties to the marriage or any two or more members of the caste to which either party to the marriage belonged.

The provisions relating to divorce are new. Divorce is not known to the general Hindu Law. Looking to the modern conditions of society, I think there should be a provision for divorce in Hindu Law.

2: If at all the Central Legislature undertakes this measure immediately, my opinion is that Part II "Intestate succession" and Part III "Testamentary succession" and Part III (a) "Provisions common to testamentary and Intestate succession" (pages 3 to 16 of the draft Hindu Code) should not be enacted at all and *status quo* be maintained. My chief reasons for the above opinion are—

(a) By the proposed enactment the whole fabric of the joint family system of Hindu society will be broken and by the removal of the provisions on survivorship and ancestral property, the happiness of most of the Hindu families will be destroyed.

(b) If the draft Hindu Code is passed into law, it will abrogate many settled principles, customs and usages of the people which they have been practising for generations. The educated and reformed Hindus who feel

aggrieved by the present law have got and can manage to have other remedies for the redress of their grievances by wills, testaments and other enactments in force but as the proposed law will apply to the uneducated masses also, there will be much trouble amongst the people. The principle leading to the introduction of females as heirs will disturb the well-established order of succession. The proposed order would be like that of the undesirable system of Muhammadan Law of inheritance and would not be congenial to Hindu society and would be a great source of strife and confusion in the peaceful joint Hindu family system.

(c) Section 2 of Part III (a) printed on page 16 of the Draft Hindu Code gives much more powers to the father who may be able to deprive his sons altogether. It will be more advisable to make the sons and his descendants as joint heirs.

(d) If the daughters are to get a share along with the son, the two should divide equally and not half the share like Muslims.

(e) The following should be added in the present Hindu Law of testamentary succession and intestate succession :-

"Any Hindu changing his religion, i.e., becoming a Muslim or Christian will lose all rights of inheritance in the joint Hindu family." Act XXI of 1850 should be amended accordingly.

PART IV—MARRIAGES AND DIVORCE.

3. It is good that bigamy has been made an offence. Monogamy should prevail among the Hindus generally. The marriages should not be allowed to be valid sacramental marriages between sapindas because it is opposed to the spirit of the Hindu Shastras and also because there is a wide scope for marriages when original four varnas of Hindus are made accessible for a valid marriage.

PART VI—ADOPTION.

4. In clause 13 (at page 39), sub-clause (iii) "He must never have been married" should be omitted because it is a well-established custom amongst the Hindus that a married man may be adopted.

3. Rai Sahib J. L. Rawatz, Additional Assistant Commissioner, Ajmer.

The Bill seeks to make unjustifiable inroads on the religious sentiments of the Hindus and Hindu society. Customs and usages are sought to be done away with. The framers wrongly assume that the Indians have reached a stage when the Laws of the Western civilization can be enforced on the Indians. The Bill can hardly represent that the voice of the Indian population though it is true, that 5 per cent can have its voice heard.

The Bill, if passed as an Act, is bound to bring disintegration and disruption in the joint Hindu family system which has advantages of its own. The law of succession, as provided increases the number of heirs and introduces women as heirs. The result would be that the business of a thriving Hindu is likely to come to a standstill or dwindle down into insignificant fragmentation. I am inclined to think that the poverty of Muhammadans is to a great extent due to the defective system of inheritance and the contemplated law will bring poverty among the Hindus also. People do not easily give up their custom but stick to them and section 3 of the Code would be found hard and troublesome in actual working.

The Bill introduces certain females for succession. Females will have double chances of succession in the father's family as well as in husband's family and in both the cases she will inherit as a full fledged owner. The exclusion of females from inheritance was based upon Hindu Shastras and was not arbitrary. The daughter even in the present system is a liability on the father's family from time to time Mukhlawa, Mahira, etc., and to make her a heir would only mean estrangement of feelings between brother and sister. She may be a loser. In view of the numerous heirs the difficulties of securing maintenance from them by those entitled to maintenance, would be great and real.

The proposed legislation gives an undue advantage to females.

Clauses 1 and 2 of Part III (a) are very objectionable. They wipe out law of survivorship. An unscrupulous or an indifferent father can deprive his sons from the benefits of ancestral property.

Part IV Marriages.—Inter-sub-caste marriages have been made legal. The population of India with its numerous sub-castes is not prepared for it at present. Let the reformers prepare the ground before such legislations are introduced.

There does not appear any necessity for introducing Civil Marriage System in the Code. Special Marriage Act, 1872, provides for such a marriage and if necessary it may be provided that Civil marriage will not affect the rights of a Hindu in the family.

The definition of stridhan is defective and goes beyond the conceptions of stridhan property so far understood. The divorce, unless where custom and usage allows it, of a sacramental marriage, is likely to bring unhappiness in the Indian family as at present constituted. I am not in favour of the proposed legislation.

4. Sri Chand Karan Sarda, President, Rajputana Provincial Hindu Sabha, Ajmer.

1. It is true that the conditions of the society have changed and efforts should be made to reform the Hindu Law with the change of times. The attempts to draft the Hindu Code is praiseworthy and very desirable but the haste which is being made to push it through immediately is not desirable; and hence the legislation contemplated by the draft Hindu Code should be suspended till the formation of a new assembly because the present assembly is not a fully representative body; or till ample time and opportunity are given to the general Hindu public to consider all its provisions. The Hindu society does not feel the compelling necessity or justification for the present Central Legislature to undertake this measure immediately.

5. Mr. Ghisu Lal, Advocate, Ajmer.

1. The idea of having a Hindu Code applicable to all Hindus alike in British India and having clear cut provisions as to the matter it deals with, is to be welcomed by all the well-wishers of the Hindus. Some of the provision of Hindu Law have become so intricate by minute distinctions lying imbedded in case-law that ordinary people cannot act according to them and the result is much confusion and heart burning and the consequences of the bona fide conduct of the parties are quite startling and undreamt of by, the said bewildered parties.

2. There are many (and their number may include very learned and pious personalities among the Hindus) who will resist all reform of readjustment of the Rules of Hindu Law as laid down in the Smritis and other Shastras on the ground that the Rishis of yore were men of most outstanding if not supernatural learning and were thoroughly matured with the all pervading and fundamental principles of Hindu culture and that now when the present-day Hindus neither know well the Shastras nor the fundamentals of Hindu culture owing to their having been brought up in an alien system of education, it will be dangerous to attempt to meddle with Hindu Law as it exists to-day. But we cannot forget the fact that the Rishis in laying down in the smritis what is called Hindu Law were seeking to provide for the needs of the Hindus as they existed in their times or in their contemplation. Nobody can reasonably now maintain that those conditions of society have not changed and changed almost completely. Efforts are no doubt made here and thereby well meaning Great Men to bring back these ancient conditions but I think Tennyson has rightly said

"Nature brings not back the Mastodon

Nor we these times."

Law should be only a reflection of the actual needs of and the true motives of action of the society which it may govern. We must, therefore, with the change of times reform the Laws which are to govern our social relations and property. The present attempts should therefore be welcome.

3. But inasmuch as the majority of the Hindus live in villages and the number of those who can read and fully understand English is almost negligible, it is most necessary and desirable that the proposed draft of the Code should be translated in Hindi and distributed, broadcast before it is put before the Assembly, and this must be done even if we may have to put it before the next Assembly after the war.

4. The law must be clear and easily understandable to all those whom it is expected to govern. Judged from this point of view the attempt to draft a Hindu Code is praiseworthy and very desirable.

5. When once codified any inconveniences or injustice disclosed by experience can be suitably modified by subsequent amending legislation.

6. In Part I Preliminary, I am of opinion that the definition of "Hindu" is rightly made extensive and also elastic enough. It is equally good that the mass of conflicting customs irrational and at times repugnant to morals as we now feel should be swept away, giving place to simple clear-cut rules easily understandable to all. We have a parallel for this in the Shariat Act XXVI of 1937 which has also similarly swept away for Muslims their own mass of confused and confusing customs.

7. Another happy provision which will greatly help to restore to the Hindus their pristine glory and cohesion and solidarity and give them a sense of common nationality is the recognition of caste as meaning only the four primary *varnas*.

8. As to definition of stridhan, it has rightly done away with the various distinctions lying buried in the ancient Smritis. But there is one very serious matter to be considered in this connection. In my humble opinion exception should be made in the case of a widow acquiring a share in her husband's property, when any son, or son's son or son's son's son be alive. In such a case she should have only a life-estate, and a corresponding provision should be made in the rights of a woman over her stridhan.

9. The case of Hindus has rightly been taken out from under the Special Marriage Act by the proposed amendments in the Special Marriage Act as stated in the First Schedule and the repeal as stated in Second Schedule of certain Acts by which the Hindu Law has already been amended because under the provisions of the Draft Code, they were not necessary to exist.

10. Among the enumerated heirs the Draft Code has made certain heirs what it calls "Simultaneous heirs". In this "daughter" has for the first time been put up on an equal footing with the son. This is quite in keeping with the modern awakened conscience of Hindu India. But in the Class 2, daughter's son has been given a first place. This should not be. Since "daughter" has been given a share along with the other simultaneous heirs which she did not have previously and because the framers of the Code make her share a "stridhan" and therefore absolutely disposable by her and not enjoyed as a life-estate only as previously, it is only fair that in class 1 daughter's son should not be given the first place as No. (2) but should come only after "mother", "father", "brother" and brother's son and son's daughter who are primary members of the deceased's family. "Daughter's son" should, therefore, come after "son's daughter" of class 2 and the last named should be transferred to class 1 and put above "daughter's son". In other words "daughter's son" should take the No. (1) in class 2 and "son's daughter" should go up in class 1 after "brother's son."

In this connection it may be remembered that the "son's daughter" born and brought up in the deceased's own family should naturally be a nearer object of natural love and affection than "daughter's son", a member of an alien family and the devotion should be along lines of natural love and affection.

11. Similarly and for same reasons in class 3 Nos. (3) and (4) should interchange their places and "brother's daughter" should precede "sister's son."

12. Coming to the rights of a woman over "stridhan," I see no reason why when her Christian, Muslim, Jain and Parsi sisters have got absolute powers of disposal

the Hindu widow should not have it. If having been kept in perpetual tutelage she is not fit to-day she shall soon be so and the Hindu community will be the better for it. However, in the case of family immovable property when sons and grandsons are alive a restriction may be made. I would, therefore, suggest only this proviso to the following effect:—

"Provided that when the stridhan property is immovable and has been inherited by a widow as simultaneous heir, the same shall not be transferable beyond her lifetime except for legal necessity or for the benefit of the estate when a son, or son's son or son's son's son were alive at the time of her death."

13. Corresponding change in the case of "widows" should be made in the clause dealing with the order and mode of succession to stridhan when the female is a widow.

14. For the reasons given above in relation to "daughter's son" above I would suggest that in paragraph 14 of the Draft Code after No. 3 "husband" should come No. 6 husband's heirs and renumbering of the heirs made accordingly.

15. As regards cases coming under paragraph 14, clause C (i) there is no reason why the son should take half the share of the daughter. The two should divide equally.

16. In Part III-A in clauses 1 and 2 the Draft Code seeks to do away with the right of survivorship and the right by birth as they prevail at present. This is the right thing to do because these two principles have been the source of much trouble and chicanery and avoidance of just claims of creditors. It seems to be the height of dishonesty that under cover of these two rights of survivorship and by birth, the benefits of the actions of a Hindu should be taken advantage of by the members of his family while they should not be liable to pay the just debts.

17. In Part IV dealing with Marriage and Divorce in Chapter I, clause 3 (d), dealing with the requisites of a sacramental marriage, the words "unless the custom or usage governing each of them permits of a sacramental marriage between the two" should be deleted altogether.

The alternative clauses 3 and 4 to clauses 3, 4 and 5 should be adopted; any custom to the contrary should be ruthlessly abrogated in keeping with the principle and spirit of the Draft Code.

18. In the part dealing with Marriage and Divorce in the alternative as well as the original clause 5 in Chapter I the clause should be deleted and marriage should not be allowed to be a valid sacramental marriage between "Sapindas" notwithstanding any custom or usage to the contrary and howsoever old. The necessity for recognition of such custom or usage is not only opposed to the spirit of the new Code but also unnecessary when original *varnas* are made accessible for a valid marriage.

19. The provisions of the Code should on no account be either expressly or impliedly made retrospective so as to affect things, deeds and acts already done before this Code becomes law.

6. The Bar Association, Ajmer.

It is contrary to principle to codify personal law by means of the artificial process of legislation, because personal law is the outcome of a natural process of evolution arising out of the customs, tendencies and usages of a people and is put to test for centuries. Personal law is intimately associated with the religion of the people. To interfere with it is to go against the assurances contained in the Queen's Proclamation after the Mutiny.

2. The proposed Code, instead of codifying the tenets of the Hindu Law, obviously aims at engrafting upon the Hindu society practices repugnant to the Hindu Dharma-Sashtra. The proposed codification is therefore undesirable.

3. If the common law of England could not so far be codified by legislative enactments, how can Hindu Law, which has a more complex basis, extending over a much longer period, a far wider territory, and a much larger number of people and a greater variety of races be codified by the legislature?

4. If this draft of the Hindu Code is passed into law it will unsettle many a settled principle as ordained by Hindu Law Texts.

5. In Hindu society customs and usages, which have been governing the actions and practices of the people for generations together are being abrogated—vide section 3 of the draft.

People, on matters of customs and usages, are so tenacious that they would not give up easily. This is not an unknown fact. Every lawyer knows this. If people are forced by legislation to give up their customs and usages, there will be immense trouble and heart-rending.

PART I.

6. Although at the beginning of society there may have been only four varnas, the present sub-castes are not of to-day's creation. These too have been in existence for centuries and millenniums together. To fuse them into original four varnas is an impossible task. Social reformers have been struggling for years and years. To give inter-sub-caste marriages and other connections, a legal status would be to revolutionize the whole fabric of the Hindu society. Clause 17, part II, is objectionable.

7. The definition of stridhan is a wild departure from the tenets of Hindu Law. How could property inherited by a woman from her husband or son be called her stridhan. Because female education is being favoured these days, it does not mean that the vested rights of people should be trampled upon. Stridhan property is sufficiently well-defined in Hindu Law and its scope should not be extended.

PART II.

8. The definition of "son" in Part II, clause 2 (c), is abrogating the "dwayamushyayana" son henceforward altogether. This is a very wholesome principle of Hindu Law. When out of two brothers there is only one son to one of the brothers, it is but proper that he may be adopted as a "dwayamushyayana" son. There is nothing wrong about it. Why should this be abrogated or discontinued for the future.

9. In clause 5 certain heirs are enumerated. The principle adopted seems to be to introduce certain females among the heirs and giving them precedence. The order of succession has more or less been practically settled by the Hindu Law Texts, and by a series of judicial decisions, most of them being of the Privy Council. There is absolutely no reason why the established order of succession should be disturbed. The proposed order would to a large extent be like the undesirable system of Muhammadan Law of inheritance. Nobody would admit that that system of inheritance is good or would be congenial to Hindu society.

Moreover in class I (i) the daughter is placed along with the son and widow to take a share simultaneously with them. This is not proper and would work as a source of great strife and confusion in Hindu society. Similarly other items of the list of the enumerated heirs, e.g., daughter's daughter's daughter has been placed before the brother's son's son. It appears that the consideration of the Hindu Law Text-writers has been subordinated to the desire to give females undue precedence.

10. Then as regards succession of heirs, beyond the enumerated heirs, the matter seems to have been left for controversy, necessitating reference to disputed problems as contained in Hindu Law books and Rulings of the High Courts and the Privy Council. Moreover clause 8 (4) seems to be improper.

11. Clause 13 also widens the powers of the woman over the stridhan property. There are certain contingencies in which the husband has rights in respect of certain kinds of property. These should not be abrogated.

PART III-A.

12. Clause 1 of Part III-A is completely wiping out of the law of survivorship. It may be advisable to allow the widow to succeed to the interest of her deceased husband in coparcenary property, but to extend this principle to the daughter is not proper.

13. Clause 2 of Part III-A also gives much more powers to the son, who may be able to deprive his sons altogether.

It would be more advisable to make the son and his male descendants joint heirs.

PART IV—MARRIAGE.

14. The alternative provision made in clauses 3, 4 and 5 seem to be better than the clauses 3, 4 and 5.

Moreover clause 3 (b) should be there, with this modification that the parties must belong to the same sub-caste. Inter-sub-caste marriages cannot be made legal unless and until the masses of the Hindu population are prepared for it. Social reformers may strive for it as a step towards reform, but it cannot be forced upon the Hindus as a whole, by means of a legislative provision. It would be a great inroad upon the Hindu masses to make inter-sub-caste marriages permissible by legislative enactment. It will lead to much strife and trouble in applying such law to the Hindu public, most of whom are not so advanced.

15. The provision against bigamy made in clause 3 (a) and in clause 24, Part IV, is against Hindu Law Texts. Monogamy has been prevailing among the Hindus generally. But it would not be right to make bigamy an offence.

16. Clause 26 will be a fruitful source of litigation. Proviso (a) will be very troublesome in practice.

17. In clause 28 the phrase "as consideration for consenting to a marriage" does not seem to be happy or proper. It may be "where in connection with any marriage" or some other expression.

18. Clause 30 operates to create a great revolution in Hindu ideals of marriage. In Hindu Law marriage is not a contract, but a sacrament. To nullify a marriage performed according to Hindu Shastras on such grounds as are mentioned in clause 30 is a transgression of the Shastras. Clause 30 (d) may be good, but dissolving a marriage for grounds like clause (f) would be improper where the institutions of certain people, e.g., Rajas do allow of the system which has been in vogue even uptil to-day.

PART V.

19. Section 10 (at page 35) possibly does not touch the powers of a next friend or *guardians ad litem* of minors, who are subject to the control of the courts—vide Order 32, rules 6 and 7.

Otherwise there may be a conflict. The court may have to appoint *guardians ad litem* for minor defendants or respondents, or persons interested in minor plaintiffs or appellants or decree-holders, may have to carry on litigation on behalf of or for the benefit of minor parties. In such cases, there may be necessity for compromising, or dealing with the minor's property movable or immovable. This provision in the general form, as contained in section 10 might militate against the working of court cases.

PART VI.

20. The *dwayamushyayana* form of adoption should not be abolished.

In clause 13, sub-clause (ii), the same difficulty of sub-castes will apply. As regards sub-clause (iii) the custom of a married man being adopted is well-established and prevalent. It would be upsetting the established usages in such cases.

21. In clause 28, the time of 80 days is too short. Although one would wish the people of India to be more active and prompt, the fact remains that the people are not so, especially people residing in villages. The period should be one year. If not, it should be six months initially and further six months with double charges as to registration fees or any other penalty.

7. The District Judge, Ajmer-Merwara.

I am in general agreement with the opinion of the Bar Association, though in one important matter, I disagree, e.g., right of divorce.

2. I am in sympathy with the Bar Association when they say that the proposed Code, far from preserving the principles of Hindu Law, as they have been handed down from generation to generation, tends to introduce

into Hindu society, principles and practices, which are totally alien to Hindu feeling and thought. Hindu Law is based largely upon Hindu shastras and religious practices and usages which have lasted thousands of years; I think, therefore it would be risky to introduce such radical changes as are contemplated by this Code under the guise of "codifying" Hindu Law. The attitude of Hindu society towards matters like marriage, succession, adoption, etc., is totally different from that of Muhammadan or Christian society.

3. If the provisions of Part II are enforced it would be a great injustice to Hindu sons. The principle underlying the Draft Code appears to be to give female heirs undue preference. According to the shastras, it is only the son and not the daughter that can perform shradh and confer spiritual benefit upon the deceased. Moreover, the marriage of a daughter entails considerable expense to the family and in case she is not married, the family has got to maintain her for her life-time. In Europe, of course, women are free and can go in search of employment, as they often do, but India, on account of the Purdah system, which is an institution borrowed from the Muhammadans, the ordinary Hindu woman is debarred from seeking employment. Therefore marriage of the daughter is the rule and not the exception. As I have already said, the marriage of a daughter means very considerable expenditure to the family, while the son, on the other hand, is bound to perform shradh for his ancestors and there is also the pious duty imposed upon him of discharging his father's debts. Once a daughter is married, she is entitled to live at her husband's house and to be maintained by him. She has also her "stridhan" a point to which I shall refer in due course.

4. I still think that daughters should continue to be excluded from inheritance, because the present system is not arbitrary but rests on sound principles and has stood the test of centuries.

5. I now come to "stridhan" as defined in clause 5 (j) of Part I. This is a radical departure from all understood ideas. I agree with the Bar Association that no expansion should be made in the conception of stridhan properties as understood now-a-days.

6. Coming to Part III-A, I would point out that according to section 1 thereof, the law of survivorship has been completely done away with. Since, in my opinion, daughters must continue to be excluded from inheritance, I would say that the law of survivorship must remain, although in the case of a member of Mitakshara Hindu family dying leaving a widow, it would be desirable to let the widow, instead of his reversioners, succeed to his property. As the Bar Association has rightly pointed out, clause 2 of Part III-A would work out very unfairly to the son's son and the son's son's son, because according to the section, as it stands, the son may transfer the property to third persons and deprive his sons and their sons altogether of any share in the property.

7. *Part IV—Marriage and Divorce.*—The Muhammadan religion allows a Muhammadan to marry four wives at a time. So far no restriction has been placed upon a Hindu male marrying any number of wives. I think, it would be a mistake to enforce monogamy among Hindus. Considering the enormous population, the number of cases where a Hindu male has more than one wife living at a time must be comparatively small. A Hindu male who marries for the second time while his first wife is alive incurs a large amount of social odium. I do not think that this matter should be legislated upon nor should bigamy be made a criminal offence.

8. The draft Code speaks of two kinds of marriages, (a) sacramental marriage and (b) civil marriage. As far as sacramental form of marriage is concerned, this has been in existence for centuries and should, in my opinion, suffice for the Hindu community. If a Hindu wants to marry another Hindu under the Civil Law, he can do so under the Special Marriage Act, 1872, which may be suitably amended to ensure that he does not suffer in his rights to property as a member of a joint Hindu family by reason thereof (of that marriage). I am personally of the opinion that all references to civil marriage in the draft Hindu Code should be cut out. Then there will be only one form of marriage, namely, sacramental form.

9. Coming to section 30 of Part IV, I agree that some restricted rights of divorce should be given but the Muham-

madan attitude towards marriage should not be copied by Hindus because according to the Muslims, marriage is only a contract which can be terminated at any time by the husband on paying the dower debt. Some of the grounds given in clause 30 are alright, e.g., (a), (b) and (c), but in my opinion, adultery or conversion to another religion should not be regarded as sufficient ground.

10. I agree with the Bar Association regarding Parts V and VI.

8. Rai Bahadur Pt. Mithan Lal Bhargava, Ajmer.

1. The Code is not a complete one.

2. It does not and cannot fulfil the object of the committee to evolve a uniform Code of Hindu Law applicable to all Hindus, as primarily there were two main branches of Hindu Law, that is Dayabagh and Mitakshara. Dayabagh applied to the people residing in the old Bengal and Mitakshara governed United Provinces, Central India, Rajputana, Bombay, Madras and even Punjab including Delhi and Ajmer-Merwara Provinces. Mitakshara Law was again made applicable according to three different schools—Benares, Bombay and Mithila. Further there are subdivisions which need not be mentioned. A uniform applicability to all the provinces would mean the abrogation of principal elements of Hindu Law based upon different Shastras. Besides this Hindu Law is supplied to residents of Indian States according to the old tenets modified by special customs.

3. The different branches of Hindu Law are so interwovenly connected with one another that to amend and codify certain branches of Hindu Law is not proper, as it would shatter the whole system of old established Hindu Law.

4. Ajmer-Merwara people have got special connection and relation with the subject of the Rajputana States and also with the people residing in southern portion of Punjab administered by the Patiala and Nabha States and also with the people of Gur Gaon, Rantak and Hissar districts and thus it is not possible that Hindus in British territory be governed by different law from the law prevailing in Indian States.

5. The definition of Hindu as given in the Code is vague and incomplete. Nowadays one more particular class has sprung up which is termed as depressed class, Harijan, Achut but there is nothing to show whether they are included in the term Hindu.

6. The Code supersedes all ancient customs or usages.

7. The definition of Stridhan is very wide. It does not seem proper that property obtained by the woman by inheritance or at a partition in lieu of maintenance or arrears of maintenance be regarded as the absolute properties of the female so that it may go out of the family of the original holders for ever.

8. Part II has been made inapplicable to agricultural land, except the land situate in Chief Commissioner's Provinces, and thus Chief Commissioner's Provinces have been deprived of this concession which is inequitable.

9. The order of succession given in clause 5 of the draft Code is entirely against the order given in various schools of Hindu Law, and it would be cutting at the root of the well-thought and well-established principles of old and learned sages, and the same remark applies to other provision and specially to clause 13.

10. Part III under the heading "Scope of Maintenance" rule 3, in the definition of maintenance, no provision has been made for charity, pilgrimage and other religious activities and social functions such as marriage, Mahara, Bhat, Chhachhak on the occasion of marriages of sons and daughters.

11. *Part IV. Marriage and Divorce.*—Marriage among the members of the same gotra or among the persons who descend from the same common ancestor howsoever high in both cases sacramental or civil should not be allowed.

The other portions of the Code are not open to any objection and are likely to improve the status of the society.

9. The Hindus of Ajmer—Through Rai Bahadur Pt. M. L. Bhargava.

1. The definition of the word "Hindu" and "Stridhan" given in Part I of the Code is vague and unsatisfactory.

2. The proposed Hindu Code is not only incomplete but it is a step to undermine the sanctity of Hindu Law,

Hindu culture and the well-considered principles laid down by the ancient Rishis and saints and thus it amounts to sacrifice to the old Rishis of Satyug, Dwajay and Treta.

3. It will cause disruption of joint Hindu families, create disunion amongst the members of the same stock and disintegrate the property earned by one common ancestor by transferring it to other families and that too not in one lump but in small fragments.

4. It is well known that all throughout British India and Indian States the relations of the subjects are very much interwoven and this Code will separate the Hindus residing in British India from that of the States and would lead to endless complications and litigations amongst members of the same family resulting in loss of natural love and affection.

5. The proposed Hindu Code would tend to transfer the property from British India to native States without *quid pro quo* (i.e., without any return from native States).

6. According to the proposed Code it would not only be difficult for the creditor to realize his debts but at the same time there is no provision as to who would be

responsible to pay the debts and discharge the liabilities of the deceased.

7. It is regrettable that by introduction of this Bill sanctity of ideal Hindu marriage, devotion of Hindu wife towards her husband and observation of "Pativrata Dharma" and "Pativrata Dharma" would disappear.

8. That the proposed Hindu Code would lead to introduction of divorce which is unknown amongst the twice-born Hindus and which is not only abhorrent to the very tenets of Hindu culture and society but is analogous to the Indian Christian Marriage Act XV of 1872 and system of "Nikah" observed by the Muslims.

9. That the proposed Hindu Code has shown a lamentable lack of appreciation of the spiritual and religious aspect of Hindu life by throwing to winds the "Pinda" theory, meddling with the principle of "Gotra" and playing with the ceremonies of adoption.

10. This meeting is therefore of opinion that the present draft Hindu Code should not be introduced in the Legislative Assembly and the Hindu Law Committee should be dissolved.

IV. THE UNITED PROVINCES.

1. The Right Hon'ble Dr. Sir Tej Bahadur Sapru.

You ask my opinion on some of the questions which are engaging the attention of the Hindu Law Committee and I have no hesitation in submitting my opinion. It must, however, be understood that I represent in no sense the orthodox Hindu point of view and I have a fear that neither at present nor in future can we look forward with much hope to our legislature agreeing to bring the Hindu Law radically into line with modern conditions. Nevertheless I am expressing my opinion.

1. I think it is only just and fair that the daughter should get some share in the father's property if he dies intestate. Your question suggests that she should get half the share of a son. I have no objection to that. Indeed the suggestion is quite moderate.

2. The Hindu woman's estate is essentially a creature of English lawyers and has led to a most confusing mass of case law on the subject. I should be glad if the Hindu woman's estate was abolished and the limited estate of the Hindu woman was replaced by absolute estate. This will save much unnecessary litigation and a great deal of chicanery and fraud in courts of law.

3. I very strongly support the proposal to enforce monogamy among the Hindus as a rule of law and I deeply regret that political considerations should have led some of our leaders not only to oppose this idea but to suggest that the Hindus should marry more wives than one in order that their numbers may rapidly exceed those of other communities. I do sincerely hope that moral considerations will not be sacrificed to these expediencies of the hour which are, in my opinion, degrading. It is to the credit of the educated classes among the Hindus that an overwhelming majority of them do not marry more than one wife. At the same time among the lower classes and the upper classes, particularly the landed class, it is by no means uncommon to see polygamy flourishing. No one knows better than the Committee that Hindu marriage is not recognized as a valid marriage in England and other countries. I need hardly refer to the decision in *Chetti v. Chetti*. This is a reform which, in my opinion, must be brought about if we want to place ourselves in line with modern conditions and modern standards of life. I thoroughly approve of your proposal.

4. I entirely approve of your proposal to remove all caste and *gotra* restrictions on Hindu marriages.

5. The fact that you propose to give a very strictly limited right of divorce for Hindus ought not to frighten people out of their wits. It does not mean that every Hindu wife will divorce her husband. The number of divorces among the communities which recognize the law of divorce is comparatively limited, but it does provide relief to wives whose life is made intolerable by their husbands. I have known tragic instances of wives being deserted, ignored and tyrannized over by Hindu husbands and those poor wives have no remedy at law.

In short, I am in complete sympathy with your proposals but as I have told you before, I do not represent in these matters the orthodox view point.

2. Pandit Madan Mohan Malaviya, President, All-India Sanatan Dharma Mahasabha.

I hold that the proposed changes are opposed to the behests of Hindu shastras and strike at the very fundamentals of the Hindu social system. I further hold that the changes, if any, should come from within the Hindu society itself, and not enforced on it from outside by an act of the Legislature. Furthermore, the Legislature, as at present constituted, are not competent to legislate on these questions relating to the personal laws of the Hindus.

Holding these opinions, I have advised and I again advise that the proposed legislation should not be proceeded with and the Bill should be dropped.

In view of the above, I have abstained from offering a detailed criticism of the proposals.

3. Dr. Bhagavan Das, Benares.

The draft has taken a whole Committee and office staff about three years to prepare. It is difficult for one who, like me, is not a professional lawyer, and, besides, suffers from old age as well as unavoidable pre-occupations, to make up and offer an opinion in the course of about three weeks, on a draft code, vitally important for Hindu Society, every word of which may be pregnant with far-reaching consequences. I will therefore confine myself largely to the making of certain general observations, based on some principles of right social structure that I believe in.

All the departments of Hindu Personal Law seem to be systematically dealt with in the Code. All are important. Yet Part IV, dealing with "Marriage and Divorce", seems to me to be the most important. Out of the family institution arise, directly or indirectly, immediately or gradually, all the other institutions, which together with this, their primal progenitor, make up society and all that it means, viz., property, with its sequences in inheritance, succession, adoption, wills and testaments, maintenance, education in science and art, minority and guardianship, State and Government with their multifarious functions and ramifications, legislation, religion itself. All these go to make up what is known as culture and civilization, and provide opportunities to the individual, for achieving the fundamental values of life.

For some years past, therefore, I have been thinking on the subject, and trying to formulate and put before the Hindu public a proposal for the radical change that seems to be indispensable, in order to remedy the vast confusion, corruption, and abuses, that have grown up in, and have overspread, Hinduism, like noxious weeds strangling the feeble remnants of the healthy crop.

As such remedy, according to my lights, I introduced in 1936, a bill for the validation of Hindu intercaste marriage. Such validation seemed, and still seems, to me the seed from which would grow all other greatly needed and valuable reforms. That Bill was unfortunately killed prematurely by what may well be called an accident. Detailed reasons in support, and replies to objections, will be found in the speech with which I proposed that it be referred to a Select Committee, if the Codification Committee think it worth while to look into it.

My hope and object in introducing that Bill was that all the ordinary rights of a Hindu should be preserved to him or her, intact, even if he or she contracted a marriage with a person bearing another caste-name. I trust that that object is fulfilled by section 6 of Chapter I of Part IV and clause 17 of Part II, of the draft, and that the alternative clauses 3 of Chapter I of Part IV does not override this section 6, in any way.

In this connexion I suggest that, instead of section 4 (2) of Chapter I of Part IV, the following (on the lines of the alternative section 4) may be put in.

"But *panigrahana*, i.e., the holding of hands of the bridegroom and the bride before the sacred fire, and *sapta padi*, i.e., the taking of seven steps by the bridegroom and the bride jointly before the sacred fire, are essential; and when they have been performed, the omission of any other ceremonies shall not invalidate the marriage. Consumption is not necessary to complete the marriage or make it binding on the parties."

With reference to clause 30 (c) and (d) of Chapter III of Part IV, a clause may be put in, giving a chance under (c), to the husband to return to the wife and cease from deserting her, and, under (d), to become re-converted to Hinduism.

With reference to property, from the insufficient consideration that I have been able to give to this very important subject, I get the impression (1) that right to inherit by birth and survivorship, now prevalent over a very large part of the country, is being abolished with important and large exceptions by this Bill; (2) that property will be fragmented minutely by being divided and dispersed between woman as well as men, as it is among Mussalmans to-day, which division is one among several causes of the alleged (and to some extent exaggerated) poverty of their community; (3) that the break-up of the joint family system will be accelerated and completed rapidly by it.

But before stating my views in regard to these matters, it is necessary that I should mention the points on which the language of the Code is obscure and ambiguous to me; the removal of which obscurity and ambiguity will have a bearing on my many other remarks, in respect of their appositeness or otherwise.

Part II, clause 1.—Do the words "agricultural land" mean only "kashikari holdings and inseparable appurtenances," or also "Zamindari holdings and rights"?

Why are the exceptions made as in sub-clauses (i), (ii) and (iii); and the exception to the exception in sub-clause (i)?

Clause 7.—Bigamy is being forbidden by this Bill; why then is there provision for inheritance by more than one widow—See also Part VI clause 6 (2).

Part IV, clause 4.—Does joint family property remain possible under this Bill. The bearing of the Income-tax Act and Rules should be taken into account in this connexion. It seems to me to be wrong artificially to accelerate and bring about the disruption of the joint family. The natural causes thereof, growth of numbers, setting up of separate households and kitchens, voluntary partition of property, etc., should be left to take their natural course.

Part VI, clauses 2 and 3.—Why should not a son or a daughter be adopted by a widow to herself, when she is full proprietor? Why should not a daughter be adopted, as much as a son, to any male or female Hindu when daughters are being made heirs side by side with sons, even though their shares are smaller? To obviate the danger of immorality, would it not be better to word section 3 thus: "No daughter may be adopted by or to any dancing girl or prostitute."

Part VI, clause 4.—Should not provision be made permitting an orphan, without any one to give him or her, being adopted? See also clause 12 (1).

Section 11 (b).—Seems to be superfluous?

Section 13 (ii).—When the marriage of *asavarna* is permitted and validated by the Bill, why should not adoption of an *asavarna* child be. Presumably, for various practical purposes, the *asavarna* bride will take on the varna-name of the bridegroom (as she does the gotra-name now; as was explained at length in my speech on the Hindu Intercaste Marriage Validation Bill); so should the adopted child.

As a fact, there is a custom current in the United Provinces, though instances are becoming rarer, by which a new born infant, before the naval cord is cut, may be taken up and adopted and brought up by a man of any

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other caste-name, and is counted as of the caste of his adoptive father though his natural father's caste may have been quite different.

Clause 14 (ii).—The wording may be made clearer, to show that a daughter's, sister's or mother's sister's son can be adopted.

Clause 27.—Procedure regarding registration of adoptions should be made easier. Why should it be necessary to get the permission of a District Court for the purpose? While certain ceremonies are prescribed by the Bill as essential for sacramental marriage, none are, for adoption. How is the adoption to be 'published', without easy registration?

I will now revert to the consideration of pros and cons re: property.

It is obvious that Public Opinion, Collective Intelligence, Mass-mind, or however else it may be called, has been taking a new turn, on an unprecedentedly large scale, all over the human world; and is being made to do so, more and more rapidly, by successive World Wars which are in effect as well as different ideologies, embodied in different classes and masses of human beings.

If it were possible, by good and wise legislation, to usher in, peacefully, without violent turmoil and bloodshed, a fresh era of a rational, equitable, scientific, comprehensive 'socialism,' which would satisfy all such demands of 'Individualism' as are reasonable; would reconcile all valid interests; would provide appropriate satisfaction for all spiritual as well as material needs of every individual; then all that is effete, atrophied, useless, harmful, in our ways of individual and social life would be gladly given up and cast away by all concerned.

But unfortunately, so far in history, the baser and selfish part of human nature has, on the whole, prevailed over the finer and unselfish element, and has not permitted such peaceful change any where. We have therefore to make the best of circumstances, and follow the line of legislation that will cause least disturbance and commotion.

The use of a firm hold on some general principles comes in here.

The desirability of marriage, i.e., permanent union between man and woman, is the first datum, and has been fully accepted implicitly in the Bill. But why is it desirable? Surely (1) for mutual companionship, lasting happiness resulting from deep affection, and (2) the rearing of good children, and the founding of a family, a *kula* of worthy citizens, as a Unit of Society. This also, I believe is undisputed. Soviet Russia tried, in the earliest years of the Revolution, to eliminate the Family, and treat the Individual as the direct Unit of Society; but rapidly realised that this was impossible; and corrected its laws accordingly.

The Cohesion of Individuals in consequence of Marriage makes the Family possible. The cohesion of families by marital, and thence manifold other alliances, (economic, educational, recreational, defensive, religious, etc.), makes society possible. Property is an immediate corollary and adjunct of family, and the prime means of strengthening it and preserving its continuity, is made dependent solely on the 'will' and 'testament' of the parent, by which the progeny is made weak-willed, entirely and slavishly dependent on the parent; or is driven to wilfulness and rebellion, forced to strike out new ways of living, in ways creative of mischievous antagonism between the old and the new generations, and thus disruptive of the solidarity of society. Soviet Russia tried to abolish all private property also, in the early years of its existence; but here, again, it quickly experienced rueful consequences, and realised and corrected its mistakes; it now contented itself with reasonable limitations and restrictions of private property and recognises heritability of it, also but whether by birth, or testament, or both, and to what extent, this I have not been able to ascertain.

No doubt there are pros and cons for each and every alternative and human nature manages in the end to reduce a bad law to dead letter. "Water manages to find its level." I am told by a lawyer friend that the first effect of the *Daya Bhaga* Law of Bengal was that the widow of a man who died intestate, became full proprietor in his place, and could disinherit all his and her progeny entirely if she so pleased. But, it seems, a custom has grown up (perhaps because practically no widow-mother ever disinherited her sons), that the widow and the sons (not daughters) take equal shares in the property; and that

even so, the widow has a life-interest only in her shares, which, after her death, is divided equally among her sons; and unless she gets her share partitioned off, formally; and then she can dispose of it as she pleases. (Vide Principles of Hindu Law, by K. K. Vaidya, 4th Edition, 1938). Taking all such conditions into account, together with the principle underlying the institution of the family, it seems to me, on the whole, that the Mitakshara system follows the right middle course. It gives power to the parent to dispose of all his own earnings at will; and also a part of the ancestral property; and to each son the right to an equal share with the father in the ancestral property. It also makes provision for Stridhana dowry for girls and ample maintenance for widows and unmarried daughters; the provision needs only to be enforced by the law Courts, when occasion arises. In this way, it strengthens Family Continuity and Alliances. To give shares to daughters side by side with brothers, would create great complications in management, especially when daughters' husbands are residents of distant places, and would increase litigation, the Dayabhaga, which the Bill wishes to have in place of the Mitakshara, does not give any share to the daughters—be it noted. Also should it be noted that “the Mitakshara is held as a high authority even in Bengal,” and is followed on points on which the Dayabhaga is silent primogeniture, which the Bill protects, wherever it now exists, serves the same purpose of Family continuity, though, not often, the younger brothers are not treated with sufficient consideration, financially, by the eldest, who takes the whole property. The Bill does not give any reasons for protecting primogeniture, agricultural lands, and Marumakkattayam, Aliyasanthana or Nambudiri law; and I cannot see why the same protection should not be extended to the Mitakshara law, which now governs ordinary property in a very large part of India. I therefore, suggest that the Mitakshara law should be maintained but the provisions for stridhana, and maintenance of widows and daughters, and their financial well being generally should be strengthened. Perhaps it would be well if, instead of giving shares outright, life-interest in such shares, and the right to spend at will the income therefrom, is given. Of course, the cases in which widows and daughters inherit absolutely even under the Mitakshara law, would be left untouched.

In this connexion, two further suggestions may be made. *Part II, clause 7 (b)*.—“The simplest rule” seems to be that a “divided son” should be regarded as having cut himself off from the family, and lost all further interest in its property; and that the undivided sons should inherit the whole share of the intestate father.

Part II, clause 23.—It does not seem right, in the interest of the family and of society generally, that even congenital idiots, insane maniacs sufferers from incurable and loathsome diseases, and habitual criminals convicted of serious crimes, should be given full rights over property; but, of course, provision should be made for maintenance and treatment, and for custody. This has apparently been the intention of the Smṛiti-karās from Manu downwards (vide Manu, ix, 201-202).

If the suggestion, that the Mitakshara law should be maintained, is accepted, some changes may perhaps be needed in some other parts of the Bill; but I trust that those can be made without any serious interference with the integrity of the Draft Code as a whole.

4. Mr. L. S. Misra, Judge, Chief Court of Oudh.

I am in general agreement with the principles and purposes underlying parts III to VI of the tentative draft of Hindu Code. Many minor alterations in details may be advisable, but it does not seem necessary to enter into them at present. As regards Part II dealing with intestate succession I am unable to alter the view which I had expressed in August last in respect of the scheme of succession then envisaged. Substantially the same scheme is contained in the proposed code. While agreeing with the object of codification of Hindu Law of intestate succession, the major modifications sought to be made, striking as they do at the root of Hindu ideals, are likely to offend Hindu sentiments to a large extent. I drew attention then to the following:—

(1) The provision for simultaneous inheritance and allocation of shares to the various heirs of the deceased, as contemplated by clauses 7 and 21, is likely to result in (a) repeated breaking up of property into fragmentary portions,

and (b) tending to eliminate in time the system of coparcenary. From an economic point of view it is, I conceive, desirable to consolidate property than to perpetuate eternal division. In some countries this ideal is brought about by rules of primogeniture. In Hindu society this is achieved by devolution of property on sons, grandsons and great-grandsons as a single heritage with the right of survivorship *inter se*. Out of this method of devolution the Hindu Joint family is evolved. The foundation upon which the Hindu family rests is not the tie of blood alone. The great cohesive force is community of interest and unity of possession, and this is the normal condition of Hindu life. In so far as the proposed modification is destructive of that condition it will not, I believe, be accepted with equanimity.

(2) One of the guiding factors, which prevails in the scheme of Hindu succession, is that property should, as far as possible, not pass out of the family of the deceased. The underlying idea is again a desire for consolidation. In providing for the Hindu woman an interest in the inheritance of the deceased, this guiding factor should be kept in view at least in the earlier stages. A scheme for simultaneous inheritance of the interest by daughters is likely to result in miscarriage of property into other families—a result which has been sought to be avoided by traditional law and by tribal and family customs.

By the operation of the provisions of the contemplated code a Hindu woman would be entitled to inherit in two families and would stand thus in a position better than that of a Hindu male. It must be recognized that the traditional Hindu Law perpetuated a certain amount of injustice upon Hindu woman, but this has been rectified to a very large extent by the recent legislation. The present Bill, I apprehend, in its excessive anxiety to ameliorate further the position of woman renders in comparison the position of Hindu males rather unenviable. To avoid it I would omit daughter from class I, entry (1) and would place her in entry (2) in that class. I would also join with her the widow of a predeceased son. The other entries, in class I may follow thereafter. In the presence of heirs in entry (1) I would provide unmarried daughters and sonless widowed daughters-in-law with adequate maintenance.

(3) As regards the nature of the estate which should devolve on Hindu women, it may also be observed that women in Hindu society, even amongst propertied classes, are largely illiterate and are seldom possessed of business instincts. There are no doubt women legislators, lawyers and ministers amongst the Hindus, but they form a microscopic minority and constitute an exception rather than a rule. The percentage of literacy amongst Hindu women can, I fear, scarcely bear a favourable comparison with that of their sisters amongst the Parsi or the Christian communities. I feel, therefore, that apart from consideration of Hindu sentiments and ideals it is unsafe to provide for absolute rights of inheritance to Hindu women. Cases where the propositus intends to benefit his wife, daughters or daughters-in-law by giving them greater rights and responsibilities may well be left to discretion of individual owners by recourse to wills. I would, therefore, recommend that whatever interest is given to a Hindu woman, her estate should be limited, and there should be a reservation for reversion of the property after her death to the line of the propositus.

Should it be deemed necessary to confer an absolute estate of inheritance upon women as simultaneous heirs, I would suggest that the rule of ordinary intestate succession should also substantially apply to Stridhan property of woman with necessary modifications.

General observations.—The Code should depart from the existing Hindu Law to the minimum possible extent. Its objects should be mainly to consolidate the existing Hindu Law based on the interpretation of Shastras and to remove the ambiguities wherever possible. Any departure from the existing law should be supported by valid arguments. I understand though I cannot vouch for it as I am not familiar with this part of Hindu Law, that the list of heirs enumerated in clause 5 of Part II of the Draft Code departs from the existing order of succession in many respects without adequate reasons being shown therefor. If this is so either the order of succession should be re-cast or the departures explained satisfactorily.

Clause 5, Part II.—This clause proposes to take away the right of inheritance which has been given to a widowed

daughter-in-law or granddaughter-in-law by the Hindu Women's Rights to Property Act XVIII of 1937 and proposes to give them only a right to maintenance. I think that this is a most retrograde step and that widowed daughters-in-law and granddaughters-in-law should be included among simultaneous heirs. There is absolutely no reason why a widowed daughter-in-law should be relegated to a claim for maintenance when the right of the daughter to succeed is being recognized for the first time. Similarly I think that dependent parents should also be included among simultaneous heirs.

At present a male Hindu gets a share in the ancestral property by birth. This right is now going to be taken away by clause 2 of Part III-A. In view of this I do not see why only a son, grandson and a great grandson are included among simultaneous heirs. I think that all the male lineal descendants through the male line of descent and their widows should be included among simultaneous heirs their shares being limited by the principle of per stirpes as provided for in clause 7 (c) of Part II of the Draft Code.

Clause 7 (d) of Part II.—This clause adopts the Muslim rule of giving a half-share to a daughter as compared to the son. There is no particular logic which leads to this figure of half. Apparently it is based on the Muslim rule. If this rule is adopted the same difficulties regarding the division of immovable property into tiny little shares will crop up in Hindu succession as it does in Muslim succession. The rights of women over the property inherited by them will in future be complete under clause 13 of Part II of the Code. Hence they can alienate the property and this will inevitably lead to the interpolation of complete strangers as co-sharers in landed and house property which will be entirely against Hindu sentiment and custom, e.g., the shares in an ancestral residential house may thus pass into the hands of entire strangers and they may demand that the house be divided or that it be sold and the proceeds distributed amongst the co-sharers. I would therefore suggest that the daughters should be completely debarred from inheriting any share in the immovable property of their deceased father. Inheritance by a widow of the deceased will not matter as under section 14 (a) of Part II inheritance to her property will devolve on the heirs of her late husband. Hence the property will still remain in the family. I think that this rule should also apply to the property inherited by daughters-in-law, granddaughters-in-law, etc., as simultaneous heirs. If the above suggestion is adopted I would recommend that daughters may be given a full share like a son in the movable property left by her father. This will undoubtedly work unevenly for where the bulk of the property left by the deceased consists of immovable property they will have a small share whereas if it consists mainly of movable property they will have a larger share. But this cannot be helped and if the father wishes to remedy this inequality he must execute a will in which case succession will be governed by the conditions of the will under Part III or he may transfer immovable property to his daughters during his lifetime as he will have now complete right to do so under clause 2 of Part III-A.

Clause 1 (b) of Part IV.—If the degrees of relationship to be prohibited for marriage are to be tightened as proposed in this clause there should be a provision that where such marriages have taken place and the parties have lived as husband and wife the marriage should be validated. I would therefore suggest that clause 29 (1) (ii) of Part IV of the Draft Code should be omitted.

Clause 28 of Part IV.—This section provides that a dowry received by a minor girl at the time of her marriage should be transferred to her after she has completed her 18th year when she requires the transferee to do so. I think that if the rule is kept in its present form it will defeat its objects as the wife will not usually dare to ask her husband or father-in-law to transfer her dowry to her. I think, therefore, that this rule should be so worded that the dowry must be transferred to her by the transferee in all cases after she attains her 18th year.

Clause 5, Part VI.—This clause permits any male Hindu who has completed his 15th year to take a son in adoption. I would raise this age to 18. Similarly I would raise the age of a Hindu widow competent to adopt to 18 years. The same remarks apply to clause 12 (4) of Part VI. The father or mother giving a boy in adoption must have completed their 18th year.

Clause 13, Part VI.—In my opinion the principles governing adoption are now antiquated inasmuch as they permit the very lineage of a minor boy to be changed without any consultation of his wishes or interests. I have known cases where the parents of a boy were willing to entertain the proposal of another person to adopt their son very much against the wishes of the boy. I think that in these modern days the lineage of a person should not be capable of being changed in this manner without his consent given after he has attained his majority. I would, therefore, suggest that one of the conditions making a person eligible for adoption must be that he has completed 18 years of age.

Clause 19, Part VI.—This section provides for the reopening of succession if an adoption is made within three years from the date of succession. I think that this will lead to a great deal of difficulty. Under clause 13 of Part II and clause 2 of Part III-A the rights of a person who has succeeded to a property are complete. It is quite conceivable that during the period of three years some of the property inherited by the successors may have been alienated. If so, how will the alienated property be treated if the succession is to reopen? Will that alienation also be set aside? I would suggest therefore that there should be no reopening of the succession merely because an adoption has taken place subsequently. The adoptee must be content to whatever he is entitled to get from his adoptive parents. This will not work as a hardship as if my suggestion is approved an adoptee will give his consent to adoption with his eyes open after he has attained the age of majority.

5. British Indian Association, Oudh, Lucknow.

The taluqdars have received the draft of the proposed 'Hindu Code' and have considered it. At first they had understood that the sole purpose of the projected legislation was to codify and to make only such slight modifications as might remove anomalies created by judicial interpretation and the glosses of text-book writers in the ancient Hindu Law. They were, therefore, prepared to give their support to the proposed legislation. They now find, however, that the 'Code' is revolutionary in its conceptions and provisions, intending to modify almost every rule which Hindus cherish. They cannot agree to modifications of such a revolutionary character but before they come to discuss the provisions of the 'Code' or its merits, they would like to point out that the time chosen for such a piece of legislation is wholly inappropriate and they would most strongly urge its postponement until the proposals have become more widely known and conditions are most suitable for a consideration.

The existing Central Legislature has now been in existence for a very long time and has had no occasion to come into touch with the people through the machinery of an election. Its members are, therefore, not in a position to judge of public opinion in this matter. In other countries law of such very great importance could not possibly be passed unless there was practically a universal demand for legislation or until they had been made an election issue. Here in India, we may at least expect that they will not be taken up until a legislature in touch with the people is functioning.

It will also not be out of place to point out that in those Provinces in which Hindu strength is predominantly concentrated, the constitution is at present suspended and Governors' rule on their own responsibility under section 93 of the Government of India Act exists. Public opinion cannot, therefore, find expression through the elected representatives of the people. Further, it is not possible for the Provinces to legislate at present except by Governors' Acts which are of a temporary character. Thus if a Code of law is passed by the Central Legislature, there will be many properties which will not be governed by it and we will have two different systems of law governing Hindus, one which regulates succession to 'agricultural land,' namely, the old laws and customs, and the other which governs succession to other properties, namely, the Code. Moreover, such a piece of legislation now will, more or less, compel the Provincial Legislatures, when they begin to function either to adopt the Code as it is or to perpetuate the difference in the rules of succession.

It must also be realized that India is striving for, and has been promised, full liberty to regulate her own affairs after the war. We are as yet unaware what form the constitution will take and how legislative measures of this kind

will be dealt with, but we feel that it would be much more suitable to postpone the consideration of the Code till such time as the position becomes clarified. It might then even be possible to have a Code of laws applicable to all the citizens of the country, no matter what religion they profess, or, at any rate to all citizens except such as profess any other creed which has a complete code of its own. The Taluqdars feel that at that time it will be possible for the ablest thinkers, lawyers, legislators and politicians of the country to devote their energies to the working out of the Code.

It may also be noted that till the commencement of the war everything that comes from the west, be it a political or social institution, was considered by our countrymen as being better than anything which the wisdom of our forefathers had produced but values have changed greatly and the old adage that 'all that glitters is not gold,' has once more than proved true. It may well be that western civilisation itself will undergo a vital change in character or, at any rate, that the people of India will not be so enamoured of it. Indications are not wanting that, throughout the world people have begun to think that a civilisation which can land humanity in such a catastrophe—as the great War must have something intrinsically wrong with it and it is even possible that, when the strain and stress of this period of calamity is past, people will sit down together and think out a better system for the whole world. It will then be the time for Indians too to think of their laws and see what modifications are required.

Coming now to the merits of the various provisions the Taluqdars have the following suggestions to offer:—

Part I Clause 2 (2).—The definition of 'Hindu' is unsatisfactory and might leave the backward races and hill tribes—the persons most in need of reform—outside the pale of Hinduism. It is, therefore, suggested that the definition should be extended to include all citizens of India except such as profess the Islamic, Christian, Jewish and Parsi faiths.

Clause 3.—Operating of the Code. Ostensibly excludes only custom or usage but says nothing about the Hindu Law as such or Statute law modifying Hindu Law while in fact the schemes laid down in the Code are at variance, not only with customs and usages but also with Hindu Law as propounded by the ancient sages. This point should also be made clear.

Clause 5 (2).—Under the provisions of the Hindu Code and according to existing customs widow remarriage and the remarriage of divorced persons is permitted. It is now sought to make all property in the hands of widows transferable and heritable. Occasion will, therefore, arise when half-blood may mean sons of the same mother by different fathers. This should be provided for.

Clause 5 (7).—The definition of Stridhana is much too wide. The whole principle will be discussed in dealing with succession to females and the right of women over property. In no case should property be given in lieu of maintenance or arrears of maintenance be deemed to be Stridhana. Maintenance is a personal right which should not be transferable or heritable. Even the transfer of property act forbids the transfer of maintenance grants.

PART II.—INTESTATE SUCCESSION.

The changes introduced into law of intestate succession are very great indeed. It is undoubtedly true that the rights of women have so far been greatly ignored but by gradual development of customs and by the changes introduced by legislation their rights have already been greatly enlarged. The Taluqdars do not object to these enlargements but they feel that when a new code is being prepared the right of succession laid down in it should be one which is in accordance with principles of scientific legislation and should not be based merely on the sentiment that since women had not been properly dealt with in the past, therefore, their right must be so increased so as to perpetuate an injustice upon men in future.

Let us, therefore, consider some of these general principles.

1. By universal consent men are held liable to provide the necessities even the luxuries of life for their wives and children and all their female folk. No woman is ever called upon to provide for any one but herself. The requirements of men are, therefore, greater than those of women. This is the reason why the share of woman is always half that of men under the Islamic Law. Indeed the same feature

is copied in the new code in determining the share of daughters.

2. So long as the family system continues, all persons have a sentimental attachment to their family. Consequently even persons who do not have sons, are anxious that their nephews or other members of the same paternal stock should represent them after their death. According to the scheme of this Code, the nephew even will be totally and permanently excluded by the widow of a childless Hindu and it will be possible for the widow by reason of the extended definition of 'Stridhana' to divert the property of her husband's family into her own family by transfer or will.

3. The present joint family system operates as a great check upon extravagance and waste. Undoubtedly it has drawbacks also and modern education is disregarding it more and more but even now it prevents the alienation of property upon which the sustenance of a whole family depends, for immoral purposes or for any reason other than valid necessity. Now it is proposed to permit women to alienate property. The Taluqdars do not desire to be understood to say that there is any inherent disability which prevents women from being good managers but, in Indian conditions it is undeniably true that they are much more likely to be misled and they very often become victims of scheming agents or relatives. If the joint family system and the other checks on alienation are to be removed some other system much as the Muslim Law of Wakf-al-aulad will have to be inserted.

4. A Hindu attaches great importance to the religious efficiency of offerings (Pinda) as determining the right of inheritance. This corresponds with relationship by blood and agnatic relationship of other systems. In the new code the efficiency of religious offerings receives no consideration at all.

Considering the provisions as to succession in the light of the above considerations the Taluqdars have to state:—

Section 5, clause 1 (1)—Simultaneous heirs.—The succession provides for the succession of a widow simultaneously with a son—the Taluqdars have no objection to this but they do object to the extent of her share. If she were given a life interest as she is at present having, there would be nothing objectionable to this but the property inherited by her will, in future, be her Stridhana, that is to say, she will have a transferable right and she can easily divert the property to her own family. In the case of a man dying leaving a son by one wife and a wife, the son will get a half and the wife a half. In such a case the possibilities are that the wife will not give her half to her step-son but will give it away to her own relatives. This should not be allowed. Moreover, the son or sons have to support their families and have to do while the widow has nothing to do but maintain herself. It is consequently grossly unjust that she should get the same amount of property as the son. The taluqdars suggest either that the definition of Stridhana should be altered or that the share of widows should be reduced to that given to them by Muslim Law, namely, one-eighth.

Further, since a widow may remarry, some provision should be made for the diversion of the property if she remarries. It may be provided that a widow who remarries shall be treated as civilly dead.

Clause 1 (3).—Mother should not get an absolute right.

Clause 10.—When the law is being made so wholly secular it is extraordinary that this provision should remain. In modern conditions except in the case of sanyasis and persons belonging to the monastic order it will be difficult to ascertain who the heir will be and for hermits section 11 is enough.

Section 13.—Having regard to the extended definition of Stridhana this provision is very unfair and must be objected to. It will enable a widow succeeding to the whole of her husband's estate to deprive her husband's real nephew or even son and to alienate the property or bequeath it to her own relatives.

Section 14 (c) (1).—There is no reason for allotting to the son only half the share of the daughter in Stridhana property particularly when a good portion of property originally belonging to the father will also become Stridhana by the new law of succession. The son's needs are always greater than the daughter's and he should get the larger share.

Section 17.—This provision is meant to do away with the caste system altogether. The taluqdars consider that a very far-reaching provision and the time is not ripe for it. It will cause great confusion in society.

Section 19.—The provision is most extraordinary; it compels a husband to make a declaration that his wife is unchaste. The whole procedure will be highly objectionable. The provision should be most strict and it should be provided that a woman who has been unchaste during her husband's lifetime or becomes unchaste after his death at any time shall be disqualified from inheritance and shall be divested of property which has already been obtained by her by inheritance. The taluqdars think that unchastity should be severely punished and a woman who cannot respect her husband enough to remain chaste has no right to get any property of his.

PART III-A.

Sections 1 and 2.—This abolishes the joint family system and is objectionable. The joint family system and its restrictions should subsist. It is always possible for those who do not approve of this system to effect a separation of status which is purely a matter of their own volition.

PART IV—MARRIAGE AND DIVORCE.

Section 3.—This abolishes polygamy and polyandry. The latter is already not recognized by Hindu Law but the former is recognized both in Hindu and Islamic Laws. The subject is very wide and cannot be discussed in a short space. Suffice it to say that where polygamy does not exist concubinage prevails. Moreover, it is a very small percentage of people who resort to polygamy and even that should cease if women refuse to marry persons with wives living. It may sometimes be necessary for a man to marry again and the economic condition of society, particularly of Eastern society in which the vast majority of women cannot look after themselves and must depend upon others, might necessitate polygamy in certain cases, particularly when the number of women is in excess of men. The suggestion, therefore, is that, while not abolishing polygamy altogether, it should be greatly circumscribed by providing

(a) That no girl shall be married to a man who already has another wife living until she has attained the age of 18 and her consent has been obtained.

(b) That a woman may claim divorce on the ground of her husband's remarriage.

Section 5 is most objectionable and renders nugatory the provisions of section 3 (b). It will encourage elopements and girls of immature understanding cannot see what is good for them and what is bad.

Among the alternatives the second section 3 (b) and the first section 4 are preferable. Clause 5 and the first clause 6 should be removed.

Section 11.—The procedure is objectionable. It will enable a disappointed lover to harass the parties unnecessarily and hold a marriage indefinitely. No third person can bring a suit in the civil courts for restraining two persons from marrying unless the rules of law are altered and it is undesirable that such rights of interference should be given to any and every person. The likelihood is that civil marriages will be discouraged since parties will not desire to place themselves in this position and no such cumbersome procedure exists for religious marriages. Since civil marriage contain provisions as to monogamy, intercaste marriages and marriage at a later age, they should be recognized rather than discouraged and all provisions which have the effect of discouraging them should be deleted.

Section 23.—After the maternal uncle the right of guardianship should be given to the certificate guardian, if any, and then only to other relatives and among relatives it should be provided that if any relative supports the girl he or she should have the right of guardianship.

Section 24 should be deleted.

PART IV—CHAPTER II.

The principal question to be considered is whether divorce is a desirable institution or not. Having regard to the nature of marriage under Hindu Law and the sacramental consequences, divorce will ordinarily not be desirable but the taluqdars cannot shut their eyes to the fact that already by custom, the right of divorce exists among classes of Hindus and that already a situation has been created in which it is impossible to do without divorce. They, therefore, think that the provisions as to

divorce should be introduced but that they should be reasonable and should not be of the kind specified in this 'Code' which introduce the odium of divorce without any of its advantages.

Section 26.—All these are grounds of divorce. There should be no such thing as 'separation' which means that both parties (if monogamy is introduced) or the woman at any rate remain tied to each other but by a wholly unnatural tie, which results in advantage to one. This clause should therefore be removed and all its provisions should be embodied in clause 30.

Section 30.—The grounds of divorce are absurd and require drastic alterations.

(a) The period of seven years should be reduced to three years.

(b) *Substituted clause (a) of section 26.*

(c) the period should be reduced to two years. (e) will be included in new clause (b). It is absurd that the party should only have the right of divorce after there has been more than ample time for her to be affected by the disease.

Add (c) and (f) of section 26.

PART VI.

Section 6 (d).—The term 'reasonable time' is very vague and some definite period, e.g., two years after the husband's death may be added.

6. Miss Pushpalata of the Women's Hostel, Benares Hindu University, Benares.

The Hindu Marriage Bill is really a praiseworthy piece of reform as it will remove some unnecessary and orthodox restrictions from the Hindu marriages.

But it has one deficiency. The Bill makes no provision for millions of those unhappy young men and women and boys and girls, who were married against their wishes before the Act passes. Such unhappy couples are undergoing an endless suffering and can never find happiness in their present condition. They are ruining their lives silently under the yoke of those so-called marriages and would prefer death or suicide to such life. Moreover, the lot of women is very miserable in this respect.

If such unhappy millions can find divorce under the proposed Act, they would be very grateful to the makers of this law.

Therefore I suggest that the divorce clause of the above code will be made applicable to the retrospective sacramental Hindu marriages as well so that the present sufferers might find relief under this Act by getting rid of their present marriage ties.

7. Sri Vijay Tohri, Allahabad.

(i) The women representatives do not come from the masses and as such their verdicts or evidences are wholly unrepresentative or do not have a mass backing. Their Western outlook cannot be recognized by the orthodox mothers or sisters, whose voices do not reach the committee and thus they are dumb and silent spectators of a ruthless and disintegration more at the hands of individuals who are far ahead of the social requirements of the country.

(ii) The question of inheritance is uneconomic and it is unsound. India is not made up of rich households and as such the poor would be made poorer still. It will lead to economic disintegration whereas economists are thinking about consolidation of "holdings" whether agricultural or "urban."

(iii) English Law cannot be applied in India, for Indian society and its fabric is more ancient than any and the Hindu family even for its defects has existed since such a long time as well suffered and survived through so many ordeals. To put new patterns of regulations and a control of social evolution would lead to the destruction of happiness of Hindu homes.

(iv) Because husband and wife are not separate, economic self-determination for each would mean the creation of a bogey of separation and loss of fidelity in or control over each other.

(v) *Provision of divorce is unholy.*—In India woman has been respected more than the man, and she is the Goddess of the family. As such to pave a way for a woman to leave her children and household would lead to destruction of the family morality and parental love so much cherished in India. It will mean the virtual evaporation of Hindu nation, let go extermination.

(vi) Instead of Tribunals consisting of a mother or an aunt a married man and a married woman drawn from

the locality where the belligerent couple resides must be made and instead of Law Courts, they must be legalized to hear the disputes and decide. *Divorce must be the resort when all efforts fail.* This will save unnecessary public scandalizing.

(vii) Law Courts are wholly incompetent to try private domestic affairs. *Homes and hearths cannot be governed by the sceptre and orb of justice.* It is presupposed that in every case the charge would be of adultery and infidelity. There are so many other things, which a judge cannot be held competent enough, however experienced he be, to decide or dilate upon.

(viii) Sacramental marriages must not be touched at all, civil marriages of the Western pattern must not be allowed. They will ruin the happiness and stability of Hindu couples. They will separate sons and daughters-in-law from the parents. They will lead to pollution of mentality and real motherhood will soon be forgotten.

Further parents' consent is essential. *This clause is quite detrimental and useless as the divorce and inheritance clauses.*

(ix) Inter-caste marriages may be permitted subject to the approval of the two pairs of parents.

(x) A widower must not be allowed to wed a virgin and so a widow to a bachelor. Instead a widower if he needs remarriage should only be allowed to marry - a childless widow. This will give the equality to woman's right to that of a man in connexion with conjugality. Just as people take offence at widow's remarriage so do womanfolk whenever a widower gets a young girl. This would solve the difficulty.

(xi) Equality must not be given with respect to civil affairs, as ladies are not capable of it. To cite example of an exception or two of propped up ladies is humbug. Generally we must know that in affairs of men however clever a woman be - she cannot compete. *We must learn from the Western civilization that they have failed to produce the happiness of their homes only on account of the so-called modern reform in their women. And we are not to repeat the same mistake.* Reforms are useless so long as there is illiteracy and when literacy prevails reform would not be necessary because our society is so finely built, and all defections would then go.

(xii) The legislature at present is incapable of deciding the fate of 240 millions of Hindus. Only a Hindu Assembly can decide it. What right have Christians, Muslims and Sikhs got to interfere with another religion.

8. Dowager Maharani Laltha Kumari Devi of Vizianagram.

Every one should know that the status and position of the woman have been fully recognized in the Hindu Social Organization. For this system is founded on the Dharam Shastras which are the productions of the revered rishis of old to whom the future was as much an open book as the past and the present. The utmost respect is due to her at every period of her life as a Kumari when she is of an immature age, as a Suhasini when she is married and as a mother when she is blessed with children. Our great law giver Mann has said that a thousand times more respect should be paid to the mother than to the father. Again, in an other religion much prominence has been given to the worship of God in the form of the Mother. While in other religions God can never be conceived or worshipped as a woman, in Hinduism. Vishnu to take one example out of many is offered worship along with Lakshmi, and when both the male and female deities are mentioned, the names of the latter are given the first place. The revered author of the Smritis have likewise laid great emphasis on the duty of not only treating the woman with every consideration and respect but also of keeping her well contented and happy. All this unmistakably shows with what feelings of honour and esteem the woman is looked upon in every Hindu household. To ensure the smooth working of society the spheres of work of man and woman have been clearly distinguished and a division of labour has been enforced. In the household within the family the woman holds the supreme position, in fact she has been called the presiding goddess of the home; while the affairs of the outer world constitute the sole concern of man. And thus has been minimised the possibility of any conflict and strife arising between the two; and thus has harmony been sought to be introduced in the running of Hindu domestic life. But all this strives after the attainment of a still higher and nobler ideal; the individuality of both husband and wife must be made to

lose, the one in the other and the love and devotion of both must be united to form one unbroken and undivided whole. This is a contribution of no mean significance of the Hindu Shastras towards the solution of the marriage problem.

Self-surrender to God is the highest form of devotion of the Bhakta and self-surrender to the husband is the perfection of love of the wife. Here vanish all distinctions of mine and thine. This implies a unity of interest and a singleness of purpose. What Hindu wife is there in this holy land of ours who has not breathed the hearts prayer day and night that the relation established with her husband in the present life may continue unbroken in all their future lives?

Owing to the ignorance of the shastric injunctions there has been no doubt a falling off from the high and noble standards herein set forth and the result has been that certain people taking advantage of the humbler condition of our womanfolk have placed them in certain matters in positions of disadvantage and this has led some of our enlightened countrymen to come forward with proposals of introducing revolutionary changes into the Hindu social system. The Hindu Succession and the Hindu Marriage Bills now on the anvil of the Legislative Assembly if passed into laws, will prove disastrous to the interests of the Hindu society. The new rights which the Bills are expected to confer on Hindu women will not in any way ensure their well being and happiness. Moreover, the ideals inclosed in the shastras will be wrecked and the condition of the Hindu woman will be on a level with that of her sister in the West.

I, therefore, consider it my duty to warn my sisters of the perils that stare them in the face. Government has no right to interfere in such sacred matters as marriage and succession. If evils have crept in, attempts should be made to eradicate them by adopting measures in consultation with one another and in strict conformity with the shastras. It will be a grievous mistake to entrust Government with powers in these matters.

It has been said that the measures under contemplation will confer a great blessing on the Hindu women. It should be strongly pointed out by Hindu women themselves that the blessing is only apparent, not real; it may be called by that name but it is not truly so.

I have every hope that if a vigorous opposition be started against the Bills by my sisters all over the country, they will be thrown into the waste paper basket in no time.

9. Smt. Bhuvanewari Devi, Fyzabad.

I. *Right of inheritance of daughters in their paternal property.*—In my opinion this kind of law will not only cause disruption in the Hindu families in the way of quarrels between brothers and sisters and unnecessary litigation and waste of money on both the sides, but will expressly be to the loss to the girls and will in itself defeat the very purpose for which the law is meant. It will of course divide India into brothers and sisters. No person can be in absolute right of any property and not only that everyone will have a share here and a share there out of all control but after a few years no one will be able to possess any property at all. This is so specially among the middle and poorer classes.

To make matters more clear I should put the case under two headings, taking a case of middle class man.

What the girl gets at present out of the paternal property or from their brothers—

(a) *Dowry*.—Two to four thousand rupees, even above their status and some time after taking loans.

(b) *Gift on child-bearing*.—Consists of clothes for the mother, and father of the child, clothes for all male and the female members of the family including the uncles of the child's father and their families in addition to the clothing for the child some ornaments or cash and varieties of dry fruits, etc., which cannot cost less than two months' income or Rs. 200 to 400.

(c) *Bhat*.—At the time of the marriage of every child, this duty generally falls on brothers. Every brother takes a pride in giving *Bhat* to his sister and in the absence of real brother and cousins, distant relatives feel it a joy to supply *Bhat* to any woman who can address them as brothers.

This *Bhat* consists of clothes for the sister, her husband and all the male and female family members. Some share of clothes has to be given to all relatives and to the

acquaintances and the servants of the family. Besides this some cash is always paid and rich brothers take further share in marriage of the girls by performing certain ceremony by themselves.

This expenditure of *Bhat* cannot be less than 200 to 400 rupees excluding the last item.

In this way if the sister has got four children the total will not be less than Rs. 1,400 to 3,000.

(d) Whenever sister or her husband comes to brother's home or when the latter meets them elsewhere, some present is always given as a matter of course, besides the gifts on the Holi, Dewali and Raksha Bandhan, etc.

Now let us see what the girls can get under the proposed law.

Suppose the father leaves a property of a house or two worth two to four thousand rupees to be divided amongst an average of two sons and two daughters, each heir shall get a property worth Rs. 500 to 700 which is decidedly less than the above sum.

Suppose the father leaves one house as will be the case of 90 per cent of men in India, this will have to be divided between two sons who live in one place and two daughters who are married away from the place where the property is situated.

Now the first thing to consider is how the girls can get their share.

Firstly.—They can have their names nominally entered as owner of the quarter of the house each, while the brothers enjoy the whole freely.

Secondly.—The brothers pay the rent month by month.

Thirdly.—The brothers if fortunately in possession of sufficient cash, to pay for the share to the sisters.

Fourthly.—Sale of the house to divide the cash.

Fifthly.—A long litigation in which a good deal of money will be spent from the pockets of the either parties, most probably after taking loans and in the end, the property will be auctioned under the force of law. There will be forced ejection.

This will be the more usual method employed.

The occupants—brothers and sisters will all become homeless. Whoever will purchase will meet the same fate ultimately.

The fate of the rich people will be no good for after two or three generations none will be left to be called a rich landlord of property and eventually their successors will meet with the same fate.

Further result of this law will be—

(1) Quarrel between brothers and sisters and their husbands.

(2) The present love between the brothers and sisters will turn into bitter enmity.

(3) All kinds of frauds to deprive the girls of the share will be played by brothers.

(4) The girls will not be married as in other community or will be married to an unsuitable match.

(5) Girls who will be in charge of the independent estate will care a hang for their husbands and will reap the fruits of weakness of their sex.

(6) Marriages in the same family like Muhammadans.

(7) Girl infanticide will be renewed, if it was true as history tells us and will be more general.

I leave the readers here to draw their own conclusion further. Daughters should certainly have a right of inheritance in the absence of male child.

II. *Monogamy*.—This is a thing which is already common in Hindus and may be further enforced strictly except in the case when the pair has no issue and that with free consent of the present wife. Such cases of double marriage should be rare.

III. *Divorce*.—If allowed by law will be another calamity for the Hindu Society. Men will divorce their wives more than women and thus it will bring no boon to the class which the law is devised to help.

At present the ladies in Hindus are thought to be the mistress of the whole household and possess the sole right of spending money earned by their husbands.

No husband I hope keeps, the keys of cash-boxes; ornaments are provided for the ladies and with some they are the only savings. With the law of divorce, the table will turn and separate accounts will be kept unknown to the other party and money utilized or even squandered at the sweet will of the earning body or bodies.

I admit that there are certain cases where females are badly treated by their husbands. Strict law should be passed against such maltreatment.

Divorce is no cure for such cases even. Rather cases of maltreatment will increase to justify divorce.

IV. *Civil marriage*.—Marriage among Hindus if performed according to religious rites needs no Court certificate but in case of marriage of a person who has changed religion to Hinduism he or she may need the protection of law.

Sagotra marriage.—I believe there is some difficulty in marriage owing to the consideration of gotra for six or seven generations. Some modification can be made in this. Intersect marriages should be made lawful.

There are certain other events which need prime consideration—

1. Settlement of dowry should be made strictly punishable on either side.

2. Female labour and child labour should be totally abolished.

3. Widow marriage should be made legal.

4. Female illiteracy—Attempt ought to be made to remove it by compulsory education.

I think that some of the ladies educated on western system have been attracted by the outward glitter of the imitation gold, which if fully exposed will make them shirk the Code. There may be some men interested in this law who see immediate self-gain but after effects stand equally for them.

10. Mr. H. Parthans, Judge.

I agree with the provisions of the draft Code subject to the following remarks:—

The daughters have been made simultaneous heirs with the sons but they have been allowed only a share half that of a son. In my opinion, they should be allowed a share equal to that of a son. There does not appear to be any justification why they should not share equally with the son in the property of their father. The allotment of half-share to the daughters appears to have been borrowed from the Muhammadan Law. There is a great objection to the allotment of any share to the daughters on the ground that it will lead to the fragmentation of the property and also to the strained relations between the brothers and the sisters. So far as the question of strained relations is concerned, I do not think that it is likely to arise simply because the daughters are given a share in the property of their father. Except the Hindu Law, the daughters are heirs in every other law but there is no ill-feeling or strained relation between the brothers and sisters on account of it. As regards the fragmentation of the property, this cannot be avoided even if the daughters are denied a share in the property of their father. Considering the present times and the facts that the joint family between the brothers is only in name rather than in practice, the fragmentation is inevitable unless a rule is made that the property will be indivisible and the sons cannot get it partitioned.

The Code provides for the application of Partition Act of 1893 in cases where a female heir who has passed by marriage into another family sues for partition of her share in the property. By the application of this provision, the daughters will not be entitled to get the property partitioned and thereby the property becomes incapable of enjoyment. They will get only the value of their share.

The Code further provides that a widow or in case there is more than one widow all the widows together shall get a share equal to that of a son. In my opinion, each widow should get a share equal to that of a son but she should have only a life interest in it and on her death it should be distributed equally between the sons. It is not clear on what principle only one share has been allotted to all the widows in case there are more than one. The widows generally have no other source of income except the property which they get from their husband.

In the case of stridhan I am of opinion that it should devolve equally on the sons and daughters. In my opinion, the provision that the son should get a share half that of the daughter does not appear reasonable.

In Part III (a), paragraph 7 providing the conditions when maintenance is to be a charge, the word 'otherwise' at the end of the paragraph is vague and will lead to much unnecessary litigation. It should be clarified. I am further of opinion that the maintenance should be made a statutory charge on the property liable for it because if it is not so done till a decree is passed or a provision is made about it by will or by the agreement between

the parties, the person liable for maintenance may transfer the property and thus defeat the right of maintenance because the decree of maintenance passed after the transfer of property cannot affect the property in the hands of the purchasers.

As regards marriage, I agree with the provision of the bill relating to the monogamous marriage. In that case, it would be necessary to provide for divorce, though in very special and limited circumstances.

In Part IV, paragraph 3 relating to sacramental marriage no age-limit is provided for the bridegroom which means that a minor below 18 years can also marry. The question is whether in his case the consent of his guardian will be necessary. In my opinion, there should be a provision for the age and it should be necessary that in case the bridegroom is a minor the consent of his guardian should be obtained before marriage.

The provision regarding the registration of sacramental marriage has been made optional. It should be made compulsory as that would dispense with much unnecessary evidence on the question whether there was a marriage between the parties or not, but the mere fact that the marriage has not been registered should not invalidate the marriage. The failure to get the marriage registered should be made punishable with fine in order to enforce registration. Similarly, adoption should also be registered.

11. Mr. K. N. Wanchoo, District Judge, Agra.

Part II, clause 5 (1).—I am of opinion that "son's daughter" and "daughter's daughter" should be taken out of class II and should be put along with daughter's son in entry 2 of class I. The "son's daughter" and "daughter's daughter" should each get half-share as compared to one share of daughter's son. I feel that as sons and daughters have been put in one class, the grandchildren should also be put in one class, except of course son's son who is already provided in entry one of class I.

Clause 7 should be suitably amended in view of the above amendment suggested by me.

Part II, clause 14 (b).—I am of opinion that husband's heirs should come after mother's heirs and father's heirs. Property which will pass under this clause will mostly come from the parents. As such parent's heirs should have preference over husband's heirs. Otherwise it is likely that daughters might be deprived of inheritance by their parents for fear that if the daughter is childless the inheritance would go to the husband's family. I am therefore of opinion that the first five entries should be kept as they are, No. 6 should be mother's heirs, No. 7, father's heirs and No. 8 husband's heirs.

Part IV, clause 30.—Seven years appears to be too long in sub-clauses (c) and (e). It should be reduced to five years in sub-clause (c) and three years in sub-clause (e).

Part VI, clause 16 (1).—The explanation to this sub-clause should be amended so that no adoption should take place till after the child in the womb has been born.

12. District Judge, Fatehgarh.

I feel that the Code's provisions where under a large number of females and female cognates have been added as fresh heirs as against the Standing Hindu Law of the Mitakshara and Dayablag as of the other minor schools of Hindu Law are unjustified. Its provisions granting absolute estates for female heirs is violently opposed to all the Sruti and Smriti Laws as accepted by all the Schools of Hindu Law as govern the Hindus. Its provisions where under simultaneous female heirs have been created and made to inherit with sons and grandsons is equally opposed to the basic principles of Hindu Law. These provisions will shatter Hindu social order and create chaotic conditions. The attempt to break up the joint Hindu families is neither in keeping with the spirit and the Texts of the Hindu Law nor demanded by the exigencies of the present times.

Its provisions meant at secularization of institutions like marriages, succession, adoption will strike at the very root of Hindu Law as conceived by the ancient law-givers.

The loosening of the prohibited degrees of marriages opening doors for marriages among very near family men will shock orthodox sentiments.

The provisions creating rights for getting separation, dissolution and divorce by a resort to law Courts will create a very disheartening situation in the Hindu society.

These provisions will set at naught the very foundations of Hindu Laws on which the institution of marriage is based. It will abrogate the very high cherished ideals of the chastity and the unshakable devotions of wives to their husbands. It will annihilate the fundamental rule of Hindu Law and religion that marriage is an indissoluble tie meant to last for the life here and hereafter.

Apostasy should disentitle inheritance as is the rule under Hindu Law. Polygamy should be restricted under the conditions enjoined under the Smriti Laws and not abolished. This rule of abolition does not obtain in other communities and Hindu population will suffer on this score.

13. Mr. S. B. Chandiraman, District Judge, Lucknow.

The time at my disposal to give my considered opinion on the Draft Hindu Code has been too short for a critical analysis of the various provisions of the Code on the subjects dealt with. The marginal notes are extensive and illuminating, and I agree with the scheme of the Code. The rights of women to property have been extended. This is bound to provoke considerable opposition from the orthodox Hindus. Again the Code has tried to abolish the joint Hindu family and this is a controversial subject on which there would be any amount of opposition. The Code has simplified the Hindu Law and the principles adopted are those which are already either the law or recognized by judicial decisions. If the principles laid down in the Code are accepted there will be a considerable social reform also in Hindu society. I am in favour of the Code as drafted.

14. The District Judge, Benares.

Part I, Preliminary.—No amendments appear to be called for.

Part II, Intestate succession.—No amendments appear to be called for.

Part III, Testamentary succession.—No amendments appear to be called for.

Part III-A-I, Intestate and testamentary succession.—No amendments appear to be called for.

Part III-A-II, Maintenance.—The law as intended to be laid down appears to be somewhat complicated, and should be simplified.

Part IV, Marriage and divorce.—(1) The definition of "Sapinda relationship" should be relaxed, and should extend as far as third generation in the line of ascent through the mother and the fifth generation in the line of ascent through the father.

(2) The "degrees of relationship prohibited" should be tightened, and the marriage between the children of brother and sister or those of two sisters should also be prohibited.

(3) For a sacramental marriage the bride who has not completed her eighteenth year should also be required to obtain consent of her guardian-in-marriage for the marriage.

(4) For a civil marriage only a bride who has not completed her eighteenth year should be required to obtain the consent of her guardian-in-marriage for the marriage.

(5) A sacramental marriage should not be declared null and void on the ground that the parties are "Sapindas" of each other in case they have lived with each other as husband and wife unless the marriage has been challenged by a third party within a year after the commencement of the Code or within a year of the marriage whichever is later.

Part V, Minority and guardianship.—No amendments appear to be called for.

Part VI, Adoption.—No amendments appear to be called for.

15. Mr. P. K. Kaul, District Judge, Bara Banki.

The subject is of a very complex nature and the effect of proposed changes so far reaching in character that it is difficult to offer any opinion without some hesitation.

The following suggestions are however made for consideration:—

Part II, 7 (b).—I would suggest that an undivided or reunited son should be given preference over one who is divided from his father. The reasons for this view will be found in the judicial decisions which prefer an undivided or reunited son to a divided son in the matter of inheritance to father's property.

Part IV, Sacramental marriage.—Of the two sets of alternative clauses 3, 4 and 5, the first should be preferred. My main ground for this preference is that the first

mentioned clauses do not use the word "caste" and would thus avoid complications which, it is feared, might arise by the use of that word.

Clause 30 (c).—The period of a venereal disease constituting a ground for a decree for a dissolution of marriage mentioned in this clause may, in my opinion, with advantage be reduced from 7 years to 5 years.

Part VI, clause 5.—In the explanation appended to clause 5, I would suggest that the word "specified" be substituted for the word "named". The former expression is, in my opinion, more comprehensive than the one used in the draft.

Clause 7—Manner of giving authority or imposing prohibition or revoking, etc.—Considering the general conditions prevailing particularly in the rural areas of the country and the general habits of life of the people, whom this provision is likely to affect, I would suggest that compulsory registration should not be insisted upon. The requirements of the authority, imposition of prohibition or revocation of the same should be deemed to have been fulfilled if it is in writing and signed by the person giving the same.

I have no other suggestions to make as regards the draft but would venture to invite attention to the stupendous changes which the proposed Code is likely to effect in the Hindu society particularly in provinces governed by the Mitakshara Law. It is a matter for very careful consideration whether such changes should be introduced without giving the sections of the community likely to be affected sufficient time for considering and expressing their opinion on the same.

**16. Mr. Thakur Prasad Dubey, M.A., LL.B.,
Civil Judge, Farrukhabad, Fatehgarh.**

If we examine the Hindu Law Bill we will find at a mere glance that it attempts not to codify the Hindu Law but to change it and replace that law by a new one. Its main provisions are: (a) to give absolute estates to females and abolish the Hindu Law rule of limited estate in all cases of inheritance by any female; (b) to introduce a large number of female heirs as also a large number of ascendants and descendants of females in the list of inheritance; (c) even to place daughters and sons on the same level in the right of inheritance; (d) to give females rights to inherit both in their husbands' families and also in those of their fathers; (e) to break the whole joint family system as conceived in ancient laws of ours and as shaped on the Mitakshara Rules, to abolish the rule of survivorship and introduce rights of female succession even in joint family properties; (f) to make the Hindu Law of marriage run on the lines of the West by abolishing the rules of prohibition against marriage among Sagotras and the like and by introducing laws of divorce and dissolution. Even much of the Vedic ceremonies of marriage and adoption have been dispensed with and the force of their sanction abolished. Widows have been given rights to adopt any they like whether their husbands had or had not given any such directions or powers. Attempt has been made to make everything secular. The basic principle of Hindu Law on which the whole structure of the laws of succession, marriage and adoption are based have been thrown aside in contempt. Not only that a large number of females have been introduced and full absolute rights given to them in all that they inherit some have been made to co-share and inherit simultaneously in fixed proportions shares with such high male heirs as the sons and grandsons.

The original idea was to effect codification to settle the unsettled complex rules of Hindu Law. It was never thought to abrogate the Hindu Law itself. The new Code is a peculiar admixture of Christian and Muslim Laws aided where necessary by rules derived from the Indian Succession or Divorce Acts and from the marriage laws of the west.

It is a serious question to consider whether such a move is really in demand from the Hindu community, whether such revolutionary changes are even in the interest of the Hindu community, whether the present is the proper time for bringing in any such Bill before the legislature and whether the Government or the legislature has powers or rights to change the Hindu Law.

Nobody, not even the most ardent supporters of the Bill, can honestly believe that any section of the Hindu community that has faith in the merits of the Hindu Law and civilization has any desire for such drastic changes. No

Sabhas of Sanatan Dharma, of the Hindu Maha Sabha, of the Arya Samajists, nor any organization of any Hindu Samstha nor any association of Hindu women have ever expressed any need for such a codification.

That Hindu Law has immense juristic merits has been spoken of by great scholars, both of the west and the east in high praises. Some fair glimpses of the greatness and comparative merits of Hindu jurisprudence will be found in the article that I contributed on the subject published in 1944 A.L.J., 11. Our literature on law is huge. Our civil and criminal jurisprudence have merits of their own. In the Tagore lectures of 1908 the Lecturer observes "I affirm that in point of logical subtlety and analytical skill the Hindu jurists have scarcely been excelled even by the most modern exponents of Western jurisprudence" (page 19). We can quote scores of such opinions of great scholars and jurists of the west on the great juristic merits of our laws.

The greatest fault assigned to our Rishis or their laws is that they have intermingled their religious and moral laws with the secular law, that they have based their positive and civil or municipal laws on their religious laws. Whether what they have done is conducive to the welfare of mankind and is in their best interests is a matter that requires grave consideration. What value can a law carry if it is not fundamentally based upon rules of ethics and morality and what value can the rules of ethics and morality carry if they are not engrained in the basic principles of the religion of a people? The Dharma or religion for the Hindus is not a matter of a few minutes stay in a temple or a church, it is the very life and being of life—life not only here but the eternal cycle of life hereafter. The Sanskrit root of Dharma is Dhr which means to sustain and Dharma is one that sustains the entire universe and the entire sentient beings. Our laws have been planned not for this life alone but also for those that have yet to come. That there is some "Beyond" even the non-believers believe. And if our Rishis planned for that Beyond there was nothing foolish about it. There are no compartments in our Dharma. A man cannot be secular sometimes and religious at other times.

Whether our Rishis were wiser in the course they adopted is a matter for history to answer. The Hindu religion, culture, and civilization has stood the havoc and ravages of time as none else has done. Even the contemporary and later Civilizations of Rome, Greece, Egypt, Brazil and others have disappeared beyond recognition. Ours yet survives and with vigour and in the words of H. D. Mayne its potentialities yet appear as powerful as ever before. Is not this test and verdict of history the very best proof of its intrinsic merits?

The Hindu Seers and the Rishis understood and well realized that our sisters, mothers and daughters were weaker and needed protection. The father was therefore enjoined to protect her in her childhood, the husband in her youth, and the son in her old age. On her marriage she changes her father's gotra and assumes that of her husband and becomes a part of her husband's-body (Ardhangini). She becomes a Lakshmi (the mistress). No Samskar or religious ceremony of the husband is complete without her joining him in the same. An elaborate system of provision for the maintenance of the widows and other females is provided for. A family is declared degraded where a female is dishonoured or ill-treated. Specific provisions are made for the marriage of those girls who may happen to lose their fathers. Our later jurists have given the daughter, the wife and the mother a right to succeed in case of absence of a son or son's male descendants. In such successions such females have been given life estates with powers of alienation in cases of necessities enjoined by the Dharma.

With these protections the Rishis ordained inheritance to the males to the exclusion of the females. They could not do otherwise. As I have said the law of succession is based on the law of the Dharma as they conceived it. I mean the law of devotion to the Pitris which constitute what we call Shraddha. Critics may say this Shraddha business is all foolish. But I would ask, do not all religions enjoin performance of some such obsequies in some form or the other? Then why feel enraged against the Hindu law-givers? Max Muller once said that this part of the Hindu beliefs were strikingly singular and that Christianity would have proved more graceful had it assimilated these uses of the Hindus.

Our Law-givers laid down that the power and right to perform Shradha entitles one to succeed. It affords one of the striking beauties of that system by making affections and affinities to run on parallel lines for both the purposes of capacity to perform Shradha and right to inherit. The *dāya* or the heritable property of a deceased will descend on him who is his participant in his Pinda. The Pinda conveys both the ideas and meanings, namely, the Pinda the funeral cake that is offered at the Shradha and Pinda the body of the deceased of which his inheritor is a part or participant. The Hindu law has engrafted rules about the fitness of people who are entitled to offer the Pindas and they alone have been declared entitled to inherit. Jimutvahān in his Dayabhag and Vijnaneshwar in his Mitakshara have each adopted and emphasised one of the two conceptions of the term *Daya* as occurring in the Text of Yajnavalkya. The difference in this approach does not uproot the fundamentals but only affect a slight difference in the list of inheritance. Such rights to offer oblations and inherit have been enjoined only for the males. Hence generally speaking males are only the heirs and not the females and a few of the females that have been given that right, viz., the daughter, the wife, the mother, and father's mother have obtained that concession by virtue of our law-givers' conceptions of their succession serving the same end and there are special Texts for the same. The daughter came in at a very early date under the religious necessity of procreating a son for the salvation of her sonless father becoming by his Putrika by her father's appointment for that purpose. The wife succeeded on the principle that she was the surviving half of the husband a part of the Pinda and entitled to offer oblations. As observed in the Tagore Lectures of 1885 (by Dr. Bhattacharya) "We can therefore take it as a correct proposition that from the earliest times reached by written Brahmanic records one of the fundamental principles of the Hindu Law of inheritance has been the general exclusion of the female sex" (page 122).

I will now present a few of the Vedic or Sruti Texts followed by Texts of Smritis to show that in Hindu Law the male alone is the heir and female is not, except in a few exceptional cases. A Text of the Mantra in the Rig Veda occurring in the third Mandala in the second verse of the 31st hymn, says: "The son does not vacate the inherited wealth for his sister; he makes her the repository of the issue of him who takes her; although the parents procreate both the males and the females, the one is the worker of good deeds, the other is graceful". Sayana-charya the Great Commentator and Exponent of a vast portion of our inspired writings has the following comment on this Vedic injunction: "However in between these two, namely, between a son and a daughter one possessed of male sex becomes the author of the meritorious religious works such as the offering of Pinda, oblations and the like. The other possessed of female sex is only entitled to be bedecked with beautiful things such as wearing apparel and jewellery and the like. A son being authorized to perform meritorious acts such as the offering of the Pinda, oblations and the like is entitled to inherit the property of his parents; a daughter is not so; she is only to be given over in marriage to another outside the family." Baudhayana sutras occupy very high position among the ancient sutras. He has the following view of this Text: "A woman is not entitled to inherit for thus says the Veda, females and persons deficient in an organ of sense are deemed incompetent to inherit" (Prasana 2, Kand 2, Verse 17). We have other unequivocal Vedic Texts on the subject. "male is the heir, the female is not the heir" (Maitrayani Samhita 4-6-4). "Women being suppressed and discarded are not mistresses of themselves nor of any property" (Shatapatha Brahmana 4-4-2). Now added to these Vedic Texts we have the concurrent texts of Smritis that lay down the same.

"While young, a woman remains under the control of her father, after her marriage, of her husband and on his death under that of her sons. She does not deserve complete independence at any time" (Manu 9-7 and Yajnavalkya 8-4).

Female sex is weak in body, flexible in temper and emotions, simple in mind, deep in sympathies and love, credulous in nature and easily winable and liable to be taken astray. She is as physiologically constituted and definitely ordained by nature to fulfil functions different from those of men. She is graceful and noble and service is her noble occupation of life. They are the mothers

of the human race and their life's preparations are directed for the fulfilment of that vital necessity of nature, the procreation and preservation of our race. Rightly or wrongly our Rishis considered it a matter of highest social importance to preserve the Chastity of the Womanhood with unshakable jealousy. They made Pativrata Dharma the be all and end all of female existence and ordained rules in that direction. The bed of husband must be maintained unpolluted. They made the females the masters of the household and the males of the outside world. Manu the much maligned Rishi ordained that that household is degraded where females are not honoured. The differentiation affected by the Rishis which appear as favouring the male never aim at belittling the position of women in society. Their whole system is a synthesis and harmonious combination of the different functions of the two for the smooth run of the society and for upholding the cause of Dharma. They all provide only for the protection of the women against the terrors and turmoils of the world.

It is said by many that the original Hindu Law does not restrict the female succession to a mere life estate and that life estate or widows' estates are creations of case-law. That view is unfounded. Narad says; "woman's business transactions are null and void except in case of distress especially the gift, pawning or sale of a house or field. Women are not entitled to make a gift or sale; a woman can take only a life interest." (Narad 3-27-30). Katyayana says that after her death the heirs take that estate (quoted in Smriti Chandrika page 677). Vivad Ratnakar page 511, Vivad Chintamani quoting Mahabharat and Dana-Dharma page 238, Dayabhag quoting Mahabharata in 9-1-60 and Vivad Chandra 22-1-7 all definitely lay down that rule.

Hence the inclusion of female heirs other than those introduced under special Texts of the Rishis as proposed is an open violation of the Hindu Law and further the provision granting absolute estates to them is another unauthorized revolutionary change.

The provision in the Bill making daughters simultaneous heirs with brothers and giving them shares is an open simulation of Islamic Law of succession. Hindu Law whether of the Smritis or Sruti or of the Nibandhakars (Commentators) militates against such a rule. The daughter has no right to offer oblations in the presence of the sons; how can she inherit with them? Sruti says that the father reincarnates himself in the body of his son (Shatapatha Brahman 14-9-48 and Manu 9-8). How can the daughter even on the basis of the rule of propinquity inherit with the son? Not one single school of Hindu Law nor any Hindu Jurist of any standing or age countenances such a novel and unheard of innovation. Prior to the days of Manu she was not even recognized as an heir. She came in and was put down in the list after the male direct descendants as a Putrika or the appointed daughter. Her position assumed great importance on this score as her son became entitled by that fiction to offer oblation to her father.

Manu is quoted in support of this new rule in an indirect manner. While writing on the subject of Putrika Putra and extolling her merits. He says "the son of a man is even as himself, and as the son such is the daughter thus appointed; how then if he has no son, can any inherit his property but a daughter who is closely united with his own soul (9-130). Here Manu is talking of an appointed daughter and not of an ordinary daughter, and there also he gives her a right to succeed only if he has no son. Manu therefore does not support this new provision.

Another Text of Manu and also of Yajnavalkya are quoted in support of this proposition. Our law-givers have made provisions for the marriage of daughters at the hands of their brothers when the father is dead and in that connexion they have directed the brothers to set apart a fourth of their shares for that purpose. The supporters of the Bill adopt this rule as an authority for the rule that a daughter is entitled to a share along with the sons by way of inheritance. Here is the translation of Sir William Jones of that Text of Manu; "To the unmarried daughters by the same mother let their brothers give portions out of their own allotments respectively, according to the classes of their mothers; let each give a fourth part of his own distinct share: and they who refuse to give it shall be degraded." (9-118) The Text speaks for itself. It is a moral injunction to the sons for making provisions for the marriage of their sisters reserving a fourth part of their shares therefor. By no twisting of

the language of this text can it be said to mean that the Rishi laid down that on father's death his daughter is entitled to inherit his property simultaneously with her brothers in face of a herd of Texts to the contrary. "Three persons the slaye, the son and the female own no property. What they have belong to those to whom they themselves belong." This is the rule occurring nearly in all the Smritis. The Text of Yajnavalkya is this: "The uninitiated however should be initiated by those brothers who have been initiated before. And the sisters also, giving them a fourth part of one's own share." (Yaj. II-124). Here also the Text speaks for itself. Initiation is a term which means religious initiation and for a girl that initiation is her marriage Samskar. The Rishi here is speaking for the provision of performing the indispensable initiating ceremony of a sister's marriage Samskar when her father is dead. Both these Rishi Texts occur where they deal with the subject of partition and are allotted shares in their fathers' estate. These Texts cannot with any straining of their language or of the context be taken to mean that they ever intended to lay down any rule of inheritance in favour of the unmarried daughters. The Bill gives them a right of succession on the authority of these Texts. The Bill goes further and gives a share also to the married daughters and with a vengeance makes them all absolute estates. And mind they are not being given shares in the absence of sons but even in the face of the living and as co-sharers of them all. Jimutvahan the author of Dayabhag interprets these Texts as meaning an injunction on the sons when partition is affected to make provisions for the marriage of their sisters and the giving of one-fourth share out of their shares is indicated as the limit of what the girl is entitled to for expenses of her marriage and that the injunction lays down only a moral injunction (Dayabhag III-36 and 37 to 40). The Smritichandrika and Nilkantha support this view Mitakshara however lays down on the authority of these Texts that unmarried daughter should be given a one-fourth share at the time of partition after the father's death for purposes of their marriage and he is supported by Mitra Misra and Visweswar Bhatta (Vide Mit 1-11 and 14) Bengal school follows Dayabhaga rules and others the Mitakshara rule on the point and the case law as it stands in Mitakshara Provinces established only this rule that in a partition of family property after father's death the unmarried daughters get a one-fourth share tenable for their lives after which they revert to those out of whose shares they are carved out. The Bill could follow these rules at the most.

The Bill does not give effect to the basic rules of Hindu Law that apostasy or change of religion disentitles inheritance. As it stands it allows succession of Hindus' property to a Christian or Muslim convert. The Hindu religion and society is a non-proselytising one. Its population is dwindling down from census to census as the figures of the last century censuses will show. The incorporation of the rule of Hindu Law on this point is an imperative call. This subject is well discussed in the Nehru report. The Caste Disabilities Removal Act No. 21 of 1850 cannot stand in the way of the legislature if it feels that Hindu society's just interests will suffer. Happily for the Bill members of other communities are parties and the All India Women's Association which is the Pioneer of this legislation is composed of members of all communities. We take it that those are really interested in the well-being of the Hindu Community. Will they not take note of this vital need of that community and make provisions in the Act for doing a bare justice? It does not appear that Hindu Members and Advocates of this codification belonging to both the sexes have ever attempted to bestow any serious thoughts on this point and cared to persuade members of other communities to take up their cause.

Hindu joint families have since ages unknown been functioning as village Co-operative Societies based on natural love and affection providing under their very constitutions for the support of the invalids of all kinds. Co-operation appears to be the call of the modern social order. Laws have been framed to make village Co-operative Societies based upon artificial methods of cohesion. We are of opinion that such village societies have not so far proved successful. These families have joint funds and joint members utilizable for all co-operative transactions and businesses. Then why demolish the old one and attempt to build up a new one for the unmanageable mass

of millions of villages? The provision of the Bill aim indirectly at a speedy disintegration of the joint family system. Wisdom of long range consideration do not justify such a move.

The provisions of the Bill evince an over zeal and jealousy for disproportionate female succession and it is a right conclusion of many that in only about fifty years time female owners of property will preponderate over the male. This amounts to converting a Patriarchal system of society to a Matriarchal one.

It is my opinion based upon experience of cases in Law Courts shared by many that Muslim Law of female succession as applied to villagers and village families in this country has not proved conducive to their welfare in spite of the counterbalancing factor of their system of marriage in their own families and between very near kith and kin. Relinquishment by females in favour of their brothers and the like is a matter of not infrequent course of conduct in spite of the fact that that law has been in full operation in this country for centuries and huge customs to the contrary have grown up against female succession. It will not be easy to break the traditions of centuries based upon religious belief among the vast illiterate masses who form over 90 per cent of the Hindu population residing in rural areas. The law with them either will remain a dead letter or will have to be forced on them by decisions of Courts. Let the supporters of the Bill examine wills and gifts of Hindus even of advanced families. The prejudice against female transfers will be found to run through them all. In a number of cases the Judicial Committee have repeatedly laid down that the generality of the Hindus have that inclination and prejudice against their property passing out of their ancestral families through their daughters and the like and have enjoined that a presumption should be raised on those lines. A law that runs counter to the desires and inclinations of a people not only fails but further proves to be fruitful source of irreparable social mischief. The very essence of law is the will of the people for whom it is meant. Savigny, one of the most eminent Jurists of the West says "The foundation of the Law has its existence its reality, in the common consciousness of the people."

It is in the common consciousness of the people positive Law lives and hence we have to call it *Volkerrecht* (People's law).

It has to be borne in mind that the Hindu Code will govern millions of the uneducated illiterate mass residing in out of the way rural areas out of touch with the disruptive forces of modern society. It is not meant for only the 5 per cent of the educated Hindus who may take a milder view of the mutilation of their religion. For the masses it is all heresy and will stand as perpetual nightmare for them.

The view of some that religion must be kept out of all social, political, educational and other activities of human society does not seem to be shared now after long experience and thinking by some even of the thinkers in the West. Even in our country the voice of great Educationists has begun to rise that in the domain of education this secularization has already done enough of mischief. If for the West the law is the very common sense of the people for the Hindus the law (the Dharma) is the very life itself.

It has to be borne in mind that the laws which are going to be abrogated are the products of the brains of Rishis that have produced the Vedants, the Upanishads, the Geeta, the Epics, the six systems of philosophy that are the wonders of the world.

The steps proposed to be taken are fraught with grave dangers. People of our ways of thinking do not deny that our religion and social ways have got degenerated, that a huge mass of the putrid waste of the past is choking up the very life of our society and great reforms are needed and no lover of Hindu culture and civilization would spare any pains in assisting such reforms. A reform is not a substitution of a new thing altogether. The Bill prescribes a treatment which is worse than the disease itself. Let us reform and eradicate the evils but let us not dig out the very foundations of our solid structure that has weathered the storm of centuries: we cannot build upon uncertain sandy foundations and discard a tested and tried one. That which glitters is not necessarily gold. The thoughtful among the Hindus are having a brooding uneasiness about this move of a handful of the modernized Hindus who are twisting our laws for a new pattern of their own novel conceptions.

A few words on the Hindu Law of marriage proposed in the Hindu Code.

This subject is dealt with in Part 4 of the Bill. Clause 1 (b) defines prohibited degrees of marriages. As it stands it does not prohibit marriages between Sagotras or Saprararas or Sapindas as such. It adopts a definition of its own which as it stands would permit marriages between people of the aforesaid classes. The prohibited degrees under this definition have been narrowed down to a limited few of the Sapindas. This would open gates for marriages among very near Kutumbis which must shock Hindu opinion. Two classes of marriages have been created under the Bill (a) Sacramental and (b) Civil (Vide clause 3). Clause 3 provides that for purposes of sacramental marriages it is necessary that the couple should be of the same Varna and should not belong to the same Gotra or Pravara and should not be Sapindas. They have thus paid a lip homage to the Shastric injunctions in this clause, they have however nullified the effects of this provision by providing a counter proposition in clause 5 where they lay down that if marriages among the Sagotras, Saprararas and Sapindas have eventually taken place even in violation of the provision of clause 3 they will not be deemed invalid. So we are where we were. Such marriages are therefore valid even if performed under sacramental forms. For marriages in civil forms the prohibition contained in clause 3 does not at all apply. The only prohibition in that form is one of the degrees given in clause and none else. So that for marriages performed in civil forms Sagotra, Sapinda and Saprarara marriages are allowed with the few restrictions as might fall under clause 3. Then follow the most abominable provisions that would shock the sentiments of Hindus and annul the Texts and the spirits of the Rishis.

Clause 26 makes provisions for a decree for separation of the wife from the husband on the wife's move, and it contains six grounds therefor. They include circumstances when the husband gets involved in some loathsome disease. Such are the times when a wife proves her wifehood and Sathhood and exhibits those sacrifices of a Pativrata wife which are the models for the world to imitate. The Bill makes such occasions as grounds to get separated. The sixth ground permits the wife to separate on any other improper causes.

Clause 29 provides for permitting any party to apply in Court to have the marriage declared null and void and clause 30 provides for applications to Courts by any of the couple for granting divorce. These provisions are drawn up on the lines of the Indian Divorce Act No. 4 of 1869 substantially incorporating the provisions of sections 10, 14, 19 and 22 thereof. That Act is applicable only to people professing Christian faith.

The consequences of these laws can better be imagined than stated when they are applied to the 30 crores of Hindus. In a few years' time the cadre of judges will have to be doubled or trebled and the scenes of matrimonial courts of the West of which we read in papers will be matters of personal concern in our own households. These provisions will only assist the flirts and the debauches and create environments to pull astray the upper class modernized educated girls and boys. It will be easy to make out a case for a divorce by a modernized young man to change and get rid of his old-fashioned wife. I believe there is yet ample of that Dharmic conception of Sathhood among our womanhood to expect them even to think of getting rid of even their abominable husbands. It will take centuries to make them otherwise minded. But for the rising modernized youth the temptation may prove irresistible. My belief is that these provisions will work havoc against our innocent weaker sex. These provisions require very grave consideration and the pioneers of the Bill have a serious responsibility for posterity yet to come. Matrimonial cases are very rare among the Hindus. That is a legal phenomena noted by foreign judges. We have such a wonderful system of admixture of religion, morality, ethics and civil rights in our institution of marriage so inextricably intertwined based on the fundamentals that marriage is a sacrament, a religious necessity and an essentially Dharmic affair. Even from their early childhood Hindu children brought up under that environment begin to think in that line and their lives are shaped on such beliefs. On marriage the girl changes her father's Gotra and family, adopts that of her father-in-law's family and gets herself absorbed therein. Both the couples start life under the

traditional conviction that their tie is indissoluble, that they constitute one soul and one body, that their union is to last not only for this life but also for the one yet to come and that dissolution is an impossibility. Their love and attachment start not at the first sight for the glamour of physical beauty but on the immutable conviction that after the religious ceremonies are completed they are externally united to fulfil their destiny. I am not talking of a few match hunters of our new products who constitute a freak and a drop in the ocean. I have in mind the vast multitude who yet continue to have abiding faith in the intrinsic merits of our laws. Does anybody seriously believe that that vast multitude of the Hindus desire any laws of dissolution and divorce?

On the point of our old prohibited degree of marriage which the Bill attempts to nullify I quote Bentham, the famous English Jurist. He says "If there were not insurmountable barriers between near relatives called to live together in the greatest intimacy this contact, continual opportunities, friendship itself, and its innocent caresses, might kindle fatal passions. The family—that retreat where repose ought to be found in the bosom of order and where the movements of the soul agitated by the scene of the world ought to grow calm—would itself become a prey to all the inquietudes of rivalry and to all the furies of passion. Suspicion would banish confidence, the tenderest sentiments of the heart would be quenched; eternal enmities or vengeance of which the bare idea is fearful would take their place. The belief in the chastity of young girls, that powerful attraction to marriage would have no foundation to rest upon, and the most dangerous snares would be spread for the youth in the very asylum where it could least escape them." (Principles of the Civil Code, Part III, Chapter V, Section I.) If we apply this dictum of Bentham to the peculiar constitution of Hindu families consisting of a large number of collaterals, young girls and young boys, living together on terms of absolute freedom under the same roof or neighbourhood the wisdom of our sages in stilling the religious prohibition would be found amply vindicated. If this is the view of a western Jurist can anybody who adopts western tests for judgment now denounce Manu when he said that it is improper even for grown up brothers and sisters and even for father and his grown up daughter remain together at secluded places. If we have to maintain the sanctity of sex purity and of chastity and of wife's unstinted devotion to the husband our laws will be found to be the ideal ones.

Whether the Indian Legislature has rights to legislate on the Hindu law of succession, adoption and marriage.

The Hindus properly so called belonging to all the schools and all its sections or sub-sections have an innate belief that their laws are divine and that they are to be found in the Vedas. Jamini in the fifth century B.C. propounded three propositions (1) what is good for man can be learnt from the Vedas, (2) it can be learnt from the Vedas only and (3) whatever the Veda says must be true. This Hindu doctrine was put to the severest metaphysical, philosophical and logical tests by the most eminent Dharshanikas (the philosophers) in our famous six systems of Philosophy. The Purva-Mimamsa and Vedanta accept the supreme authority of the Veda on the basis of its own eternal and immutable character. The Nyaya system accepts its authority on the fact of its being the work of the omniscient God. The six systems of our philosophy all proclaim the Vedas exclusive authority. The scores of our Rishis' Smritis repeat the same. The Itihasa, the Puranas and the Epics all sing the same song. All these have built up a harmonious system of life—a life for the fulfilment of the great Dharma.

The Hindu theory of law is that it is the command of the Supreme Ruler of universe and not of any king or political sovereign and that it is divine and no law is or can be man-made (Vide Manu I—58). Every political sovereign is most imperatively enjoined to enforce that law and himself obey the same. An obedience to law implies an obedience to the divine will and it never wounded the pride of even the most despotic of Hindu kings to bow down his head before its majesty. (Manu VIII—8). The Austinian Theory that laws are commands or the sovereign authority has no place in Hindu Jurisprudence. Hence if Hindu Law is to be allowed to remain Hindu law no sovereign or legislature has any rights to make it or change it. This is perhaps one of the reasons why even the foreign rulers refrained from interfering

with Hindu law rules. The Muhammadan rulers did that and so did the East India Company. When the British sovereign assumed suzerainty of this country it was preceded by a Royal Declaration: "We disclaim alike the right and desire to impose our convictions on any of our subjects. We do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure" (Queen's Proclamation of 1858). The British Government has been scrupulously following this non-intervention policy consistently and it will be wise to continue the same. Whether the new Indian Legislature has any powers in this matter is a question for the constitutional authorities to determine. On principles of Hindu law no king and no legislature has any such authority. If any such body usurps such a power or authority it strikes at the very foundation on which the whole structure of Hindu Jurisprudence is made to stand. My point is that assuming that Constitution Act of 1919 or of 1935 invest the Legislature to enact such laws, does it behove those Hindu Members who believe in these fundamentals of our laws to attempt to make laws which their law forbids them not to do?

The most serious difficulty that must face the Legislature is that granting that they may have powers to legislate on matters of civil rights connected with succession, inheritance, adoption and marriage which they had none prior to the passing of Government of India Act of 1935 can they do so if by doing so they directly interfere with the long cherished religious-rules of the Hindus? I will quote the late Dr. Ganganath Jha (Vice-Chancellor of Allahabad University), one of the greatest Sanskrit scholars and Orientalists, "So far as I have been able to understand these laws the order of precedence among inheritors is strictly in accordance with the liability to offer the Shraddha. If that be so, will it be right and fair to interpolate new names into the list while the Legislature cannot, I suppose interfere with the liability to perform the Shraddha? This is only one example that comes to my mind." (Hindu Law in its Sources, Volume I, Preface page 1.) We cannot separate the religious element from any of these Samskritic events of life from their civil rights and liabilities. How can we then legislate about civil rights arising from them and which all inseparably intertwined with them. We cannot play with the religious sentiments of millions. Paying lip homage will not do.

Conclusions and remedies.

I am conscious that the opinion of this type will be treated as retrogressive and blindly conservative, meant for an uncivilized society of several centuries back containing negative views with no hopes for future reforms, aiming at the continuance of the stagnation of the Hindu social order. We do not plead guilty. None is more anxious for the removal of the rust and the dust that has got accumulated on the surface of our gold than ourselves. Only we do not want to barter away our gold for counterfeit alloys that have only temporary lustre. Those who believe that our laws are static and unchanging only betray ignorance. Every successive Smriti and every successive Nibandha marks by stages definite development of our laws. Needs and demands of time and the changed conditions found their successive remedies in the evolving processes. But every one of these of our jurists wrought the changes needed within the fundamentals of our basic ideals. By their evolutionary changes they attempted to fulfil and not to destroy the Law. It is well known to all students of Hindu Jurisprudence that this change from age to age was effected under the process of interpretation. None of our Rishis not excluding even Manu, Narad, Katyayana, Brihaspati, Yajnavalkya, Bandhyayana, Apastamba, Vyas, Vasishtha, Vishnu and scores of them attempted to say anything new of their own. They were the Seers and Knowers of the Law. The group of our Modern Commentators (which period begins from a thousand years back) made attempts to formulate rules of law on the basis of the Vedas, the Srutis and Smritis in the process of interpretation and classification of conflicts applicable to the needs of changed conditions. These were the people who have devoted their lifetimes for studies of our entire vast literatures and their rules run in harmony with that Entire Whole. They were the believers of that system and by their vast studies were entitled to speak with

authority and they formulated rules running in consonance with the current customs and usages that were generally based upon Shastric injunctions as pronounced by learned local pandits and scholars from time to time and hence the Hindu Society did not feel the least hesitation in adopting these rules. Hindus want rules of laws of such types laid down by such believers coupled with vast learning of their entire legal, philosophical and other literatures. We are accustomed by our tradition to take our laws from Saints and Yogis of the type of Vijnaneshwar. That is how to Hindu mind runs. Thus there has been a steady and progressive evolution of our laws down to most modern times.

I put it down as the unanimous verdict of all students western and Indian of the Hindu Law that this law has been highly elastic, progressive and dynamic. The system of the modern Courts of law was partially responsible to put a check on that growth as the administration of law passed into the hands of un-informed judges who knew little of the original Hindu law and their decisions began to be based on case law and on a handful of English Commentaries. But even there remained fair chances of consultations of original texts and books of Hindu Law in the highest Courts at least. Codification will put a final seal to all internal and self-evolved growth that could be possible. That is another poisoning effect of codification. Our Law Books will become useless hereafter for all practical purposes.

The demand for monogamy is all a matter of airy sentiment based upon the cry of equality of women. Our Shastras permit second marriage under very stringent conditions and polygamy is a rare affair. But as I have said it has to be given up from the point of view of the higher interests of the Hindu Society. Its population is subject to various elements for its decrees. We will add another by this process to that continual fall in our population. It is not unknown that day in and day out we hear of Hindu girls, women and orphans getting out and taken into other faiths. The absolute owning of properties by the females will add tremendous force and attraction in that direction for the fall in our population.

We yield to none in our respect for the learning and scholarship of the members of the Committee that is in charge of the codification. But we will be failing in our duty to our community and to our great laws if we do not emphatically express that they are not the right type of persons who can inspire confidence in the masses of the believers of our faith nor have they that requisite qualification as even our modern commentators of the type of Vijnaneshwar, Jimutvahan and others possessed. Our laws need evolution at the hands of such people of such studies and of such untainted faith in the intrinsic greatness of our entire system. There is no paucity of such great men even in these days. Legislative house is not a proper place for that. Let the reformers come up on Hindu platforms and satisfy the Hindus and evolve progress and suitable changes.

We have had a great past and hope to have still a more glorious future. We have a mission and a contribution to make to the humanity so heavily depressed by the weight of materialism. Our ancient laws have furnished materials to the laws of practically the whole of the East Asia and to all the bigger and smaller islands of the Pacific and Indian Ocean. We hope to supply the spiritual corrective to the West that it so badly needs. This is the opinion of the best modern thinkers of the West themselves. It will not be wise to dethrone us from such a pedestal and bring us down to the level of imitators. The glamour of materialism has got to be subdued in the sublime light of our spiritual culture. I close this note with the following studied observations of that eminent Orientalist Max Muller.

"If I were to look over the whole world to find out the country endowed with all the wealth, power and beauty that nature can bestow—in some parts a very paradise on earth—I should point to India. If I were asked under what sky the human mind has most fully developed some of its choicest gifts, has most deeply pondered over the greatest problems of life and has found solutions of some of them which well deserves the attention of even those who have studied Plato and Kant—I should point to India. And if I were to ask myself from what literature we in Europe, we who have been nurtured

almost exclusively on the thoughts of the Greeks and the Romans and of the Semitic race the Jewish, may draw that corrective which is most wanted in order to make our life more perfect, more comprehensive, more Universal, in fact more truly human, a life not for this life alone but a transfigured and eternal life—again I shall point to India.” (India What it can teach us by Max Muller, page 6.)

17. Mr. Harish Chandra, I.C.S., District Judge, Allahabad.

I am not in favour of any attempt on the part of the legislature to introduce changes of such a drastic nature in the laws relating to the Hindus. The attempt to codify Hindu Law relating to various subjects is a very laudable one. But there seems to be no justification for introducing changes therein which are fundamentally opposed to Hindu concepts of law and religion. Coming to the law relating to the Intestate Succession there seems to be no harm in enlarging the rights of a Hindu widow. But in my opinion there seems to be no justification for changing the law which gives her only a limited right in the property inherited by her. If she is made an absolute owner of such property it is more than likely that such property would pass out of the family. Having regard to the present conditions when education is still so poor particularly amongst women in India the ignorance of the widow is in many instances successfully exploited by unscrupulous persons to the detriment of the family. The giving of shares in a father's property to the daughters is also likely to have undesirable consequences and would lead to the disintegration of the Hindu society as it exists to-day. Hindu estates, high or small, would gradually dwindle into nothing as they would in course of time be parcelled into infinitesimal portions owing to their devolution on daughters. At present howsoever large the number of children may be, the estate retains its integrity and no share passes out of the family. The disadvantage which Muhammadan society suffers from on account of such disintegration is partly mitigated by the custom prevailing among them by which it is possible to have marriages amongst cousins. Cases are not common in which whatever vicissitudes a Hindu family may have passed through and whatever movables it may have lost the landed property has been preserved intact with the result that the representatives of a former illustrious family are still in a position to eke out a living and the original estate is preserved more or less intact. The present custom by which the daughters of the family receive ceremonial gifts on special occasions from their fathers' family will gradually disappear and this will lead to social changes, which would adversely affect Hindu society. The Hindu Law of Succession is also based to some extent on the consideration whether the person who inherits the property will be capable of offering oblations to the deceased ancestors or not and this aspect of the matter is totally ignored by the proposed bill.

The provisions relating to the personal property of a hermit or an ascetic or a perpetual religious student are also not complete. According to the bill the heir to the property of an ascetic or a sanyasi is his disciple. But if he leaves no disciple but leaves a Guru Bhai or a disciple of a Guru Bhai it does not appear what will become of his property. In *Achuta Nand Das versus Jagannath Das*, 21, C.L.J., page 96, a Guru Bhai has been held to be a proper successor in such circumstances. A similar view was taken in *Bhagwan Ram Anuj Das versus Ram Parpan Ramanj Das*, 22, Calcutta, page 843. In the case the Collector of Dacca *versus Jagat Chander*, 28 Calcutta, page 608 the Guru's Guru was granted letters of Administration against the Crown. The Bhatija Chela was recognized to be an heir in *Swarath Gir versus Jagannath Gir*, 3, Law Reporter, page 503. It would therefore appear that this matter requires further consideration.

The proposed law relating to Hindu marriages is also opposed to Hindu ideas regarding marriage. The idea of divorce is foreign to the Hindu Law and religion, but divorce would be a necessary concomitant to civil marriages. The bill proposes to make serious inroads on the present Hindu ideas regarding marriages and should not in my opinion, be undertaken unless there is a real demand on the part of the Hindus for such legislation.

18. Mr. Krishnachandra Srivastava, Civil and Sessions Judge, Mirzapur.

It must be admitted that the changes desired to be introduced in Hindu Law by the Code are not changes

which the Hindu community feels necessary for its growth and development. On the other hand the Hindu community in general still feels that the Hindu Law, as administered to-day, however ancient and archaic, embodies and represents its moral and religious ideas and fits in with its social and economic structure. Reforms may be desirable and may even be necessary but the need for them must arise from within the consciousness of a people and they should not and indeed cannot be imposed from without by a legislative fiat. Law like the society which is to be regulated by it must be a matter of organic growth. The proposed legislation suffers from an inadequate regard for the above considerations, and if it is carried out the Hindu society will not easily assimilate it but will for long continue to regard it as alien to its nature. The Code will also deprive the Hindu Law of its flexibility and its marvellous adaptability to changed conditions and circumstances. The rigidity resulting from the codification will make it incapable of modification with the changing needs of the people and a too frequent revision will be necessary to relieve it of its static nature.

The changes intended to be introduced by the Code are so far-reaching and numerous that a thorough and careful examination of its provisions will naturally require more study and thought than is possible in the short span of a few days. I shall, therefore, content myself with a few general remarks on what may be regarded as the three radical changes sought to be introduced by the Code.

One of the changes which are only too hastily levelled against Hindu Law is that of unfairness to women and an exclusion of women from their legitimate rights in property. This supposed wrong to women is desired to be corrected first by providing daughters to succeed to their father simultaneously with sons. What, however, is not sufficiently appreciated is that a daughter is not such a neglected individual in the Hindu system of law as she is sometimes imagined to be. The Hindu Law secures her right of maintenance, residence and marriage expenses and casts corresponding legal obligations with respect to her on the members of the family in which she is born. The legal sanctions in these matters are reinforced by religious ones and they afford a sufficient guarantee for the well-being of a daughter in the Hindu society and an uncared for or an unprovided for daughter is a rarest exception. In societies where it is not uncommon for women to remain unmarried, it may be necessary to allow them to succeed to their father's property simultaneously with sons and not to deprive them of the support which her father's property could give. But Hindu society is not yet faced with this problem and it is very unlikely that it will be faced with this problem in the near future. The Hindu Women's Right to Property Act has enlarged the rights of women in the property of their husbands and the Hindu Law of Inheritance Act has brought such females as may have a legitimate claim in respect of the property of a person nearer in the order of succession. Such defects, therefore, as the Hindu Law might have had have been removed by the aforesaid enactments, and there is nothing in the present state of Hindu society to justify and change in the law relating to succession by females. Daughters under the code will get an equal share with sons in their father's property and will further get a share in their husband's property. And this double benefit will not in law and in practice have any obligations and responsibilities attached to it. The day seems far when women in India will enter professions or pursue career of profit and so long as that day does not arrive it is indeed unjust if not also prejudicial to the interests of the community to enlarge in so considerable a measure the rights in property of persons who can shoulder no responsibility. Nor do the dangers of the proposed change in this matter stop here. The cordiality existing between brothers and sisters even after latter's marriage will be seriously affected and disputes and dissensions will mar the harmony of their relations. The example of other communities, very often cited in support of the proposed change, is not really in point, because the laws governing them have nothing corresponding to 'prohibited degrees' and very often the persons united by marriage do not belong to families who are absolute strangers to each other.

The second change of vital importance contemplated by the code is the extension of the scope of Stridhan to cover every kind of property coming into the hands of a

woman and the removal of all restraints on her power of alienation with respect to it. Having regard to the appalling ignorance and illiteracy of the female population of this community, it cannot be denied that the conferring upon women's unrestricted powers of transfer is fraught with the gravest consequences. Conferring such powers upon them would only result in making them easy victims of design and sharp practice and dupes of unscrupulous persons trying to overreach them. The present state of Indian women has compelled Courts to throw a cloak of protection round pardanashin and illiterate ladies and to cast a very heavy burden on people dealing with them to prove intelligent execution by the ladies and their own absolute fairness and good faith. The law on the subject has not yet undergone a change and this is strongly indicative of the fact that the state of society which necessitated the safeguards insisted upon by the Courts still continues. In these circumstances, it can hardly be denied that unless women reach that stage of education, knowledge, and capacity to manage their affairs, the proposed legislation will have the most injurious consequences.

The third violent break of the Code from the Hindu law consists in destroying the Hindu co-parcenary and doing away with rights in property by birth. Apart from other considerations, the good that the Law of Hindu co-parcenary has done to the Hindu society and the manner in which it has preserved property from imprudent and prodigal managers or fathers are themselves sufficient justification for its continuance. It has to be remembered that agricultural land still forms the only property of the bulk of the Indian population, and agriculture still continues as the main source of their living. The Code will not affect agricultural lands but provincial legislatures will ultimately have to legislate regarding agricultural lands on matters covered by the Code to bring about uniformity in the law relating to property. The cessation of joint ownership and the destruction of co-parcenary will make the happiness and the chances of making a living of a large section of the Hindu population depend on the character and disposition, if not even on the sweet will, of the person holding the property of the family for the time being. The Hindu co-parcenary system has also exercised and continues to exercise a great check on the disintegrating influences of modern life and its tendency towards the destruction of the family. The social and economic consequences of the Code are, therefore, likely to be anything but desirable in the present state of Hindu society.

19. Mr. Jagat Narayan, I.C.S., District Judge, Shahjahanpur.

I and the other two Hindu Judicial Officers in this District Judge Chief Mr. R. B., District Civil Judge, and Mr. J. P. Sharma, Munsif, are strongly opposed to the codification of the Hindu Law.

Hinduism is practised over a vast area in diverse forms. The customs in different parts of the country differ but the essential principles are based on old *hasstras*. The case law goes on changing so that the law which is actually administered by the British Indian Courts is in accordance with the law as actually practised in the country. The proposed Hindu Code seeks to introduce new principles which are foreign to Hinduism and are against the spirit of the *Shastras*. The codification of such a law will mean interference with our religion.

Even from a purely non-religious point of view the proposed law contained in the Hindu Code will lead to the economic ruin of the Hindus by disintegrating not only the joint families which continue to be the rule amongst the masses of Hindus in these Provinces, but also it will lead to unhappiness in individual families. The provisions are far in advance of the state of society amongst the majority of Hindus.

20. Mr. Bind Basni Prasad, Additional District and Sessions Judge, at Basti.

The first question is whether or not the Hindu law or any portion of it should be codified. I am definitely of opinion that the law should be codified. Codification has its advantages. It makes the law definite and produces uniformity. Most of the principles of Hindu law have become crystallized now in the British period owing to the rulings of the Privy Council and the various High Courts. Nevertheless, there are a number of topics on which there is no decision of the Privy Council and the various High Courts are divided in their opinions. In such cases the Courts sometimes find themselves on the horns of the

dilemma. In the early British period when the principles of the Hindu law had not developed, the help of the Pandits was sought for by the High Courts to pronounce their opinions from the original text. That stage is now gone and to-day the Courts find out the relevant law without much trouble from the decided cases and the commentaries on the subject. A non-official attempt at the codification of the Hindu law has already been made by the Right Hon'ble Sir Dinshah Fardunji Mulla in his famous book of the Principles of Hindu law.

One of the objects of the proposed legislation is to evolve a uniform Code of Hindu Law. When the Hindu law was first laid down by Manu it was intended to apply alike to all the Hindus. Commentators however arose in different parts of the country, who interpreted the same law in different ways with the result that to-day in different parts of India we find that Hindu law in many of its branches is differently applied. To take one glaring example, we find that the rule of succession and devolution of property are so widely divergent between the *Mitakshara* and the *Dayabhag*. For the solidarity of a community it is desirable that there should be as little difference as possible in the application of such laws to the different parts of the country.

The Hindu law was made ages ago. Society has much advanced since then. Laws must be consistent with the progress of the society, particularly in matters with which the proposed Bill deals. On this ground also the codification of the law embodying the more progressive views of the society is desirable.

One of the subjects dealt with by the bill and which has aroused a great deal of controversy is the succession of the females. The Hindu law, as it is, gives only a life estate to the female heirs. They have a very limited power of alienation of property. This distinction between a male and a female heir causes a justifiable resentment among the Hindu women. I see no reason why any such distinction should be made between two classes of heirs, simply on the ground of sex. No hallmark of inferiority should attach to any person on the ground of sex. While I am in favour of equality in the status between male and female heirs, it is a question for consideration whether her daughters who may inherit property as widows or mothers in their husbands' family should be allowed any right of inheritance from their father's family. According to the proposal in the draft Bill, as I understand it, a Hindu woman will have the double right of inheritance, both from her father's family as well as from her husband's family. I doubt whether unrestricted inheritance to daughters from the father's family should be allowed. Probably it would be good to allow such inheritance from the father's family only in cases in which the daughter is not properly provided for.

Another point to which I may invite attention is that, according to my hurried study of the Bill, daughters-in-law have not been given any right of inheritance. I think they should figure in the list of heirs.

Clause 1 (3) of the Bill provides for the commencement of the Act from January 1, 1946. I would suggest that there should be a period of at least three years between the passing of the Act and its commencement so as to give time to the society to adjust itself to the new law.

Clause 2 (2) defines the term "Hindu". I am told that there are certain new converts to Islam in Rulandshahr and Aligarh districts who still follow the Hindu law of succession. According to the definition of the term "Hindu" as contained in the Bill the new law will apply to them also. If it is so, the intention may be made clear by adding an illustration.

Clause 4.—I think the two provisos in the definition of the term "custom" are unnecessary.

Clause 5 (f).—The terms "Gotra" and "Pravara" should be expressly defined. It should not be left in vagueness as in this sub-clause.

Clause 5 (j).—For the words "by any other mode" I would suggest the words "by any mode whatsoever". According to the recognized canons of interpretation the word "other" will be considered as meaning analogous to the reason expressly mentioned preceding that word. If the change suggested by me be made in this clause, then the definition of "stridhan" will be widened, and I am of opinion that it should be so.

21. Additional Civil Judge, Gorakhpur.

In any progressive society change is inevitable. Change is the rule of nature and without it there will be either

stagnation or decay. The Hindu Law in ancient times was in many respects not the same as is administered in courts at present. Rules laid down in *śrūtis* and *smṛitis* were in the past interpreted differently by different commentators or altered by growth of custom or *vyāhāra*. Besides in modern times there has been interpretation or comments by jurists and judges and there has been an accumulation of case-law. With the change of times and circumstances and with the growth of public opinion the legislature has to step in to make such alterations in the law, as may be considered desirable. The public cannot be ignored, specially with regard to a legislation which is bound to have a great influence on and which is likely to affect their social life.

The first part of the proposed Hindu Code relates to intestate succession. It seeks to introduce uniformity in the law on the point for the whole of British India and the Dayabhaga system of law (which now prevails in Bengal) appears to have been taken as a model and to some extent the Mitakshara has been engrafted on it. The Mitakshara Law, with some modifications, more or less, prevails throughout India, except in Bengal. For instance in the Bombay Presidency, it has been modified to some extent by Vyavahar Mayukh. There should be no objection if there is uniformity in the law applicable to the Hindus throughout British India and I personally see no serious objection to some of the proposals made but there are others, which will cause repercussions in Hindu Society. The public, specially the conservative section of it, will be opposed to certain proposals made in the Code. Some changes have already been introduced in the old Hindu Law by the legislature by enactment of the well-known Deshmukh Act and others. Like those Acts, some of the changes made in the law by the proposed Code will in course of time become acceptable.

The most important change proposed to be made is the removal of sex disqualification in the matter of succession and the abolition of the Hindu women's life estate. In no other system of law women are disqualified from inheritance but the Hindu Society is based on quite different ideals. In order to make the change acceptable, some compromise may be necessary. The change in the law should not be sudden and drastic. Under the proposed Code a widow will have a share equal to that of a son and a daughter will get a share half of that of a son. They are classed among "simultaneous heirs". Thus they will all inherit together. If a daughter is classed as a "simultaneous heir" with the son and the widow, etc., it will be opposed by a great majority of the Hindu public, including a majority of women. Under the present state of Hindu society no money or presents in kind can be accepted from a daughter or a younger sister or a son-in-law or a brother-in-law. That is considered sinful or objectionable. Whenever a girl comes to the house of her parents or brother, she is given presents in cash or in kind or both, according to the status and position in life of the giver. Similar presents are also made on the occasions of certain ceremonies or marriages of the children of the sisters or daughters. That practice has grown up in society probably because a daughter or sister does not get any inheritance from her father or brother, if there are any male issues. If a daughter is given a share on inheritance, her brothers will be very reluctant to give her presents as is done at present and the brothers are likely to find it difficult to give up the old practice of making presents owing to social difficulties. Hindus are, as a rule, exogamous and daughters are often given away in marriage at distant places. A daughter in one family after marriage becomes a daughter-in-law or wife in another family. Wives also receive presents from their relations at the time of their marriages and other occasions. Thus what the daughters lose from their fathers by not receiving any share on inheritance in the presence of their brothers, they more or less receive the same in the shape of presents, etc., from time to time. A loss to a daughter in her father's family is thus a gain to her as a wife in another family.

It may be that the practice among Muslims and some other communities of marrying within the family, like marriages between first or remote cousins, grew up to prevent the daughters from taking away inheritance into another or strange family. Sometimes there is litigation between brothers and sisters or their descendants after their death among Muslims. It is feared that if the daughters are classed as "simultaneous heirs" that will give rise to litigation and estrangement of cordial relations

between brothers and sisters. Every Hindu woman, leaving aside a small minority having very advanced views will be against the proposal regarding daughter's inheritance in the presence of the sons. There is also a feeling in the country that the property of a family should not go into another family and be thus divided. That ingrained feeling cannot be eradicated easily and will take considerable time. Hence I think that a daughter should not be classed as one of the "simultaneous heirs" but her place should come in a separate entry below the "simultaneous heirs".

As regards section 17 of the rules regarding intestate succession it will not be to the liking of the orthodox section of the community, although conditions of society are changing so rapidly that it will come sooner or later.

Another noticeable change proposed to be made is regarding the devolution of joint family property. The rule of survivorship is also being given a go-by. This is another proposal which will not be acceptable to conservative sections of Hindu society who are in the majority. It is true that the joint family system among the Hindus is gradually weakening but with the progress of society that will be inevitable. It has been said that if the joint family system among Hindus and the attendant right of survivorship ceases to be part of the law, there will be a great disintegration in Hindu Society. A great majority of people will not be agreeable to the proposed change. The right of survivorship should be left, as it is until a change is called for by the people themselves.

The proposals in Part III of the Code are regarding maintenance and they are quite reasonable and I do not want to say anything about them.

Part IV of the Code relates to marriage and divorce. Two kinds of marriages, e.g., (1) Sacramental marriages and (2) Civil marriages are mentioned. As there is already the Special Marriage Act on the Statute book, none should have any ground to object to its enactment in the form proposed in the Code. In both the forms of marriages, monogamy will be insisted upon. This is a step in the right direction. In the present Hindu society, monogamy is the rule and polygamy is rare. The rule of *factum valet* proposed to be made applicable to *sagotra* and inter-caste marriages is very desirable.

The provision in the proposed Code is that if the parties to a marriage are members of a caste having *gotras* and *pravars*, they must not belong to the same gotra and have a common *pravara*. In practice, so far as I am aware, marriage among persons having the same gotra is avoided and a *pravara* is seldom taken into consideration.

Another controversial question is of divorce. In higher castes among the Hindus, divorce is not permitted. Even among certain Muhammadan families, probably converts from Hindus, there is either no divorce, although permitted by law, and if there is a divorce, the divorced wife does not marry again. In certain Muslim families even a widow does not re-marry. That convention has grown up in certain families.

Part V of the Code relates to guardianship. The proposals made are reasonable and I do not propose to say anything regarding them.

Part VI is about adoption. It is proposed to make the law of adoption the same throughout British India. In this province, widows find it very difficult to prove permission from their husbands to make an adoption, as much permissions are in many instances, only oral. Hindu widows should not be prevented from making an adoption unless when it has been expressly prohibited by their husbands. In section 5 (1) of the Code, a Hindu male of sound mind and who had attained the age of 15 years may adopt. I do not see why such a low limit of age is proposed to be enacted. This limit should be at least 21 years if not more.

22. Civil Judge, Lohaghat.

The proposed Code introduces a number of innovations foreign to the Hindu mind and Hindu Society. Some of the innovations, specially those relating to marriage and divorce, although objectionable to the orthodox section of the Hindus, may, compared to the other portions of the proposed legislation, be still regarded as comparatively less harmful and if passed into law would please the reformist section of the Hindus without seriously disrupting the Hindu Society. Monogamy is the rule and polygamy is an exception among the Hindus. Polygamy generally is only resorted to when there is no male issue and there seems to be no harm if the present system remains. By

introducing divorce (foreign to the Hindu law) a person could marry any number of times he likes. There should consequently be no objection to polygamy in exceptional cases.

The provisions relating to inheritance will be seriously objected to by the Hindus. The provisions of Hindu Law with regard to self-acquired property, as they exist at present, are that a Hindu can dispose of such property by a will and that to the absence of such a will the property is to be inherited by the general rule of succession. This rule appears to be perfectly sound inasmuch as it leaves the present owner free to dispose of the property by a will if he so desires. The proposed legislation appears to reverse the process and the changes sought to be introduced would not be acceptable of a great majority of Hindus. The proposal to give to the daughters a share equal to half of the son and abolishing the women's limited estate would result in shattering the existing fabric of the Hindu Society. A vital concept of the Hindu Society is that a daughter after marriage adopts the Gotra and becomes the 'Ardhangini' of her husband. She becomes in every sense the part and parcel of her husband's family. To give her a share in the family of her brothers would amount to introducing strangers in the co-parcenary body, and would lead to litigation and fragmentation of family estates. While among the Muslims this fragmentation is sought to be checked by inter-marriage in the family circle, but, this obviously is not possible among the Hindus. The proposal to allow marriages among not only Sagotras, but also Sapindas will be considered repugnant by the vast majority of the Hindus.

Under section 2 (d) of the proposed bill no doubt joint family property is excluded from the rule of succession described above and would be governed by the existing rules of Hindu Law but the changed law would provide an ever ready tussle between the son and the daughter. The former would try to show that the property passed by survivorship while the latter would claim it as being self-acquired property. This will lead to enormous litigation which is not at all desirable.

Lastly in my opinion the proposed bill, which affects the well being of millions of Hindus, should be given a thorough consideration which it deserves before it is passed into law.

23. Mr. K. N. Gupta, Offg. Judge, Barabanki.

The present draft for a Hindu Code contemplates to lay down a common law of inheritance and intestate succession, with disappearance of survivorship, absolute right to women folk including daughters and divorce.

The draft also proposes to make daughter a simultaneous heir with the son with absolute rights.

It is said that the present Hindu Law is to be put at one place in a codified form so that it may be within the easy reach of the man in the street. I doubt very much if despite codification of Hindu Law at one place, and its publicity, it will be within the easy reach and comprehension of the huge ocean of illiterate and ignorant Hindu humanity in Indian villages, a point which I have already stressed in my previous report. And if we want the law to be at one place, we have got Gour's Hindu Code, complete by itself. In actual working, there has never been any difficulty in finding out the correct law as it has become clearly settled by legal precedents. It is no use wasting time, money and energy in these difficult times to codify the existing law, which can be easily found out at the time of need.

The argument that is made in support of introducing changes in the existing law is that probably the change of times warrants it. I doubt if the change of times is such, yet, as to warrant the proposed changes in the law.

No doubt girls (or women) in advanced cities getting education in schools and colleges sometimes get affected by the impact of western thought bringing in them a sense of self esteem which might result in a demand by them of an equality of status with men and it is indeed a good resolution for their benefit to allow them a share or a right of divorce proposed under the draft bill.

But it is a stern reality that the huge majority of Hindu women or girls of villages in this country would never think of an equality of status with men or of a divorce from their husbands in the present state of huge illiteracy and ignorance, prevalent there. They will always be in the hands of men, despite the best of the intentions of law, for they would never realize what they are to get and how they are to exercise their rights independently of the help of men, near and round about them.

They would not be able to decide for themselves independently of other influences whether in a given situation it would be proper for them to obtain a divorce or not. Interested persons would put them to quarrels and bring about situations unprofitable to them. It is not difficult to imagine under these circumstances that the legislation proposed is bound to lead to a large number of offences, endless litigation and very serious consequences, e.g., fragmentation of property and disruption of happy family life.

The proposals are merely good resolutions and mere good resolutions, it is well said, generally pave way to hell, if they cannot be worked out beneficially. In a state of extreme illiteracy and ignorance most of the women will never know of their rights despite all efforts at publication nor will they ever think of enforcing their rights, even if they knew them, because of their sentiment of good will towards, and implicit faith in, the menfolk. They extremely depend upon men, who, finding them to be ignorant and illiterate, owning absolute rights uncontrolled, unmanaged and undirected by anything, shall, then, certainly exploit the position to their extreme disadvantage, causing more hardships on them than those that exist at present.

The introduction of the system of divorce in Hindu Law is bound to produce social ills which do not exist in the society yet. Marriages shall be reduced to mere social contracts and the religious tie which bind a Hindu husband to his wife and vice versa up till now would vanish in no time and that harmony of affections which exists in the Hindu family at present would become a thing of the past, after the introduction of the provision of divorce into the law.

As I have already said in my previous opinion, the first and the foremost thing to be introduced is the compulsory education of the womenfolk as well as menfolk so that they might come to possess a civic sense and appreciate the idea at the back of the Bill and give everybody her or his due so that the womenfolk might be really benefited after the Bill is passed into law. We should legislate for the benefit of a class only when it can really reap the benefit and not when the result would be otherwise. As far as is known it is only a minor (and negligible) section of rich and modernised women of some big cities, who have put in resolutions for the introduction of the law of divorce in Hindu society. But otherwise Hindu society in general and the rural Hindu public in particular have, so far, never clamoured for the introduction of the system of divorce in Hindu law. It is sometimes suggested that the new generation might in future want it. If that be so such persons will have occasion to agitate for the changes of law in their own times, but I doubt if such persons in the new generation also will be more than a limited few. It would be open to them to be married under the provisions of the Special Marriage Act (III of 1872) which provides for divorces. But why should a whole population suffer for the caprices of a few individuals.

I have no doubt that the Bill if made law is sure to take away from women, in the present state of their existence, even that much of ease and comfort which they at present enjoy in the form of maintenances, life interests, family protection and happiness of a Hindu family. The introduction of the new provisions would be like allowing a baby to play with fire.

In my opinion the draft Bill ought to be opposed.

24. Messrs. Gopal Chandra Sinha, Civil Judge, Hardoi and Balram Sinha, Munsif.

A codification of the Hindu Law is altogether unnecessary and uncalled for.

As regards such of the provisions of the draft Bill as seek to introduce a change in the existing law, we find ourselves in complete disagreement with many of them. For instance, we are not at all in favour of the provisions giving a share to daughters along with the sons, providing that a husband shall under no circumstance be allowed to marry again in the presence of one wife and doing away with the indissolubility of a Hindu marriage. Giving a share to daughters would not only lead to a fragmentation of property but would also tend to unnecessarily create discord and embitter the good relations between brothers and sisters, besides depriving a married woman of the exalted position that she at present occupies in her husband's family and also creating a difficulty in the marriage of the daughters of persons likely to leave little or no property. In many cases daughters and sisters get from their

father and brothers much more than what they would have got by way of a share had they had a share in the property of their father.

Similarly, the rule about monogamy is unnecessary, as well as improper. Although polygamy is legally permissible, yet in actual practice bigamous or polygamous marriages are very rare. Besides this, in cases where a husband cannot do without marrying another wife, e.g., in cases where the existing wife is suffering from an incurable leprosy or the like, and at the same time to divorce the latter would be prejudicial to her own interests, it would not at all be proper to prevent the husband from marrying again.

The most detrimental of all the provisions contained in the Bill is the one regarding divorce. A divorce on the ground of incurable insanity, incurable leprosy or an incurable venereal disease would leave the other party totally uncared for and stranded and would be very unfair to the divorced party. As a matter of fact, the very idea of a divorce is against the Hindu ideals of a marriage and is calculated to foster discord and dissatisfaction in the lives of married Hindu couples instead of persuading them to make their married lives more harmonious.

25. Mr. Girish Chandra, Civil Judge, Unao.

The draft Hindu Code is an excessively complex affair. No definite conclusions can be reached in a hurry. I had the advantage of looking into the opinion of Mr. Desh, Deepak Munsif, South Unao (See opinion below. I generally agree with him and endorse them.

26. Mr. Desh Deepak, Munsif, Unao South.

I want to draw the attention of the Committee to the principle that underlies what is known as a "Women's estate." The principle is the recognition of the fact that women have inherently a limited executive capacity. To be short, I would point out that this principle is recognized universally by debarring them from similar other capacities. A woman, for example, cannot be appointed to the "executive services." Hindu law-givers carried the proposition further in the interest of private properties also. It looks to me terrible that instead of amending the private property laws of other communities, those of the Hindu community should be spoiled to bring everyone "in line." The situation is worsened by the fact that Hindus do not marry their daughters "nearer home" by giving them to first cousins and so on. It will require greater responsibility than average for women to manage distantly situated property. The idea of letting unmarried daughters inherit in preference to married ones is again a realization of the aforesaid difficulty.

In a limited estate a woman is no way a loser and the property is also safe in her hands. I do not want to digress on the subject here because I have said sufficient to draw the Committee's attention to this important feature. If the point seems relevant, I shall be too glad to give evidence before the Committee.

2. I am opposed to any form of divorce. All the grounds on which divorce has been allowed suggest that pleasures of an unmarried, married life are an essential right of women. Thus the provision that if a husband has been a lunatic for seven years divorce should be granted, forgets that the husband too has suffered and if his wife cannot divide the sorrow with him, who else should be expected to do it. Similarly I see no reason why the wife of a man should be allowed to run away if the latter unfortunately catches incurable leprosy.

If a wife has been left uncared for for seven years, there should be provision for compelling the husband to give maintenance. The amount may be even made penal. But to grant a break of marriage tie seems nothing short of monstrous.

Lastly, the provisions about separation on grounds of bigamy are equally harmful. It is the bigamy that should be stopped and not that it should be encouraged by allowing a bigamous partner to say just that his marriage be better considered dropped.

3. On the other features of the Code I had had no time to think.

27. Mr. Nava Ratan Kumar, M.Sc., LL.B., Munsif, Cawnpore City.

A reading of the draft Bill of the Hindu Code shows that at every place the principles as enunciated by Mitakshara school have been over-written and given place to by principles of other schools.

The most controversial provision is in Part II, section 5, clause (i) in which the widow and the daughters of a

deceased Hindu are being given share in the property. This amounts to stamping the Hindu Law with ideas and principles from Muhammadan Law. That the daughter has not had a share in the property of her deceased father under the Hindu Law has been due to the fact that she is married into far distant families. But under the Muhammadan Law the nearer the marriage in relationship, the better it is taken to be. This custom and usage in that law has mainly arisen to preserve the property in the same family. To expect or to induce Hindus to marry their daughters within a closer circle will be to do violence, with their religious principles, nor will it ever be possible. Giving a share to the daughters will also introduce among the Hindus the common ill-feelings that are generally to be found between the brothers and the sisters in most of the Muhammadan families. This will tend to disrupt the homogeneity of Hindu families. Personally myself and the other judicial officers of this place with whom I have had a talk on this point are unanimously and strongly opposed to introducing this law among the Hindus.

The widow of a deceased Hindu too should not, in my opinion, be entitled to a share in the property except by way of maintenance as she has the rights uptill now. To give her an absolute right in the property that she would so inherit will mean sowing seeds of disputes and disruption in the family. In my opinion the widow, a mother or a grandmother, of a deceased Hindu should not have in any case more than the widow's estate as it is at present understood.

There is no doubt that some reform is needed in the marriage system of the Hindus. The Bill as drafted provides two forms of marriages. One under the sacrament and the other is the civil marriage under a contract. In my opinion the parties to the marriage or their guardians should, at the time of marriage, be free to choose whether they will have the marriage under the sacrament or as a civil one. If they have once chosen to have the marriage performed as a sacrament, I think they should not be permitted to, turn subsequently, the same into a civil one and the provisions of section 18, Part IV, Chapter I, should, in my opinion, be deleted. On the other hand some provision should be introduced in the Bill whereby even in case of civil marriages the usual Saptapadi and parikrama ceremonies be insisted upon and the provisions of judicial separation and divorce should be made applicable only to such marriages as are at the very time of marriage registered as civil marriages.

Under Part VI, Chapter I, in section 5, clause (2) (a), the word 'implied' should be deleted. The widows should be given a right to adopt unless there is an express prohibition made against it by their husbands. The age-limits as fixed for the adopting father and mother at 15 years is rather ludicrous. This age, in my opinion, should be fixed at minimum of 21.

It is a pleasure to read this translation in chaste Hindi but in paragraph 2, section 24 (b), two or three words jar on the ears. Probably the learned translator has not been able to hit upon the appropriate Hindi words for some terms. I would suggest 'tenants in common' to be translated as Sah-Swami and 'joint-tenant' as Sanyukt-Swami. The words 'transferee and Transfer of Property Act' too have not been appropriately translated. So the Transfer of Property Act could be translated as Sampatya Prathakya Kanun. In the Bill transfer has been translated as Hastantar. So the transferee could be translated as Hastgat Karta.

28. Mr. R. P. Dikshit, Munsif, Dalmau at Rae Bareilly.

The provisions relating to inheritance contained in the Bill in so far as they give daughters a share equal to half that of the son and abolish the limited estate which a female inherits, would break up the joint family system which is one of the predominant features of Hindu society. It would also result in fragmentation of family estate. The conception of Hindus is that after marriage a girl becomes part and parcel of the family of her husband. In giving her a share in the property of her father it would introduce strangers in the co-parcenary body leading to divisions and disputes.

Another fact to be noted is that the Central Legislature is not competent to legislate upon succession to agricultural land and as such the law would not govern a majority of the Hindus of this Province, who own agricultural land and moreover under the proposed Bill "heritable property" does not include joint family property and succession of this property would not be changed.

The law of divorce stands on the same footing. Except for an infinitesimal percentage of the community, divorce is unknown to Hindu Law, which believes only in one marriage for a woman. The relationship is created essentially by a sacrament and not by a contract. If, however, parties are so minded they can enter into a civil marriage, but this does not necessitate a revolutionary change in the Hindu Law as it stands to-day. In my opinion the provisions relating to succession of females and divorce as contained in the proposed Bill are highly unjustified and are far in advance of the current ideas of the majority of the Hindu population.

29. Mr. Sharker Dajal Khare, Munsif, Sehwan.

The proposed legislation seeks to amend the present Hindu Law mainly in the following respects:—

(1) Inheritance, (2) Right of daughters to inherit along with their brothers, (3) Right of women over the property inherited by them, (4) Monogamy and (5) Divorce.

In other respects it merely seeks to codify either the present law or propose very minor and unimportant change which need not be discussed in this short report.

I take up each of these important five points separately.

Inheritance.—The present system of inheritance is based on the religious belief that the person who can confer spiritual benefit to the soul of the propositus must come earlier in the order of succession. Change is sought to be introduced on the basis of the idea that all the descendants of the propositus up to four degrees must come first and the other descendants of his father after that. This change would not be tolerated by the Hindu public because it seeks to undermine the Hindu belief that benefit can be conferred to the soul of a person by his male descendants and family men.

Right of daughters to inherit along with their brothers.—This subject is treated very lightly by certain persons. In my opinion this legislation will go very deep to undermine one of the finest features in the present Hindu structure. At present a normal Hindu at the time of Kanyadan gives away not only his daughter to the bridegroom, but as many things and as much property as he possibly can. In the majority of cases a Hindu spends more at the time of his daughter's marriage than he can ever hope to give to his sons. Apart from that the idea that the daughters receive no share in the family property urges their parents and brothers to keep on giving them as much as they can. What is more important is that under the present belief, the girl's people look upon the property of the girl's husband as something sacred and the enjoyment of which is strictly prohibited to them.

With the introduction of the present legislation all these finer regards and sentiments are bound to disappear. In my considered opinion, these finer regards, sentiments and beliefs must remain there in order to save Hindu society from disaster. The beauty of a society lies in the sacrifices that its members can make. Under the present system the Hindus have to practice two sacrifices—the one of giving away almost everything at the time of their daughter's marriage and the second of treating the daughter's money as strictly forbidden to her parents and brothers.

Under the present system the daughters are by no means the losers. What they lose as daughters, they gain as daughters-in-law.

I am, therefore, not in favour of the proposed change. However, if the change must come I am against the idea that only one-half share should be given to daughters. I am not in favour of half-measures. If the change comes, the daughters and sons should be allowed to inherit equally.

Right of women over the property inherited by them.—The present system has worked well. The entire Hindu Law shall have to be overhauled and rewritten if this provision is introduced. This question is closely connected with the question of inheritance discussed above.

Monogamy.—The present system that there is no limit to the number of wives, exists probably due to the fact that the number of females in the country was greater than that of males. I have no objection to the proposed change provided monogamy becomes the law of the land.

Personally I think that this legislation is hardly necessary because people generally do not marry more than one wife.

Divorce.—This legislation is hardly necessary, because the impotent do not marry. If this legislation is passed

divorce should be allowed on the following two grounds only, namely:—

(1) impotence and (2) on grounds of cruelty only where the husband turns out his wife and marries another wife.

30. Mr. Roy, Munsif, Ramsanehghat.

The Hindu Code is full of glaring defects. By way of illustration I will refer to some only. The definition of Hindu given in the Code is, a person professing the Hindu religion. A person who has ceased to be a Hindu and has taken up a different religion may profess to be a Hindu whenever he finds a rich relative dying and there is a likelihood of his inheriting the property of that relative. Thus mere professing the Hindu religion should not make a person Hindu, but some formal ceremony is necessary like kalma among the Muhammadans, and baptism among the Christians. The Hindu Code proposes to repeal the whole of the Hindu Inheritance (Removal of Disabilities) Act, 1928. By that Act a person who has been from birth a lunatic or idiot was excluded from inheritance. In 1928 the legislature felt it necessary to exclude a lunatic and an idiot from birth to inherit but now it wants to revert to the original position but why nobody knows. The Hindu Inheritance (Removal of Disabilities) Act, 1928, was quite wholesome Act and, in my opinion, it should not be repealed. The Hindu Women's Rights to Property Act, 1937, should also not be repealed and I shall give its reason subsequently while coming to the question of inheritance. The whole scheme of inheritance given in the Code is too artificial and at places very hard. The daughter's daughter's daughter is placed above the sister. The legislature thought it proper to include a sister in the list of heirs next after a father's father by the Hindu Law of Inheritance (Amendment) Act, 1929, but by the present Code the sister's position comes even after daughter's daughter's daughter. One has no sympathy for a daughter's daughter's daughter as compared to a sister and the position of the sister should have been the same as in the Hindu Law of Inheritance (Amendment) Act, 1929. The father's mother and father's father are placed even after the daughter's daughter's daughter. The father's mother and the father's father in their old age would be unprovided for and left to starvation while the daughter's daughter's daughter would take away the property. By the present Code the whole scheme of inheritance as provided in the Hindu Law is revolutionized but it still provides for the inheritance of the preceptor (acharya), a disciple (sishya) and a fellow student (sahramachari). In the ancient times one used to have one preceptor and a small group of fellow students for life, but now one has so many preceptors and so many fellow students and which preceptor and which fellow student is to inherit it is difficult to follow. The whole scheme of inheritance would show that the Hindu Code is following a shadow by throwing away the spirit. The Hindu Code has made an attempt to curtail the dowry to some extent evidently with the idea that there may not be difficulty in the marriage of daughters. But to my mind there will be a great difficulty now in getting suitable matches for daughters in the case of a person not owning much property. As a daughter has been made to inherit her father's property only those girls will get a good husband who will get a good patrimony and it is now almost impossible to get a good husband for a poor man's daughter. Up to this time if one could manage a few thousands of rupees for purposes of dowry one could get a good husband for his daughter. The Code proposes to give a share in the father's property to a widowed daughter also and is repealing the Hindu Women's Rights to Property Act, 1937. After a daughter is married she is merged in her husband's family and she ought to inherit the property of her husband in case of the death of her husband. The Hindu Women's Rights to Property Act, 1937, was a very sensible Act and, in my opinion, it should not be repealed. The Code gives an equal share of inheritance to an unmarried daughter, a married daughter and a widowed daughter. Among the Hindus by marriage the daughter ceases to be a member of her father's family and becomes a part and parcel of her husband's family. It is absolutely unnecessary to make a married and a widowed daughter inherit their father's property.

A marriage has been divided into two, viz., a sacramental marriage and a civil marriage. In a sacramental marriage a marriage within the prohibited degrees is not permissible, but if there is any such marriage which violates the

provisions of a sacramental marriage provision is made in the Code to convert it into a civil marriage which amounts to a marriage upon marriage. This is against the rules of any society and its effect would be that the sacramental marriage will be reduced to a nullity. Much can yet be said against the provisions of the Code, but for the present I would like to content myself with what I have said above.

31. Mr. H. P. Varshni, Munsif, Oral.

GENERAL.

1. It is proposed to enforce the draft Hindu Code with effect from 1st January 1946. As the people to be affected by the proposed law have not yet been able fully to appreciate the changes, I think it would be advisable to enforce the new law with effect from 1st January 1950.

2. I regret to have to point out that the Mitakshara as prevalent in the Benares school would be vitally affected by the proposed changes but there is no well-known representative of this school belonging to the Northern Provinces on the Hindu Law Committee. I would humbly suggest that to inspire confidence some jurists of these provinces should be co-opted as a member of the Committee.

INHERITANCE.

1. Wide revolutionary changes have been proposed in inheritance; they should, in my opinion, be curtailed for the present though provision may be made so that the law may be broadened after a period of, say, 25 years in the light of experience gained with regard to the proposed changes.

2. The daughter and the widow should be given some share in the property of the father or the husband but the provision in the Hindu Law should not be made identical with the provision in the Muhammadan Law. This would be repugnant to a large number of Hindus even though such a provision be necessary. In my opinion, the share of the female heirs should not exceed one-third the share of the simultaneous heirs. In the case of stridhan, the share of the son may continue to be half the share of the daughter or it may be made equal to her. Some difference, however, must be made between the married and unmarried daughter as such a difference has been recognized from times immemorial. Moreover, in the case of a married daughter, expenses have already been incurred and present made by the mother to the detriment of the total stridhan.

3. The allotment of a share to the daughter in the property of the father would amount to introduction of strangers into the family and may lead to disputes. Some provision should be made for curtailing such litigation, e.g., the wishes of the father to whom the property belonged if expressed in a fair and reasonable manner, be made binding on the heirs. In any case, the sons should be given a right to purchase the share of the daughter or other simultaneous heirs, just as such a provision exists in the Partition Act.

4. The disqualification of a widow on the ground of unchastity has been properly narrowed but the provision in section 18 that her right to inherit cannot be questioned without a finding on the point by a court of law is, in my opinion, very stiff and would make the task of the other heirs in genuine cases very hard. A declaration by the deceased husband during his lifetime with regard to the wife's unchastity, reduced to writing, should, in my opinion, be sufficient to deprive her of her rights in his property.

5. The transfers of Pardanashin women would still require some protection since they would now have full rights of transfer over the property held by them. Certain provisions in the light of well-known authorities of the High Courts of Northern India should be included in the Act.

6. The provisions of the draft Code sound the death-knell of joint Hindu families. This institution is very helpful and advantageous in certain cases. Provision should, in my opinion, be made in the Act for retention of joint family property after due declaration in writing by the members who wish to continue joint.

MARRIAGE.

1. The provision with regard to dowry given at marriage to a family is appropriate and should be retained.

2. The registration of all marriages whether performed in the religious form or in the civil form is, in my opinion, necessary.

3. The grounds of divorce given in the Act are quite appropriate. But people may anticipate that these grounds may in due course of time be widened so as to give a general right of divorce to the wife. Some provision in the Act to the effect that no other ground of divorce except those enumerated or those recognized by custom would be valid should, I think, be added.

4. Divorce.—In the case of divorce, in my opinion, there should be a preliminary decree and then a final decree after at least three months or six months. When cases are filed in the District Court, the final decree should be passed by the High Court but when cases are filed directly in the High Court then too only a preliminary decree be passed initially and later a final decree.

This is to safeguard against a party getting an ex parte decree and then re-marrying. Later the other party who had no knowledge of the ex parte decree coming to know but only to find that his or her spouse is already the wife or husband of another. The Muhammadan Law provides for a period of *Idat* and the Indian and Colonial Divorce Act (applicable to Christians) also provides for a Decree Nisi and a decree absolute after six months. A similar provision is necessary if divorce is introduced in Hindu law.

MINORITY AND GUARDIANSHIP.

I am generally in agreement with the provisions of the Act in this part.

ADOPTION.

I am generally in agreement with the proposed changes. The choice of adoptees has been rightly widened and the daughter's son and sister's son are now made eligible for adoption, as also strangers to the adoptor.

32. Mr. A. C. Bansal, Additional Munsif, Muzaffarnagar and Mr. Maati Bansal, M.A., LL.B.

In our opinion, the proposals are half-hearted measures in some respects halting and in others hasty. It conveys the impression that the Committee have been influenced far too much by personal law of the Moslems and the Christians. There is neither logic nor sense behind some of the proposals and in our view any development of Hindu Law must be in keeping with the numerous institutions and traditions of our culture. The joint Hindu family for example is an institution peculiarly our own. It suits our needs. So much so that even converts to Islam from the Hindu fold retain it long after they have ceased to be Hindus and it causes genuine hardship when their plea of jointness is ignored by the courts on the ground that they are Moslems. The proposals in our view knock the very foundations of the joint family. We see in it a happy solution of our social needs, e.g., insurance, dotes, work-houses and public charities, joint stock companies. To scrap such an institution in pursuit of western ideas about so-called equality of sexes seems to us unfortunate and undesirable. Society is moving and rightly so towards larger loyalties and this return to the individual is in our considered view a retrograde measure. Joint family to us means socialism in its only practical form.

The law of intestate succession should be such as to conform to the wishes of the bulk of our people. Departures from it should be the exception. It seems to us that the masses around us do not wish for any such change. Even those of us who know better do not feel that the proposed changes in the law of Intestate succession meet our wishes. Those who do not wish to let their daughters inherit their property will be driven to execute wills or gifts inter vivos. We are of the opinion that the number of those who will seek to avoid the clutches of the new law would far out-number those who wish to adopt it. In the present state of our legal system where good conveyancers and reliable lawyers are so few, a law which forces many to resort to conveyancing seems to us most criminal. The changes would further expose our girls to the machinations of crafty conveyancers and artful adventurers.

Reform is necessary but it should not blindly borrow from cultures faced with different problems and dealing with different human material. The girls out west can take an intelligent interest in affairs and are not so helpless as many of even our educated girls, let alone the masses in the villages. To make a law keeping in view only a few and to ignore the bulk of our population is not wisdom.

Our suggestions are:—

1. Intestate succession.—The daughters should have an equal share with the sons but only in movables.

preferably only in cash. This would avoid fragmentation of land and house property and the evils arising therefrom. It would prevent forced sales of such properties resulting in lowered value. The law of pre-emption and the Partnership Act should cover cases if the law proposed passes into a Statute, and effects landed property as well. It may be argued that if inheritance of girls is confined to cash, people will invest in land. The answer is that a father who wishes to deprive the daughter can do so in many other ways, e.g., by will and does not have to resort to converting cash into property. In the case of zamindari property the scheme adopted by the Real Property Legislation in England in respect of Strict Settlement should be followed which we shall deal with later.

There must be some provision for registration of the break up of the joint family status. This would prevent litigation. Registration should remain the only proof of the break up of the joint family status. There should also be registration of the Karta of the family who should hold the joint family property on trust. The Karta should have all the powers of the Statutory Owner under the English law of Strict Settlement, also called the tenant for life. He should be free to alienate land and give indefeasible title to the buyer and the trust should attach to the proceeds of sale. A screen should protect the buyer completely. The trustee Karta should hold the proceeds on trust for all the co-sharers and all provisions relating to express trusts shall apply to him. Court sanction may be made obligatory in cases of alienations of land.

In case the legislature chooses to go ahead with the proposed laws in respect of land also, we would suggest that some such provision as mentioned above should be there to look to the interests of the daughter who very often will be married and residing far away from the property. The Karta in such a case shall hold it on a trust for sale. We use the expression in the sense in which it is used by English Real Property Lawyers. In our opinion these safeguards are essential for preserving property and increasing its market value. These will also reduce litigation.

In our opinion it is unnecessary to provide for recourse to High Court or even the District Judge's Court for the provision in respect of marriage, divorce, etc. The Subordinate Judiciary is quite capable of dealing with all these cases and the expenses of the litigants would be far less.

From the definition of the word Hindu, remove the bringing up test. It is too vague and would lead to unnecessary litigation. The test should be simple. The religion of the father should be the sole test.

Provisions relating to exclusion of customs are undesirable. They would lead to stagnation in the name of uniformity. The rigors of law can be reduced by local customs.

PART II.

Clause 2 (b).—In the absence of registration to the contrary the courts should be made to presume that the family is joint.

Clause 5 (i).—Why exclude the son's widow and grandson's widow? Maintenance is a very poor substitute for rights in the property. She should be a simultaneous heir just as if our husband were alive.

Clause 5 (ii).—There is no reason for bringing in the son of the daughter at such an early stage. He should come after daughter and daughter's daughter should be added.

Clause 7 (d) give the daughter equal share but only in the movables.

Clause 11—Renunciation.—Either registration or proclamation should be necessary to give him this status. This is to avoid litigation.

Clause 13.—Sales should be subject to the sanction of the District Judge who shall certify after enquiry that proper value has been given for the same. This protection must be there at least for the next 25 years. The money should be deposited in court and paid to the lady as far as possible personally. Sales from ladies in any other manner shall be void and of no effect whatsoever.

Clause 19.—The condition proposed is excellent and should be retained.

PART III.

Clause 1.—If this measure must be retained then it should be subject to the abovementioned safeguards. Provision should be made for pre-emption by other co-sharers where the house property is sold. Partition Act should apply. Payment by pre-emptors should be possible by slow and small instalments.

PART IV.

Clause 1.—Inter-caste marriages should be possible even when the marriage is performed as a sacrament and be fully valid.

Clause 2.—Provisions as to monogamy are desirable.

Clause 3.—Provisions for separation on the grounds stated are desirable.

Clause 4.—Provisions in respect of property given at marriage constituting trust property are valid. Safeguards suggested above, viz., sale only with the permission of the District Judge and after enquiry. Money to be paid to the lady by the Court as far as possible.

DIVORCE.

Clause 29 (1) confine only to civil marriages.

Clause 29 (2).—Marriage should be a nullity. No divorce.

Clause 29 (3).—Add "or at the time of filing the suit" provided madness is incurable and complete, and duly certified. Idiocy should not be a ground of divorce. The forum should be the District Court of the lowest jurisdiction. Optional forum may be the High Court.

Clause 29 (3).—Absolutely unnecessary to have confirmation of the High Court.

Clause 30 (c).—Seven years is too long a period. Two years should be ample.

Clause 30 (e).—The period again is very long. Reduce to two years.

Clause 30 (f) should be retained.

Clause 30 (2).—Confirmation by the High Court unnecessary.

Stridhan.—Take away rights of succession from daughters who have been married away in respect of Shulk as it is not in keeping with our traditions.

Adoption.—Either scrap adoption altogether or allow adoption of girls as well as of boys. Restrictions placed are meaningless. If a person desires to adopt, he may carry out the ceremonies but in any case registration should be made compulsory and be the only proof of the fact of adoption.

In all the cases mentioned above, there should be no stamp duty levied on registration and refusal or delay on the part of officer concerned should be made punishable.

These proposals are necessarily tentative. They will have to be modified according to the needs depending on what is embodied and what is left out when the Act finally takes shape. The time at our disposal is too short to admit of any detailed discussion on the measures proposed.

33. Mr. R. K. Sarcar, Munsif, Rae Bareilly.

The draft Hindu Code in the name of codification and uniformity seeks to make revolutionary changes in the very principles of the social order of the Hindus in utter disregard of their age long traditions. The proposals if accepted would lead to the disruption of the Hindu families and to the disintegration of their family property without any compensating advantages. Codification will make the Hindu Law rigid, stereotyped and stagnant. The draft Hindu Code seeks to give legal effect to the following principles:—

(1) Abolition of several systems of succession obtaining under different schools of Hindu Law and provision for a common law of intestate succession for all Hindus in British India.

(2) Removal of sex disqualification by which Hindu women in general have hitherto been precluded from inheriting property in various parts of India.

(3) Abolition of Hindu women's limited estate, and giving absolute rights over property to women over all inherited estate.

(4) Maintenance allowance.

(5) Marriage and divorce.

(6) Minority and guardianship.

(7) Adoption.

(1) Different schools of law have been in vogue in different parts of India. Differences between Mitakshara

and Daya Bhag Schools are fundamental and have historical economic and sociological background and cannot be merged together. Such merger is neither necessary nor desirable. Mitakshara with its complete sway in most parts of India is not accepted in Bengal and any mechanical blending is disastrous. The Bill as originally referred to the Joint Committee excluded from its operation ancestral and co-parcenary properties governed by the Mitakshara Law. Now the draft Hindu Code, part III, paragraphs 1 and 2, lay down that ancestral property and share in co-parcenary property will be inherited by succession and the principle of survivorship has been abolished. This has been done to bring the Mitakshara law and Daya Bhag law in a line. This bids good-bye to a principle most cherished nearly in the whole of British India to make the law conform to the principles of Daya Bhag school obtaining in Bengal only. John Mayne, the great Jurist, regarded codification of Hindu Law as a miracle. He observed "The age of miracles has passed and I hardly expect to see a Code of Hindu law which will satisfy the trader and the agriculturist, the Punjabi and the Bengali, and the Pandits of Benares, Rameshwaram, and of Amritsar, and Poona. But I can imagine a very beautiful and specious Code, which should produce much more dissatisfaction and expense than the law as at present administered." These remarks fully apply to the points discussed above.

According to item 21 of the Provincial Legislative List contained in the Government of India Act, 1935, only the Provincial Government and not the Central or Federal Government can legislate for transfer, alienation and devolution of agricultural land. This is another obstacle in the way of a systematic and uniform codification of Hindu Law. The wish that Provincial Legislatures will follow with similar legislations may not fructify and even if it fructifies each Provincial legislature may legislate in its own way.

(2) The Hindu religion and law regard marriage as a sacrament and wife as the better half of the husband (The wife is called the Ardhagini). The Hindu society is based on the patrilineal family from the Vedic times. It is the man who has the obligation to continue the line by setting up and maintaining the family. The woman has no such responsibilities. Under the Hindu Law a son has legal responsibility to maintain his aged parents and others while a daughter has no such responsibility. Under the Bill submitted to the joint Committee and under the draft Hindu Code a daughter will inherit from her father, her father-in-law and her husband without any responsibility while it is the property only of a male Hindu that is liable to maintenance, i.e., a son will have to share his father's estate with his mother, sister, widowed sister-in-law and dependent parents of his father and will be exclusively burdened with the responsibility of continuing the line and maintaining his paternal family. This will not only remove sex disqualification but will be unjust to the Hindu males.

(3) This is quite similar to the second point. At present a woman gets the limited estate in lieu of maintenance. It is not inheritance as such. As a woman has no responsibilities to discharge, she gets the limited estate to maintain herself and hold the property in trust for the next male heir.

The law of succession is closely inter-related to the law of marriage. The prohibited degrees in marriage in force by Hindu law are unique, and as such the Hindu law of succession excluding women from inheritance is also unique. The systems of law where prohibited degrees are different, succession by woman is possible because the property is kept in the family. For instance marriage between the cousins is allowed in the Christian and Muhammodan societies and is abhorred by the Hindus. So long as society is based upon private property the natural desire is to keep the property in the family. As the marriage between the near relations is prohibited by Hindu law it was necessary to exclude daughters from inheritance as otherwise the family property would have been broken up and the portions passed to different distant families. The draft Hindu Code maintains the prohibited degrees of marriage and yet gives absolute rights to women which is anomalous. The inheritance by males and females of definite portions of the property of the deceased also disrupts the family property, which is not desirable.

Stridhan.—The definition of stridhan as given in the draft Hindu Code includes inherited property which is the same as giving absolute right to the females. Inherited property should be excluded from Stridhan.

(4) The draft Hindu Code gives right of maintenance to mothers, widows, the married daughters, widowed daughters who are unprovided for, widowed daughters-in-law, unmarried illegitimate daughters till their marriage. These provisions certainly give relief to the female sex and are desirable. When females do not get absolute estates or any share or inheritance in their fathers' property it is certainly desirable that there should be provision for their maintenance.

(5) The provisions affecting marriage are nearly the same as they obtain at present. They maintain the prohibited degrees.

The introduction of monogamy is a salutary provision. The provision which would not make the marriage invalid if the parties are not of the same caste or are of the same Gotra and Pravara is a step in the right direction. The provisions for the civil marriage generally follow the principles of the sacramental marriage given in the draft Hindu Code.

Amongst the Hindus marriage is a sacrament and not a contract and is not dissolved even after death and divorce is absolutely foreign to the Hindu system of law. I would like to retain divorce for civil marriages only and would not countenance it for sacramental marriages.

(6) and (7) I have no special comments to make. They generally follow the Hindu law as it obtains at present.

34. Munsif, Bara Banki.

The question of codification of Hindu Law is a very debatable point and is bristling with numerous difficulties. The Hindu Law is a personal law and is based from times immemorial on such old traditions and customs that it cannot be radically and drastically changed so as to alter and affect the entire structure of Hindu society and its long preserved culture. It is a social legislation and the legislature has no right to enact a Law of Inheritance which is against the religious, moral and eugenic ideals of the society. The life of a Hindu even in these days is still influenced and permeated by religious ideas and ceremonies inside the family. I am personally against disintegration of Hindu society which the present Hindu Code is bound to create. The traditional status and position of the Hindu family must be maintained subject to slight modifications. This Code clearly aims at bringing on a par with ingredients of Moslem Law and the Indian Succession Act with those of Hindu Law. The conditions and circumstances of Moslem and English societies differ to a very great extent from ours and any such legislation is not commendable and will not meet the approval of the society as a whole.

I have gone through the provisions of the Code and I find it proposes to make three revolutionary changes in the Hindu Law.—

(1) Abolition of several systems of succession and a provision for a common law of intestate succession for all Hindus in British India.

(2) Removal of sex disqualification so far as the inheritance of the property of intestate is concerned.

(3) Abolition of Hindu women's limited interest and giving absolute rights of property to the women over all inherited estate.

So far as the abolition of several systems of succession is concerned I think is good if there is one common law of succession for the whole of India for all classes of Hindus and it should be codified keeping in view the principles of Hindu Law.

As regards (2) and (3) I am not in favour of giving absolute rights to women in the property over all inherited estate. Women are not absolutely precluded from inheritance under the present Hindu Law. They get absolute rights on their *stridhan*, and they should not be allowed further power of disposal over inherited estate. Women are considered of less importance than men in the matter of inheritance in the society as a whole and it cannot be said to be a sex disqualification. Hindu society is based on patrilineal family from a long time and it is the duty of a man to continue the line by setting up and maintaining the family and for these reasons it is the son who is under the legal obligation to maintain amongst others his old parents, sisters and others while daughter is not required to do any of these things. There is still a lot of *pardah* in

India and lack of women education and these factors combined will entail great litigation if women are made absolute owners. Time has not yet come when we should deviate from the tradition and impropriety of granting an absolute right of ownership to women. If the old family system is not to be preserved and our women seek to be guided and led away by the western civilization and culture I think a time will come after 50 or 100 years when we will have no difficulty and will perhaps gladly yield to their demands. In the Moslem Law where women get a share the considerations are absolutely different from those of the Hindu society and their principles cannot be adopted by us. I find that their principles of marriage are based on other considerations which are not to be found in Hindu society. What I find is that they have also not approved of the general system of granting shares to women and one finds every day in Courts a common plea that daughters are excluded from inheritance. In Oudh there are hundreds of wazibulars where custom of exclusion of daughters from inheritance is recorded and is accepted by the general Moslem population. In Hindu society huge dowries are given and there are so many occasions and ceremonies when daughters and sisters receive large number of presents throughout their life from their parents and brothers. For the above reasons my view is that daughters should not get a simultaneous share with a son.

I do not agree with the definition of *stridhan* as given in the Code.

In the absence of divorce few homes were unhappy but with its advent many homes will now become unhappy. Even in western countries people have started realizing that divorce should not be encouraged. When an evil has not yet come in Hindu society why should it be invited and regretted later on. I think our society is not yet ripe for these changes. I do not want to criticise each and every provision of the draft Hindu Code when the very principles on which its edifice has been erected are not acceptable to me.

In conclusion I would say that except the abolition of several systems of succession and codification of one common law of succession the rest of the proposed codification of Hindu Law should be dropped.

35. Additional Munsif, Farukhabad.

It would be both unjust and unwise to supersede centuries old traditions and conceptions by a stroke of the pen. Proposed changes in the matter of marriages and succession are not only far-reaching but do complete violence to the rules of Smritis and Shastras. Introduction of a large number of female heirs with absolute right and creation of simultaneous female heirs are bound to result in disintegration of property apart from the fact that they run counter to the basic principles on which Smriti laws governing such matters are based. Proposed rules regulating dissolution of marriages are the most objectionable feature of the Bill. Millions of Hindus not only look upon but take pride in thinking that the marriages are sacramental ties which nothing can dissolve. The very idea that they are going to be dissoluble is shocking. It is surprising that the sponsors of the Bill instead of taking lesson from the evil effects of such rules so patent in the societies wherein they obtain should be keen to have them introduced in Hindu Society so far immune from those evils and should be prepared to undertake their attendant evils. Provisions permitting marriage among Sagotras, Sapindas and Sapravaras are no-less objectionable. They appear to have been introduced as a necessary evil with the introduction of a large number of female heirs with absolute estate.

It is really doubtful if the legislature is competent to legislate on matters like succession under Hindu Law which though apparently only a civil matter is inseparably connected with matters purely religious. I have not the slightest doubt that the present attempt at codification is misconceived, injurious and wrought with untold dangers which would shake the very basis of Hindu society and introduce great evils from which it has been so far immune because of the laws now sought to be abrogated.

36. Mr. Tej Pal Singh, Munsif, Farukhabad.

I am of opinion that the Bill fails to fulfil the higher interests of Hindus from all stand points.

Its main provisions as I find from the Bill are to multiply a very large number of females and their cognates in the list of inheritance, to give them absolute estates, to abolish the age long accepted rule of their limited estates, to make daughters succeed with sons and grandsons, to break the Mitakshara rule of right by birth in the family estate, to permit succession of females even in coparcenary properties thus breaking up the joint family system, to base succession neither on the Smriti laws of spiritual benefits and Shradha as propounded by Dayabhaga nor even on the basis of propinquity as propounded by the Mitakshara, to make marriage, and adoption absolutely secular by abolishing the vedic ceremonies of Kanyadan and the like, to introduce the western conceptions of separation, dissolution and divorce in our matrimonial affairs, to permit marriages even among very near kith and kin and even among very near Sapindas and even to legalize marriages held among such paternal relations. These will sound and look attractive from the theoretical point of view of those who cry for equality of women in all human affairs but a cooler and calmer thinking will convince even those reformers that these provisions will work to the greater hardships of females than the males and will permanently undermine their best interests. Modern students of Hindu jurisprudence who have studied Roman Law and Hindu Law and have pondered over their comparative merits have vied with each other in acclaiming the merits of the latter. It will therefore be unwise to deal lightly with such a system of law that has withstood the tests of centuries and worked so well. I am therefore wholly opposed to the entire Bill.

Our laws do need codifications and reforms here and there but they should be done on the foundations of our ancient laws and not entirely changed and reshaped on other patterns unsuited to Hindu civilizations, religion and culture.

37. Mr. J. N. Chak, Bar.-at-Law, Convener, Committee of Legal Opinion, Oudh Bar Association.

The opinion of the Oudh Bar Association on the provisions of the draft Hindu Code is that the minimum alterations required are those set out below of which the most essential are the amendments suggested with respect to Part II, section 14 (a), paragraph 1.

In Part II, section 5, class I (1) it would be better to add the widowed daughter-in-law among the simultaneous heirs as the Joint Select Committee did. In fact instead of giving the daughter rights in her father's property, it would have been better if provisions were made for her share in the husband's family. Daughters take away a considerable portion of the patrimony under the existing social system to the families of their husbands.

In Part II, section 7 (b), undivided sons should be given preference over divided sons. The Section as it stands would be an inducement to separate as the separating son would lose nothing and might in certain circumstances be a gainer, e.g., when the family property dwindles on account of adverse circumstances. It may also be that after the separation, there was an augmentation of the property owing to the exertions of the sons who remained joint with the father. Other reasons are detailed in the recent Allahabad Full Bench case. *In re Ganesh Prasad v. Hazarilal* specially in the judgment of Bajpai, J. 1942, A.L.J.R. 289, 310-311.

In Part II, section 14 (a), paragraph 1, between the word "husband" and the next word "shall," there should be inserted the words "or father," and between the words "wife's" and the next word "death" there should be inserted the words "or daughter's", and the aforesaid word "death" should be followed by the words "as the case may be." A typical illustration not visualized in drafting the above section may be furnished to explain the desirability of the proposed modification. An old gentleman dies on the 2nd January 1946 leaving a married daughter with her four children, viz., one son and three married daughters, the first mentioned daughter dies on the 4th January 1946. On the 3rd January the daughter would be the sole heir under section 5, class I (1) read with section 6. If the gentleman's daughter had predeceased him, her son would, under section 5, class I, entry 2, have been the sole heir to the exclusion of his three sisters under clause II, entry 2 of section 5 read again with section 6. But as in the illustration aforesaid the married daughter has not predeceased the gentleman; if section 14 (a), paragraph 1, is not modified by amendments set out above,

on the 5th January 1946 her son would get only one-seventh and the remaining six-sevenths, the lion's share would fall to his sisters under sections 14 (b) (1) and c (I) while the gentleman had all along been expecting with his old notions the justice and reasonableness of which are recognized in section 5, class I, entry 2, that all his property would ultimately be taken by his daughter's son. All his reasonable expectations appear to be frustrated by a section which as it stands diverts the great bulk of his property to the family of his daughter's married daughters.

In Part III-A there should be deleted "I scope and operation of Parts I and II" including sections 1 and 2.

38. The Gadarwara Bar Association, Gadarwara, District Hoshangabad (Sheo Prasad, B.A., LL.B.—President.)

We have gone through the Draft Hindu Code and after discussion have come to the following conclusion:—

1. (a) In our opinion the subject of marriage dealt in the draft is revolting. As contemplated in the Code, the marriage of a Hindu with a Buddhist, Sikh or Jain would be regarded as sacramental marriage. This will destroy the happiness of marriage and examples are not wanting to show that such marriages have been found to be unhappy, for culture and training of different communities vary.

(b) The introduction of divorce is an innovation in the Hindu society. It is prevalent amongst the Muhammadans, Europeans and to some extent amongst the lower class of Hindus also. It will not fail to damage the moral citadel of religious sanctity that has so long governed the Hindu mind. Under the Code, it is intended that in the case of sterile wife a Hindu husband must divorce his first wife to enable him to marry another woman in the hope of begetting children from the second wife. This is introducing in the Hindu society a novel thing which is said to be prevalent amongst the westerners. This will do away with the conferment of spiritual benefit on the barren wife, according to Hindu scriptures, by the birth of a son to the co-wife. In the absence of divorce, that is contemplated by the new Code, the children born of the second wedlock would be treated as illegitimate and not entitled even to maintenance and they would be barred from inheriting the property of their legitimate father. While concubinage becomes recognized by the Code by declaring that not only the concubine and her children are entitled to maintenance and its non-penalisation. All this is being introduced under the guise of monogamy.

(c) The most provoking part of the Code is that which seeks to introduce annulment of marriage and divorce and the validation of "sagotra" and "samana-pravara" marriages. The whole structure of the Hindu society is based on the ideal of a lifelong devotion of the wife to the husband as the only means of maintaining and spreading spirituality in the family and this will be completely undermined by the new rules.

2. On the whole the draft will result in undermining what is notable in the Hindu conception of life and foreign ideas will be introduced in the name of justice to the fair sex.

3. On the subject of inheritance the Code introduces many inheriting heirs along with the son and the result will be disintegration and secession from the joint family.

We are, therefore, of opinion that the Code should not be hurried up through the legislatures during the war. All such drastic changes as are intended to be introduced should be completely dropped. After the war, when proper legislatures are formed, after new elections, the subject would be considered threadbare and without disturbing the wholesome recognized rules a bold attempt should be made to eradicate such of the evils that may have crept in the Hindu society.

For the time being we propose complete dropping of the subject.

39. Sitapur Bar Association.

The Sitapur Bar Association is of opinion that Hindu Law based as it is, on Shrutis, Smritis, conduct of the virtuous immemorial usage and customs, should not be made the subject-matter of any codification which means direct encroachment on the freedom of Hindus to follow their Dharmas Shastras and not from any earthly power. The Bar Association is further of opinion that the proposed codification will entail a lot of litigation and shall not be in the interest of the Hindus.

40. Meerut Bar Association.

In recent years a vast change has taken place in political, economic and social conditions of the people and with this change people have begun to entertain new ideas about things and men. As a result of this state of affairs and in view of the fact that Hindu Law greatly governs the social structure of the society, it is essential that a desirable alteration should be made in the present law. But any such change should be made in keeping with the advanced opinion of the society and should not be allowed to go beyond it. Sir Henry Maine says, "social necessities and social opinion are always more or less in advance of the law. The law is stable, the society is progressive. The greater or less happiness of a people depends on the degree or promptitude with which the gulf between the public opinion and law is narrowed." Thus the happiness of the people consists in bringing the law into conformity with the advanced views of the people. On the other hand, if the legislation is in advance of the public opinion, or is opposed to the sentiments of the society, it is likely either to remain a dead letter or to lead to undesirable consequences.

Unfortunately the proposed Bill contains many features which not only cut at the root of the fundamental principles on which the Hindu Law is based, but comes into direct conflict with the sentiments and interests of the society.

To mention only two very prominent objectionable features of the Bill:—

(1) The Code provides that a daughter will inherit along with the son. Such a rule is likely to remain a dead letter, as the father being bound by the sentiment that the property of the family should remain in the family in majority of cases, is likely to make a will devising the whole property on his son. Such an action will lead to unpleasant feelings between the father and daughter on the one hand and the brother and sister on the other and will as well result in all sorts of litigation after the death of the father. Besides it will cause a spirit of competition between the brothers and sisters and in some cases also the interference of the son-in-law in the affairs of his father-in-law's family. Thus the result as far as the peace of the family is concerned and in many other ways will be very unfortunate.

(2) The Code further provides that the property which a woman inherits will become her Stridhan and that she will have a right to dispose of it by transfer inter-vivos or by will. This rule will give rise to many complications and undesirable consequences. It will open a floodgate of opportunities for the unscrupulous to take undue advantage of the seclusion, youth or ignorance of the women and to deprive her of the property by various cunning and objectionable devices. The necessary consequences will be corruption in its various forms and litigation in its worst form. In our opinion the present rule of "woman's estate" is very sound and should not be disturbed.

We may also mention that the Code does not make it quite clear whether the property which a son inherits from his father along with other heirs, shall become his separate property, or as at present, will be an ancestral one. If the former, it will mean that in course of time the institution of joint Hindu family will cease to exist. If the latter, then it will mean that his position will be worse than that of his sister, as regards his rights over the property.

In our opinion it is not the proper time for enacting a law which will have far reaching consequences for the society—the codification of Hindu Law is a matter of the highest importance and will vitally affect the welfare and the future progress of the society. It should not be undertaken without due and mature consideration, full discussion and full ascertainment of Hindu public opinion.

Any wrong or hasty step is likely to bring about a result quite contrary to what the framers of the Code desire and may prove very detrimental to the interest of the people for whose good it is sought to be enacted.

We agree with Dr. K. N. Katju (*vide* his article in A.L.J. No. 10, 1944, that the present Central Legislature possesses no mandate from the Hindu community to deal with a matter of such vital concern to that community. That the Central Legislature cannot legislate with regard to agricultural land—legislation governing that property can be passed by Provincial Legislature and such legislations in most provinces are under suspension and popular Governments in provinces have ceased to function. That

it would be highly inexpedient and imprudent that legislation affecting the Hindu community as a whole should be undertaken by the Central and Provincial Legislature piecemeal. That it is desirable that the Hindu community should pronounce upon the topic as a whole so that necessary legislation may be passed by both the Legislatures simultaneously.

Moreover, in the present unsettled political conditions and when the Central Legislature has grown almost stale, and the public has to face many difficult problems created by the war, the public is not in a mood to consider such issues. It is, therefore, desirable that the task of bringing the Hindu Law into conformity with the advanced views of the society should be left over to a more appropriate occasion when the Legislature is more suitably constituted to reflect public opinion and there are better arrangements for ascertaining the view of the society. Consequently we are of opinion that the Bill should be withdrawn by the Government failing which it will be the duty of the opposition to have the Bill thrown out.

41. Mr. Gopal Swarup Pathak, Advocate, Allahabad.

I am in complete agreement with the spirit of the draft 'Hindu Code'. It carries out the reform which was long overdue.

There are many provisions of Hindu Law as it exists today which are not in keeping with the advanced stage which the Hindu society has reached and the rigorous application of the new law works hardship in numerous cases and has the tendency to retard the progress of the society. The piecemeal legislation introduced many complications. While putting certain provisions of Hindu Law with modifications in a statutory form, it was very often overlooked how the statute would react on other branches of the Hindu Law which remained unmodified. This became a fruitful source of litigation. To take an instance, the Hindu Law of Inheritance Amendment Act II of 1929 sought to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate. While introducing a number of persons in the list of heirs, the Act professedly applied to succession in respect only of the property of males.

The effect of the Act on succession to stridhan property was not taken into consideration by the Legislature.

According to the Mitakshara, in the case of a woman dying without leaving an issue her stridhan devolved on her husband and after him on the husband's heirs in order of succession to him. The question frequently arose whether for the purpose of determining heirs to stridhan property in such a case the amending Act should be taken into consideration and the new heirs introduced by that Act should be treated as stridhan heirs or the Act should be ignored and the new heirs although husband's heirs where the property belongs to the husband, should not be taken into consideration where the property is stridhan property. Upon this point there has been difference of opinion not only between different High Courts but also between Judges of the same Court. Similarly the Hindu Women's Right to Property Act (Act No. XVIII of 1937, as amended by Act XI of 1938), gave rise to a number of complicated questions. There can be no two opinions about the question that the Hindu Code should be as exhaustive as possible and should embrace the whole range of subjects with which it can possibly deal.

A noteworthy feature of the code is an attempt to assimilate the law relating to families at present governed by the rule of Mitakshara to the more advanced Dayabhag system of law. I appreciate that by this means the framers of the code have made this branch of the law uniform and have succeeded in abolishing the rules relating to the pious liability of a Hindu son to pay his father's debts which always resulted in considerable litigation and sometimes in undeserved serious injury to innocent creditors. In this connexion there is one criticism which I have to offer. According to the Dayabhag Law on the death of the father his male issue inherit the property separately as well as ancestral as his heir but as between themselves they hold it as coparceners and the property inherited from the deceased is co-parcenary property. Under that system of law even females are co-parceners. Every co-parcener takes a defined portion of the property and is the owner of that share, which upon his death devolves upon his heirs. That share is capable of being

alienated by the co-parcener just like separate property. Nonetheless the powers of a manager under the Dayabhag Law are the same as those under the Mitakshara Law. He can contract a loan for a joint family purpose and a decree passed against him for such a debt as manager will bind the other members, though they are not parties to the suit. He can also mortgage the family property for the purposes of the family business—(vide Mulla's Hindu Law, 9th Edition, page 339. Although it is made clear that two or more heirs who succeed simultaneously take the property as tenants-in-common and that the inherited property becomes the separate property of the heirs, yet the proposed Bill does not make it clear as to whether a co-parcenary will subsist and the manager will have the powers which he enjoys under the Dayabhag Law. In my opinion, the language employed in the proposed Bill does not touch the provisions of the Hindu Law relating to co-parcenary and the powers of a manager. If the intention of the framers of the Bill is to modify or in any way affect these provisions of the Hindu Law more explicit language should be used. If they want those provisions to be left untouched, even in that case a section dealing with those provisions will remove the doubts and will prevent considerable litigation. It will be conducive to clarity if the point is dealt with in a new section in Part III-A.

42. Mr. S. K. Dutt, Advocate, High Court, Allahabad.

As a jurist and a Hindu I hereby emphatically protest against the legislation sought to be introduced by the Draft Hindu Code, especially that touching marriage and divorce. And I implore Your Excellency as the King's representative to throw out the Bill, as the proposed legislation has no sanction in the law and the religion of the Hindus, and, if given effect to will be nothing short of an uncalled for interference with the religious rites and practices of the Hindus. The legislation, as envisaged in the draft, discloses colossal ignorance of the Rao Committee to appreciate the fundamental principles of the Hindu Law, and no useful purpose can be served by such a committee, and I request that the committee be superseded and persons well versed in the principles of Hindu Law be entrusted with the task of legislation. One example of such ignorance will suffice. The draft seeks to introduce monogamous marriage into the Hindu society without making any provision for the offering of oblations to the manes of his forefathers by a Hindu for which the existence of a son (putra which term in Sanskrit means that the person liberates his fathers from the hell called put) is enjoined by religion as essential. The Bill thus sponsors *Uftapindandakriya*, i.e., the total abolition of the offering of oblations to the manes of the forefathers. This, however, is only one instance of many a sapping defect of the Code, all of which cannot be enumerated here. The reasons for my opposition to the Bill relative to divorce are given in short below:—

The evils that will follow from the Bill being passed into law will far exceed the evils prevailing in communities where divorce is allowed. For the Hindu Society which is very conservative in character will not receive the idea of divorce favourably, and this will amount to virtual ostracism of the divorced woman. She will not be able to find a home for herself; for conservative sentiments will stand in the way of her second marriage, more so when a large number of unmarried girls will always be available for marriage. And her father's home will not welcome her for social reasons. Without, therefore, any separate source of income to fall back upon, with the doors of her father and her relations closed for ever to her, her plight can better be imagined than described. I may here incidentally point out that the Hindu Widows Remarriage Act which was intended to legalize and popularize the marriage of widows in the Hindu society has not been able to solve the problem of the widows in spite of its existence for about a century. A celebrated American missionary, who was also a reputed educationist in India, once told us that he was an admirer of our system of marriage because it was in its nature indissoluble, and he regretted the baneful effects of the Law of Divorce in America. But the evil is not confined to America only. A knowledge of the proceedings of the Matrimonial Courts in India and abroad will reveal not only the evils of the system, but also will show to what shameful extent the right of divorce may be sought to be exercised. The Bill, if enacted, will break the backbone of the society by giving occasions for moral lapses.

If the object of the Bill is to provide a remedy for the wife against a cruel husband, it can be secured by making a suitable law in that behalf, providing for exemplary damages in cases of cruelty, and this will necessarily operate as a check on the delinquent husband. For those who do not like the marriage tie to be indissoluble, and who want to breathe in free air, there is already the Special Marriage Act which they can avail themselves of easily and this will also give them the benefits sought to be provided by the Bill.

Do not introduce this hybrid system into a law which has worked well for thousands of years and which has survived the test of time. Any law of divorce will not only be foreign to and militate against the cardinal principle of Hindu Law, which is, that the marriage of a Hindu is a sacrament, and not a matter of contract, which is the principle upon which the law of divorce is founded, but also will not find acceptance among the Hindus *en masse*.

43. Mr. R. Bharadwaj, M.A., LL.B., Kasganj.

The very idea of codifying the divine law of the Hindus by an act of legislature is utterly repulsive to Hindu minds. The task seems impossible to foreign scholars and jurists too. Sir John Mayne has truly said: "The age of miracles has passed and I hardly expect to see a Code of Hindu Law which will satisfy the trader and the agriculturist, the Punjabi and the Bengali and the Pandits of Benares, of Rameswaram, of Amritsar and of Poona. But I can imagine a very beautiful specious Code which should produce much more dissatisfaction and expense than the law as at present administered."

Royal proclamations and Government announcements have from time to time assured non-interference in the religions of Indian subjects. Accordingly, it is the pious duty of Their Excellencies, the executive heads of the Central as well as of the Provincial Governments, to scratch away any proposal or bill, adversely affecting Hindu religion. The Indian Legislatures, composed as they are of heterogeneous elements, have, as the Venerable Pandit Madan Mohan Malaviya observes, no right whatever to legislate on religious matters of the Hindus. The members of these legislatures are representatives for secular, e.g., economic and political, not for religious matters. Religious affairs, especially those of the Hindus, are divine and holy, hence never subject to votes.

It is no good to give new interpretations to scriptural texts and go against the traditional ones. A tradition is, after all, a tradition, which is respected all over the world.

The so-called progressive Hindus are a handful, and if they do not like to adhere to the divine law of the Hindus they may adopt any other existing law or invent one of their own as they choose; but certainly they have no right to enforce their views on the very vast majority. The British Government recognizes the rights even of minorities and individual freedom; and it seems, in that light, very strange to make an attempt at violating the religious right of even a single Hindu. The best good that can be done to Hindus is to let them alone in their religious and social matters.

The gradual and sudden encroachments on Hindu Law, religion and society, in the past, under the pretext of reforms, smack of a sinister effort, to disrupt the Hindu society as Seths Jaya Dayal Goenka and Hanuman Prasad Poddar of Gorakhpur have observed in their manifesto.

The way and the haste with which the various committees relating to the proposed Hindu Code have acted have been most objectionable and the proceedings, wholly irregular, as pointed out by Sri S. K. Roy Chowdhury in his minutes of dissent (United Provinces Government Gazette, dated 27th November 1943, page 13).

I would endorse the following detailed criticisms of the proposed Hindu Code for consideration:—

'Hindu Law and Codification' by Sri B. D. Kathalay, Advocate (All-India Reporter, April 1944, pages 13 to 30).

Minutes of Dissent by Messrs. Nilkanth Dass and Baij Nath Bajoria (United Provinces Government Gazette, Part VI, pages 13 to 15).

'Codification of Hindu Law' by Dr. K. N. Katju (Allahabad Law Journal).

44. Mr. Gopal Behari, Advocate, Allahabad.

The Bill to amend and codify the Hindu law relating to intestate succession sponsored by the Government is a part of the general scheme to codify the entire Hindu law, and to correct and modify the edicts of the ancient

law-givers so as to bring the law, usages and customs of Hindu society in conformity with the prevalent notions. In view of the extreme importance of the subject it deserves a very dispassionate and close study. Among the many revolutionary changes sought to be made by the Bill, the principal two are, the giving of a share to a daughter, married, unmarried, rich or poor, even in the presence of a son, amounting to one half of the son's share, and the creation of absolute ownership so far as females are concerned thus abolishing the widow's life estate.

The authors of the Bill have quoted the Smritis in support of the changes for according to Manu, "the brothers shall severally give to their maiden sisters out of their own shares, each a one-fourth part of his estate; those refusing to give shall be degraded, Chapter IX, verse 118." But has Manu not stated "after the death of the father and mother, the brothers, being assembled, may equally divide the paternal estate, for they are not owners while they (the parents) live—Chapter IX, verse 104." Boudhayana has laid down that "male issue in the male line being left, the estate must go to them" "Vyavastha Darpana" by S. C. Sarcar, 2nd edition, page 14. And Dayabhaga has categorically stated as follows:—When a person's right of property ceases by death, the right devolves on son Coleb, Dayabhaga, Chapter XI, section 1, paragraphs 31 and 32. Narada too says let the sons regularly divide the wealth when the father is dead—Smriti Chandrika, Chapter I, C. 135. Goutama likewise states: "After the demise of the father, let sons share his estate"—Mitakshara, Chapter 1, section ii. The system of inheritance is based on the religious doctrine of pinda of oblations, for Manu has ordained that to the nearest sapinda the inheritance next belongs.

With regard to the direction to give one-fourth part of the share to the maiden sisters, it is pointed out by Chandeshwara that it is merely intended to defray the expenses of the nuptial ceremony, and other commentators have maintained that so much only shall be given as is sufficient to accomplish the sacrament of marriage, Colebrooke's Digest Volume 3. (Lond. Edition), page 93. A similar expression would be found in the Dayabhaga where Narada, Vijnaneshwara and Devala are quoted.

In connexion with the abolition of the Hindu woman's limited estate the authors of the Bill themselves admit that Smriti authority for the doctrine of limited estate is not unequivocal, a conclusion which is opposed to the view of Dr. Altekar who states that while some Smritis definitely limit a woman's estate, others are merely silent on the point. ("The position of Women in Hindu Civilization", 1938 edition, page 315). The law is now well settled by a long line of judicial decisions based upon an elaborate consideration of the original texts, and has been accepted as correct by an overwhelming body of commentators both ancient and modern. Besides it has the sanctity of long usage and immemorial custom. Could we, therefore, not rely upon the Queen's Proclamation which is the Magna Carta of the Indian people that in framing and administering laws due regard be paid to ancient rites, usage and customs of India?

A Bill to amend the Hindu Law of Succession with respect to daughters was introduced by the Hon'ble Mr. P. C. D. Chari in the Council of State in 1934, and in view of the storm of protest raised it was dropped, and in the intervening period there do not appear any basic changes in the structure of Hindu society which would justify the present move. We are in the midst of a gigantic war, we are facing famine and starvation, we are being ruled by Ordinances, the flower of Indian youth is busy in emergency services, the veteran Hindu leaders are devoting themselves to serious political and economic problems that are staring them in the face. Men's minds are pre-occupied with bigger and more vital issues and the redress of the chronic evils which the framers of the two Bills have in mind could very well wait for more peaceful times when a freer and fuller discussion would be possible. The Legislature too has ceased to be representative for want of elections and the assent of the electorate cannot be implied from the vote of the Hindu members of the Legislative Assembly. Hindu rules of conduct, or Dharma, and Religion and Hindu law are so mixed together that a change in one is bound to react on the other, and it will be in the fitness of things that a direct mandate is taken from the electoral constituencies on live issues of the kind under discussion.

The contention that there is a crying need for the change can be answered by an examination of representative wills of typical Hindu fathers. If there had been at any time a genuine desire on the part of Hindu fathers to give a share in their property to daughters, and to create absolute estates in favour of their wives and daughters, we would find the same clearly expressed in testamentary dispositions which see the light of day so frequently. An examination of the kind suggested would show that there is a predominant desire in the Hindu mind to preserve the property, especially immovable property in the family itself, and it has been judicially recognized in more than one case that there is a deeprooted prejudice among Hindus against succession following in the female line. That this prejudice is not peculiar to the Hindus would be apparent from the fact that Muslims in India marry their daughters to cousins as far as possible. In ancient Egypt the marriage of a sister with her brother had its root in the anxiety to preserve the family property. The Jewish and the Grecian laws had analogous provisions to protect the inheritance from inroads by strangers to the family. The waqf Alal-ulad on which Muslims set great store are manifestly intended to keep the family property intact for succeeding descendants in the male line.

If the law were amended as suggested, it would mean the disruption of the family on the death of the father or the head of the family, and in cases where the patrimony is small, partition with the resultant auction sale and ouster from dwelling house will cause the ruin of the minor sons and grandsons of the deceased. In the event of a premature death of the only earning member of the family, which is by no means a rare occurrence in India, the parcelling out of numerous shares will render the task of bringing up infants and providing for their education almost impossible in the absence of a country-wide organization of state-aid. A death blow would be given to a hoary institution—the joint family system, and whatever defects it may have, it is still a living organism, a dynamic force, and a treasured status.

It is a misnomer to call it a Hindu Code. It is a Hindustani Code with a curious amalgam of ideas borrowed from the Muslims, the Parsis and the English. It is not only Un-Hindu but Anti-Hindu, for it cuts adrift from the sacred anchorage of Hindu jurisprudence as expounded by the greatest of our law-givers. The reason is not far to seek as in the words of Mr. Susil Kumar Roy Chowdhury, one of the members of the Joint Committee, "many of the clauses in the Bill have been passed in the joint committee through the help of non-Hindu votes." I ask in all seriousness if the Muslims will tolerate any attempt to alter their law of inheritance? The Hindus are being invited to share the disadvantages from which the Mohammedans suffer owing to fragmentation of their estates minus the corresponding advantages obtainable by marriage and wakf-alal-ulad.

The move will open wide the gates of litigation. The question whether the property was joint family property or the separate property of the deceased now solely confined to disputes between the collaterals on one hand, and the widows or the daughters on the other hand will have a much wider significance, and embrace fresh disputes between the son on the one hand, and the widowed mother or sisters on the other side. As the principle of survivorship is being retained side by side with the new law of succession, it is obvious that the son could defeat his sisters by proving that the property was ancestral or joint family property. Similarly if an unwary purchaser gets some property from a Hindu not suspecting that his aunts, or aunt's daughters have a share in the property—whose very existence he may not know and may not have the means of knowing in view of the Parda system, and other complexities of our civilization, there is bound to be serious litigation involving difficult questions of law and fact. Any lawyer of experience will tell you that it is not easy to buy trouble-free title from a Muhammadan if it is not his self-acquisition.

The protection that the law gives to pardanashin ladies is the result of long experience based on wider recognition of the conditions of society, the practices of women-folk and the vices of the professional money-lender. To unsettle the principle of limited estate which has stood the test of time and has acted as a redreg to the unscrupulous friend or relation having sinister designs on women's

property would spell disaster to many a home, and all attempts to impose revolutionary changes in the basic structure of Hindu Society under the deceptive slogan of woman's emancipation deserve resistance.

The wail that the females are not fairly treated in the matter of inheritance may have been heard in recent times in Women's Conferences. But how far are these Conferences representative in their character? Do they reflect the opinion of their sisters and mothers in villages? Do they echo the views of the illiterate women of the city? Are these not mixed conferences of fashionable girls of society drawn from all communities, Muslims, Parsis, Sikhs and Christians, whose systems of law are entirely different?

Phillimore in his "Principles and Maxims of Jurisprudence" at page 254, while discussing the Roman law of inheritance, makes the following observations: "According to the law of the Twelve Tables, daughters shared in the inheritance with sons, but the evils to which such a state of things led were so considerable, the corruption, luxury and insolence of the women thus endowed occasioned such alarm among the Romans who thought the purity of the mother the best guarantee for the qualities which made a valuable citizen of the son, that the Voconian law prevented all women from inheriting property, even that of their father when he had no other child."

45. Mr. Harikishen Dadhu, Advocate, Lucknow.

Marriage among the Hindus is a sacrament and not a Civil contract and as such forms a part of religious observances and in pursuance of the abovementioned proclamation cannot be interfered with. Hindu shastras lay down that the marriage tie continues even after death.

Similarly in the case of laws of inheritance they are inextricably connected with the offerings made by the heirs to the deceased and which offerings are for the benefit of the departed soul.

Thus it is clear that the provisions of Hindu Law are not confined to the affairs of this world but travel beyond into the next and are not insignificantly affected by the belief in the theory of Transmigration of Soul which is not accepted by other religions.

Without going into the merits or demerits of the proposed amendments it is most respectfully submitted that the present Legislative Assembly is not competent to handle such questions. Besides, the fact that the elections to the same were held when it was not given out in any quarter that the reforms in matters of religion would be undertaken by the said Assembly, is it not most incompatible with the recognized principles of non-interference with the religious observances of a particular religion that a heterogenous body composed of a number of non-Hindus should amend the Hindu Law. If the Hindu Society is really convinced of certain defects in their Laws it is for that society alone to consider and reform it. It is highly improper that members belonging to other religions who are not affected by the proposals and who have nothing to lose or gain should hazard their opinions. I respectfully beg to maintain that it is the sole concern of Hindus alone and other communities are out of Court.

For instance, how would other communities like if certain forms of marriage recognized by the Muhammadan Law or certain forms of courtship preliminary to marriage, recognized by other societies are legislated upon by outsiders.

Not only that, the State in India has gone to the extent of giving legislative sanction to the provisions of personal laws which seem against the recognized principles of jurisprudence. Does not validation of Wakf for the benefit of one's progeny (Wakf-al-Aulad) seem against the well-recognized rule against perpetuity.

The State in India has even gone to the length of recognizing principles in the sphere of worldly affairs (not religious matters) which flagrantly seem against the doctrine of law accepted by all. What I beg to point out are the reasons for recognition of Impartible Estates? What actuated the incorporation in the Oudh Estates Act (of 1869) the provision of single heir succession which is popularly known as Gaddi Nashini system?

All these facts go to point to one factor and that is "the exigencies of the time."

Similarly why cannot we recognize that the constitution of the Hindu society with certain beliefs—which may appear unreasonable to others—did require the promulgation of laws which would maintain and help in the

development of the community. It can be asserted on the other side that those conditions have changed and modification of laws is required. It may be, but then again it is only the Hindu community and none else who can consider what is best in its interest.

Even the Hindu members of the present Legislative Assembly did not enter the same on this ticket and have no *locus standi* to legislate on religious matters when it was unequivocally proclaimed that religious neutrality would be strictly observed by the Government and which proclamation has not yet been abrogated. If there is any doubt, let the matter be decided by a plebiscite of Hindus and the proposals stand over for the time being.

I submit, even at the risk of being charged with repetition, that the State would be treading on very dangerous ground in undertaking to legislate on matters like these. It is doubtful that even a national Government in India would be competent to legislate on the present proposals.

46. Shri Bharat Dharma Mahamandal, Jagatgunj, Benares Cantt.

1. The All-India Council of this Socio-Religious Representative Association considers it unnecessary to give oral evidence before your travelling Committee but to submit this well-considered opinion of the council with the request to file it as written evidence against the attempts of the Imperial Government regarding the Marriage Bill, codification of Hindu Dharma Shastras and Bills regarding Hindu Code, Parts I and II.

2. These measures of anti-Hindu religion are unwise, unstatesmanlike and unjust and cut at the very root of the sacred religion of the Varnasrami Sanatani Hindus who are by their inborn characteristics sincerely loyal to the Crown.

3. The measures are directly in contravention to the Royal Proclamation of Her Imperial Majesty the late Empress Victoria of sacred and loving memory assuring religious neutrality and confirmation of the same by all Her Majesty's worthy successors.

4. The Government Councillors—the originators of such anti-Hindu Bills and the so-called Hindu reformers who lend support to the all-harmful anti-religious movement are either non-Hindus or political Hindus or Hindus who are not only ignorant of, but deplorably unmindful about, the religion of the ancient Hindus and its main principles as well as the unchallenged Vedic Philosophy on the basis of which those principles of Sanatan Varnasram Dharma firmly stand. This move for introducing such unjust law under the guise of codification against the Varnasrami Sanatani Hindus who have so successfully passed, the hardest tests of both the ancient and modern histories is really treachery against the orthodox pre-historic Hindu nation.

5. This Association representing the whole orthodox Hindu India has already sent strong protests to His Excellency the Viceroy, the Hon'ble Law Member, Government of India, and to several Provincial Governments. Similarly, its representatives and members and sister associations throughout the length and breadth of India have sent protests and will give evidence before your Committee.

6. Although the original conception of the Dharma of the ancient Hindus of Hindusthan includes *Abhyudaya* (spiritual advancement and all success) and *Nishreyas* (final liberation of the soul) and although it is equally helpful to the entire creation, to the whole of humanity as well as to all creeds of the world, the special creed of the ancient Hindus who are considered both in the east and the west as the early promoters of world civilization, the originators of the ways and means of the culture of humanity and the first torch-bearers of spiritual light in this moral world, consists in the sixteen fundamental principles which are (1) the faith in the *Sadachar* as the first principle of Dharma, i.e., all bodily actions are according to *Sattwa* or *Tamo Guna*, either Dharma or Adharma respectively; (2) the faith in *Sadvichar*, i.e., the faculties of the mind to be kept pure and in higher spheres for which the *Sikha* is preserved on the head converting it into a temple; (3) the faith in the *Satitwa* Dharma of Hindu womanhood consisting in their self-dedication of a unique and culminating nature for the reservation of the purity of the ancient Hindu race;

(4) the faith in the *Ashrama Dharma*, i.e., the four stages of life of the male members of the Hindu society for regulation and unobstructed progress of spiritual perfection; (5) the faith in the existence of the mighty occult Government and occult high office-bearers of *Rishis*, *Devas* and *Pitris*, etc., controlling our mortal world; (6) the faith in the *Avatarbad*, i.e., the incarnations of the Almighty God and his divinity's occult high office-bearers; (7) the faith in the several graded devotional practice of *Upasana*, *Bhakti* and *Yoga*; (8) the faith in the *Moorti Puja*, i.e., Image Worship and in the mystic circle (of *Tirtha* and *Pitha* as centres of connecting link with the occult—*Daivi*—world) worship; (9) the faith in the *Shuddha Shuddha Viveka*, i.e., the scientific and philosophical theory and practice of touchability and untouchability for establishing connexion with the all-pervading spiritual force as well as with the occult world; (10) the faith in the *Shastric* ceremonies of *Yajna* for individual welfare—and *Mahayajna* for universal welfare—for receiving invisible help of the high occult Government and its office-bearers; (11) the faith in the *Saguna* (with attributes) and the *Nirguna* (attributeless) aspects of the Almighty God; (12) the faith in *Mukti*, i.e., the final liberation of the soul; (13) the faith in the caste system of *Varna Dharma* for maintaining the purity of the spiritual race of humanity through heredity organization and birth-right; (14) the faith in the *Vedas* and the *Dharma Shastras* as the sacred books revealed—the one directly and the other indirectly from the occult world through the invisible help of the *Devas* and must not be interfered with by any human agency; (15) the faith in the *Divine Law of Karma*—actions and reactions of body, speech, mind and intellect and *Sanskaras*, i.e., seeds of Karma and in several *Shastric* ceremonies of *Sanskaras* and (16) the faith in the *Janmantarvad*, i.e., in the theory of re-birth of the departed souls in regular and safe order. Therefore the codification of the Hindu Dharma *Shastra* is a direct interference with the above-mentioned creed of the Hindus in general and the Bills under discussion cut directly at the root of some of the above-mentioned religious principles in particular.

7. The measure directly affecting the religion of the Hindus is against the injunctions of the *Vedas* and *Shastras* against the long-established system of the religious sociology and is definitely against the philosophical theology of the ancient Hindu race and as such, in the opinion of the *Sanatan Varnasrami* Hindus should be thrown out and the measures of codifying the Hindu Scriptures be stopped in the interest of both the Rulers and the ruled.

47. Pandit Subodh Chandra Lahiri of Benares.

The present proposed Hindu Code contemplated deviation from the general principles of Hindu Law. Nay, it not only contains provisions against but is also based on principles repugnant to the Hindu Law as given in the *Smritis* and exposition thereof made by saintly commentators acknowledged and followed by the community popularly known as Hindus. The very nomenclature is therefore deceptive and cannot be acceptable.

The proposed code is throughout incongruous and full of inconsistent provisions and nowhere a case has been made out for the proposed deviation or change from the existing law and practice. The subject-matter of Hindu Code as administered and followed today is claimed to be derived from the divine scriptures as exposed by learned *Pandits* respected as almost saints not only for the vastness of their learning but also for their deep insight to the necessities of the community. It is a matter of great regret that the machinery to forge a new code has been scrupulously kept aloof from learned *pandits* from coming into its contact for reasons best known to the authority trying to force upon millions something unwanted and definitely unwarranted. If certain changes were felt by the legislators to be absolutely necessary, then it would have been the best thing to get some *Pandits* nominated in the Assembly and in the Select Committee so that the Hindu population would have been benefited by their counsel and suggestions.

It is true that the *Mitakshara*, *Mayukh* and *Dayabhaga* are only commentaries and are therefore liable to changes in case of better exposition of the subject but no such change is possible when such a change is itself repugnant

to the principles whereon the commentaries have been made and that is why the help of people well versed in the Shastras is necessary if the Hindus are to be termed as such. It is not our object to criticize the personnel of the Select Committee or the constitution of the Assembly whereon we have no control but it is certainly our duty to point out shortcomings and other defects which could have been removed and thereby a vast amount of energy and national wealth would have been saved and directed to more useful channels. The code proposed is not likely to confer any benefit to the Hindu society, it has simply shaken the faith of the people on the British administration and we do not propose to aggravate the feelings already embittered by dilating the point further.

The Mitakshara is followed by about 80 per cent of the Hindu population with slight deviation in some particular localities. The rest is governed by the Dayabhag Law. The Hindu Law is therefore capable of being somewhat different in different places according to exigencies of circumstances and the authors of the proposed code do not advance any reason why only one law should be followed by all and everywhere. The attempt to unification is bound to create complications so long as provisions relating to customs are allowed to remain. If the code respects customs in a particular locality or among particular classes why then an attempt has been made to do away with the custom adopted in the light of commentaries.

Hindu Law certainly recognizes rights of women and definite provisions have been made for them under particular circumstances. Is there any reason why rights should be amplified and an attempt should be made to bring them to the level of Muhammadan Law? English Law also recognizes rights of women. Should it therefore follow that the properties of English people should be divided among sons and daughters of an intestate or that the English people are less progressive than the Hindus as contemplated in the Code?

It is not clearly understood to what the Committee wants to drive at by the word 'Progressive' whereof elements it claims to have collected from different schools of Hindu Law now in force. The principles underlying the 'Caste' and 'Gotra' have been jumbled up and the code contemplates their extinction altogether, notwithstanding reference has been made thereof here and there creating even greater complications than what exists today. The main provisions suggested aim at innumerable fragments of properties beyond all hopes of their being put together once again in one hand and directly promote entire disruption and vilest corruption on the other.

Divisions of property to minutest possible particles are not beneficial even in most advanced countries far less are they so desirable for a country industrially backward where it becomes difficult to collect a small capital even for a modest enterprise. The little capital now in the control and hands of Hindus would soon disappear in a couple of decades and difficulties would become unsurmountable in collecting capital for any big enterprise and India may have to beg and beseech foreigners for capital to be lent on terms dictated by them. Can India afford to accept such proposals at the very dawn of industrial development? Nay the time has now come when every attempt should be made to make circumstances so that required capital may be easily available for any big enterprise and for that purpose it may be necessary to minimise divisions by restricting inheritance rather than enlargement thereof for some time to come. Hindus are prepared for sacrifices in this respect should circumstances demand such.

Unless some clear-cut principles are enunciated in the light whereof proposed provisions are to be made, there would be no end of arguments which are bound to be vague and may appear to be out of point. When some general principles are adhered to it is immaterial if one distant kindred be preferred in the new proposals to another entitled under the present law. The framers of the proposed Bill have proceeded half-heartedly everywhere and the faltering and fallacious arguments advanced for the proposed changes are illogical, untenable and without premises.

It will be sufficient here to note that while rights of heirship have been extended to daughters of an intestate no such right has been extended to daughter's son even though daughter's son can confer 'spiritual benefit' as

the framers have advanced the arguments of conferring the same when favouring certain class of heirs in the line of succession to others. There may not be much objection to the adoption of the Dayabhag school. But the whole intestate succession has to be recasted even if it were so. The adoption of the principles of Dayabhag throughout India will necessitate an assemblage of respected pandits and other influential persons for obtaining an active support thereto.

The present code contemplates to do away completely with the principles of the Mitakshara followed by no less than two hundred million people. The peculiarity of the Mitakshara consists in incidence of ancestral property and of survivorship in a joint estate. Once it worked as a great check against extravagance and immoral purposes of persons holding ancestral property.

It may be possible for the framers of the bill to register the support of a few people favouring communism and communistic ideal. This would be so because those who clamour for 'communism' have no clear notion of the subject nor any idea of 'national wealth' and the import of the phrase. They are satisfied that such measures are likely to impair the catch word 'Capitalism'. Ancient Indian policy recognized the principles of communism in certain form that had due regard for 'national wealth' and a vast majority of people will be found willing to revert to that position when and whereunder India enjoyed great prosperity. No one can conscientiously agree to the insidious process of diverting the control of capital from Indians to foreigners.

The attempt on the part of the framers of the Bill to do away with the limited estate of the females now in existence is only consonant with the principle and policy it purports to promulgate. But it is opposed to the traditions of the Hindus and one finds no reason why this should altogether be abolished. If it is possible for a testator to create one or successive life estates capable of being administered it stands to no reason that there should be any difficulty in the administration of a limited estate, created by operation of law of an intestate. Hindus, generally of higher classes, would not like their widows for re-marriage and sometimes peculiar allurements are held out. It is better to observe celibacy even under compulsion and social restrictions rather than otherwise and it would be against public policy to encourage re-marriage by holding out inducement to clever loafers and thus allow them to entice away for marriage rich widows who have succeeded to her father's as well as husband's properties. Women's limited estate, ordained by the sages and a peculiarity of Hindu Law, is admittedly an excellent device to provide for widows under certain circumstances consistent with the notion of womanhood and marriage, not found elsewhere and has been working smoothly even under present day changed circumstances. Is the plea for simplifying the subject enough to abolish a thing which prove to be a great boon to the society? Incidence of limited interest of 'Stridhana' property must find a place in the Code.

The 'Varna' and 'Gotra' have a special significance in Hindu Law which will cease to be a Hindu Law without them. Restrictions imposed with regard to marriages and other matters have proved beneficial to the society. It is true that there has been some inter-caste marriages specially forbidden for this age and probably, though fewer, such marriages took place in ancient days. Progeny of such marriages may have embraced a different religion or may have been assimilated somewhere in the Hindu society gradually by influx of time. Such contingency can be met by dividing the 'Sudras' in two groups and descendants of such marriage may be classified in one group or the other persons in one of these groups who having followed any other religion embrace Hinduism or profess to follow Hindu religion. Following a particular trade or profession and inter-caste marriage raise the question of regrouping the followers in some particular caste as contemplated in our 'Shastras'. The problem of regrouping is not easy to solve. A section of the population asserts that difficulties would disappear in free India when every measure has to be weighed for national utility and national self-respect without being guided or controlled by individual or self-interest prompted at the instance of others. However a solution can be worked out if the principle of regrouping be acceptable but as a matter of fact the time is not yet ripe for it and opposition thereto appears to be

formidable. Thus concrete proposals in respect thereof need not be discussed at present and may be left to future generations when the necessity may be felt or become pressing.

It may not be quite out of place to mention that the Sanatan Dharma is all pervading based on laws of Nature and therefore eternal. Even Muslims and Christians cannot be outside the operation and the scope of Natural laws and eternity. Their means and methods, manners and customs are only deprecated as illogical and unscientific and therefore unsuitable for social integrity. It would be out of place to discuss at length the subject but the suggestion of keeping a register for inter-caste and inter-religious marriages for those who have admiration for the 'Sanatan' Dharma and Indian culture and traditions may be profitably utilized. Such marriages even though they can be solemnized in the usual way, the method of registration thereof will furnish an additional evidence for the purposes of succession and other matters to be applicable to the married couple and their issues.

The introduction of monogamy is at present uncalled for. Instances of polygamy are few and negligible except in certain sections particularly well-to-do Kahatriyas and others under exceptional circumstances and therefore the legal check contemplated in the Code is not warranted. Restrictions proposed to be placed on Hindu marriages may not only promote social evils but may also tend to favour conversion to Islam.

Hindu scriptures look into marriage as a sacred union absolutely necessary for the welfare and progress of the society and therefore rules are not only very strict but also they are respected and adhered to by every Indian and thus scriptures encourage marriage and discourage divorce now interpreted as absolute prohibition of divorce though in ancient days divorce was permitted under special and exceptional circumstances. The framers of the Bill have proceeded on wrong hypotheses and therefore provisions relating thereto have become unacceptable and not even suited to needs of the society. European manners and customs are followed in India and imitated by some Indians negligible in number, who have been responsible for the clamour for divorce as a counter-measure to eliminate the rigours of monogamy. Protection enjoyed today by an illiterate and faithful wife of an incorrigible husband will be gone and probably divorce would be sought by insinuating false charges on an innocent wife and thus force her to seek another husband leaving aside the high ideals of chastity and morality which, held in so high esteem today, would be reduced to mockery. Even if the principles of divorce be introduced it should be so framed as it may be consonant with scriptures and not impair the high ideals and traditions which the whole world may feel proud of.

The chapter on adoption is merely an apologia probably inserted to keep up an appearance only. The Code as framed is definitely influenced by Western and Muslim ideology repugnant to the principles of adoption and its idealism. The position therefore has become most anomalous. For example, the widow of an intestate without an issue takes the whole of her husband's property absolutely. How can she be divested of properties so vested in her even if she adopts a son under an authority duly registered. The evil of conferring an absolute estate on widows may be conveniently reiterated here for there will always be an inducement from undesirable persons for intercourse.

Rules for inheritance for hermits are again a misnomer. How can a person who has renounced the world become possessed of worldly riches so long as he does not retract renunciation and once again enters a worldly life? The general notion today is that wealth and riches are given to an ascetic for some charitable and religious purposes and he holds the property not as an absolute owner thereof but retains only in trust for some specific purposes. Instances are not rare where an endowment for religious and charitable purposes have been converted after a lapse of time into banking and business houses controlled by hermits apparently said to have renounced the world but in fact keen on worldly luxuries and sometimes given to debauchery and other vices deprecated even in worldly life. Recognition of private right in a slipshod manner is not justified. Courts in India have been reluctant under section 92 of the Code of Civil Procedure to grant adequate

relief even in cases of an express trust where mismanagement, extravagance and breaches had been proved and to confer the right of inheritance would exclude the very jurisdiction of such courts to remove a person succeeding under the law. Matters relating to endowment are a vast subject in itself and it may be profitable to examine the proposals adopted at the All-India Sadhu Sammelan held in Benares in 1938 and then frame laws so as to give full effect to what such endowments and religious orders stand for.

48. Sri Arya Mahila Hitakarini Mahaparishad, Jagatgunj, Benares.

On behalf of the All-India Council of Sri Arya Mahila Hitakarini Mahaparishad—the Representative Association of the Sanatani Hindu ladies of India—I beg respectfully to submit the following statement in connection with the Hindu Marriage and Succession Bills and Codification of the Hindu Dharma Shastras for favourable consideration of the Government of India and of His Excellency the Viceroy and Governor-General of India who is the highest representative of our Emperor.

2. That at the outset kindly allow me to observe that the measures are as unwise as they are unjust and unstatesmanlike and simply cut at the very root of the sacred religion of the Varnasrami Sanatani Hindus who are by their inherent nature sincerely loyal to the Sovereign and that the measures are directly in conflict with the Royal Proclamation of Her Imperial Majesty, the late Empress Victoria of sacred and loving memory assuring complete neutrality in matters of religion and confirmation of the same gracious promise by all Her Majesty's worthy successors and that lots of representations strongly protesting against the anti-Hindu Bills have been submitted to the authorities by numerous societies and important personages from every part of the country.

3. That as regards the legal aspect of the measure, eminent lawyers of nearly all provinces of India and the highest legal authorities in the land, the Calcutta High Court Bar Association, says—"the Bill is inopportune, ill-advised, an uncalled for measure, harmful and highly detrimental to the religious, social and economic interests of the Hindu community and is diametrically opposed to the custom and sentiments of those on whom it is sought to be imposed and this Association strongly urges on Government to drop the said Bill."

4. That all educated and experienced persons will agree with us that the Government Councillors—the originators of such anti-Hindu Bills—and the so-called Hindu reformers who lend their support to the all-harmful anti-religious movement—are both not only ignorant of, but on account of want of religious education, are sadly unmindful about, the religion of the ancient Hindus and its main principles as well as the unchallenged Vedic Philosophy. These ignorant persons are quite unaware of the highest philosophical aspect of the teachings of our Shastras regarding our Caste system, Gotra and Pravara Order and the theological basis on which Hindu marriage system and the "Dayabagha", i.e., Succession Laws of Dharma Shastras so firmly stand.

5. That the religion of the ancient Hindus, who are considered by both the Orient and Occident as the Early Promoters of world civilization, has, according to the Holy Scriptures of the Hindus, its special creeds distinctly marking it off from all other religion existing at present in Hindusthan. The fundamental principles of the particular religion of the Varnasrami Hindus, prominently include, among others, (a) the faith in the existence of the Mighty Occult Government formed of its dispensing high office-bearers of various types called Rishis, Devas, and Pitris, etc., who directly control our mortal world; (b) the faith in the order of Varma Dharma or the caste system based on subtlest scientific formula with the object of maintaining the purity of the spiritual race of humanity through special virtues of the female order and through hereditary Organization and birth-right; (c) implicit faith in the unerring authoritative nature of the Vedas and Shastras which are the sacred books revealed the one directly and the other indirectly—from the Occult world through the invisible help of the Devas and as such, must not be interfered with by any human agency; (d) the faith in the Divine Law of Karma—bodily, vocal, mental and intellectual actions and reactions and their inevitable creation of Sanskaras, i.e., seeds of Karma; (e) the faith

in the Satitwa Dharma of the Hindu womenhood—their chastity of an extreme nature and self-sacrifice of the highest grade for national tranquillity, social and family peace as well as for establishing connecting link with the occult Government and (f) the faith in the theory of rebirth of the soul and in the laws of Shraddha, Tarpana and other religious ceremonies in order to help the departed souls of ancestors in the next world including marriage laws and laws of inheritance which are all equally helpful in keeping the onward march in the next world and in rebirth of the departed souls in regular and safe order. It will thus be clear that the proposed codification of the Hindu Dharma Shastras is a direct interference with the Religion of the Hindus in general and the Bills under discussion cut directly at the root of the abovementioned religious principles in particular.

6. That at such an unprecedented disturbed period of the world history and specially of Indian History and benign Government is humbly requested to refrain from lending any weight to such seriously dangerous enactments directly affecting the personal religious laws of the Varnasrami Hindus who are ever peace-loving and loyal by nature and who make up the bulk of the population of the Indian Empire. That the so-called reformers, who are no other than the non-Hindu elements of the political Hindu group, cannot possibly ignore the existence of the ancient Hindus of Hindusthan and their special creed which is distinctly apart from other creeds of the world.

7. That the ignorant Government Councillors and the rabid reformers may conveniently call it superstition, but they cannot overlook the fact the Sanatani Varnasrami Hindu ladies have their own unflinching faith in the holiest Satitwa Dharma and such unholy ideas as the divorce system, widow re-marriage, are down-right, shocking and extremely painful to the enlightened and religious-minded higher caste ladies. All educated persons can well imagine how godless materialistic culture and irreligiousness have utterly failed to shake the spiritually deep-rooted faith of the vast majority of the Hindu population.

8. That the measure directly affecting the religion of the Hindus is against the injunctions of the Vedas and the Shastras, is against the philosophical theology of the ancient Hindu race and as such, in the opinion of the Arya Mahila Hitakerini Mahapatishad—the universally recognized representative association of Varnasrami Hindu ladies—the anti-Hindu Bills should be thrown out and the measures of codifying the Hindu Dharma Shastras be stopped for ensuring the abiding welfare of both Hindu India and the Government. For this act of justice the Sanatani India will pray to the Almighty.

49. Arya Pratinidhi Sabha, U.P. (Secretary—Ram Dutta Shukla, Esq., M.A., LL.B., Advocate).

In the considered opinion of the Arya Pratinidhi Sabha, United Provinces, the proposed draft Hindu Code alleged to have been prepared for the benefit of the Hindus will really prove detrimental to them. The said Code, if passed and made into law will not only give rise to litigation and encourage ruinous fragmentation of property but it will certainly be instrumental in destroying age-long Arya Hindu culture and disrupting the social organization of the Hindu society from its very roots.

The Sabha, therefore, strongly urges the Government that it should not attempt to impose the draft Hindu Code after passing it as law in spite of opposition.

It may be further urged that the Sabha opposes the Code in its fundamental principles and hence it does not submit any detailed proposals on its merits.

50. Shri Ganga Sabha, Hardwar.

Shri Ganga Sabha, Hardwar, strongly protests against the proposed "Hindu Code" prepared by the "Hindu Law Committee" and the "Intestate Succession" and "Hindu Marriage" Bills introduced in the Central Assembly, and emphatically urges upon the Government to withdraw the Bills in question and cancel the said Hindu Law Committee.

The succession and marriage, etc., religious rites of the Hindus are only constituted according to Dharma Shastras, and any kind of alteration in these religious ceremonies of the Hindus is considered unwarrantable and undesirable

interference in the performance of their religious rites, which is against the policy of the Government's non-interference in the religious matters of the Hindus.

The Sabha is of the firm opinion that any such alteration in the present religious traditions and the rites of the Hindus, which is not based on religious and shastric lines, is altogether unpracticable; and the proposed "Hindu Code" and the Bills in question, besides being directly antagonistic to Hindu culture, Hindu religion, Hindu civilization and Hindu tradition, will not only be harmful to the peaceful well-managed joint family system of the Hindus, but will also bring untold misery and evils in their daily life.

51. His Holiness Sri Raghava Acharya Swami of Acharya Pith, Bariely (U.P.).

1. The opening clause proposes to amend Hindu Dharma Shastra but nobody is empowered to amend them.

2. The definition of 'Hindu' given in clause 1 (2) is very general to include those who do not follow Hinduism.

3. Law of Intestate and Testamentary Succession has been clearly laid down in Hindu Dharma Sastras which is unchangeable.

4. Hindu Code must have no concern with Special Marriage Act as in Part I-6 and Civil Marriage (Part IV-7-22).

5. Hindu marriage is indissoluble, so clauses dealing with nullity and dissolution of marriages should have no place in the Code.

6. Penal Code is the proper place to deal with maintenance of illegitimate son, daughter and concubinage and not the Hindu Code.

7. Forms of adoption other than Dattaka have been fully recognized by our Dharma Shastras; draft should not oppose it.

8. Hindu Code must fully remain according to Hindu Dharma Shastras.

52. Sri Hanuman Prasad Poddar, Editor, "The Kalyan."

The Committee appointed in 1941 went outside its terms of reference and most strongly recommended in its report to the Government of India the preparation of a complete Code of Hindu Law. The Government of India, we understand, accepted this recommendation without consulting the bulk of the Hindu opinion and entrusted the same Committee with the work of preparing a draft of the proposed Hindu Code. Thus it will be seen at the very outset how this momentous issue of the codification of Hindu Law was determined upon in a haphazard way. In the explanatory statement prefixed to the draft the Committee makes a categorical observation, which is hardly borne out by facts. It is generally felt, the Committee says, that the evils of piecemeal legislation on this subject should be avoided and that an entire Hindu Code acceptable to the general Hindu public should be in operation at an early date. We would respectfully ask the Committee as to whom they consulted on this subject and what justification they have for making this categorical statement. With the exception of a few lawyers—whose outlook on life, I am afraid, is purely secular and materialistic and who have been trained in a way of thinking which is alien to the genius and temperament of the Hindu nation and antagonistic to the Hindu view of life and who are accustomed to viewing things merely from the professional standpoint—the bulk of Hindu opinion will, we presume, hardly favour such codification. Moreover, the need of piecemeal legislation cannot be obviated even after such codification has been accomplished and agreed upon by all. Under the existing constitution, so far as agricultural land is concerned, the power of legislation rests entirely with the Provinces. Even if the draft Hindu Code is passed by the present Central Legislature, the Committee can only hope that "the provincial legislatures will speedily extend its relevant provisions to agricultural land also." Subjects like religious endowments and the Hindu Law relating to charities and gifts also fall beyond the province of the Central Legislature. Thus piecemeal legislation shall have to be resorted to even after the present Code has passed into law. Again, the constitutional future of this country is yet uncertain and it is doubtful whether a Code passed by the present Central Legislature can at all have any permanent effect. Thus, in our opinion, to embark upon a legislation of this kind at the present juncture will hardly be wise or called for.

The superstructure of Hindu society is founded on eternal principles derived from the *Srutis* (Vedas) and *Smritis* (ancient law books), which are regarded by the Hindus as embodying the divine injunctions. These two classes of sacred literature coupled with the immemorial customs and usages which have been handed down from generation to generation from time without beginning constitute the sources of Hindu Law and no Government or political authority has the power to meddle with it or change it at will. According to the political theory of the Hindu, a King is the custodian of law and not its maker. His duty is to enforce it among his subjects and administer justice according to the injunctions of the Dharma Sastras. Maharshi Yajnavalkya, one of the foremost law-givers, says:

"A King should dispose of judicial and other matters in consultation with learned Brahmans according to the injunctions of the Dharma Sastras free from anger and greed."

Ever since their assumption of supreme authority in this land, the British Government, too, had been consistently following this principle and had been observing a policy of strict non-interference in our religious and social matters. But of late, this principle is being violated in actual practice and our legislative bodies, too, have arrogated to themselves the function of legislating on our social and religious matters, which in reality does not belong to them. It may be observed in this connexion that the Central Legislature, as at present constituted, possesses no mandate from the Hindu community to introduce drastic and revolutionary changes in their existing law. It would, therefore, be contrary to every principle of democratic institutions and representative legislatures, as has been rightly pointed out by Dr. K. N. Katju, that a task of this magnitude should be entrusted to the present legislature unfortified by a popular mandate.

One of the objects of the Committee, it is alleged, is to evolve a uniform Code of Hindu Law which will apply to all Hindus, by blending the most progressive elements in the various schools of law which prevail in the different parts of the country. However laudable this object may be, it is not in consonance with the fundamental principles underlying our social system. As has been seen above, the various customs and usages obtaining from time immemorial in the various communities inhabiting the various parts of this vast sub-continent form one of the principal sources of Hindu Law and they cannot be abolished or interfered with without undermining the very foundations of our society. We can ill-afford to pay such a heavy price for securing uniformity. Our society has always shown the highest regard for these customs and usages. Lord Manu, our foremost law giver, says:

"What may be found to have observed in practice by the good and the righteous twice-born men (of different groups), that he shall ordain for countries, families and castes, and not which is antagonistic (to such practice)" —(*Manusmriti VIII-46*).

Again, he says:

"He shall tread the path of the virtuous by the same way in which his fathers and grandfathers have trodden; going by that way he will not incur blame" —(*Manusmriti IV-178*).

Maharishi Yajnavalkya who says:

"Whatever custom, practice or family usage prevails in a country, it should be observed in the same way as it stood when the country was brought under subjection."

Succession in our country is governed by two divergent schools of law (1) the Dayabhaga school and (2) the Mitakshara school. The former is recognized in Bengal alone, while the latter holds sway in the rest of India. The Committee in its anxiety to secure uniformity has tried to blend the two schools by partially adopting the provisions of the former school and partly those of the latter and made them applicable to the whole of India. This, to our mind, is unnecessary; the two systems are working satisfactorily in their respective areas and need not be amalgamated just for the sake of uniformity. This becomes all the more unnecessary when we find that there is much affinity between the two systems, the points of difference being few and far between. Even modern writers like the late Dr. Priyanath Sen and the late Mr. G. C. Sarkar have recognised this affinity and the decisions of the Calcutta High Court have also affirmed their similarity. The present arrangement need not, therefore, be disturbed

and should be allowed to stand as it obtains at present in the various parts of the country.

Moreover, in our social and religious matters the opinion of lawyers cannot and should not be allowed to prevail. Although we have no reason to question their good faith and sincerity of purpose, and appreciate their eagerness to reform our society, we are afraid they cannot view things in their right perspective as they cannot appreciate the Hindu point of view. It is the opinion of our learned pundits, who are well-versed in the scriptures and can rightly interpret them, the heads of families and our village panchayats, our family priests, the Dharmadhikaris and above all, the pious Acharyas of the various religious sects or Sampradayas as they are called, that should count in these matters and no attempt should be made to overhaul our social system without consulting all these functionaries who exercise parallel authority and jurisdiction along with the judiciary of the state.

With these preliminary remarks we proceed to examine briefly the various provisions of the proposed Hindu Code which are obviously objectionable and opposed to the fundamental principles underlying our social system, which has some peculiarities of its own. We should, however, like to make it clear at the very outset that we shall discuss these features of the Code from the layman's point of view; for our knowledge of law or jurisprudence is hardly worth the name. What strikes the most casual observer is the fact that the proposed Code seeks to demolish the four corner-stones of our social structure, viz.: (1) our time-honoured customs and usages which have held undisputed sway throughout the length and breadth of our sacred motherland from time immemorial and for which even our holy books cherish the highest regard; (2) the institution of patrilineal family with its special form—the joint family system, better known as the coparcenary in legal pharaseology—which is the very backbone of our society and has been extolled by Western scholars as the "Hindu Republic", and which, though combining all the virtues of socialism, is entirely free from its defects; (3) the caste system or the institution of hereditary caste, which has preserved the integrity of Hindu society for countless millenniums and successfully withstood and repulsed the repeated attacks of militant alien cultures, diametrically opposed social systems and proselytizing religions, and maintained the purity of blood which is so highly valued both from the ethnological and the spiritual point of view; and above all (4) the lofty ideal of feminine chastity, which is the pride of the Hindu nation and which inspired the noble Rajput ladies even in the mediaeval period to burn themselves alive in thousands rather than allow their modesty to be outraged by the aggressive Muhammadan conquerors. Thus it will appear that the proposed Hindu Code seeks to cut at the very root of our hoary culture and will take the very life out of our social system if it is passed into law, and cannot therefore be sufficiently denounced. We would, therefore, appeal to the Government of India not to allow the Code to be introduced in the Central Legislature, to dissolve the Hindu Law Committee and to see that no such attempts are made in future to tamper with the fundamentals of our social system, which have stood the test of ages.

The function of a State is to promote the high ideals for which a particular society stands and to preserve the high standard of morality which it keeps before its eyes rather than countenance any disruptive measure which seeks to lower the standard of morality or connive at transgressions which contribute to bring down the moral tone of the society. Legalizing inter-caste marriages and dissolution of marriages, among others, will, it is feared, decidedly have the effect of lowering the moral tone of the Hindu society and should in our opinion never be allowed.

PRELIMINARY

The definition of a Hindu has been extended so as to include even Buddhists, Jains and Sikhs, nay, even converts to the Hindu religion; illegitimate children of Hindu parents, and those who have given up the orthodox practices of Hinduism or expressed disbelief in any of its tenets will also be entitled to call themselves Hindus. *Prima facie* there should be no objection in extending the definition of a Hindu thus; but the intention with which this is being done, viz., to allow such converts to marry within the fold of the Hindu society and to succeed to the patrimony of Hindus is mischievous and, if carried out, will undermine the fundamental principle of purity of

race and will mar the spiritual relation maintained between the spirit of a deceased and his descendants through the offerings of Pinda and water, which form one of the principal tenets of Hinduism and cannot be compromised on any account. This will divest marriage and succession both of their religious character and will make them purely mundane affairs, which cannot be acceptable to orthodox and religious-minded Hindus.

The application of the word "caste" has similarly been restricted to the four principal divisions or Varnas as they are called in Shastraic terminology, thus excluding the various sub-castes existing within the four main divisions. This is obviously intended to remove all distinctions between the different sub-castes and amalgamate them by allowing intermarriages between them. This, too, is objectionable from the Hindu point of view, which recognizes the necessity of maintaining all these differences for preserving the distinctive traits of each group by way of specialization. We Hindus are taught to see unity in diversity and do not believe in prescribing a similar Code for all. Moreover, this definition opens the door for those who have embraced another religion to get reconverted just in order to claim a share in their patrimony. This will remove all bar against the Hindu renouncing their faith and leaving the fold of Hindu society, and thus weaken the solidarity of our social organization.

The definition of "stridhana" has also been made very wide so as to include all kinds of property. In our opinion women should not be allowed to succeed to ancestral property nor should such property, if inherited by them, be called "stridhana." "Stridhana" should be taken to cover only such movable property, e.g., money, ornaments, etc., as may be bestowed on a woman by her husband or other relation for her personal use.

SUCCESSION.

The peculiarity attaching to succession among the Hindus is that the right to inherit the property of a deceased devolves on the person or persons who are competent to offer him oblations in the shape of Pinda and water and thus confer spiritual benefit on him. In this way, the relation between the deceased and his heirs and the heirs of his heirs is maintained for ever and the line of descent remains unbroken. According to the investigations carried on by the Hindu Rishis in the domain of spiritual science—the conclusion of which is as correct, rather more correct than those of any modern scientific research inasmuch as they had developed through Yogic practices a transcendental vision which penetrates through the mist shrouding the invisible "beyond"—the spirits of our deceased forefathers accept the offerings of those alone who stand in the relation of Sapindas to them, i.e., who are related to them up to the seventh degree in the male line, and in the absence of such Sapindas from any one belonging to the same gotra or main line. It is according to this religious principle, which is an article of faith with the Hindus, that adoption also is restricted to Sapindas alone and is extended to Sagotras only when there are no Sapindas surviving.

Female relations even though falling within the orbit of Sapindas and illegitimate sons (i.e., sons born otherwise than through marriage solemnized according to the injunctions of the Sastras) as well as those belonging to other gotras; even though comprised in the same caste, and similarly those who have embraced another faith or renounced the essential practices forming part of the Hindu Code (not this so-called Hindu Code, which is anti-Hindu in its conception and outlook and seeks to demolish the very foundations of the Hindu social organization) are precluded from this right and hence debarred from the right of succession as well. Thus it will be seen that the Hindu customs and usages are inseparably connected with the laws of the other world and cannot be abolished or changed without seriously affecting the fundamental tenets of our scientific religion. It will further be seen that females and other individuals mentioned above are debarred from succession on firm religious grounds and not through any social injustice arbitrarily perpetrated

which is sought to be removed by our 'enlightened' social reformers by means of such anti-Hindu Codes misnamed as Hindu Codes.

It is precisely with this end in view (viz., to secure other-worldly happiness through offerings of Pinda and water) that every Hindu is called upon to marry a virgin girl belonging to the same caste but in no case to the same gotra, with certain other restrictions, and procreate children. The institution of marriage, too, in this way is held to be a sacrament, which binds the husband and wife with a sacred tie so as to enable them to reach the *summum bonum* of life, viz., moksha or liberation from the chain of re-birth, through religious practices carried on jointly in a disinterested way for the sake of duty and strictly in accordance with the Shastraic injunctions, rather than a social or civil contract entered into at will as a result of temporary mutual attraction just for the sake of indulging in sensual pleasures, which could be as easily terminated with mutual agreement whenever it is convenient or expedient to do so. This reduces the sacred institution of marriage to a farce or a dolls' play and robs it of its solemnity and stability which are so essential for making it a source of lasting happiness and mutual good. The provisions of the proposed Hindu Code on the subject of marriage and divorce too, as we shall see later, are exceedingly harmful as they open the door for such convenient marriages and thus deal a staggering blow to our social system which imposes so many healthy restrictions on our sons and daughters simply because they cannot be expected to exercise their independent judgment on questions which are of such vital importance to them if they are left to themselves and allowed to use their own discretion.

Reverting to the subject of succession it may be pointed out that by allowing daughters to inherit a part of their father's property the Committee have obviously tried to introduce the Muhammadan Law into our system and have thus exposed us to the evils which mar the happy relations subsisting between brothers and sisters in that society. Up till now the responsibility in respect of our daughters rested on our shoulders only up to their marriage. At the time of wedding and even after that a father or brother could give anything he liked to his daughter or sister. While sending away his daughter or sister to her father-in-law's after her marriage a father or brother deemed it his sacred duty to give away as dowry or nuptial presents the maximum he could give even though he had to incur debts for doing so, and she continued to get something from her father's house off and on till her death. But she did not claim any share in her father's property. The reason was that she was going to be in due course the mistress of her husband's house where she held undisputed sway. Now by allowing her a share in her father's property she is being recognized as a co-heir, and therefore a rival of her brothers and in this way the sacred relation so far subsisting between brothers and sisters is being made a thing of the past.

The result of this will be that the property of every householder will have to be partitioned after his death if he leaves a daughter behind him and the proprietary rights in respect of a part thereof will necessarily be shifted to another family, viz., that of his son-in-law. This will deal a terrible blow to the joint family system and break up the integrity of one's ancestral property. And should any one die without a male issue he will be debarred once for all from receiving offerings of Pinda and water which he would have otherwise received from his next-of-kin inheriting his property. With a view to retaining one's property in the same family, it is permissible among the Muhammadans to marry one's own cousin. By allowing our daughters to have a share in our property we are indirectly being encouraged to introduce such marriages in our society as well. In course of time marriages between real brothers and sisters will begin to be recognized as valid. Thus we shall be no better than brutes in this respect.

Up till now Hindu women used to be abducted for gratifying one's carnal desires only; now the share of her father's property which she will fetch with her will act as a further incentive to their abduction. Again, there will be no bar against a father bequeathing his property by means of a will to anybody he likes. Consequently it will be open to any one who may like to disinherit his daughters to execute a will bequeathing his whole property in favour of his sons alone. In this way our daughters will not only lose their share in their father's property but will also forfeit

¹ The word "Sapinda" itself is derived from the word "Pinda" and denotes one who is competent to offer "Pinda".

² According to this definition even a son born through a so-called civil marriage, widow remarriage, inter-caste marriage or marriage between Sagotras and all other forms of marriages forbidden by our Sastras will be called an illegitimate son and should be debarred from succession according to the Hindu Law.

the sympathy and goodwill of their brothers and will consequently be deprived of what they used to get from the latter by way of dowry or nuptial presents. The budget of their marriage expenses will also be cut down with the result that the poor girls will stand to lose in both ways.

The widows have also been given a share in the property of their husband. This involves the danger of the property being dissipated as they are liable to fall a prey to the machinations of designing persons. Again, the classification of enumerated heirs in clause 5 and the order of their priority is defective from the Hindu point of view. The Hindu Shastras give priority to such heirs as are more qualified to offer Pindas and water to the deceased. Clause 7 (b) places sons who had been divided from their father before his death on the same footing with those who were living with him. This is unreasonable. In our opinion undivided sons should be given preference over divided sons as the latter generally take their share when dividing themselves and if they are promiscuously treated they are likely to receive a double share which they certainly do not deserve. In clause 8 (4) a woman has been recognized as belonging to the same gotra as her father and has consequently been given the title to inherit the property of her father's agnates. This is clearly opposed to the Shastric injunctions. According to our Shastras a woman ceases to be an agnate of her father as soon as she is married. Her gotra is now the same as that of her husband. She no longer retains a separate existence of her own. The two are inseparably united and are treated as one entity. Hence she cannot and should not be treated as an agnate of her father once she is married and transferred to another family.

STRIDHANA:

In clause 14 (b) a deceased woman's parents and their relatives too have been recognized as entitled to inherit her property other than that received by her from her husband. This is in direct contravention of the Shastric injunctions and is opposed to the principle of Kanyadana. The hand of a girl is given by her father as a gift to her would-be husband. In this way she ceases to have any connection with her father's family and is bodily transferred to her husband's family as soon as she is married. Thereafter not only the parents of the girl but all her relatives on her parents' side refuse to take anything, even water, from her father-in-law's, much less inherit her property. Like the property of a Brahman and that set apart for gods (for the maintenance of temples, etc.) the possessions of one's sister or daughter are also held as sacred and inviolable and can never be appropriated or used for one's own purposes. In this way to include such provisions in the proposed Hindu Code is to trample upon our religious susceptibilities and sentiments, which should never be allowed. In clause 14 (c) it is laid down that in *stridhana* devolving on sons and daughters a son shall take half the share of a daughter. In our opinion a daughter, even if allowed a share in *stridhanam*, should not get more than her brother, as such invidious distinction is likely to be resented by her brother and is sure to prejudice the sacred relation subsisting between brothers and sisters.

MARRIAGE AND DIVORCE.

The degrees of relationship prohibited by this chapter include the following cases only:—

- (1) where one is a lineal ascendant of the other, or was the wife or husband of a lineal ascendant or descendant of the other;
- (2) where the two are brother and sister, uncle and niece, aunt and nephew, or the children of two brothers.

A marriage within the degrees of relationship referred to above cannot even be conceived of in the Hindu society. To include them in the prohibited degrees is not only ridiculous but outrageous to the Hindu sentiment. Nay, the results that follow from this prohibition are even more sacrilegious and obnoxious. Prohibiting marriage with one's lineal ascendant means that one cannot marry one's own granddaughter, but there is no bar against his marrying his own brother's granddaughter. Similarly one can lawfully marry a brother or sister of one's grandfather or grandmother. Again, prohibiting marriage between the children of two brothers means sanctioning marriage between their grand-children. In this way not only marriage between agnates but one between Sapindas also has been recognized as valid. Thus the proposed

Hindu Code has at several places ignored the fundamental principles of our socio-religious system and seeks to introduce the laws of other foreign systems into our society.

For the marriage of girls who have completed the age of sixteen, the consent of their guardians has been dispensed with. In our opinion this restriction should not be waived even after the girl has attained or passed the age of sixteen. For a girl of sixteen or above cannot be expected to have a sound or ripe judgment and should in no case be allowed a *carte blanche* in the matter of her marriage, as the same is more likely to be abused than turned into good account. Of the ceremonies that are observed at the time of marriage only two, viz., *Saptapadi* and *Panigrahana* have been recognized as essential, while *Kanyadana* has been conveniently passed over. According to the Hindu Shastras, *Kanyadana* is as essential as any of the other two ceremonies and a marriage cannot be complete without this item. In fact, there can be no *Panigrahana* without *Kanyadana*. Hence *Kanyadana* should also be recognized as an essential part of the nuptial ceremony.

Clause 26 concedes to every wife the right to live separately from her husband under particular circumstances without forfeiting her claim to maintenance from him. In our opinion this will open the door for every wife who is not on good terms with her husband to establish in a law-court sufficient reasons justifying her living apart from her husband, which can easily be done, and demand maintenance from him, which should not be allowed. With the avowed object of checking the dowry evil it has been laid down that the money which may be given on behalf of the bride or the bridegroom in consideration for consent given to the marriage shall be held by the other party as a trust. In the case of the money given to the bride, the latter will be entitled to demand it from her father-in-law on her completing her eighteenth year. Instead of checking the dowry evil this will be led to disputes between the girl and her father-in-law.

The Code also provides for dissolution of marriage under special circumstances. It will be very easy to obtain a decree from the law-courts that such circumstances exist. One has only to win over a medical man to give evidence in his or her favour or to secure a few witnesses to corroborate one's statement. This will lead to one's private life being exposed and openly criticized and the high ideal of conjugal fidelity will be compromised. Nay, the very woman whose interests are sought to be safeguarded by recourse to such revolutionary changes in the existing law will have her position weakened all the more. Notwithstanding the presence of a number of vices in her husband, an ordinary Hindu woman, who is a personification of modesty and meekness, will never dare to knock at the door of a law-court for obtaining a divorce. She would silently and willingly endure hardships rather than allow the prestige of her family to be lowered in the estimation of others. The facilities sought to be provided by law for dissolution of marriage will be exploited and abused by unscrupulous men, who will seek to divorce their innocent and unsophisticated wives in order to be able to get some more refined and polished lady for a partner. Who would be willing in the Hindu society to accept the hand of a poor unattractive woman who has thus been divorced by her husband? It is more honourable in the eyes of a Hindu woman to have her widowhood shared by a co-wife than to be discarded by her husband. Again, polygamy has been declared as unlawful. But the right to divorce has reduced monogamy to a farce. One can marry any number of wives during his life-time by divorcing one wife after another.

In this way, even as an endeavour has been made to introduce the Mohammedan law in our social system by allowing women a share in property, it has been sought to graft the Protestant Christian law by allowing them freedom in the matter of marriage and divorce. How far this will contribute to our happiness can be easily judged from the state of affairs obtaining in the West. We are told the percentage of divorce suits filed in the law-courts of some of the most advanced countries in the West is much higher than that of other kinds of suits taken together.

ADOPTION.

As a condition precedent for a valid adoption it has been laid down in clause 13 that the boy to be adopted must be a

Hindu and must belong to the caste of which his adoptive father is or was a member. This would mean that one can adopt any Hindu boy of his caste no matter whether he belongs to the same Gotra or not. This would in our opinion defeat the very purpose of adoption, which is to perpetuate the paternal line, to maintain the integrity of the joint family and, above all, to provide for the spirit of the deceased getting the offerings of Pinda and water. This last object can be fulfilled only when the adopted boy belongs to the same Gotra as his adoptive father. It should, therefore, be laid down that the boy to be adopted must belong to the same Gotra as that of his adoptive father, and should preferably belong to the same family. It has been further laid down that the boy to be adopted must not have completed his fifteenth year. Instead of this it should be laid down that the boy must be younger in age than his adoptive parents.

CONCLUSION.

The provisions of the proposed Hindu Code are not known even to the elite of the country. Under these circumstances it will be unfair to the public to invite their opinion on a subject of which they have little or no knowledge. Our request, is that the Hindu Code should be withdrawn, the Hindu Law Committee should be dissolved and an assurance may be given by the Government not to interfere in our social and religious matters in future.

53. Shri Sanatan Dharam Sabha, Moradabad.

1. In the opinion of the Sabha, neither the Government of India nor any of the Provincial Governments ever possessed nor possess power to legislate upon matters likely to effect a change in the private laws of the Hindus relating to their religion or society.

2. The provisions of the proposed Hindu Code are contrary to the principles of Dharma Shastras and are detrimental to the Hindu civilization and culture.

3. The provisions of the proposed Hindu Code will cause discord and mutual dissensions in families leading to dangerous consequences.

4. No necessity has arisen for any change in the existing Hindu Law which has been given a permanent shape after various considerations by the Courts established by the British Government during the last 150 or 200 years and which has never been declared defective by any Court.

54. Sri Durga Gita Vidyalaya, Lucknow.

In the considered opinion of this institution, the proposed draft of the Hindu Code alleged to have been prepared for the good of the Hindus is extremely detrimental to them. It shall, if made a law, not only give rise to endless litigation and encourage ruinous fragmentation of property, but will destroy the age-long Hindu culture and disrupt the social organization of the Hindus from its very roots. I am not going into the details of the Code as we are opposed to the codification itself of the Hindu Law in this arbitrary manner and especially to the proposed draft of the Code in its fundamental principles. If any codification is considered necessary, a Committee composed of learned persons like Pandit Madan Mohan Malaviya, Mr. Shyama Prasad Mookherjee, Mahatma Gandhi, Shri Man Jaidyalji Goenka, Shri Man Hanuman Prasad Poddar, etc., who can voice the opinion of certain sections of Hindus, should be formed and they be requested to submit a draft.

We would, therefore, strongly urge upon the Government that it should not attempt to interfere in our religious and social matters by imposing a legislation in spite of the opposition of practically all the Hindus, both Sanatanists and Arya Samajists.

55. President, The Divine Life Society, 'Ananda Kutir' Rishikesh, District Dehra Dun (Himalayas).

The major reforms embodied in the present Hindu Code mean to strike at the cultural and social progress of the Hindu community. Any legislation that is detrimental to the established traditions of Hindu Community is not to be tolerated. I am of firm opinion that the Hindu community must evolve such reforms only which can bring about solidarity among the different sections of Hindus to whatever possible means.

According to the new Code the definition of the term 'Hindu' and the marriage referring to that are rather disastrous and upsetting leading to the undesirable result of 'Jatisankara.' Such caste confusion will prove a death knell to the social and spiritual progress in a land where the ancient customs and family traditions are the basis and bedrock of the religion. The ancient law-giver Manu has said, "Yenasya Pitro Yata Yena Yatah Pitamahah. Tena Yayat Satam Magram Tena Gacchan Na Rishyate." One should tread the path of his forefathers where there is no fear of danger and downfall; The Smritis emphasise the continuity of observance of Kula-dharmas and Jatidharmas, neglect of which drags the families to perpetual hell and destruction.

The holy scripture of the Hindus, the Gita emphasises, 'Sankaro Narakayaiva Kulaghnanam Kulsasya cha,' and 'Utsanna Kula Dharmanam Manushyanam Janardhana Narake Niyatam Vaso Bhavateptyanushushruma.' Sankara invariably leads the families and the family destroyers to Naraka and those whose family traditions are abolished suffer eternal hell.

Part 4, Chapter 1, clause 3, prohibits a man from marrying a second wife when the first one is living even though she is barren. Such marriage is not at all an offence but in some circumstances is encouraged by the Hindu Law. According to the holy scriptures the parents have no salvation without a son. 'Aputrasya Gatir Nasti, Swargo naiva cha naiva cha.' The very definition of the word 'putra' or the son says that he is one who saves his parents from the hell called 'Pum.' "Pum Namno Narakat Trayata Iti Putrah." Therefore considering all these one is induced to marry again for the continuity of the progeny, and the son through this wife confers according to Shastras spiritual benefits upon his step-mothers also. The sections means divorce of the first wife in case of a second marriage which is rather absurd and unfair on the part of the man when she herself recommends him for the same. The law not only disapproves such marriage but deems it as an offence which is rather a deplorable fact aiming at the ruin of the Hindu community.

As regards the succession and the principle of inheritance the present code introduces many new simultaneous heirs along with those previously recognized by Hindu Law. Inheritance according to the Hindu culture mainly being the competency of conferring spiritual benefit on the deceased and his ancestors. This statute is economically unsound and socially harmful giving rise to fragmentations of Hindu holdings and promotion of strained feelings among the simultaneous heirs. This is a terrible shock to the Hindu joint family and an unfeeling detriment to the whole community which undermines the economic source of the society. This resource to women is rather regressive and repugnant to their moral, social and spiritual advancement. Scriptures downrightly condemn her financial independence and social liberty at any stage of time which in the long run may surely give rise to moral corruption and social degradation. "Pita Rakshati Kaumare, Bharta Rakshati Yauvana, Putro Rakshati Vardhake, Na Stree Swatantryamarhati." Father looks after her before marriage, in her youth she is under the protection of her husband and in her dotage the son takes her care. Woman is the backbone or the bedrock of the basis for sustaining religion and national strength and prosperity. She is the queen of the house, the ministering angel. Vidya Vinayasampanna Grihinee. She is the inspiring force or the genius of the home which is the origin and the beginning of every form of social organization. The home is the nursery of the nation, the sweet place or centre wherein children are trained for future citizenship. Woman illumines the home through the glory of motherhood. She represents the divine mother and occupies her place here in home. We, Hindus, respect and worship her first more than anything, "Na Gayatrya Faro Mantro Na Matuh Paradaivtam." Such is the place of woman amongst us, Hindus. She is the origin, the fountain-source of the future citizen who ought to be pure, unalloyed and untainted. She is not an equal but an Ardhangi, a part and parcel of the man. Freedom to her is nothing but a great degradation and downfall from her level. "Streepumvatoha Prachalati Grihe Tasya geham Vinashti." The home is nothing but a burial ground where a woman behaves like a man possessing masculine qualities. Money and property in her possession will result in the disturbance of her peace dragging her

to the public and exposing her to the dangerous of the unscrupulous exploiters. She is exposed to the influences which obliterate her modesty, which is an important feminine trait, which is an ornament to her and which is the best safeguard of her virtue and character. She soon becomes independent which brings in various sets of troubles and degenerations. The new reforms will not in any way ensure their well-being and happiness but the ideals inculcated in the shastras will be wrecked and ruined.

The proposed legislation, far from being of any benefit in fact disastrous to the interests of the Hindus. It seeks to alter the fabric of a social system formulated after deep deliberation by enlightened sages and has served well through centuries. The competent authority to act in such matters are the venerable heads of communities but not a set of degreed persons influenced by occidental ideas and ideologies.

It is the duty of every self-conscious and self-respected member of the Hindu community to oppose and overthrow the proposed reforms with a single-voiced overwhelming majority. I, with all my heart, appeal to every body and individual of my country to condemn strongly and oppose this move which threatens to thwart and trample the well-established and widely recognized laws which govern our ancient civilization.

Such unwarranted interference in matters of religion and age-long convention has to be stopped. No stone will be left unturned in making a united and determined stand against such injurious legislation. No single Hindu will rest from his efforts to compel the authorities to drop these baneful reforms forthwith.

56. Prof. K. R. R. Sasry, M.A., M.L., Reader, Law Department, University of Allahabad.

Though the effort to codify Hindu Law is welcome and laudable, this draft Hindu Code is not exhaustive. It does not deal with all points dealt with by the provisions of Hindu Law at present.

The following amendments are necessary:—

1. Matters not expressly dealt with by the Hindu Code would continue to be governed by the provisions of Hindu Law.

2. Under 'adoption' the explanation to section 16 should read as follows in order to follow the same principle:—*child en-ventra mere is a child in esse*—which has been followed in clause 16, part I (Intestate succession):

Explanation.—“A person not actually born at the time of adoption, although he may then be in the womb and is subsequently born alive, is said to be living at the time of adoption for the purpose of this clause.”

3. In clause 19, part II dealing with the disqualification of unchaste wife: delete “unless he has condoned the unchastity.”

57. Sri S. Mahalingam, B.A., Souterganj, Cawnpore.

I make certain suggestions for alteration of the draft Code to make it more useful and bring it into line with cultured modern thought.

1. It is unjust to exclude the daughter of a predeceased son as an equal sharer with his uncles and aunts. The provision for succession of simultaneous heirs should therefore be corrected to read as under:

“The list of persons who are simultaneous heirs to the estate of a deceased person are: (1) his widow, (2) son or sons, (3) daughter or daughters. The simultaneous heirs shall have equal sharers in the estate of the deceased son or daughter if the son or daughter shall be only equal to what would be the share of the son or daughter if the son or daughter was alive.

Explanation.—If a man leaves a widow, a son, a daughter, two children of a deceased son and three children of a deceased daughter, the widow, son and daughter shall each be entitled to 1/5th of the estate, each of the children of the deceased daughter to 1/15th of the estate.”

2. In the case of property of a woman whether derived as Sridhana or as a share in her parents' estate after death the simultaneous heirs should be as in the case of a man except that the widower shall be substituted for the widow.

3. A heir should have the right to relinquish his or her claim to her share of an estate notwithstanding the fact that on the date of relinquishing he or she had heirs who in case of his or her death before the date the estate actually devolves would be simultaneous heirs to the estate relinquished.

4. No marriage contracted before the girl is 16 years old or before the boy is 20 years old should be valid. This section is in replacement of condition 5 of the valid marriage in Part IV of the Code and is absolutely necessary to prevent early marriages which is a bane to the welfare of the Hindu Society. Relief however should be given to a girl married before she is sixteen by making it obligatory on the other party to the invalid marriage to maintain the girl till she dies or marries. Marriage between parties to an invalid marriage at a later date when both parties are of proper age should be allowed.

5. In the causes of Divorce the period of insanity, desertion and suffering from a venereal disease is too long. It should be reduced to three years so that the suffering of the aggrieved party may not be too much prolonged.

6. Impotency of a period of the respondent for a period not exceeding three years before the date of institution of a suit when the applicant is at the same time potent should be valid reasons for divorce.

7. Ability to remarry a person whose marriage has been cancelled by divorce must be explicitly stated, the conditions being that the party is potent, sane and healthy.

8. A wife who has been divorced for reasons other than moral turpitude shall be entitled for maintenance from her divorced husband until she dies or remarries if she is unable to maintain herself out of her estate or be employing herself in a profession or calling accustomed to, before her divorce.

9. A husband divorced for insanity shall be entitled for maintenance from his wife, brothers or sisters if any of those relatives are in a position to maintain him, and if he has no estate devolving on him.

10. Under Chapter III, Part III, marriage shall be null and void in case of clause iv only if either party had a wife or husband living at the institution of proceedings. It is unnecessary to dissolve a marriage when the obstruction to it in the form of a husband or wife living has already disappeared by death.

58. Mr. Ram Behari Lal, Professor of Sanskrit, D.A.V. College, Cawnpore.

The draft Hindu Code must be passed into Law immediately to meet the urgent needs of the progressive sections of Hindus with the following changes where necessary:—

1. No share in ancestral property should be given to daughters when sons exist because on leaving their father's house and family on marriage, they assume the Gotra of their husband and become members of his family for which only they have interest naturally. Of course if no son exists, they must get all the ancestral property. No smriti in its present form sanctions a share in ancestral property for a daughter.

2. Daughters when married must share equally with the husbands their ancestral property, i.e., in a joint family there should be two owners of the share in the ancestral property which comes to a husband—he and his wife half and half as according to all smritis wife becomes half part of the body of the husband.

3. Females are not inferior to males and should not have inferiority complex which their present life or limited interest in property proves. It is absolutely essential that whenever any property ancestral or otherwise comes to them, they must have absolute interest. The Code quite rightly sanctions this.

4. (a) Divorce must be sanctioned. The Hindu Law books clearly sanction that a woman who menstruates can marry another husband if her first husband is dead, has abandoned her, is suffering from a terrible disease that he is afraid (to approach his wife) or had become an ascetic. Another husband is sanctioned for women in five calamities, i.e., when the husband is lost, is dead, has become an ascetic, has fallen off from the Hindu religion and has become impotent.

(b) Divorce should not be permitted on the ground of adultery because Hindu society is not so progressive that witnesses may depose in Court about it.

5. Marriages among all castes or Varna must be sanctioned. The following authorities sanction marriages among all castes or Varna and it is absolutely absurd and nonsense to say that a marriage is valid only when the parties belong to the same caste.

Manu Smriti says in Chapter III, verse 13, “It is sanctioned that a Sudra woman can be the wife of a Sudra, a Sudra woman or a Vaisya woman can be the wife of a

Vaisya, a Sudra woman, Vaishya woman or a Kshatriya woman can be the wife of a Kshatriya and a Sudra woman, a Vaisya woman a Kshatriya woman, or a Brahman woman can be the wife of a Brahman." In the time of Yajnyavalkya Smriti, the prejudice against Sudras manifested itself and therefore Yajnyavalkya Smiriti, Chapter I, verse 57 says a Brahman can marry a Brahman woman, a Kshatriya woman or a Vaisya woman, a Kshatriya can marry a Kshatriya woman or a Vaisya woman and a Vaisya can marry Vaisya woman and a Sudra only a Sudra woman.

In Paraskar Griha Sutras also the marriage ceremony is sanctioned exactly as is enjoined in Manu Chapter III, verse 13, that a Brahman can marry a Brahman, a Kshatriya, a Vaisya or a Sudra woman and so on.

It should be clearly mentioned in the Code that all marriages between Hindus, of whatever caste, sect, or community the parties may be, shall be valid.

One consolidated Hindu Law Code is absolutely essential for the whole of India and is overdue.

59. Mr. Balwant Rai, B.A., Gulab Bhavan, Buland Shahr, United Provinces.

Speaking as a whole the changes proposed in the Hindu Law are of far-reaching consequences, and in practice will cut at the roots of domestic harmony and Hindu culture, illiteracy, simplicity, religiousness and dependence will be exploited in a most niggardly manner by the husband's family to the great inconvenience of the parents and brothers of the wife.

Besides this general misuse, the Hindu family will be confronted with an other injustice also. Supposing the deceased has a daughter and children of a deceased daughter in this case the children of a deceased daughter do not come anywhere even though the other daughter dies issueless. Injustice is particularly done to the son of a daughter. On general principles and on other particular clauses much has to be reconsidered.

60. Mr. C. P. Chandra, Benares.

Her Majesty Queen Victoria's Proclamation stands prima facie against the "Hindu Law Code", the Hindu Marriage Bill and the Hindu Order of Inheritance Bill that are under legislation in spite of every pretence. Our Dharma Shastras can never be substituted by or reduced into any law book nor can they be amended by any exterior point of view.

I. The Muhammadans and the Christians who are buried in the grave, after their death, believe that their soul shall rise up on the last day of the judgment. The Hindus, on the contrary, believe that after death, they take birth again and again to undergo the "Transmigration of soul", a system in proceeding towards their "Moksh"—a kind of "Salvation," unlike others. If their "Samskar has been performed, they require the "Tarpan and holy cakes" to be offered to them after their death, by their descendants as laid down systematically in their Dharma Shastras, in the order of succession. Most of them offer the Tarpan and holy cakes, at one and the same time to the same deceased person from their respective branch. Thus, their whole group, one after another, follows the same order of succession and succeeds to the property of the deceased owners, in the absence of all preceding ones. The names of these successors are all included in the Dayabhag and Mitakshra schools, with a little difference in order about them. Their order of succession begins from the real owner's person, to his father's and then to his grandfather's, etc., in which males are always full owners. Their order is 1st, 2nd, 3rd, 6th, 7th, 9th, 10th, 11th, 12th, 13th, 15th, 16th, 17th, 18th, 21st, 22nd, 23rd and 24th. After these the daughter's son of the owner's son, grandson, and his brothers too are included as 25th, 26th and 27th respectively.

II. *Deviation of a century-old Hindu Law from our original Dharam Shastras.*—(a) In the face of such an order of succession, the daughter's son of the deceased owner is the 6th which entitles him to succeed to his maternal grandfather's share or interest even in a joint Hindu family, like sons and grandsons. Jointness or separation of his maternal grandfather, from his brothers, nephews, etc., does not stand against his succession. Nay, a daughter's son, born, in the lifetime of his maternal

grandfather succeeds him, in the same way, as a son or grandson, succeeds in the Dayabhag. The "full ownership right" vests in a daughter's son, from owner to the owner, then and there, for there is no full owner between him and his maternal grandfather.

(b) The life-interest of the widow (his mother's mother) and the daughters (his mother and her sisters) changes into maintenance charges, as in the presence of sons and grandsons. Their right of limited ownership or life-interest, whatever it be, which entitles them to remain in possession or acquire possession over the property, is nothing but a "mortgage in possession's" right.

(c) In short, a daughter's son is full owner, over the property of the deceased owner, his maternal grandfather since his death. He cannot be compelled to wait for the death of any one, except his own mother and his mother's mother, after the death of his maternal grandfather, for his full possession, over his maternal grandfather's property, whether in the hand of others or in the hand of such a widow who is not his mother's mother or such daughters who are his mother's sisters. The life interest of any lady, other than the widow who is his mother's mother can be change into maintenance charged, which can be paid by a daughter's son, side by side with his possession over the property.

(d) When a daughter's son, as owner, redeems the property of his maternal grandfather (1) after the death of the widow (his mother) or (2) along with his mother, (3) or in case of his mother being dead before or after the widow's death, the entire property of his maternal grandfather, which was in his name and possession prior to his death or at death-bed, falls to him. Such a redemption can be made by a daughter's son or by his heir, at any time, within 60 years, since the death of his maternal grandfather, provided the life-leases of the widow (his mother's mother) and his mother expire in the meantime. If however their life-leases extended to more than 60 years, a period of 12 years, since the death of the last surviving one, can be added. Neither the daughter's son nor their heir can be deprived of their succession, by the life-leases of other, provided they survived after the widow. Nay, a daughter's son born in the lifetime of his maternal grandfather is full owner over the property of his maternal grandfather whose full ownership right vested to him, either already or side by side the widow's right of possession, as mortgages in possession. A daughter's son, not born in the lifetime of his maternal grandfather, has an inferior right. Any transfer made by the widow or daughters, prior to his birth, cannot be set aside by him unless it was set aside by his mother or its effect was removed by actual succession and possession by her.

(e) A century-old Hindu Law (in spite of being an interpretation of our Dharam Shastras) under the combination of rulings, after being adapted to other laws and various maxims drawn from English and Roman Laws, could not intellectually reach our Dharam Shastras. All the abovementioned Bills, under legislation, attempt to justify the long-standing errors, coming down till today by giving them a new shape or law, without weighing the situation from beginning to the end.

III. (a) "Our lawyers in Law Courts, as well as our Representatives in the Assembly or Council are not our "Religious Representatives" to get the already existing Dharam Shastras, in law and legislature, substituted by their own, in the name of amendments, that their tone of thought is lost.

(b) No Hindu, under the circumstances, enumerated in this article can be compelled, under any law, legislature or order, to execute a "will" prior to his death. He can (i) neither specify any successor after him, (ii) nor can change order of succession, (iii) nor can bind any of his successors. The order of succession in our Dharam Shastras is most precise and its basis is very deep. Nothing can be added to or substituted from it. Similarly "No Divorce" among the Hindus, can be allowed, after natural relations. A Hindu marriage is a religious sacrament and the marrying parties, after the Sarda Act being passed, should be cautious prior to its celebration. It is not the outcome of contract, as in others. We cannot part with our Dharam Shastras or our faith in them. They are our greatest "Safeguards" of which we are little aware, as yet.

However, if necessity arose, we shall touch all points in details, exposing the deep-rooted principles of our Dharam

Shastras. What the real right of ladies and female issue is, under different circumstances, among the Hindus, will be shown. *Unnumberable Hindu owners' property and wealth* that are in the hands of others, who have no right to retain them in their hand any further, should be restored to the original owners or to their heirs—A topic worthwhile to be taken up these days shall be suggested by us.

61. Dr. Margal Dēva Shastri, M.A., D.Phil., Principal, Government Sanskrit College, Bénarés.

I have nothing to add to what I have stated regarding the provisions contained in the draft Bill on Intestate Succession and Stridhana, except to point out that the orthodox opinion continues hostile to the very idea of an ill-informed legislature, normally elected on political issues, to legislate on matters which have intimate relations with the religious life of the community. Consequently in case of an issueless person a statutory prohibition against a second marriage, although agreeable to modern notions on sex equality, excites strong opposition, and the orthodox opinion would insist upon providing for certain exceptional cases.

In the section dealing with 'maintenance' the words 'so long as she remains a widow' occurring in clause 5 (iii) may be deleted and the following words may be inserted 'so long as she remains chaste,' as Hindu Law does not recognize widow marriage in case of persons belonging at least to the three higher castes.

In the case of sacramental marriages, the alternative clauses 3, 4 and 5 are preferred to those given for the reason that the latter validate marriages between persons belonging to different castes, to which orthodox opinion is opposed, unless such marriages are sanctioned by custom. Chapter III relating to nullity and dissolution of marriages is obnoxious to orthodox opinion, as marriage is regarded as a sacrament and from the Hindu point of view, creates an indissoluble tie between the husband and wife and neither party can divorce the other unless divorce is allowed by custom as among the Sudras. In certain cases of marriages, such as between Sagotras and the persons belonging to prohibited degrees among the Sapindas, the wife is to be discarded but maintained as a mother, but the present legislation either makes such marriages null and void or regards them as valid, thus allowing the wife to contract another marriage or live in an incestuous union—contingencies to which Hindu opinion has always been opposed.

Coming down to the section on 'Adoption', there is no objection to abolish all other forms of adoption except the 'Dattaka', but other provisions—such as the right of the adopted son to the properties of the adoptive father follow from the section of the Code on Testate and Intestate Succession, which have already been dealt with in my last two letters referred to above and need not be reiterated here. I have only to add that the present legislation is much ahead of the genuine demand of the Hindus and should wait at least till the present abnormal times give place to a more peaceful era, when the Hindus may have more time and inclination to think about their social organization.

62. Mr. S. K. Roy, "Amrit Bhawan," Rae Bareilly (Oudh).

The draft Hindu Code and your Committee are encountering ignoble and irrational opposition from the conservative and orthodox sections of the community. But you must on no account allow yourself to be daunted by it. History records that whenever any reforms have been proposed, this section comprising mostly of behind-the-time fogey persons have always barked and yelped against them, ostensibly in the name of social good, but really for their own selfish motives; happily however, their ravings have seldom been of much consequence; the caravan of reform has moved on, letting these curs of society whine in vain.

The cry of a single Socrates deserves greater consideration than those of a million Tom fools, and if it is the wise few, impartial in outlook, and gifted with insight, not the simple-minded, unthinking, masses who can propound and speak on reformatory measures in the interests of the whole society. Hence you should beware of taking this opposition on its face value, i.e., on its numerical strength, but you must give consideration to the fact that the opposers for the most part consist of men who either have

to liquidate some unfair privileges by the enactment of the draft Code, e.g., orthodox 'Pandits', Sanatanists, etc., or who merely dance to the tunes of the former.

Now, as regards the draft Code itself, I submit that though the Code does not go far enough, yet it is a welcome step towards recognizing the due status of our women-folk whose emancipation is the 'sine qua non' of national weal. So long as women are debarred from their natural and absolute rights of inheritance to property, they will suffer from immoral inferiority complex and timidity which is one important cause of our national degeneration, for without healthy, educated and satisfied mothers the race can never improve, and without racial betterment, national well-being remains an idle dream.

The principle of divorce too must be recognized in Hindu Law in the interest of millions of our suffering women who will any day welcome liberation from the bondage of tortuous and callous husbands. But, you must bear in mind, Sir, that it must be given retrospective effect to be of real service, else a large number of genuine cases will be deprived of its benefit.

In the end I shall ask you to give the time-worn opinions of retrogressive men the lot they deserve, viz., the waste paper basket, and see that the draft Code is passed and enacted, especially in respect of the above provisions, in the interest of social justice.

63. Mr. Kumud Kanta Ray, Student, Middle Temple, London.

Section 3 of Part II of the draft Code provides that the rules of succession as framed in that part will apply to "Hindus dying intestate after the commencement of this Code." Now, a set of people, namely, those who married under Dr. Gour's Act (Act III of 1872 as amended by Act XXX of 1923), obviously raises some difficulties about succession to their property.

Section 24 of Act III of 1872 inserted by the Amending Act of 1923, provides that persons professing the Hindu religion who marry under that Act will be governed by the Succession Act as regards matters of succession. The effect of this new clause was that a person declaring himself to be a Hindu became a non-Hindu for purposes of succession, whereas a Hindu who disowned his religion would still remain a Hindu for purposes of succession. Obviously, the amendments referred to in section 6, Part I of your Code is intended, among other things, to remedy this defect. After 1946, as your Bill stands, Hindus whether they perform Hindu civil marriage or marry under Act III of 1872, will be governed by Hindu Law of Succession as embodied in the Code.

But what about the Hindus (including Buddhists, Sikhs and Jains) who married under Act III of 1872, as it then stood between 1923 and 1946? They cannot seek protection under the plea that by virtue of the direction given in clause 3 under column 4 of the First Schedule they will be governed in matters of succession by their personal law, that is to say Hindu Law. For your amendments specified in clauses 1 and 2 of the same schedule also take away the very clauses under which they married. The result is that such Hindus will not be allowed to be governed by Act III of 1872, under which they married, as it shall stand then.

The commentary on the margin against section 27 of Part IV clearly shows your intention to apply the same rules to persons who are Hindus whether they marry as Hindus or as non-Hindus under Act III of 1872. The effect of your Act will be that it will not cover the set of people referred to above who can reasonably expect the benefits of enlightened and just legislation. A suitable clause may, therefore, be introduced either in section 3 of Part II or section 27 of Part IV of your Code, clearly bringing the persons who married under Dr. Gour's Act under the operation of your Code.

64. Sri Sitaram Dwivedi, Mirzapur.

I welcome the attempt that the learned members are making in codifying the Hindu Law. This ought to have been done long before. The draft Code has become the subject of discussion in the Hindu society. The orthodox are opposing it and the progressive ones do not find it up to the mark of the times. The agitation of the orthodox ones is neither based on Hindu religion nor on any experience. Having both the facts in view I suggest the

following amendments in order to secure proper rights to womenfolk whom the Hindus have been trampling down for a long time in the name of religion :—

Part I.—In section 3 it should be provided that it has retrospective effect in all cases of living persons, who, if this Act were in force, had succeeded in accordance with the provisions of this Law. All limited rights shall cease at once.

Part II.—In section 4 it should be provided that no person shall be deemed to have made any will against the interest of any person who would succeed after his death beyond one fourth of his share.

Section 7 (a) should be amended to provide each widow a share equal to that of a son.

Section 7 (b) should be amended to give a daughter a share equal to her brother.

Section 8 (4).—A married woman should be given every right to succeed, where her husband can, to her husband's bandhus.

Section 13 should be amended in such a way that any woman who is in possession of any property by virtue of succession or otherwise as a Hindu widow with limited rights, shall be deemed hence forth as if the limited rights of a Hindu woman never existed.

Section 19 should be amended to deprive a woman who is living in adultery of her husband's property in a case during the lifetime of her husband she failed to rebut the charges of living in adultery in a Court of law where she was sued for this purpose.

Section 21 should be amended in such a way that any successor shall be entitled to succeed to the property coming to succession within twelve years from the date of the opening of the succession if such person reverts to Hinduism. If such a person is a minor he or she shall be entitled to succeed within 12 years from the date he attains majority.

Part III.—In section 3 the maintenance allowance should be extended to education and legal necessities.

In section 5 (8) an Adharmaj son should be given maintenance till he attains majority and afterwards he will get what a dasi son used to get before the Hindu Law was codified.

In section 5 (9) an Adharmaj daughter should be given maintenance allowance till she attains majority and after that she will get what a dasi son is entitled to get. Her marriage will not stop the payment of maintenance in any way before she attains majority. She will also be given the cost of her marriage.

In section 6 (7) no woman shall be deprived of her maintenance allowance by any will or otherwise unless she was given full opportunity in the Court of law for depriving her. In every case she shall be entitled to her maintenance till the decision of any Appellate Court given against her. The cost of the litigation on behalf of the woman should be borne by the person bringing the suit against her.

Part IV.—In section 5 a provision should be made to the solemnized marriage when it was not performed by the guardian or in case failing the guardian the consent of the District Judge. Any person marrying or aiding in marriage which has no legal foundation shall be punished according to Law. Any man or woman either before passing of this Act or afterwards who has lived as husband and wife without undergoing any form of legal marriage shall be deemed ideal married ones.

In section 29 a provision should be made for the dissolution of the marriages which took place even before passing this draft Bill on the grounds given in the codified Hindu law.

In section 30 a provision should be made for the dissolution of the marriages when husband and wife want to separate by mutual consent or when any one of them is guilty of cruel treatment or misbehaviour.

Part V.—1 (a) in every case the supreme guidance of any minor shall be the District Judge and other guardians shall be under him and the District Judge shall guide them in the interest of the minor.

Part VI.—The section should be amended to continue the local customs in adoption.

Section (3) is a very bad section. It has gone against the spirit of this Code. It deprives a daughter of her adoption. This section should be deleted and a provision should be made for the adoption of a daughter. An adopted daughter shall have the right of inheritance like that of a daughter.

As a man has a right to produce as many children as he likes through any of his wives, so after his death, his widow wives should be allowed to adopt any son or daughter jointly or severally. No restriction should be placed on members. The section 8 should be amended in the light of this proposition.

The restrictions placed on the adoption of a child up to clause 13 is unnecessary and injurious. This section should be deleted and in place of it the provision should be made to give full liberty and choice to the man who intends to adopt. An Adharmaj son or daughter should be made eligible for adoption.

Note.—My representative capacity is this that I am a member of the representative Assembly of the U.P. Congressmen and a delegate to the Indian National Congress.

65. The North-Zone Branch of the Convention of the Teachers of the Deaf in India, 12-A, South Road, Allahabad (General Secretary—Mr. Daya Nand Nagar).

I, as General Secretary, on behalf of the Committee of the North-Zone Branch of the Convention of the Teachers of the Deaf in India beg to ventilate our opinion through you to the Government, United Provinces, and the Government of India regarding the proposed amendment by the Hindu Law Committee, Madras, in clause 23 of Part II removing the bar to the right of inheritance for the deaf-mutes. The amendment seeks to entitle the deaf-mutes to inheritance, which is denied to them according to the law in vogue. As it is our duty to look after the interest of deaf-mutes we intend to support the present move as being in the right direction. The disqualification on the principle that "these persons are incompetent to perform the religious rites which conduce to the spiritual welfare of the deceased, should not now stand in the way to the right of succession to inherit the property, because the deaf-mutes receive the adequate and up-to-date scientific education. A very high percentage of these unfortunate deaf-mutes properly trained become very useful members of society able to support themselves and their family. As intelligence and ability make them fit to manage their own affairs, just like that of their fortunate hearing brethren, they must be given the right of succession to the inherited property. The doubts and anomalies regarding contradictory judicial interpretations given to the texts of Manu and Yajnavalkya on which their exclusion from inheritance was based, have been set at rest by the proposed amendment.

66. Sri B. Mangat Rai Jain, "Sadhu," Legal Practitioner and Publisher, "Sanatan Jain", Bulandshahr.

From the Hindi *Jain Gazette*, Delhi, it is learnt that Pandit Malkhan Lal Jain, Shastri of Morena has been produced as a witness by Seth Perahadi Lal Patni (Jain), Delhi, General Secretary, All India Digamber Jain Maha Sabha as a representative of the Jain community and in his statement he has supported the unrestricted right of a Jain widow to adopt without the consent of her husband and other relatives and has stated that she can adopt even an orphan, to the effect of which there are numerous rulings of the various High Courts which have been discussed in our article published in "Sanatan Jain" of December 1944, on pages 2-4, a copy of which has already been sent to your honour previously. It is also known that he has stated that widow remarriage is against Jain Shastras and those who perform widow remarriage are outcasted. This statement of the above named Panditji is wrong and cannot be borne from the Jain Shastras. There are 84 sub-castes among the Jains such

as Agarwalas, Khandelwalas, Parwaras, Saitwalas, Oswalas, Gangerwalas and others. Widow-remarriage is freely allowed among the Setwalas to which Shree Shree 1008 Shree Acharya Shanti Sagarjee Maharaj belongs who is the greatest saint of the day among the Dig Jains. Besides this almost all other sub-castes have adopted this custom of widow remarriage since 17 years or more when the late Jain Dharam Bhushan, Dharam Dewakar, Fatituddharak, Brahanchari, Sheetal Prashadji started "Sanatan Jain" paper in 1927 and organized Sanatan Jain Samaj to which thousands of Jains belong. There is one Sanatan Jain Widhva-Ashram at Akola (Berar, C.P.) and thousands of Jains have performed widow re-marriage and they have not been out-casted. On the other hand, All-India Digambar Jain Maha Sabha is only an old and dead body containing a limited number of members of old age and of old ideas.

Neither All-India Digambar Jain Maha Sabha is a representative of the Digambar Jains in true sense nor Pandit Makkhan Lal Jain Shastri of Morena can be regarded as a representative of the Digambar Jains.

On account of the narrow mindedness of All-India Digambar Jain Maha Sabha, a new institution called All-India Digambar Jain Parishad has been started by the enlightened and educated people who have adopted—

- (1) the system of inter-caste marriages among the various sub-castes of the Jains such as mentioned above,
- (2) the system of purification of the persons who had been outcasted in olden times.
- (3) the suppression of the evil of holding feasts at the time of deaths, and
- (4) the conversion of non-Jains into Jainism, an old custom.

But even this instituton has not patronised widow-re-marriage; so there arose a necessity of an institution, which would also patronize this useful practice of widow-remarriage, a need of the day. Hence a third institution named as All-India Sanatan Jain Samaj was started 17 years ago, with its Headquarter at Wardha, C.P. B. Akshay Kumar Jain, B.A., Rais of Vijay Garh (Aligarh) is its President and B. Hira Sava Dome Jain of Wardha is its General Secretary. Pandit Chandor, Sen Jain Vaid of Etawah, U.P. is its Treasurer and Purohar Mantri, B. Bishamber Dass Gargiya (Jain) of Jhansi is the editor of *Sanatan Jain* its organ and Vijakaran Acharye Pandit Ransi Dhar Jain of Bena-Etawah (C.P.) is another editor of the same. I am its publisher and B. Manohar Nath Jain Vakil of Bulandshahr is its manager. Karam-Vir Seth Kastur Chand Jain is the Secretary of the Sanatan Jain Vidhva Ashram at Akola.

67. Santana Jain, Buland Shahar.

HINDU LAW CODE AND JAIN LAW.

Discussion is going on, at present, in the newspapers about the Hindu Law Code and the Jain Law and efforts are being made to get unanimous amendments incorporated in the Hindu Law Code with amendments incorporated in the Hindu Law Code with a view to amending the law for the Jains according to the Jain Law. It would, be proper, here, to mention that the Jain widow also has the same rights, as the Hindu widow enjoys under the Act of 1856, to the property of her newly married husband and that nobody is entitled to dispute her right, in law. No Jain Shashtra prohibits remarriage of a widow. The only injunction for her is to remain chaste. Those child and young widows who are unable to maintain perfect chastity can lead a religious life only after remarrying themselves. In the present age, many women become widows due to the war and infectious diseases, and their remarriage proves very beneficial to the Society. Thousands of widow marriages have been performed in the Jain community. The Sanatan Jain Samaj came into being only with this very end-in view. We, therefore, request the Jain members of this committee not to deprive widows of their rights simply with a view to exhibiting their sham piety before the world. We, also, request the members of the Hindu Law Committees to give sufficient opportunity to All-India Sanatan Jain Samaj, Wardha, to oppose any proposal made contrary to the above view. If a contrary view is taken, it would be an act of gross

injustice towards the society reformers and the celebrities like Ishwar Chander Vidya Sagar, Sir Ganga Ram, Lala Jamma Das Bajaj and Brahanchari Shital Prasad.

PROTECTION OF THE RIGHTS OF JAIN ORPHANS AND JAIN WIDOWS—MEMORANDUM TO THE HINDU LAW COMMITTEE.

The Jain community is greatly dissatisfied with the draft Hindu Code as published by the Hindu Law Committee for the information of the public.

The law and custom confers on the Jain widows the absolute right for adopting without authority from her husband and the consent of his collaterals. An orphan can also be adopted. Married men and men of any age have been and are still being adopted among the Jains. In the draft Hindu Code, Jain widows and orphans have been deprived of their existing and recognized rights in this connection. The All-India Digambar Jain Parishad and the All-India Digambar Jain Mahasabha have, therefore, made a strong demand for the protection of the aforesaid rights in their Joint Memorandum. The Memorandum has also strongly opposed on weighty grounds, the proposal to put daughters also in the first category of heirs along with the sons and has drawn the attention of the law committee to the consequent danger of disruption of the beneficial and traditional system of Joint Hindu family.

The introduction of the divorce system, has, also, been strong opposed as being detrimental to the happiness of the Hindu family life. The Memorandum has been sent to the Hindu Law Committee after its completion.

68. Mr. Ogra Sen Jain, Secretary, All-India Digambar Jain Mr. Parishad, Delhi. ("Sadhu.")

NOTE (1).

We were greatly surprised to know that while applying the Hindu Law to the Jains, the attention of no member of the Hindu Law Committee was drawn to the fact, that among the Jains, the Jain widow has a right of adoption recognised by Law and Custom even without the authority from her husband and the consent of his collaterals. Besides, even an orphan and a married man can be adopted. This is the special feature of the Jain Law, which has given this right to the widow and has not rendered her as helpless and dependants on the others, as the Hindu widow under the Hindu Law. The Jain widow is not subjected to such humiliating treatment by her relations as the Hindu widow who, sometimes has to commit suicide or to change her religion due to the harsh treatment of relatives. It could not be understood as to how this beneficial provision of the law escaped the attention of the members of the Hindu Law Committee, who are anxious to introduce divorce on the ground of its being a beneficial measure. This is the law for the Jains, which is quite whole some and we hope that the Committee would incorporate this amendment. We are also of the opinion that this provision should also be extended to the Hindu widows. It will have two advantages. Firstly, the condition of the widows will improve. Secondly, if the Hindu widows will have a right to adopt orphans, the number of such orphans as are a burden at present on the Hindu Society will decrease the right to adopt a married man is based on the ground that after the marriage, the character of the boy and the nature of the wife become known and it can't, also, be ascertained whether the couple would carry out the orders of the widow and serve her with affection. Among Jains, the custom allows adoption of the daughter's son and the sisters' son and the widow has an absolute discretion to adopt any one of them. On this subject, there are a number of decisions given by High Courts and the Privy Council, some of which are quoted below:—

A.I.R. 1939 Oudh, 113=180 I.C. 129, Nemi Chand v. Sanatan Chand.

It is well settled that a Jain widow can adopt without authority from her husband the consent of his collaterals. This is common to all the Jains and there is no difference on this point among the different sects of the Jains. Among Jains adoption confers on the adopted son all the rights of a natural born son and he succeeds to all the property of his adoptive father. A.I.R. 1939 Bombay 377, Hira Chand v. Rowji Sojpell. A.I.R. 1921, Bombay 147=45 Bombay 764; 23 Bombay L.R. 227.

Among the Jains, adoption, is a mere temporal or secular arrangements and has no spiritual or religious object or significance. The adoption of an orphan boy is valid by custom among them. A.I.R. 1924 All. 49; 21 A.L.J. 478.

Custom allows adoption of daughter's son among Agarawala Vaishnavas. 56. I.C. 81: No religious ceremonies, such as giving and taking are essential among the Jains and a married man can lawfully be adopted among the Jains.

2. By making the daughter also an heir like the son, the favour has been shown to women. There can be two reasons for this. The emulation of the example of our Muslim neighbours and the consideration that, in the absence of the son, the property passes to the other relatives, how so ever distant, of the deceased person, while the daughter, so lovingly brought up, is deprived of it under the law. If the first consideration has prompted the Committee to include the daughter in the list of heirs, we do not agree with them, because, on this very basis, the partition of the property is effected, among the Muslims in a number of small shares, which not only leads to interminable litigation but also reduces the value of it. Now, the question is whether the daughter should receive anything. Among the Hindus, so long as the brother and his wife are alive, they continue to give presents, etc., to the sister in the shape of Bhat and Chhuchhak. This makes the sister steadfast in her love towards her brother and his wife and no occasion arises for any such misunderstanding as is witnessed among the Muslims. Besides, if the daughter is deprived of her paternal property, she and her offsprings receive that property which would have otherwise passed to her husband's sisters. This provision in the draft Hindu Code is not only not beneficial but also detrimental and humiliating to the Hindus and the Jains. Of course, the daughter should inherit the

property in the event of there being no son or grandson of the deceased person as is the custom among the Jains. This is the settled law for the Jains and we hope that a similar provision will be incorporated in the Hindu Code when the attention of the Committee is drawn to the absence of it. If this provision of law is made applicable to the Hindus in general also, the Hindu community would feel extremely satisfied in our opinion. But it would be a great mistake to treat the daughter also as an heir along with the son.

3. Some people have begun to feel pity on women in general because some of them have been badly treated and harassed in certain cases, and want to introduce divorce among the Hindus also as a legal measure. But it would be a great mistake to do so. The traditional feeling of love between a Hindu husband and a Hindu wife will altogether disappear and divorce proceedings of all description or false, will become the matter of daily occurrence. If a misunderstanding arises at present between the husband and the wife the couple is reconciled after the removal of it. But this will become impossible after the acceptance of divorce as a feature of the Hindu Law. Divorce suits will be filed on the occasion of the least provocation or misunderstanding or on the suggestion or support of a third person. The goondas will have a greater opportunity of harassing the innocent people. The Indian women of to-day are not so well-educated as to derive proper benefit from the divorce law. On the contrary, there is a likelihood that they may suffer harm on account of this in case they act on the persuasion of inducement of others. So far as we understand, women in general, except a few educated ones whose number is negligible, are opposed to this and consider the incorporation of such a provision for them in the law as an insult. We hope that the members of the Hindu Law Committee would not humiliate us by being influenced by the Western atmosphere.

V. BIHAR.

1. Chief Justice, Patna High Court.

The Hon'ble the Chief Justice is in favour of codification on principle, but will express no opinion on the proposed changes as they are a matter for the Hindu community.

2. Mr. Justice Meredith.

The matter is of course primarily one for Hindus. Speaking for myself, I am on the whole in favour of codification. The objects to be attained thereby are (1) unification, (2) simplification, (3) certainty, (4) accessibility. These objects have, I think, largely been attained in the great Indian codes—the Indian Penal Code, the Indian Evidence Act, and the two Procedure Codes.

The disadvantage according to orthodox English legal theory is over-rigidity and lack of adaptability. True, in the past, peoples have been known to have become slaves to their codes, but under modern conditions amendment by legislation is not difficult and it is possible even for codified law to be kept abreast of changing conditions in a developing community.

It is important that the law should be accessible to the people, and easy of reference by anyone, and not, as under the English system, the trade secret of a close corporation. Codification is calculated to attain this object. It seems to me a pity that the Code cannot be made complete, owing to the inability of the Central Government to legislate on some subjects, e.g., certain provisions on the subject of maintenance which are part of Hindu Law cannot be inserted in the Code for that reason.

I am entirely in favour of the extension of the rights of Hindu women contemplated in the Code, but consider that if the changed law is to work successfully it must be accompanied by an intensive policy of female education.

I do not feel competent to deal with the provisions of the Code in detail, but some of them appear odd. For example, if venereal disease is to be a ground of divorce at all, why wait seven years? If the object is to prevent communication to a spouse, this would not serve the

purpose. If it is to provide an incentive for seeking cure, then also it would come too late. Generally speaking, however, the provisions of the draft Hindu Code, where they modify existing Hindu Law, seem to me progressive and sensible.

3. Mr. Justice B. P. Sinha.

I entirely agree with the views expressed above.

4. Mr. Justice J. Imam.

I have nothing to say about the general provisions of the draft Hindu Code.

Sections 20 and 22 at pages 14 and 15 of Part II of the draft Hindu Code, require consideration. Notes of the Hon'ble R.B.E. with reference to similar provisions in the Hindu Code, Part I (Intestate Succession) Bill should be seen once again. I think there is much to be said for the suggestions made by him therein, which are relevant to the provisions contained in the sections mentioned above in the draft Hindu Code.

5. Mr. Justice R. B. Bevoor.

I agree with the general remarks of the Hon. J.E.D. about codification. I do not wish to express any opinion on the question of policy such as the extension of women's rights and the abandonment of the Mitakshara system of joint property, as these appear to me primarily questions for the decision of the Hindu community.

In connexion with clauses 20 and 22 of Part II, I would draw attention to my note on clause 19 of the Hindu Code, Part I (Intestate Succession) Bill. My criticism of that clause seems to apply almost as accurately to the present clauses.

Assuming that it is decided to abandon the Mitakshara system of holding joint property, I do not think that clauses 1 and 2 of Part III-A will work satisfactorily. Clause 2 is said to have been added tentatively; but unless the

acquisition of right by birth is abandoned, I think the provision that all devolution shall be by succession and not by survivorship will apply to families governed by the Mitakshara school of law. Under that system it is not the interest of any individual which devolves by survivorship but the family property as a whole. If the Mitakshara system is to be abandoned, I suggest that on the passing of the Act, or on the happening of a specified event a complete partition between all members of the Mitakshara joint family should be deemed to take place, and thereafter there should be acquisition of rights in property by birth and all property should devolve by succession and not by all survivorship.

6. District Judge of Muzaffarpur.

The changes proposed will perhaps go against the very principles of existing Hindu Law derived from the ancient Hindu Shastras and established by long usage and custom prevailing in the country.

7. The Judicial Commissioner of Chotanagpur, Ranchi.

I am in favour of this amendment.

8. District Judge of Shahabad.

I agree with the principles underlying the draft Bill.

9. District Judge of Saran.

On a reference to Part II (Intestate Succession) of the draft Code, it appears that widow, son, daughter, etc., have been made simultaneous heirs. This will apparently destroy the principle of co-parcenary under the Mitakshara school, a system which, in my opinion, has been working quite satisfactorily so far. The inclusion of the daughter in the first class of the simultaneous properties is not proper. The daughter's name should, therefore, find place in the second entry below the simultaneous heirs named in the first entry.

The provisions regarding marriage and divorce in Part IV of the draft Code are, I am afraid, against the religious sentiments of an average Hindu. The rule imposing restrictions on the number of wives a person may have at one time is, no doubt, salutary to some extent but I suppose it is a common belief among the Hindus that a man having no son to offer *pinda* to him after his death cannot get salvation. In these circumstances, it would not, I think, be desirable to deny the second spouse to such a man in all events as is proposed to be done under the draft Code. As regards divorce, it can very well be had in accordance with the provisions contained in Act III of 1872, if the marriage takes place under that Act. Consequently, those people who are less orthodox and are keen on having divorce may have their marriages recorded under Act III of 1872 but the purity of Hindu notion about marriage which is a sacrament and not a contract as in cases of civil marriages should not be polluted by the introduction of the divorce system in the Hindu Code itself.

As to adoption (Part VI), there does not appear to be any good reason for extending the age-limit of the boy to be adopted from 5 to 15 years. The reason for fixing the age-limit at 5 years in the Dattaka Mimamsa apparently seems to be this, that grown up boys may not regard their adoptive father as their real father and may not forget the affection of the real parent and may further find it difficult to adapt themselves to the environments of the new house. The age-limit should not in any case exceed 8 years though it will be desirable to have it fixed at 5.

10. District Judge of Purnea.

Even a cursory reading of the draft Code would show that the proposed changes are far-reaching in character, and that they should not be allowed to be made on the ground that they strike at the very root of the Hindu religion, culture and society in perpetual bondage, nor I think the Hindu Shastras ever meant to do so. All that the Shastras said was that the females being the weaker sex deserved to be looked after by the stronger sex, namely, by the males. There is no doubt that there are some defects in the Hindu society due to which the females have to undergo many hardships and trouble and drudgery. The root of all these evils is the lack of education amongst the males and the females in our society and not in the

law which we propose to change. That evil must be done away with if the position of the females in the Hindu society is to be improved.

The proposal for giving an absolute estate to a female strikes at the very root of the theory of sapindas and it will lead to many troubles and litigation in families which were formerly unheard of. The ladies unfortunately will be in most cases but creatures in the hands of some scheming relatives or servants and at the cost of the estate earned by somebody these scheming people will have a merry time.

The proposal for giving a share to the daughter in a Hindu family even when there is a son is quite unnecessary. Everybody knows that in a Hindu family, specially in the case of a middle class Hindu family, the giving of a girl in marriage tells heavily on that family. In most of the cases, the family has to mortgage their properties in order to give the girl in suitable marriage. If in spite of this the girl has to receive a share in the joint family property it will not be beneficial to the girl herself, but it will only mean that her husband or her husband's relatives will be on the look-out for that share and it will be a source of constant litigation between two families who are supposed to live in very cordial relations at present at least.

The proposal with respect to divorce even in the case of a sacramental marriage is, to say the least of it, highly prejudicial and it strikes at the very principle of marriage according to the Hindu Shastras. When a marriage takes place according to the Hindu rites, the couple are joined permanently in presence of *Agni-devta* for good or for evil. The proposal for allowing a divorce in particular cases will lead to many unhappy litigations and reciprocal abuses in open court from which the Hindu society is so far immune. The wife has at present every right to remain aloof from her husband and if she is being ill-treated by him for any other reason, I do not think that the giving of the right of divorce will improve the case of females in any way whatsoever.

The proposal that a Hindu male or a female may repudiate his or her marriage subsequently on some ground and seek for a dissolution of marriage is not proper in my opinion.

But in view of the sweeping changes which the draft Code seeks to make in the laws which have governed the Hindu society up till now, especially in the provinces governed by Mitakshara Law, I think that it would be desirable, if the Code is enacted after this matter is brought specially to the notice of the electorate, and not by the present legislature whose election has become overdue on account of the War.

11. District Judge, Dharbanga.

Some of the changes proposed in the Hindu Code as at present drafted are highly revolutionary in character. For example, amongst the simultaneous heirs in Part I, clause 5, class I (i), the daughter has been included along with the son, the son of a predeceased son and others. Another instance is the abolition of the Hindu joint family by clause 1 in Part III-A. In my opinion, such changes are not likely to be received with favour by the Hindu public at the present time.

12. District and Sessions Judge, Patna.

In my opinion legislation of this character ought to be taken up when normal times are restored.

As regards some of the particular clauses in the draft Code, there has been criticism of clause 12 in Part II of the Code. It has been suggested that clause 12 should be enlarged and the right of pre-emption should be given to the male heirs when transfers of ancestral properties are proposed to be made by female heirs. As to clause 5 in Part VI, it has been suggested that the age of fifteen is much too low for the capacity to adopt in the case of a Hindu widow. At that age she is likely to be influenced by others and will hardly be in a position to make an independent choice.

13. District Judge, Gaya.

The provisions of the draft code are, in my opinion, not wholly salutary. So far as intestate succession is concerned, one finds that daughters have been made

heirs like sons. There can be little doubt that this is mainly, if not entirely, due to the fact that compared with men our women are at a very great disadvantage. The proposed change may ameliorate the condition of females in some cases, but speaking generally, it is not likely to effect any real improvement. A married woman, if she has a father-in-law or a husband, has hardly a voice of her own. It follows therefore that the share she will get in her father's property in law will in fact belong to her father-in-law or her husband. If she asserts her right there will be dissension in the family. Then again the proposed change will lead to a further reduction in the shares of heirs and may in many cases introduce strangers—sometimes unwelcome strangers—in the family. Married women would in almost all cases like to dispose of their shares and any body who has the means may purchase them. What this will mean in a society essentially orthodox may be better imagined than described. Many girls, particularly those who have had some education may very well refuse to marry and this so far as the moral standard is concerned may have far reaching consequences.

So far as the other provisions are concerned, I am inclined to the view that they are what they should be. The recognition of civil marriage in Hindu society has become necessary. Of course, those who are high caste Hindus will prefer sacramental marriage as at present but civil marriages are by no means rare and with the march of time there may be more of them. If the Hindu society is to put a ban on such marriages the position will be very unsatisfactory indeed. The much maligned caste system will have to face a severe trial if civil marriage, as proposed, is introduced but the world has changed in recent times and it is still changing. If a system is purely artificial and in a state of decadence as many people believe the caste system to be, it has no right to stay.

The provisions relating to nullity and dissolution of marriages maintenance, minority and guardianship and adoption are, in my opinion, not open to any objection. Most of them are already in existence. Only they have been codified. They may be adopted.

14. District Judge, Manbhūm Singhbhum.

I. *Intestate Succession.*—(a) Although the proposed legislation regulates intestate succession of heritable property, it appears that the list of enumerated heirs in Part II, clause 5 of the Code upsets the system of the Hindu law of succession. It is neither wholly based upon the nearness of blood nor on the principle of offering of *pindas*.

(b) The distribution of share among simultaneous heirs (vide clause 7 of the Code) is against equity and justice. A daughter is allotted half share of a son as an absolute owner in a heritable property. If the deceased intestate leaves behind him a son and a large number of daughters, the latter would get the major portion of the heritable property with no obligation whatsoever in regard to performance of *shraddh*, etc., of the deceased as also other duties of the family (including *Dev-seva*, if any) which are incumbent upon a Hindu son according to our religious conception of filial and other duties.

(c) The daughter gets a double share—one in her father's inheritance and the other, in her husband's property. In addition, she gets a major portion of the corpus of the property in the shape of dowries and other gifts on the occasion of her marriage. The allotment of share appears to be unduly in her favour.

(d) The idea of conferring an absolute estate on a female by inheritance is bound to disintegrate Hindu family properties, introduce aliens therein (in the event of transfer which will happen in normal course of things) and bring in various complications and misery to the members of the family, destroying the fabric of the Hindu society.

(e) The definition of "stridhan" (vide clause 13 of the Code) is evidently too wide and requires modification.

(f) Change or abandonment of religion should be made a disqualification to inherit.

II. *Marriage.*—(a) A marriage of a Hindu being a religious sacrament, it should be left to be performed according to the Hindu Shastras and custom, if any, prevalent in any Province. It should not be made subject to any codified law.

(b) It is not desirable to introduce changes in the prohibited degrees of relationship of marriage, inconsistent with the principles of the Hindu Shastras.

(c) The right of having a second wife in the lifetime of the first should not be conceded to a male except where second marriage is necessary merely for the purpose of procreation, as when the first wife is proved to be barren.

III. *Divorce.*—(a) Dissolution of marriage is foreign to the idea of a Hindu. The marriage of a Hindu is understood to create an indissoluble tie between the couple. The right to divorce if allowed would lead to immorality, unfaithfulness and a spirit of unjustified independence.

(b) Exception may, however, be made where the civil marriage is performed which does not partake of the character of a religious union.

IV. In other respects no comment need be offered.

15. District Judge, Monghyr.

The Hindu Officers are opposed to the draft code on the whole, mainly on the ground that the Legislation will have the effect of breaking up the solidarity of the Hindu families, and much of it is against their religious sentiments. A Hindu 'nana' or 'nani' in this Province will not even take water at the place where their daughter is married and by this legislation they are sought to be made heirs.

They are also against the idea of divorce.

16. Bar Association, Chapra.

1. In the definition of "Stridhan" in clause (j) of clause 5, we should like to omit the word 'or arrears of maintenance,' because it will lead to various complications.

2. *Maintenance*: In section 3, column (1) we should like that after the word 'residence' the words "and also other absolute necessities, for instance, medical treatment, etc." be added.

3. *Re: debts to have priority.*—Clause 8.—We should like to add the words "except those for immoral purposes" after the words 'deceased'; otherwise it would be setting a premium on immoral debts.

4. *Sacramental marriage.*—We should like to add the following clause (b) after the word 'idiot' or 'leper, impotent or suffering from venereal diseases or from Pthisis.'

17. Darbhanga Bar Association.

The Association has two serious objections to it. The first is that the Federal Court has held that the Central property and to that extent Hindu women's right to property Act was declared *ultravires* and the Provincial legislatures had to re-enact it in order to validate its universal operation. The Code will be open to this objection as well.

The second objection is that it is not framed by Hindu members well versed in Hindu Shastras with the result that a revolutionary anti-shastra Hindu Code is produced adversely touching the very structure of Hindu society giving a violent shock to people's religion, beliefs and traditional mode of succession. At least it is desirable that so important a legislation must not be rushed through in this abnormal time when the majority of the people's representatives are absent from the legislature. It would be fair to the Hindu populace who will be affected by this Code to have the consideration of this Code taken up after a fresh election so that the country may accept or reject this Code after full consideration. To do otherwise is to ignore the public opinion and rob the people of the right to be heard, consulted in this important legislation.

The Association is therefore of opinion that the legislation be postponed till normal time returns.

18. District Bar Association, Patna.

The Association do not approve of the proposed legislation in the way in which it is sought to effect the existing Hindu Law. The Hindus and their laws are an example of "unity in the midst of diversity". Dayabhaga is natural to those who are governed by it as Mitakshra is to those who are governed by the latter. The proposed law would do away with the different laws and impose upon the Hindus new legal ideas, mostly foreign to all systems of Hindus.

To a Hindu men and women are equal from some points of view and altogether different from another, while one has a preference in some matters over the other he can never conceive that a woman is half of a man. The proposed law will force the Hindus to think in terms of the Quran that two daughters make one son.

The True Hindu Law, of course, gives a father an absolute right of disposal over ancestral movables and even over the income from immovables but it offends even against the latest and most advanced theories of man (socialism) that he should have the right of squandering away immovables which he never acquired.

The simultaneous succession of heirs is not the less objectionable especially because it consists of mostly a group of men, women, children and old people.

The legislation may codify the existing law and may amend, i.e., declare the old law where judicial decisions have gone astray but not transplant laws of the desert into the fertile lands of India.

It is better if after preparing a complete code a plebiscite be held or people be given an option to make a registered declaration if they want to adopt the new law and those who do not make such a declaration should be governed by their old law. The replacement of the Hindu ideas of Shastric Law by the Quranic law is always repulsive to the sentiments of Hindus.

II

Hindu Codes as they exist or as they have been handed down to us are not the handiwork of an individual or a group of individuals, but a mere collection of the laws as they obtained at a particular time or in a particular locality. Sadachara, Deshachara and Kulachar combined to bring about modifications whenever the society needed it. But this was always from within and was never imposed from without. Hindu law grows and is not injected. So any arbitrary imposition of rules from the legislature is repugnant to the religious and legal notions of the Hindus.

Next the sitting members of the Legislature did not get any mandate from the Hindus to change their laws. For every radical change in the Hindu law, a plebiscite of the body of persons affected should be taken. If this be not feasible, at least the changes proposed should be an issue of election, so that the combination of Muhammadan and non-Muhammadan members of the Legislative Assembly may not be alone able to impose arbitrary or malignant rules on the unknowing millions.

Thirdly, the proposed changes are wayward, irrational and improper. What is most striking in the changes is that spiritual benefit has scrupulously been banished. Marriage to Hindus is not a merriment but an obligation for continuance of the family traditions. It is payment of the Pitri rina, when a son is born. There is no scope for limitation on the number of wives when a son is not born. Then heritage is given for continuing the family traditions, and is not a right of simultaneous heirs who owe no obligation to the deceased. Further, divorce without dowry debt is an irrational proposal. This adoption of the Quranic succession cuts at the root of the Hindu ideology. Those who feel discounted may avail themselves the right of making wills, but should not inflict their whims on others who do not want it.

We are totally opposed to this legislation,

19. Bar Association, Purnea.

The provision of the proposed Hindu Code was discussed at length and the majority of the members are against the proposed Code as they are of opinion that it is mainly against the fundamental principles of Hindu Law, Hindu rites, Hindu religion and also against time-honoured customs. Some of the members oppose the provision of 'divorce'. Almost the majority of members are of opinion that as long as this Code is not more widely circulated amongst the people at large such far-reaching legislation should not be enacted.

20. Bar Association, Monghyr.

Work of an Utopian.—The sponsors of the draft Hindu Code aspire to build an Utopia for the Hindus living in British India by substituting a new so-called codified Hindu Law in respect of intestate and testamentary succession, marriage, divorce, guardianship and minority and adoption, in the place of the existing one in respect thereof. The guiding principle of the framers of the Code has been, in their own words to formulate "a Code of Hindu Law which should be complete as far as possible", to avoid the evils of piecemeal legislation on the subject and to evolve a uniform Code of Hindu Law which will apply to all the Hindus by blending the most progressive elements in the various schools of law which prevail in different parts of the country." Now the question arises as how far this is practical and suitable for the people for whom it is intended.

Hindu Law is a crystallized mass of time-honoured custom and usage of the people.—No one who is acquainted with the A, B, C of Hindu Law as it exists to-day will gainsay that it is the product of, customs and usages of people as conditioned by the political, social and economic circumstances from time immemorial.

It is an ever-growing thing like the common law of England. To chisel and round off Hindu Law as has been done in the draft Hindu Code under review is to stultify and deaden the very spirit and motive force of Hindu Law.

Common law not yet codified.—Why should there be any hurry about codification of Hindu Law especially during war time. Hunger and death stare in the face of the people; some of the eminent persons who can better anticipate the consequences of this legislation are behind the prison bars, while many more are in the battle-fields.

Customary law superior to written law among Hindus.—It has been settled now by the highest Tribunal "that under the Hindu system of law, clear proof of usage will outweigh written test of Law". This being so the sponsors of the Code are clearly wrong in abolishing all customs and usages expressly saved.

Anomaly.—There would be a great anomaly if the draft Hindu Code be passed into law. A confusion will arise involving many families in endless ruinous litigations. There would be one law for British India and another law for Indian states. Again under the Government of India Act, 1935, the Central Government is not authorized to legislate on all matters except those provided in list No. 1 appended to the said Act. So the evil of piecemeal legislation will still persist. There would be one law for heritable property as defined in the draft Code and another set of law for agricultural lands in respect of which the Central Government is not competent to legislate. One may ask the framers of the draft Code whether this is the type of uniformity and certainty which they mean by their avowed objects published with the Bill.

Primogeniture why retained.—Law of primogeniture prevails in India among independent and semi-independent native states and big families like Maharajah of Darbhanga. The framers of the draft Code seeing that they would receive a hard knock out from them has wisely saved this law but feeling quite confident that they would easily tide over the opposition from the poorer Hindus, they are hurling upon their head of those dumb millions "a baneful law."

Sheer waste of public revenues.—The type of codification as envisaged in the bill is a sheer waste of public revenue.

Freedom of religion and faith which has been left untouched by the sovereign will of the State by the sagacious Queen Victoria is going to be surrendered by a handful of so-called pioneers.

Any change in law must be made after proper representation.—If any change in law is needed let there be adequate representations in a proper way. India unlike England is a vast country. Any legislation which is going to effect over 30 crores of people almost one-tenth of the human race should not be blindly hurried through the legislature after the manner of England.

No drastic change in personal law desirable till complete independence.—The framers of the draft Code hardly realize the grim reality that no uniform law can be modelled for the entire Hindu community without full responsible Government or complete independence.

Law of marriage indissolubly linked with the law of property (Succession).—Hindu Law of marriage is vitally linked with Hindu Law of Succession. Sapindaship is the soul of Hindu Law. By creating 'simultaneous heirs' the framers of code would produce inequitable results. A daughter succeeding with the son, is a double gainer rather she is a triple gainer in some cases. She inherits under the draft Code both in her father's house as well as in her husband's house without any liability. Moreover under the prevailing customs a huge dowry as well as *stridhan* also go to enrich the daughter directly or indirectly. Thus the poor son is saddled with all the liabilities of the household but with little gain. This system of succession will hasten the disintegration of joint families and non-stop fragmentation of properties resulting in stark pauperisation, domestic feuds and rampant social scandals of serious types. Giving of absolute estate to females means producing young, gay, wanton females. Duty is the marked feature of every typical Hindu home and this feature has been preserved in spite of the impact of western culture and ideals upon us for over 200 years. But once the draft Code comes into force "rights" and assertiveness will take the place of duty and hospitality. If you want to be stranger in your own home, if you want that your wives and sisters mothers and daughters should start about on highheeled shoes and with painted faces, you must change your law at once.

Muslim law has provided as checks 'Dower debts'.—Muslim law, in order to check the evils of want or divorces and to save the property from infinitesimal disintegration, has taken recourse to *Wakf-ul-aulad*. Besides amongst the Muslims generally men with any property encourage marriage between near relations such as step sisters and cousins so that the family properties may not pass to strangers.

Hindu Law practically settled on all points.—It is a well known fact that Hindu Law is practically settled on all points. It therefore needs no such codification. A few enactments like the Hindu Law Inheritance Amendment Act, 1929, and Hindu Women's Rights to Property Act, 1937 as amended in 1938 are quite satisfactory. Dr. Deshmukh had attempted to introduce divorce in Hindu society but his attempt proved abortive. Now the sponsors of the draft Code have come forward with an identical bill which also deserves the same fate. In theory every Muslim is entitled to marry and keep four wives at a time and can divorce one and all of them on even the most foolish pretext but what do we find in actual practice? Monogamy is the rule and polygamy and divorce is the exception. They realize the sanctity of the conjugal tie. Then why should the Hindus change their laws relating to marriage which have kept pace with the time. Gandharva Form of Marriage, Special Marriage Act, 1872, and the widow Remarriage Act, 1856, are quite sufficient to meet the requirements of time. What is the use of revolutionising the whole system of law. To think of only one law in a country like India, 2,900 miles long and 2,000 miles broad—peopled by so many castes and creeds with their prejudices and traditions is a Mid-Summer Night's dream. In so small an island like the British Isles, there are different laws, English Law, Scotch Law, Welsh Law and the Irish Law. What wonder' is there if there are only five schools of Hindu Law among the Hindus?

Absence of divorce in Hindu Law a unique feature in the world.—The absence of divorce in Hindu Law is a unique

feature which distinguishes it from all other systems of jurisprudence. Manu compares a woman who has married twice to a beast. Marriage between a man and woman has been declared to be indissoluble which continues even beyond this earthly existence. This conception has taken a deep root in Hindu mind. To uproot it and engraft in its place an entirely different thing is fraught with consequence which the readers will shudder to think of. Again at a Hindu marriage, a bride is given with certain solemn ceremonies as a gift which once it has become complete cannot be revoked by the husband? And the wife takes a vow to follow the husband like a shadow even beyond the grave. Then how can she turn back upon her own promise?

Monogamy mere idealism.—It sounds very well that every male must stick to one female throughout his life, but in actual practice what is found. The country which has favoured monogamy abounds in crimes like adultery and bestiality. Domestic peace and harmony are not infrequently marred by the scandals of divorce courts and conjugal infidelities. Moreover the end of a Hindu Marriage is to beget a '*put*', i.e., a son who will be a deliverer from the torments of hell. Nobody in ancient days thought of and a vast majority even today do not think of such devices as birth control. They hanker after leaving some boy to perpetuate the line and to offer *pinda*, i.e., oblations to their ancestors. Thus it is evident that the draft Hindu Code is best suited only to those handful of Hindus who are semi or completely westernized and have no love of respect for their heritage.

Kind of adoption as given in the draft Code most perverse and inequitable.—To dispense with the necessity of *Hawan* in adoption to extend *kririma* form adoption to the whole of India and such other things are most perverse and inequitable and irreligious. A few instances are cited:

(1) '*Datta Homa*.' has been made optional and registration of the authority to adopt compulsory. Registration by itself is not sufficient to give unimpeachability to the authority to adopt. Pleas may and will be taken that registration has been brought about under undue influences, misrepresentation, mistake and fraud document is not properly executed and vague and that it suffers from technical defects, and as such it is invalid and inoperative. Moreover there may be circumstances in which the person having the intention to give authority to adopt, to his widow is unable to register the proper deed, e.g., when he is counting his last breath; when he is attacked with cholera or plague or apoplexy, typhoid or similar fatal diseases which may bring about his death instantly and suddenly. Under such circumstances, will his line become extinct and will his ancestor be debarred for ever from receiving oblations (*pidnas*) periodically? There may be advantages of registration of the authority to adopt, but the draft suffers from serious drawbacks in not providing for unforeseen and deserving cases. *Datta Homa* is absolutely essential. A *pandit* can be more easily available than a sub-registrar, and at the same time it is a much better substitute for registration inas much as at the time of *Datta Homa* there would surely be a gathering of relations, friends and well-wishers among the invitees. They would be living witnesses to the factum of adoption and they will serve as a more effective check of fraud than registration. Besides, *Datta Homa* is a ceremony similar to that when a son is born to a person. It is a day of great rejoicing and festivities and it is a dismal day in the family to which the adoptee belonged prior to his adoption in the adopter's family. Thus even in this view of the matter the new Hindu Code attempts to abolish the Hindu religious rites and *Samskara*.

The adoption of an only son is a family calamity, if not a national calamity. It offends against the very spirit of Hindu Law although at present we are bound by the interpretations.

Some other glaring defect.—(a) Definition of Hindu is misconceived and unwise. It is too narrow. Everybody who follows Hindu religious usage and custom in any shape or form is a Hindu would be a better definition than that given in the case.

(b) Part IV, clause 31 is mischievous and misconceived. It is sure to corrupt and contaminate Hindu ideals and home.

Punishment of bigamy—clause 24, Part IV. If you punish bigamy, you will increase prostitution and adultery. The framers of the draft Code perhaps forgot to legislate on this matter. Prostitutes will take the place of second wife, third wife, fourth wife and so on. By no legislation you can curb and control the sexual urge in the man. A prostitute would be a formidable rival of a Hindu wife.

(c) Part IV of clauses 7—22 (civil marriage) dethrones priestcraft and dispenses with the religious sentiment associated with marriage. The whole thing looks like a Bania's account book. The idea of Kania Dan (i.e., the gift of a daughter) would evaporate if the draft Code passes into law. The posterity will look with wonder and suspicion if there was a satee like Savitri, Anusuya, and an ideal wife like Seetha and Parvati. Many works of art, science and literature would be regarded as mythical in course of time and our custom, usage, religious ideals and traditions would be a matter for research and inquiry for our posterity.

The draft Code is mischievous in conception, slovenly in execution and monstrous in result. It saps the very soul of Hindu Law and presents a system of law which is familiarly unfamiliar and opposed to Hindu culture, religion, and society. The draft Hindu Code is fit to be rejected altogether. And the existing Hindu Law should be allowed to grow and flourish as before uninfluenced by the rigour of a statute.

21. Mithibari Bar Association.

The members of this Association are generally opposed to the principles of the draft Hindu Code.

22. Bar Association, Muzaffarpur.

The members of this Bar are in favour of codification of the existing Hindu Law and the bill, but entirely, opposed to most of the provisions of the draft code which tries to change the whole structure of the Hindu society and joint family system which in spite of some of its demerits has merits of its own that cannot be ignored.

The definition of the word 'stridhan' is very wide. Properties given to widows in her maintenance or received by her on partition in the family should never be considered to be stridhan property.

In Part II of the draft code, Intestate Succession in Class I, widow and daughter have been classed as simultaneous heirs with son, and son of predeceased son. They should introduce further difficulties and complication. The estates in the hands of Hindus in which there is no rule of primogeniture prevailing will be divided in very small portions and after sometime small estates would disappear. The distribution of shares among the simultaneous heirs would be fruitful source of litigation. Hence the members of this association are of opinion that widow and daughters should not be classed as simultaneous heirs.

The disqualification from heirship which is so far prevalent under the Hindu Law should have been retained. At least the persons who are congenital idiots should have been excluded from inheritance.

The salutary provision of the rule of survivorship should not have been given a go-by. This would destroy the entire fabric of the social structure of Hindu society. In spite of some of the demerits of the rule of survivorship, this should not be given a go-by. The clause 2 of Part III-A providing for disinheriting the after born son is against all rules of justice and equity.

The provisions for registration of sacramental marriages although optional should be omitted altogether.

The provisions for the dissolution of sacramental marriages would be against the religious injunctions and can be dissolved. The provision for dissolution of the sacramental marriages should be omitted altogether.

23. Bar Association, Purulia.

The considered opinion of the Purulia Bar Association regarding the Hindu Code is as follows:

(1) There cannot be one system of Hindu Law for the whole of India, a vast country, including several provinces where different ideas prevail.

(2) Most of the provisions of the bill are repugnant to Hindu ideas and, if passed into law, they will make a revolution in Hindu Law known to the Hindu from time immemorial.

(3) There will crop up innumerable suits regarding inheritance as the newly enumerated inheritors will not be allowed to have their share amicably, and also regarding dissolution of marriage as a Hindu husband or a wife will try to have separation on futile and false grounds.

(4) Whatever affection amongst different members of a family now exists and whatever peaceful life members of Hindu families now enjoy will be lost to them forever.

Special remarks.—(1) The definition of caste is too old to be of any service now, at least the several high castes should be mentioned separately as distinct castes as for instance Kayashtha, Baidyas and others.

(2) The enumerated heirs will upset the entire system of Hindu Law of succession as hitherto known and followed. A few instances will clear the point; a daughter has been given half share of a son as absolute owner even if she be a widow or without any issue. Suppose a man has left one son and five daughter having family deities and yearly religious pujas such as durga puja, etc. The son will get only 2/7th of the paternal property. The son is to perform the Sradha of his father, defray the expenses of the daily saba puja of the family deity, etc. Whereas the daughters will not take care of these religious deities of her father's family. Again a daughter's daughter's daughter has been made an heir and placed before uncle and uncle's son; suppose two brothers A and B live jointly. A dies leaving an infant son C, who is brought up with tender care and educated by the male B. C gets a daughter who is married to a rich family. She dies leaving an only daughter who is married to a third family. C's daughter's daughter also dies leaving an only daughter who is married to a fourth family. Now C dies and his wife died before him whereupon the family will inherit the share of C; excluding B and his son. These are repulsive to the idea of any Hindu.

(3) Women have been given absolute right to the property inherited by them which will create independence spirit in young widows and lead to various injurious results.

The law of inheritance as suggested in the draft code is neither based on theory of offering Pindas nor on nearness of blood.

Re: marriage.—(1) There should not be any codified law regarding sacramental marriage which should be left to be performed according to Hindu Sastras and customs prevalent in different provinces.

(2) The restriction regarding a male having a first wife taking a second wife requires sufficient modifications; as for instance a barren faithful first wife, generally gives assent to her husband taking a second wife wishing that her husband's line should continue.

Re: dissolution of marriage.—(1) Dissolution of marriage is foreign to the idea of a Hindu and the idea itself is repulsive.

(2) It will lead to immorality and unfaithfulness.

(3) At least a person who marries according to Hindu Sastras and follows the Brahminical faith of Hindu religion should not be allowed to dissolve marriage, i.e., on any grounds whatsoever.

(4) The grounds of dissolution as for instance idiocy, venereal disease will lead to various false litigations.

(5) Marriage is not a contract among the Hindus, who follow Hindu religion based on Smritis and sutris and cannot be dissolved.

Re: adoption.—The law of adoption as applicable to Hindus of different provinces does not require to be codified as it is practically well-settled.

Finally this association strongly opposes Hindu Law to be codified in the manner sought to be done.

24. Dinapore Bar Association.

Inheritance by a daughter.—Owing to the prevailing custom of giving dowry at the time of a daughter's marriage and for other reasons elaborately discussed by S_j. Sarkar, the majority of the members hold that a daughter need not be given a separate share in the paternal property. But in case of premature death of the father of an unmarried daughter the latter should be given, in cash or ornaments or both, at the time of her marriage a sum equivalent to a definite portion of her father's property besides her marriage expenses in other respects. The amount of dowry to be thus given should not exceed an amount representing the share of a surviving son.

Tentatively it is suggested that the value of the former should be about half that of the latter.

A minority opinion suggests that even a Mitakshara father should be given the right to donate or will out portions of the ancestral property to his daughter. If the father has already exercised this right before his death, no separate provision need be made for the daughter after the father's death.

(2) *Marriage.*—Inter-caste marriage has been supported by S_j. Sarkar and also by the majority of the members.

A minority opinion is opposed to it on the ground that it would endanger the caste system altogether.

(3) *Divorce.*—The majority of the members are in favour of enacting law against bigamy but not in favour of allowing divorce on any ground whatsoever. A minority opinion suggests the adoption of divorce laws for certain deserving cases, such as, marriage brought about by force or fraud, marriage with an impotent spouse, desertion for seven years, grave cruelty, adultery, etc.

25. Gaya Bar Association.

The Hindu Law is a well-thought out and perfect system of law and has served the Hindu society so well for so many centuries. It is consistent with the unique culture and civilization of the Hindus and cannot tolerate any encroachment which will have the effect of undermining their culture upon which is based the foundation of Hindu society. It would be, in our opinion, detrimental to the best interest of the Hindu society to import into it ideas of other systems of law which are based upon the peculiar circumstances and cultural development of the particular class of persons in the superficial belief of progressive-thinking. Therefore, we consider that the modification of Hindu Law with far-reaching innovations therein borrowed from other system of law not at all desirable.

However, we have considered each item of the Hindu Code and we give below our considered opinion:—

Part I—No change necessary.

Part II—Clause 5—Enumerated heirs.

We are opposed to (a) making the "widow" and the "daughter" heirs along with sons, grandsons and great-grandsons, on the ground of fragmentation of property. Slavish imitation of Muhammadan Law in this respect is not at all beneficial to Hindu society for the Muhammadans have to a very great extent safeguarded their property by means of their own law of marriage, which we cannot adopt.

(b) Female heirs should not be given an absolute right for the simple reason that in the present state of Hindu society with appalling illiteracy, the female heirs will not be benefited. The mischief-mongers will exploit the position to their advantage to the ruin of the family.

Part IV—Marriage and divorce may be retained with the provision of "Monogamy" that in case there is no progeny within 10 years of the marriage, a second marriage may be allowed, in that circumstance. Divorce—on the ground of impotency, provided the impotency is proved to have been existing since the date of marriage.

26. Bar Association, Kathihar.

After careful consideration of the draft Hindu Code we are of opinion that the draft Code introduces non-Hindus and their practices into Hindu Law which have undermining and disruptive effect on the national life of India. Clauses regarding succession have the effect of destroying the lowest unit of national unity leading to the denial of spiritual benefit to the ancestors and help to make the nation irreligious and to lose its religious habits. The clauses on marriage maintenance and

divorce are highly anti-social in the life of the Hindus and have the disruptive effect to their national existence. The clauses regarding divorce and illegitimate children, introduce disruption in the family life making the sweet home of the Hindus a hell while the idea of civil marriage is alien to Hindu life. On the whole the result of the Code will be to alienate what is good in the social life of the Hindus and shake the very foundation of their national existence. We take strong objection to the codification and also on the ground that at such an abnormal time such an important measure cannot receive careful consideration and the Legislative Assembly is not the proper authority for the task of passing such a draft. We are of opinion that the draft should not be passed into law at all as it is quite undesirable.

27. The Government Pleader, Ranchi.

There are various systems of Hindu Law in the several provinces of the British India and almost every system has its own law of intestate succession. The law thus varied from province to province and it must be admitted that the proposed draft would lay down a uniform law for succession throughout British India.

The principal feature of the existing Hindu Law is the minor position occupied by females. Not only are females disqualified to inherit when related in distant degrees but the estate held by them is always a limited one. This discrimination against female succession stands out very prominently when compared with the laws of succession under other systems of law. It cannot be denied that there is a strong demand for removal of those disqualifications and the limitations to a Hindu women's estate. Hindu women will have under it full and absolute rights in all property inherited by them whether from males or females. The removal of this disqualification is expected to make their position in society far better than it is at present. There is no doubt also that this limitation on the estate of a Hindu woman is a fruitful source of litigation in courts and accounts for a very large number of decided reported cases but at the same time it has to be taken into consideration that a very large majority of these women are uneducated, living behind the purdah and unable to look after own affairs. It is, therefore, of doubtful expediency to clothe suddenly them while in majority of cases it can be confidently be predicted that they will lose their property shortly after the inheritance.

Though the estate of a Hindu woman is limited she has the full absolute power over the income. She represents the estate fully but her alienations are only upheld if they are justified by a legal necessity. Ordinarily, therefore, they do not suffer from any inconvenience except in cases of emergency where loans are required to meet urgent demand. This can be remedied by extending means of the term legal necessity or by introducing a system of sanction from a court of law which will meet such urgent cause. I am, therefore, of opinion that limitations of a Hindu women's estate should not be abolished altogether but power over the disposal of the corpus may be extended gradually and during transition period it may be made subject to safeguards, for example, sanction of proper court.

The third important objection of the draft is to remove the discrimination against female succession. Women in a large part of India are debarred from succeeding to property in the same way as men. Daughters do not succeed with sons and the more distant female relations are still more or less excluded from succession. The draft purports to put daughters and other female relations in a more favourable position. I do not think there can be any objection to the main proposals. One thing, however, needs notice. The draft lays down to different modes of succession for properties belonging to males and females. Under the existing Hindu Law female heirs are even in a more favourable position in regard to stridhan property. This has been done in order to compensate them for the unfavourable position which they hold in respect of properties belonging to males. Now that females are being given a very good position so far as properties belonging to males are concerned, there would appear to be no reason for according them a more favourable position in respect of succession to stridhan property. There is no reason, therefore, why different orders of succession should be laid down in respect of the properties belonging

to males and females. The reason for differentiation having gone it will be more proper to have the same rule of succession applied to properties whether these belong to males or females. In these circumstances I think that the proposal to give a favourable position to females in regard to succession to all property would improve the present law and be more just to the females, but I am also of opinion that the same rules of succession should be applied to properties belonging to males or females.

28. The Government Pleader, Monghyr.

The preamble of the draft Hindu Code shows that the object of the proposed amendment is not only to codify the Hindu Law but also to amend certain branches of Hindu Law as administered hitherto. A mere codification such as has been attempted by Sir Hari Singh Gour in his book called Hindu Code would not have met any objection but the proposed amendments in the draft Code are open to serious objection. Before entering into some details, I may point out certain matters which require careful consideration.

Firstly, the Hindus believe their law to be of divine and original and in that sense, the fountain heads of their law are the *Smritis*, the *Smritis* and the commentaries on the same by the sages of very ancient times. Immemorial and approved customs are presumed by the Hindus to be based on unrecorded and divine revelations regulating human rules of conduct. These written and unwritten rules of law have till now been interpreted and administered by the British Government so much so that all branches of the Hindu Law are practically settled and that without doing any violence to the Hindus mind regarding their faith about the divine and religious origin of their law. The question, therefore, is an innovation which is sought to be made by the draft Hindu Code is so necessary as to be passed into law. In my opinion it is not and I will give my reasons hereafter.

Secondly, the proclamation of Queen Victoria aptly called the "Defender of the Hindu Faith" made on the 1st November 1858, and known in history as the Magna Charta of India is an important document to be considered in this connexion.

The question arises whether there is any reason for any departure from the policy indicated in the Queen's proclamation. In my opinion, there is none.

Coming to the broad features of the draft wills, it is clear that the main amendments are with respect to laws relating to succession and marriage. I take up these items one by one.

Intestate succession.—(a) All rights based on customs or usages are sought to be superseded except those which are expressly saved in the draft Code. The only important exception of this kind appears to have been made with respect to an estate which descends to a single heir by a customary rule of succession. There is no reason why such customary successions should be discontinued. Obviously the draft Code aims at a revolution in the line of succession on the basis of natural ties of love proximity and affinity. Is there any reason why all the other male and female offspring of the holders of such an estate should be continued being treated as unfortunate persons who cannot be allowed to claim these just and natural rights? By one stroke of legislation this custom also can be superseded, invidious as it seemingly is.

(b) As stated above, a revolution is sought to be made in the line of succession and in my opinion the very object for which the changes are proposed to be made will be frustrated and the entire fabric of Hindu society built upon ancient traditions and culture which has withstood all foreign dominations till now will crumble to pieces. It is impossible to point out all the evil effects with reference to all the changes that are sought to be made but I will enumerate some of them.

(i) Let us consider the provision for simultaneous heirs mentioned in clause 4, class I, clause (i).

Widow, son, daughter, son of a predeceased son are entitled to succeed simultaneously each getting one share while the daughter is to get half a share. Can there be any cogent reason why, such near relations as father and mother are debarred from inheritance. There may be cases in which the son or poor parents may acquire considerable properties. Is it reasonable that the parents should remain destitute as they were and get maintenance

and the widow and sons and daughters should inherit all the properties and if they so like divide the properties and become absolute owners thereof and the daughter is to take half the share even if she is rich?

(ii) The Part II of intestate succession is proposed to be not applicable to agricultural land. The question is what would be the rule of succession with respect to such lands as long as the Provincial Legislature does not enact a similar Code for such lands. Presumably the existing Hindu Law will be applicable in such cases. The result will be a dual system of succession. If a man, therefore, dies leaving agricultural and non-agricultural properties, the succession may open out to two different persons with respect to each of the two properties.

(iii) As regards the other changes in the line of succession, the first and the foremost objection is that, that they are quite opposed to the Hindu notion of spiritual benefit which is the foundation of the law relating to succession prevailing till now. In my opinion, the sponsors of the draft Code appears to have been led to think that the Muhammadan rule of succession and the provisions of the Indian Succession Act lay down better rule of succession that is prevalent among the Hindus, but they entirely overlook the vital differences of the social and marital ties amongst the Hindus as compared with the Muhammadans and Christians. When the Muhammadan law allows a daughter to take a share, there is simultaneously the law of marriage amongst close relations which are forbidden among Hindus and thus the properties are seldom allowed to pass out of the family. Again in a Hindu family, the daughter after her marriage is converted to the 'gotra' of her husband and practically she becomes a member of a different family altogether having nothing to do with the father's family except occasional visits on ceremonial or other important occasions and this is the reason why we find Hindu wives leading an ideal life and they do not even dream of having a share in their father's property. It is, therefore, that we find genuine and unselfish love and affection between brothers and sisters and their parents under the present system of law which is bound to discontinue if the father's properties are to be inherited and partitioned by them. Envy, hatred, and even crimes like those which led to the Female Infanticide Act may take the place of love and affection if the system proposed by the draft Code is passed into Law. The rights of the females have been very sufficiently protected by the Hindu Women's Rights to Property Act and there is no reason why the daughter should inherit in the family of birth as well as marriage while the son cannot so inherit.

(iv) While defining heritable property, it appears as if the system of joint Hindu family with rights of survivorship has been maintained but on examining the matter carefully, one cannot but come to the conclusion that the joint Hindu family system will be a matter which will disappear in no distant space of time. In every case of partition between the members of a joint family, the succession to the estate of divided members will take place accordingly to the draft Code and the solidarity of the Hindu families, which we find at present, will in course of time entirely disappear. In fact the provisions of Part III-A of the proposed Code gives a death-blow to the joint Hindu family system and rule of survivorship.

(v) The widow in a Hindu family according to the present system of law is entitled to possession of the entire estate of her husband on the Hindu belief that she represents her husband fully as along as she is alive and that as a matter of fact there is a legal fiction that the husband continues to exist in his wife's person till she is dead. There is absolutely no reason why her rights should be curtailed and she should be content with a certain share which may be reduced to a great extent according to the number of children left by her husband.

(vi) While giving share to a son there is no reference whether the son will get a share irrespective of the question whether he had separated from his father or not. Suppose there is a case in which one of the sons had separated from his father by partition and the other sons remained joint with their father. As the proposed provision in the draft Code stands the separated son would get a share over again which is highly unjust and inequitable.

(vii) While giving a share to the daughter certain matters have not been taken into consideration. Suppose

a father begot six daughters in succession and his seventh and the last issue was a son who became actually the greatest object of love and affection of his parents as the only child who would perpetuate their generation: According to ordinary demands of Tilak and Dowry in Hindu family the marriage of six daughters would relieve the father of a considerable portion of his properties, and if after his death twelve annas of the remnants of his properties were to be taken away by the daughters the poor son who was the pride of the family would have practically nothing left to maintain himself while each of such daughters will get some share in the properties left by their husbands also.

(viii) There are various other instances of inequitable results which will arise from the proposed law of Intestate Succession but, I think, the instances pointed out above ought to be sufficient for maintaining the law of Intestate Succession as it is prevailing at present and not changing it altogether. It may, however, be pointed out that the draft Code is by no means a complete Code and it leaves various other branches of Hindu law interconnected with those included in the Code which have not been taken into consideration nor has it been considered how the provisions in the draft Code would react upon those provisions of Hindu law which are left untouched. I have not been furnished with a report of the Committee which would have been of some assistance in finding out the principles on the basis of which the draft Code has been prepared. I do not also find the reports to have been published anywhere which would have made the general Hindu public consider the change which is sought to be brought out and give their considered opinion on the same.

Testamentary succession.—There is no safeguard against improper wills executed by the testator. Suppose a man having wife and children dies leaving all his properties to an absolute stranger by a will. Will such a will be upheld by a court of justice? I understand, the law even in England will not support a will like this in its entirety, where there is no vested interest by birth as it prevails among the Hindus.

Marriage.—The provisions of marriage in the draft Code are classified into two heads, viz., sacramental marriage and civil marriage. So far as sacramental marriage is concerned the provisions are on the whole not open to serious objections. Polygamy has practically disappeared among the Hindus and is fast disappearing even in places such as Tirhut where it was very common, but there are cases in which a marriage of a male with another female while his wife is living, is considered to be necessary. It generally happens when his wife does not produce any child, male or female, and when it is certain that she is barren, the husband is allowed to take a second wife and generally it is done with the consent of the wife. The basic principle of such a marriage is spiritual benefit of offering of Pindas and libation of water by the descendants. Such marriage should not be banned by law. So far as the civil marriage is concerned, it is entirely unsuitable to the Hindu society and the provisions of the draft Code in this connexion if passed into law, will not by any means be a progress in the law applicable to the Hindus but will only lead to a destruction of Special Marriage Act of 1872 with certain alterations and additions or omissions but in effect it is substantially the same. The Special Marriage Act was enacted for persons who did not profess the Hindu, Buddhist, Sikh, or Jain or Muhammadan or even Christian faith and there is absolutely no reason why such an enactment should now be made for Hindus. So far as divorce is concerned it is opposed to all the well-cherished ideals of a Hindu. A divorce is distasteful even to a Muhammadan as we find very rare and exceptional cases of a Muhammadan divorcing his wife and where such divorces are permissible as amongst the Christians, the family life is very frequently unhappy and the law courts are full of divorce cases. Such provisions of divorce will certainly not contribute to the progress and welfare of the Hindu people. In my opinion the entire provisions as regards civil marriage in the draft Code are fit to be rejected.

IV. Minority and guardianship.—There is nothing improper in the provisions made in the draft Code in this connexion.

IV. Adoption.—There is no reason why certain forms of adoption perfectly valid under the Hindu scriptures and

immemorial customs or usages should be abolished. Provisions of clauses 5, 2, are not consistent with those of clauses 7, 1 of Part VI. Clauses 5, 2 provide that a Hindu widow has the capacity to take a son in adoption to her husband provided that there has been no express or implied prohibition by him. This would suggest that if a Hindu widow takes a son in adoption, the adoption would be held to be valid unless the person who challenges that adoption proves that there was any express or implied prohibition by her husband. In clause 7 it is laid down that the prohibition of adoption must be by a registered instrument or by a will, and at the same time an authority to adopt must also be by a registered instrument or a will. The question arises what would happen if a Hindu widow adopts a son in the absence of any registered instrument or will. From section 2, clause 1, it would rather appear that the onus of proving the adoption to be invalid will be upon the person challenging the validity of adoption and his objection must fail. In my opinion, the widow making an adoption must prove that she was authorized to do so.

As regards other provisions relating to adoption, I am of opinion that most of them are conducive to the welfare of the Hindus but adoption of the only son of a father should not be held to be valid and the religious ceremonies such as Homam, etc., as enjoined by the Shastras are necessary to create a valid adoption.

29. Government Pleader, Shahabad.

Intestate succession—Clause 5.

The widowed daughter-in-law who is a very near relation should find a place in the order of succession.

In Class II, the proposed heirs of the third degree should be eliminated as they are very remote relations. The daughter's daughter's daughter becomes a complete stranger and probably does not visit the family of her mother's mother's father even once in life. The sister's sister's son or the brother's son's son are much closer relations who remain in close contact all their life.

Part III-A, clause 2.—This clause introduces the most revolutionary change in the whole draft Code. It will change the structure of the entire Hindu unity so far as provinces other than Bengal are concerned. It abolishes joint family. It is sought to be justified on the ground that it will secure uniformity with Bengal. If that were the only consideration then Bengal must come in line with the rest of India; forces of disintegration have already been at work but the whole of India cherished right of every Hindu. It deprives the junior members of family of the safeguarding against dissipation of property by the other. It is a check upon the money-lenders' vacacity against improvident borrowers, and a protection to dependants of junior member such as son's daughters or widowed daughter-in-law. It will to a great extent nullify the rights given to women by clause 13 of Part II because many women will be excluded by the provision from getting the share of their husbands.

Part IV.—Marriage clause 3 (4). The clause provides that the husband should not have another wife alive. But the Hindu sentiment of having a son for religious purpose, namely, for offering Pinda is so strong that regard must be had for that sentiment, and provision should be made for a second if the first wife is either stout or always remains ill and is incapable of bearing. It should be noted that however revolting it may be to European civilization for a man to take two wives, it is so ingrained in the Hindu culture that even the co-wives do not consider it to be unnatural for a husband to take a second wife for begetting children.

The marriage law or a measure of reform should provide against unequal marriage which often happens and leads to the misery of widowhood. A man beyond the age of 60 years should be legally prohibited from marrying a girl, in a sub-caste in which by custom widow marriage is not allowed.

Clause 28, Part IV.—The proposed check against dowry system is ineffective. Usually dowry money is utilized in preparing ornaments for the bride and in meeting expenses and the form it is now taking is that the brides party is asked to meet the expenses and give the ornaments to the bride. The dowry really represents the money value of the share the female could have got if she were a son taking an interest by birth of the family property. Dowry should be penalized if it is taken in excess of that

share which would come to the girl on partition in the family. It will not be possible to give effect to the proposed law regarding dowry and means will be found always to evade it. Because there is nothing in it to prevent the wife from transferring the property to the husband, or from executing a deed of relinquishment or release or transfer ostensibly for consideration. When divorce is permitted there ought to be provision made for the maintenance of the wife. This is required more urgently in society in which second marriage is regarded with disfavour and usually does not take place. Moreover when the divorce is obtained late in life the wife may not be able to remarry even if she liked. Therefore she should be maintained by the husband till she remarried.

30. Government Pleader, Dumka.

The Hindu Code prefers drastic changes and it is doubtful if the Hindu Society is prepared to accept these changes.

2. My comments in regard to the different provisions of the Code are given below:—

PART II.—INTESTATE SUCCESSION.

1. In clause 5 (i), the daughter has been made a 'simultaneous heir' with the son. She should, as at present, inherit only in the absence of a son, grandson or great-grandson. There is no reason why she should get a share with the son specially when provision has been made for her maintenance and marriage in part III-A, II of the Code.

2. In clause 10, the intestate's fellow-student (Sahramachari) has been mentioned as an heir. This provision is unnecessary as there can be no case for such inheritance in these days.

3. In clause 13, a woman has been given the same right over every kind of her stridhan property as a man has over his separate property. This absolute right of a woman should remain confined to properties other than those inherited from a male relation. In the latter case, she should have only a restricted right as at present. If any person wants that his female heir would have unrestricted right in the property, the object can be achieved by a will. This restriction is necessary in view of the general backwardness of the females in most parts of India.

In case this suggestion is acceptable, there would be consequential changes in other provisions of the Code dealing with inheritance and adoption.

PART III—A. II.

In clause 3, a paternal widow-grandmother should be enumerated as a dependant entitled to maintenance.

PART IV.—Marriage and Divorce.

1. Sub-clause (a) of clause 3 is objectionable. In view of the fact that a Hindu takes a wife for a son who can offer oblation and continue the line, this clause should either be omitted or so amended as to enable a man to take a second wife in the lifetime of the first, in case the latter has no son or is a victim of serious or loathsome disease.

Most people now do not take a second wife in the lifetime of the first but there is no reason why if a man under necessity has to take a second wife in reasonable circumstances, he should be debarred from doing that by legislation.

2. Under sub-clause (b), clause 3, a 'lunatic' or an 'idiot' cannot marry. Under the Indian Lunacy Act, 1912, 'lunatic' means an 'idiot.' The use of both the terms in the Hindu Code perhaps signifies that even an ordinary 'idiot', i.e., a person of weak intelligence, is prevented from marrying. It would, in my opinion be going too far to debar such a person from contracting a valid marriage.

3. Clauses 3, 4 and 5 of the Code under the head 'Sacramental marriage' are preferable to clauses 3, 4, 5 and 6 of the Bill as introduced in the Assembly and quoted in the Code.

4. My objection to clause 3 (a) applies to clause 7 (2) also.

5. Clause 24 will depend upon the final stage of clause 3 (a).

6. (a) In clause 29 (1) (iv), 'idiocy' should not be a ground of declaring a marriage null and void.

(b) Clause (v) should be changed to enable a man to have two wives in case of barrenness or disease of the first wife.

(c) Sub-clause (4) of clause 29 will also require modification in view of the opinion expressed above.

7. Divorce is unknown to Hindu Law and is against Hindu sentiment. Clause 30 of the Code should therefore apply to civil marriages only and not to sacramental marriages. If, however, divorce is introduced in sacramental marriages also, clauses (a) and (b) should not be grounds of dissolution of such marriages. If a wife unfortunately turns out to be a lunatic or a leper subsequent to her marriage and if divorced on that ground, it would undoubtedly be very cruel to her.

PART VI.—ADOPTION.

If a widow is given absolute estate over the share she inherits from her husband, clause 5 (2) is in order, but if she is given only a life interest as suggested in paragraph 2 (of this note), she should have the right to adopt a son to her husband only with the latter's permission in writing.

31. Government Pleader, Gaya.

The draft Hindu Code introduces an important change in the Law of Succession. Part I of the draft contains the definitions. Part II of the draft deals with intestate succession. The law which governs the succession to the property of a Hindu male or female is divided into two broad systems, namely, the Dayabagha and the Mitakshara schools of Hindu Law. The Dayabagha recognizes only one mode of devolution of property, viz., survivorship and succession. The Dayabagha prevails in Bengal, whereas the Mitakshara governs the whole of British India excepting Bengal. Under both these systems, there are five female heirs, viz., (1) widow, (2) daughter, (3) mother, (4) father's mother and (5) father's father's mother. There are two sub-schools under Mitakshara law, viz., the Benares and the Mithila school. The Presidencies of Madras and Bombay recognize the supreme authority of the Mitakshara which governs the said two provinces; except in Bombay females inheriting property from males throughout British India, take only life interest in the property inherited by them. With regard to Intestate Succession in Part II of the draft, the proposed legislation aims at four radical changes, viz., (1) including among female heirs a large number of persons, (2) giving to the female heirs an absolute right in immovable property as possessed by males, (3) preferring female heirs to males in many cases, and (4) making the widow and the daughter simultaneous heirs with son and the latter taking half a share in heritable property. The rule of simultaneous succession of the female heirs along with males in absolute ownership is not to be found in any school of Hindu Law in British India. The making of daughter a simultaneous heir with son seems to be based on sentiment. In Hindu society there is no marriage among relations and the result will be that daughters will sell their shares to strangers and there will be great fragmentation of property which will greatly affect the economic condition of the Hindu society. This kind of succession is prevalent amongst Muhammadans and there being great fragmentation of property amongst them, they are not happy in spite of the custom of marriages between near relations in their society, and they have introduced Waki-lal-Anlad only to stop fragmentation of property. In England, there is the rule of primogeniture which prevents fragmentation. We are of opinion that daughter should not be made a simultaneous heir with son and no female should have absolute interest in the property inherited by her. Females were mostly allowed maintenance for their lives and so there does not seem to be the necessity of increasing the number of female heirs and giving them absolute right in property.

Coming to Part III which deals with Testamentary Succession, Hindus shall be governed by the provisions of Indian Succession Act and other enactments applicable to them.

Part IV—Marriage and Divorce.—Clause 3 of this part introduces monogamy. In India every Hindu is anxious to have a son who may offer Pinda for salvation of his soul after his death and who may perpetuate his memory and so if clause 3 is enacted, it would be a life-long agony to a husband who will have no child from his wife.

I think that section 3 of this part should be amended by enacting that if the wife has not given birth to any child for a period of 10 years after marriage, the husband is entitled to marry another wife even in the lifetime of that wife.

Divorce.—Absence of divorce is one of the salient features which distinguishes Hindu society from the rest

of the world. In case wives are suffering from long and incurable diseases, husbands in order to marry a second time would have to divorce the first one and so it would operate very hard on those poor women.

In the end, I say that Hindu Law, as it at present stands, is based upon Hindu Shastras as given by the Rishis and it has worked quite well for centuries. The intended legislation, instead of consolidating existing Hindu law, has made alterations on the basis of Muhammadan law and the Western law of marriage and divorce. This codification is an invitation upon the fundamentals of the Hindu law as given by the Rishis of yore and it can be argued whether the Central Legislature has power to codify Hindu law by introducing such law. In my humble opinion there is no necessity for codification of the existing Hindu law as is proposed to be done by the Bill.

32. Commissioner of the Patna Division, Patna.

From the reports received and from the general impression of the attitude of Hindus, as far as I have been able to gather, it appears that by far the overwhelming majority of the Hindu community are strongly against the material provisions of the Code and that they feel that the draft Code, if enacted into law, will seriously affect the basic principles, both religious and social, on which the Hindu society has been based for thousands of years. The one most serious general objection to the Code is the increase in the fragmentation of holdings owned by person in scattered areas, some of which may be in different provinces. A good deal of similar difficulties according to the Muhammadan law, is prevented by the Muhammadan practice of marriages between first cousins, but such marriages according to the Hindu Religious Code, amount to incest. The laws of inheritance are also intimately connected with the Hindu beliefs about the right to offer *pindas*, and this right is not exercised by daughters. It seems to me that while there are good reasons to justify considerable improvement in the status of women in the Hindu society, and particularly to safeguard the economic position in connexion with inheritance, any legislation to be undertaken should be carefully considered so as to avoid giving the slightest impression that it is sought to affect the religious practices and beliefs of the community. I agree with the opinion expressed by Mr. Gokhale in his letter No. 2063, dated the 12th April 1944, that it is inadvisable to take up a highly controversial measure of this kind in war time. At present most of the provinces have no popular ministries. I am of opinion that it would be better to take up such legislation at a time when the relevant points could be fully discussed by the representatives of the people in Legislative Assemblies and that the enactment, to be duly approved by such legislatures, should be initiated and carried through in consultation with and with the support of, responsible ministries.

33. Mr. B. C. Mukherji, I.C.S., Commissioner of the Bhagalpur Division.

The Code provides that where any aboriginal tribe is already governed, in respect of any of the matters dealt with in the Code, by the Hindu Law, it will in future be governed by the Code, only in respect of those matters. It is clear that so far as the application of the Hindu Law or custom or usage to aboriginal tribe is concerned the enactment of the Code would not make any difference in the present position.

2. Without necessarily endorsing all the provisions in the Code relating to minor details, I am in complete agreement with the object of the Code and also with the main provisions relating to succession, marriage, divorce, guardianship and adoption. Many of the existing customary laws of the Hindus on these subjects are antiquated and it is high time that they were brought in a line with modern ideas of equity and propriety. The extent to which the proposals formulated in the draft Code will ultimately be accepted will obviously depend on the value of Hindu opinion in favour of them. There will of course be a very great deal of opposition to some of the more radical changes proposed from the orthodox elements of Hindu society; but I do not foresee any administrative difficulties in giving effect to any of them.

34. Deputy Commissioner, Dumka.

The Code applies to all the Hindus and Hindu means a person professing the Hindu, Buddhist, Sikh and Jain

religion, and if in respect of all or any of the matters dealt with in this Code, any person would have been governed by the Hindu Law or by any custom or usage as part of that law if this Code were not in force, includes that person in respect of those matters. In the note of explanation it is said that "There are tribes (like the Kochis) who have adopted Hindu Law for some purpose but not for others" and accordingly the definition has been framed in the form suggested.

In recent censuses, a large number of aboriginals have been returned as Hindu by religion—not because their religion is what is ordinarily understood as Hinduism but because when faced with the problem of defining tribal religion, many enumerators have termed it "Hindu" for want of any other name. Moreover a few aboriginals in a few areas have shed their tribal religious practices and have adopted orthodox Hindu ones. Such a change of religion has not, however, affected the tribal customary law by which they are bound in civil matters.

If the definition in clause 2 remains as it is, two consequences seem possible. Firstly, the census reports may be used to suggest that the tribal customary law is not applicable to aboriginals since "they profess the Hindu religion." Secondly, an aboriginal will only have to declare before a court that he is a Hindu by religion to raise a presumption that he will be governed not by his tribal customary law but by the new Hindu Code. It might then well happen that in cases affecting a single family a brother who has adopted certain Hindu practices may claim that the Hindu Code applies to him whereas other brothers who still follow their tribal practices will claim that the tribal law alone is applicable. Since tribal customs have always decided questions of a civil nature among aboriginals it seems important that this portion should not be disturbed by a new enactment which is not at all aimed at clarifying aboriginal law but merely codifying what is well understood as Hindu Law.

I understand that at the time the Indian Succession Act was passed similar difficulties were felt with reference to the conversion of aboriginals to Christianity. The point that then arose was whether the Christian aboriginals would be governed by the Indian Succession Act or continue to be governed by tribal custom. It was considered undesirable that a mere change of religion should entitle an aboriginal to invoke an entirely different law and there were obvious difficulties in the case of families in which some were Christians and some were not. Section 3 of the Indian Succession Act appears, therefore, to have been inserted to provide for the situation. This section gives powers to the provincial Governments to exempt any race, sect or tribe of the province from the operation of the Act and it appears that by Government Notification No. 3563-J., dated 8th December 1931, the Bihar Government did in fact exempt Mundas, Oranos, Santals and some other tribes from the operation of certain provisions of the Act. I am enclosing a copy of the notification for your easy reference. It seems essential that a similar provision should be made in the Hindu Code and I would suggest that the following sub-clause (3) should be added to clause 2 of the Code.

At the 1941 census, an authoritative list of tribes in the province was compiled and in the event of this sub-clause (3) being inserted it is suggested that a notification covering all of them should then issue. It will be seen that in the event of a tribal custom being identical with a Hindu custom the notification will in no way prevent the tribe from being governed by it. The notification and the sub-clause (3) will merely ensure that tribal customary law is not obliterated by the proposed new Code and that a single law will continue as at present to govern all members of tribe.

35. Rai Bahadur N. K. Singh, Additional District Magistrate, Gaya.

The draft Hindu Code has been prepared by the Hindu Law Committee appointed by the Government of India. The Committee was appointed to formulate as far as possible a complete code of Hindu Law. The Code prepared by the Committee deals with succession (intestate and testamentary), maintenance, marriage and divorce, minority and guardianship and adoption. The committee because of the provisions of the Government of India

Act has not been able to deal with other branches of Hindu Law. The draft Code, therefore, is not a complete code of Hindu Law. The other branches of Hindu Law will have to be dealt with by the Provincial Legislatures. The principles of all the branches of Hindu Law have been settled by judicial decisions and are well known to the Hindus. The object of the codification of the law is to introduce uniformity throughout the country. This will not be achieved if the remaining branches of Hindu Law are left to be codified by the Provincial Legislature. The limitations imposed by law upon the powers of the Central Legislature are not insurmountable. It is desirable that the codification of all the branches of Hindu Law may be undertaken by the Central Legislature after overcoming the legal difficulties that stand in its way.

2. The changes introduced by the Code are so fundamentally alien to the spirit and principles of the existing law that it will not be inaccurate to say that the Hindu Law in the event of the draft Code being passed into law will be changed beyond recognition.

3. The draft Code with the provisions of a revolutionary character does not commend itself to the vast majority of the Hindus except a small progressive section which has had the benefit of liberal education. The proposed legislation appears to be premature and may be undertaken after the intellectual horizon of the Hindu community has been widened as a result of liberal education.

4. The Hindu Law and more particularly the portion relating to intestate succession, marriage and adoption is based on religious principles. Of heirs, the one who confers a higher spiritual benefit to his ancestors is preferred to others who confer less. The nearness of blood is not a guiding principle in the matter of succession which is based on spiritual principles. Female relations are practically excluded because of their incapacity to offer *pindas* and thereby to help their ancestors spiritually. In fact, the basis of Hindu Law is purely religious. Marriage according to Hindu Law is sacrament. Contract has no place in the Hindu Law of marriage. The authors of the Code have allowed the existing list of heirs who confer spiritual benefit to their ancestors to stand and have included in the category of heirs a large number of persons on secular grounds, e.g., nearness of blood, etc. Similarly they have retained the sacramental form of marriage and have also many provisions for civil marriage. The blending of secular and religious principles into the texture of Hindu Law is not conducive to its homogeneity. The law should be either secular or religious and not a mixture of both. If the intention is to rob Hindu Law of its anachronism, the ideal course is to secularise it altogether.

5. Under the existing law, the fragmentation of properties are so appallingly great that families are economically on the brink of ruin. The Code provides for a large number of female heirs, widow, daughter, son's daughter, sister, etc., with absolute interest in the properties inherited by them. The introduction of such a large number of alien heirs into the family will spell the economic ruin of the Hindu family. The number of middle class families will decline and Hindu families generally will be socially, economically and intellectually poorer than they are to-day.

36. District Officer, Shahabad.

I do not agree that a widow and daughter-in-law need find a place in the order of succession as under the proposed maintenance provisions she will receive equivalent maintenance without the possibility of fragmentation. Again the heirs of the third degree in class II although they are remote are in the direct line and in the new provisions the sister, and therefore, her son will already have taken a share from the common father's estate.

2. *Clause 2 of Part III-A.*—This provision is necessary and logical if the proposal to allow inheritance by the widow and daughters is accepted. I will not do away with the joint family as the provision will apply only in certain specific cases. It is also not correct that many women will be excluded from getting the share of their husband because if he dies intestate the widow takes a share and if he leaves a will she gets maintenance under III-A-5 (iii). If the provisions for intestacy and maintenance are accepted and they seem wholly reasonable then this clause must logically be included.

3. *Clause 3 (a) of Part IV.*—The law now proposed would require that the first marriage be annulled on the grounds of impotency (which clearly includes sterility) although in theory a Hindu may have at a time more than one wife. In actual practice it is very rare that he can afford to do so.

4. A further provision to prevent unequal marriage might well be included.

5. The wife will now be entitled to a share in her husband's estate and the Code already provides that she would have powers of transfer and disposal with regard to "Stridhan."

6. There is already in clause 31 provision for alimony after dissolution or declaration of nullity of a marriage. It, therefore, does not seem necessary to have a separate provision for this in the Code. If it is necessary then it might come in clause 26 of Part IV.

7. In clause 8 (d) of Part VI the phrase "within a reasonable time" occurs. There is no definition of a "reasonable time" and although there are manifest difficulties in fixing a period it seems desirable that a time to do so should be fixed. As I do not know sufficient about the Hindu customs, I am not in a position to state what that time-limit should be.

8. Apart, therefore, from suggesting stipulation of the time-limit and the possibility of including in the Code a separate self-contained provision for alimony, I have no comments to offer on the proposed Code.

37. Rai Bahadur M. P. Sinha, Deputy Commissioner, Ranchi.

The principles underlying the draft Code are sound and I generally agree with the proposed codification of the Hindu law which will no doubt evolve an uniform code which will apply to all concerned by blending the most progressive elements of the time in different schools prevailing in different parts. It is high time that the proposed changes be operated upon in order to reconcile the conflicting decisions of the law courts. I do not anticipate any untoward administrative consequences if the Bills are codified.

38. Rai Sahib J. K. Saran, Personal Assistant to Commissioner of Patna.

This draft code upsets the settled principles of Hindu law and is calculated to bring chaos in the Hindu society. It allows a share to the daughters between sons and daughters. The sons living together generally live joint and so though they have a share they do not disagree. But the daughters are married at different places and so cannot live joint with the son. They must therefore seek separation of their shares. They will be getting only fractional shares and so bring in difficulty to manage the same and may necessarily sell them to the enemies of the family. Even the Muhammadans have this law under it and they seek to evade it by executing *wakf-ul-Aulad*. The Hindus cannot tolerate it. This will ruin them economically.

Under the code the females are given absolute rights over whatsoever property they get. This will also upset the old laws based upon religious books. This will affect the reversioners very adversely. So this provision is also against the Hindu sentiment.

Under the present Widow's Remarriage Act when a widow takes another husband her heritage from her previous husband is forfeited and the next reversioner gets it. But now if she gets an absolute estate in her husband's heritage she runs no such risk; she will now remarry retaining the properties of her previous husband. So even children born of the second husband will inherit these properties which she got from her previous husband as they will inherit them as mother's properties. Such a contingency is highly obnoxious to the Hindus in general.

4. (j) *Stridhana.*—Formerly the word "Stridhana" was used in a very limited sense. In short it was applicable to gifts obtained by a woman from her relatives and her ornaments and apparel and the gifts from strangers which came under that denomination were presents before the nuptial fire and those made at the bridal procession. Now this definition makes no distinction between the properties acquired by male or female. The proposer of the draft has here, tried his level best to give the females the similar rights to properties as those possessed by the males. In my opinion "Stridhana" should still be confined to mean only the properties acquired as arrears of maintenance, by gift from a relative or stranger before, at,

or after marriage by her own skill or exertions, by purchase and by prescription.

The word "Stridhana" should not be applied to the properties acquired by females by inheritance or devise or at a partition and in lieu of maintenance.

PART II.—INTESTATE SUCCESSION.

This part of the draft being wholly unwholesome should at once be nipped in the very bud for reasons given below :—

(1) By engrafting such legislation into Hindu law, the authors of the draft will make the confusion worse confounded, which will totally be against the long standing convention and customs and will make the Hindu Law more complex and less intelligible to the public.

(2) Hindu parents are not exceptions. They with their all faults never wish that their children should drag on miserable existence. They always want to place their children on a better footing than what had been their's.

The parents of a Hindu, like others, are always led by family prestige and they always try their level best to marry their daughters at least in a family enjoying equal status. So in regular life, when the daughter becomes the partner of her husband she enjoys the usufruct of her husband's wealth and position in a far better degree than what she had been in her parent's house.

(3) It is upon the efficiency and management of the present coparcenary system that Hindu Law exists. It is only to keep the unit intact that great thinkers in society are thinking of introducing the co-operative system. It is thereby hoped that labour and efficiency with capital when put in proper channel would yield great results.

Generally when the girl is married she entirely comes under the sway and control of her husband or the vice versa. It is hoped that they would grow more intimate to one another and they no longer bear the same love and admiration for their parents and the other members of the coparcenary state. Will the husband like that the estate which belongs to his wife should be managed by her parents? The reply to this in the majority of cases will be "no and never".

The result will be that the husband will continue his best to remove the share of the estate from the hands of the wife's parents. That will give noise to continuous litigation. The economic unit of the coparcenary system will be completely destroyed. It will lead to extreme forms of fragmentation. The progress and prosperity will be replaced by poverty and ruin. Thereby the economic structure of the society will collapse. By such acts there is every danger of degeneration of the Hindu Society.

(4) Have the progressive elements in any country who have reached the pinnacle of glory have all along with their progress been changing their personal laws? Let us for a moment look into the English law of primogeniture. How inequitable the law appears, so far as succession to immovable properties is concerned. According to the rule of primogeniture if last owner dies leaving sons, the eldest son is entitled to succeed. How inequitable does the rule of law sound? Yet the most progressive element in England has never thought it proper change the rule of primogeniture. They have not broken the record of long standing convention.

They know that by breaking the laws of primogeniture they will introduce the evils of fragmentation which will bring ruin and disaster to the society.

(5) Are the females by nature fit to manage the affairs of an estate. They have several duties of household affairs. Of course, I do not talk here of the families whose members are millionaires. I am here speaking about the majority of the families. Besides those women have to respond to the duties of a mother. They are to be kept within house to watch over all the affairs which by no means are small. So in affairs beyond their house their property shall solely be managed and controlled by their husbands. They will exercise every discretion in the matter. The wife's control over the property under such circumstances shall count nothing.

(6) The India Act XVII of 1937 as amended by Act XI of 1938, The Hindu Women's Rights to Property Act, 1937, has given greater freedom to enjoy the property of their deceased husbands. They can get the share of their deceased husbands partitioned. Under the present law they have right to transfer the property but not without legal necessity. Are not there some restrictions

to a Hindu father applicable as well? Can he dispose of the ancestral property in any way he likes? The answer is in the negative because the transaction of Hindu father must not be tainted with immorality.

Can it be for a moment be said, that the society in which the females get no share by inheritance their condition is wretched? Respect and admiration to women are all dependent on the culture, the environment, the education and to some extent on religion. It is not altogether dependent on sexual appetite. Our shastras enjoin the women should be respected like anything. It is also said the place where women are respected and worshipped becomes the abode of deities and such places become the treasure of perpetual happiness and bliss.

One of the main cause of less respect and admiration for women is want of religious training. The sacred writings and verses (mantras) which are chanted by our priests at the time of marriage are a meaningless tune to the majority of us. Is not the Bible in the prescribed curriculum, to the students Oxford and Cambridge Universities? But what is happening here. We are losing our own ideal and trying to catch hold of the others. In fact of all these if an evil is persisting and increasing day by day in the Hindu society there is no wonder.

Let us for a moment turn to the real state of things. Are the Hindu women in any degree inferior to the women who belong to such communities in which they get property by inheritance? To which community, the women in India at present, belong, who are leading in every sphere of life? Decidedly majority of them belong to the Hindu fold. In view all these facts I am of opinion that the law of inheritance; as they are, should not in any way be disturbed.

Clause 13 Stridhana.—In the light of aforesaid circumstances the word, Stridhana should be confined to the old meaning. I have no objection if the women are given the right to dispose of whatever "Stridhana" they have by transfer inter-vivos.

Clause 14.—Order and mode of succession to stridhana.—This amendment is not at all wanted. Succession to stridhana must be governed by the old laws.

Clause 15.—This amendment is not at all necessary.

Clause 16.—This amendment is necessary inasmuch as it clears the position of the right of the child in womb.

Clauses 17 to 25.—Their enactment is for the good of the Hindu society and as such they should at once be turned into law.

PART III.—TESTAMENTARY SUCCESSION.

Part III A.—As I am not in favour of inheritance of the females this enactment is undesirable.

To my mind the old law is on a better footing than the present enactment. By this enactment the owner may use the property and transfer the same even for purposes immoral and leave their descendants as beggars. By such amendment restrictions for the misuse of the property shall totally be gone.

II.—Maintenance—Clauses 3 to 9.—These may be enacted into laws inasmuch as they clarify the laws of maintenance which already exist in the Hindu Law.

PART IV.—MARRIAGE AND DIVORCE.

The Hindu society never allowed divorce in the higher classes. The general principle of legislation ought to be to make laws to facilitate the working of the society not to introduce an absolutely new thing in it. The Hindu society has not up to now introduced any such thing as divorce in its high classes. So making provision for it for all classes is not only unnecessary but positively harmful. If however the society develops on modern lines and there comes demand of divorce on part of the men then a legislation for divorce will be justified.

PART V.—MINORITY AND GUARDIANSHIP.

Clauses 1 to 10.—These are necessary legislation and as such they should at once be enacted.

PART VI.—ADOPTION.

Clauses 1 to 31.—All these clauses are in no way harmful to the Hindu society and they should be enacted. Enactments like these being no definite evidence, anybody may claim to be an adopted son. But by the aforesaid

enactment, registration being necessary in case of authority to adopt, a good deal of unnecessary litigation would be saved.

39. Darbhanga District Hindu Sabha.

The proposed amendment in the central legislature purporting to amend the inheritance laws of the Hindus and introduction of marriage laws in the Hindu society are designed to shake the foundation and solidarity of Hindu joint family and disintegrate the Hindu society ushering in drastic innovations in the age-long established customs prevalent in the Hindus and are fraught with dangerous potentialities to undo the Hindu race and once for all make Hindus weak, imbecile, degraded and demoralised so that they may not rear their heads in the world and claim a place in the comity of Nations and participate as an equal partner in the coming world order.

The legislature on whose anvil the draft is going to be hammered has outlived its usefulness and utility, has become superannuated and rusty and has ceased to represent genuine Indian public opinion on account of long and unstatutory continuance.

The draft as a whole is anti-diluvian, revolting, reactionary, revolutionary, abrupt, radically drastic, anti-social and anti-national, designed and sponsored by the enemies of the community and the Hindu nation. The brothers and sisters are placed in one category so far as successions to father's properties are concerned. This will disintegrate and break the joint Hindu family system and give rise to interminable series of litigations ultimately bringing the complete destruction and ruin of the family. Foreigners will be introduced in the family as brother-in-laws and they will relentlessly mismanage and destroy the properties if at all anything is left by endless litigation. Then again Hindu marriage being not a contract but a sacrament, the sanctity of married life, the love and happiness of Hindu families will disappear and happy and prosperous Hindu families will be converted into regular rendezvous of indecent brawls and quarrels, with the introduction of civil marriage and freedom to choose partners from any caste.

The support lent by the Government is against the Declaration of Queen Victoria and successive pronouncements by His Majesty's Government not to interfere with the social, religious cultural laws of the Indian people and is therefore militating against all canons of decency, truth, and good Government and is the serious breach of solemn promises made from time to time.

The Hindu Law is based upon Smritis written by the Rishis such as Manu, Yajñavalkya, Parasara, Narada and several others and the Hindu Law of inheritance and succession is based upon them and any change or interference with them will be revolting to Hindu sentiments until and unless it is considered by constituent assemblies of Sanskrit scholars and divines of Hindu race on an all-India basis.

The law of divorce will introduce all the evils of European family life and for a downtrodden and slave race of Hindus it will be a death-knell and the sacred ties of conjugal love and devotion will be hopelessly loosened ushering in an era of strife squabbles, misery and unhappiness in Hindu families and also bring in its wake immorality and all the attendant vices. Therefore the Hindus of the District numbering over two millions beseech you and your committee to forward and submit your considered opinion before the legislature and the Viceroy the alarm and indignation of the Hindu race who has voiced the universal opposition to the Bill from one end of the country to the other from Hindukush to Cape Comorin to drop the Bill forthwith and save the Hindu nation from the threatened annihilation. The Hindu race has sustained enough injuries from countless centuries from its avowed and determined enemies, their attacks and onslaughts and has survived but this prospective mortal blow exceeds all and will work its extinction. The members of the legislature who are sitting in judgment over the destinies of the country have no right to legislate on such vital and religious and fundamental issues without the sanction of the Hindu race as a whole and unless a plebescite based on universal suffrage endorses it, they are not entitled to make any change.

40. Shree Sita Ramiya Brojindra Prasad, M.A., B.L., Retd. Subordinate Judge, Gardinabag, Patna.

Before I state my views on the draft Code and a list of the points which I shall urge before the Committee, I consider it absolutely necessary to state that the land in which we live is known as Bharatvarsh and our law and religion are known as Sanatan Dharma. The residents of this land did not know the words, Hind and Hindu. They were coined in contempt for us by the Muhammadans who were introduced in the country for help by some unfortunate and thoughtless Maharajas, but who subsequently became the rulers of the land. I have been told by my Muhammadan teachers and professors that Hindu means "slave" or "black" and is a contemptuous word. Similarly, the Englishmen call us "native" or "nigger" (which also means "black") in contempt.

2. Our *Sanatan Dharma* seeks material welfare of its followers, not as the ultimate object of life but as leading to beatitude of salvation from all miseries. The law-makers were such men as the great Manu and Yajñavalkya, who could see things at a distance of thousands and thousands of miles without the help of a microscope or telescope and could foresee intuitively events to take place at a distance of thousands and thousands of years afterwards without observation and ratiocination. According to their view, a material good even, if it did not lead to spiritual benefit, is "Adharma." (Sin). They attached such a great importance to spiritual good. This is the basic principle of *Sanatan Dharma* and any amendment of any provision in Hindu Law militating against that principle cannot be called an amendment of it, but it must be looked upon as ending it.

3. Now, I proceed to state my views on the draft Code.

(i) It is by no means an easy task, nay it is a very very difficult task, for the legislators, who have no sympathy with, or correct idea of, the basic principle of spiritual benefit to improve the Hindu Law. In the name of amendment, that basic principle has been given a go-by by the framers of the draft Code and Muhammadan and Christian principles have been sought to be introduced in the Hindu Law, which must not be allowed or sanctioned by the followers of *Sanatan Dharma*, or by the Judiciary, or by the Government. Here, I do not wish to make this letter long by making quotations in support of what I say.

(ii) The Code stands self-condemned, because the word Hindu has been wrongly defined and the Hindus and non-Hindus are sought to be governed by the same law and also because the Christian and the Muhammadan principles of divorce, marriage and heirship are sought to be introduced in the Hindu Law. Whereas our law-makers lay the greatest stress on life-long celibacy and enjoin lawful marriage, the framers of this Code sanction concubinage. A man, who runs, can see their vast difference. I am not at all able to understand how the framers call it an amendment of the Hindu Law, when they are disregarding entirely the underlying principle of Hindu Law, and seek to introduce the principles of other religions in it. It is a wonder that this Code sanctions civil marriage, though it is known that the parties to the civil marriage have to declare that they belong to no religion, and they give preference to the son of a concubine over the son of a lawfully married second or third wife in the lifetime of the first wife. I shall say that the framers of this Code put a premium on lawlessness of such a provision. The provisions of this Code will affect not only the Hindu owners of landed property, but the whole Hindu social system. In view of such revolutionary changes, it may be rightly said that the framers of this Code have taken a fancy for the Christian and the Muhammadan principles, because the high and sublime principle of spiritual benefit is not appreciated by them for want of real and proper spiritual education.

(iii) Their attempt to amend the Hindu Law in this manner reminds me of the remarkable beggar of England, who tried to increase the length of his blanket by cutting it into pieces and sewing them up. In doing so, he not only disfigured it, but destroyed it. Such will be the result of this amendment of the Hindu Law, if it is passed.

(iv) The Ganges is a very sacred river for us. We show respect and reverence for the Ganges. What do the foreigners like Muhammadans and Christians do? They pollute it by making the foul and dirty water from drains fall in it, though we entirely dislike it. Such is the attitude

of the framers of this Code towards our Sanatan Dharma. The true followers of it respect it, revere it and follow it so that they may obtain salvation. The framers of this Code seek to introduce undesirable provisions in our law with a view to force them upon us, though we do not want them and entirely dislike them. If the framers of this Code and their followers do not like our law, they are perfectly free not to follow it and they may select the law which they wish to follow, but they should not try to pollute our law.

41. Babu Ramnandan Prasad Narain Sinha, Sehra village, Patna District.

As neither the Government of India nor any of the Provincial Governments does possess or had at any time possessed any right to legislate upon matters relating to the private laws of the Hindus:—

(a) The present policy of the Government of India of codifying Hindu Law through the agency of the Central Legislature specially under its present form and constitution is most undesirable and its contemplated action thereon unstatesmanlike;

(b) the action of the Government of India in constituting the Hindu Law Committee for preparation and drafting of Hindu Code is totally disliked by the Hindus; and

(c) the Hindu Intestate Succession Bill and the Hindu Marriage Bill contain many provisions quite contrary to the spirit and the letter of the Dharmashastra and are detrimental to the Hindu culture and civilization.

42. Mr. S. Singh, Patna-Gaya Road, Patna.

On going through the draft Hindu Code by means of which the framers of it seem to amend the Hindu Law, it is transparent to me that they have no idea at all of the basic lofty and sublime principle of spiritual benefit underlying the Hindu Law; that its sole object is not to remove any defect or shortcoming, if any, in the Hindu Law, but to introduce all sorts of undesirables (such as non-Hindus, converts, illegitimate men and dissenters like Brahmans and Arya Samajists), who do not and would not at all care to follow the principal features of the Hindu Law, in the fold of Hindus; that, in short, to place the Hindus and non-Hindus on the same level; that it is impossible for any thoughtful man to consider that the Code aims at improvement of Hindu Law, when it sanctions civil marriage, though it is known that the parties to the civil marriage have to declare that they belong to no religion, and it puts premium on lawlessness and immorality by giving preference to the son of a concubine over the son of a lawfully married wife—married in the lifetime of the first wife; that the provisions of the Code most provoking to the Hindu culture are about marriage and divorce, which are sought to be forced on the Hindus according to the Muhammadans and Christians; that new inheriting heirs are introduced by the Code without considering the matter of spiritual benefit; and that, therefore, I strongly protest against the passing of the Code into law.

43. Mrs. Lal Bihari Lal, Ranchi.

At a ladies' meeting held on the 18th December 1944 in the house of the late Babu Miratan Banerjee, Upper Bazaar, Ranchi, for discussing the proposed Hindu Marriage Bill and the Hindu Inheritance Bill, the assembled ladies belonging to the middle class Hindu society considered it desirable to protest strongly against the passing of the two proposed Bills. In the opinion of the meeting our Hindu society will be impoverished by the multiplicity of heirship contemplated by one of the proposed Bills and that apart from the constant domestic strife bound to result from the

claims of sons and daughters to the ancestral property, the passing of the Bills will hamper the special privilege rightly possessed by daughters in the building up of society. Members of the Hindu society have, as is well known, to incur heavy expenses in the form of dowry to the bridegroom and in other ways in connexion with marriages and the maintenance of healthy social relations and there is no reason to believe that the passing of these two Bills will help to lighten that burden of the heads of families in any way. It would be highly improper to give to daughters, in addition to these expenses, a share in the ancestral property. It would be very unjust not to keep Hindu marriage separate and different from civil marriage. If all nations have the right to maintain the special features of their respective religions and social customs, there is no reason why Hindu women should not have that right.

44. Mr. G. N. Pande, Founder and Principal, Patna Deaf and Dumb School.

The conferment of the right of inheritance on the deaf and dumb is a move in the right direction. It is strange that they should have been excluded from this right at any time; but now that the conscience of the community has been awakened and we are going to bring the Hindu Law into line with the requirements of the times, we must see to it that no amount of clamour from the orthodox group is allowed to deflect the Committee from the step it has taken.

It is obvious that if any group of persons needs the help of society more than others it is the physically handicapped. Those who are perfectly normal may be able to shift for themselves even if they get no share in the ancestral property. In fact this is the rule where the law of primogeniture prevails. But it is necessary that special provision be made for the handicapped. The least that can be done is to give them the same rights as other people.

It appears that the ancient law-givers themselves were not inclined to exclude the deaf and dumb from inheritance. They only wanted to pay lip-homage to some custom hallowed by antiquity but already honoured more in the breach than in the observance. Hence they narrowed the disability to one from birth.

So they made it necessary that in every case it should be enquired as to whether the disability was one from birth. Now in case of deafness it is practically impossible to determine whether the defect is congenital or subsequently acquired. The outward result, that is dumbness follows even though deafness may have been acquired any time between the first three years of a child's life. In most cases the dumb person finds himself excluded from inheritance because he is ignorant of his right and cannot go to court to claim it. When an inheritance opens he is simply ignored. In the few cases when there have been people to assist him to go to court his right has been affirmed. (Vide Mahesh Chunder v. Chunder Mohan 14 B.L.R. 273; Surat v. Narain XII Act, 530.)

Now it is very unfair that in every case a person afflicted with deafness or dumbness should be compelled to go to court to establish that it was not congenital. It is like asking everybody to prove his parentage by incontrovertible evidence before inheriting his father's property. But whereas there is legal presumption in favour of legitimacy there is none such in favour of every person being born normal unless the contrary is proved. So if for any reason the proposal to confer full rights of the deaf and dumb is not adopted their interest should be safeguarded by putting the burden of proof on those who assert that the defect was really one from the very moment of birth.

VI. BENGAL

1. The Joint Committee of Women's Organizations, Bengal.

The Joint Committee is composed of the following Organizations:—

- (1) All-India Women's Conference, (2) All-Bengal Women's Union, (3) All Bengal Mahila Atma Raksha Samity, (4) South Indian Ladies' Club, Calcutta, (5) Maharastra Bhagini Samaj, (6) Gujarati Stri Mandal, (7) Saroj Nalini Dutta Memorial Association (Ladies' Section) and (8) Girls Students' Association.

Memorandum.

1. The general purpose of the draft Code is acceptable. Subject to the amendments hereinafter proposed, provisions relating to inheritance by women, marriage and divorce are specially supported.

2. It is not the desire of the memorandists at this stage to enter upon any controversial questions but they have been advised that the Law-givers and commentators such as Vishnu, Manu, Yajnavalkya, Narada, Parashara and others have all recognized the rights of women to have property. Recent legislation also has proceeded to give Hindu women wider rights to property than previously enjoyed by them. Apart from these circumstances it is felt that while legislation should give due importance to old traditions, customs and usages, it is imperative that legislation should also keep pace with, and help the growth and progress of society by remedying clear wrongs and giving recognition to established healthy practice though of comparatively modern origin. With present

conditions of Hindu society the memorandists feel it is essential for the well-being of society to secure in some measure the independence of women. It is further felt that this object can best be achieved by legislating (a) that marriages should be monogamous and (b) that women should have definite rights of inheritance along with men.

It is almost the universal practice amongst Hindus now to enter into monogamous alliances and to give this practice a legal recognition is to do no more than to legislate something which is very widely practised. Monogamy if imposed with the utmost vigour works hardship in special cases which society has to recognize and practise. This protection can be given by enacting similarly for dissolution of marriage or declaring marriages as null and void.

Again a society where women are economically completely dependent and subservient, progress is greatly hampered.

3. In the investigation that the memorandists have made they have found that by far the largest opposition to the provisions of the Code relating to inheritance of women can be conveniently summarized as follows:—

(1) The proposed rules of inheritance will result in subdivision and fragmentation of property, and

(2) That Hindu religion is opposed to inheritance of women.

Answer to (1) (a).—Complete absence of fragmentation of property, results in concentration of unearned income in the hands of a comparatively few. This creates a tendency to idleness and also a desire to hoard. In consequence society loses through the non-productivity of these idle members and the absence of circulation of wealth.

(b) Under Dayabhaga School fragmentation is already well on its journey. As sons inherit absolutely, property is broken up. The introduction of similar rights of daughters would not make any difference in principle but only in degree. If in principle, fragmentation cannot be objected to, then social requirements must govern the question of degree. Ownership of property will make women independent and they will undoubtedly gain in status. Besides this will effectively check the feeling that women are a burden to the family.

(c) Evils of the Mitakshara joint family system are already felt by members of the community governed by such law. By reason of the difficulties in alienation, joint family properties though valuable cannot be readily turned into liquid money for purposes of trade or other advancement of individual members. Credit is not easy to arrange on the security of Mitakshara joint family properties. Banks and financiers do not readily accept such property as security. When they are so accepted the proportion of credit is small. It would therefore be to advantage to abolish joint family properties as contemplated by Mitakshara law and the proposed Code provides for this. Once the principle is conceded all arguments in favour of inheritance of Dayabhaga property by women will be equally applicable to Mitakshara properties.

Answer to (2).—Hindu law as will appear by reference to the various commentators is "Nyayamulak" and not "Vedamulak." The origin of Hindu religion is in the Vedas and the departure of Hindu Law from Vedas is well established and recognized. Hindu Law being "Nyayamulak" is based on logic or reason. If reason and not religious doctrine governs the question of inheritance it could not be urged that inheritance of women is opposed to religion.

Amendments suggested.

(a) Since sons carry on the family it is considered advisable that they should have the opportunity to keep the family dwelling house. With this object in view it is recommended that the Code should be amended by introducing provisions allowing sons the right to buy out daughters where the property to be inherited is a dwelling house.

(b) The alternatives to clauses 3, 4 and 5 under sacramental marriages in the Code should be done away with altogether. We are strongly of opinion that inter-caste and sagotra marriage should be permissible. The "Special Marriage Act" should not under these circumstances be deleted but should remain outside the Hindu Code as at present it is the nucleus of a Civil Code.

(c) To the same and as clause (b), for purpose of marriage, sapinda relationship should include only up to the third generation (inclusive) in the line of ascent through mother and fifth (inclusive) in the line of ascent through father and not respectively the fifth and seventh generations.

Divorce.—(a) Adultery and not concubinage or prostitution alone should be available as a ground for divorce. To do otherwise would be to strike at the basic principle of monogamy. Of course it would be open to the grieved party to condone the adultery of the other spouse.

(b) Grounds of divorce include lunacy, loathsome disease and desertion when any of these continue for seven years. This period should be reduced to five years as it is felt that seven years would be too big a period.

Maintenance of the wife when she lives separately.—When she lives separately on the ground that her husband is keeping a concubine it should not be necessary to entitle her to maintenance that the concubine should be living in the house. It is recommended that the wife should be entitled to maintenance if she lives separately from her husband simply on the ground that he is keeping a concubine.

Alimony.—It is not clear whether there is a provision for alimony on a dissolution of marriage being granted on the wife's petition. Such provision must be made, if it is not there already.

2. Calcutta Branch of the All-India Women's Conference.

As we have all along demanded a uniform, revised and comprehensive Code of Hindu Law, we fully support the main principles incorporated in the Code drawn up by the Hindu Law Committee. We should however like to bring the following points forward for the consideration of the Committee:—

(1) *Part II, clause 21.*—We are of the opinion that this clause is not necessary. If this clause disqualifying the descendant of a convert is to be retained, we are of the opinion that the Caste Disabilities Removal Act of 1850 should be done away with, as otherwise it merely means that the sins of the father are being made to visit the children.

(2) *Part IV, alternatives to clauses 3, 4 and 5,* which were the original clauses of Marriage Bill as introduced in the Assembly, should be omitted altogether. We are strongly of opinion that inter-caste and sagotra marriage should at least be permissible. We support the new clause 3 in regard to the requisites of a sacramental marriage but we suggest that in clause 3 (b) the words 'or have any loathsome infectious disease' be added after the word 'idiot.' Clause 3 (d) should finish at the word 'other' and the words 'unless the custom or usage governing each of them permits of a sacramental marriage between the two' should be omitted. The inclusion of these words would only defeat its purpose and militate greatly against obtaining a uniform law.

Part IV, clause (5), marriages according to custom deemed to be valid sacramental marriage.—We are of opinion that this clause should be deleted. It will not be possible to bring about an uniform law if this clause is enforced. It will also mean that inter-caste marriage may be prohibited by custom or usage in certain areas as there is no provision for it directly. If in order to allow greater laxity in regard to the ceremony of marriage, it is thought desirable to retain this clause, then, in clause 3 an addition should be made providing for inter-caste and sagotra marriage directly, although even then difficulties may arise.

Clause VI optional registration of sacramental marriages.—We are of opinion that registration should be made compulsory, for sacramental marriages also.

Part IV, Chapter II, clause 26 (b).—The words 'in the house' should be omitted. Another provision (g) should be added to provide for a habitual or a grave criminal.

Clause 30 (a).—We are of the opinion that the period of seven years is too long and that three years should be substituted instead.

Clause 30 (c).—Here also seven years is too long. Even in the text of Narada we find that in the case of deliberate desertion a lesser period is indicated. If the offending party has deliberately deserted and has been heard of, then three years should be sufficient. If unheard of, and if there be children to such a marriage, then a period of seven years may be prescribed for desertion.

Clause 30 (e).—Here also seven years is too long a period as it would leave the petitioner open to grave risk of infection for a long period. 'Contagious and loathsome disease' should be added to this provision.

A new provision bringing in adultery as a cause for dissolution should also be added. There is no reason why this should not be done as in the texts of Narada, Vasishtha, Katyayana and Parasara, this has been included as a ground on which a woman could remarry. "Patita" which means fallen and bad charactered are not recognized in the texts for remarriage; and clause (f) as it stands, does not cover this ground satisfactorily.

3. Professor K. P. Chattopadhyaya, M.Sc. (Cantab.), University Professor and Head of the Department of Anthropology, Calcutta University.

In a discussion of the principles which underlie the rules of inheritance published in Science and Culture (Volume IX, pages 56-62, 1943-44) I pointed out to what extent the recommendations of the Hindu Law Committee of 1941, fitted in with the old social traditions. Certain defects in the rules for intestate succession were also pointed out. A copy of the reprint of my paper on "Cultural Basis of Rules of Inheritance" is enclosed herewith, to avoid reiteration of the arguments and facts noted therein. The earlier portion of the paper analyses the factors linking inheritance rules with the general culture. The second half applies to the conclusions to the case of inheritance of property by women (in the Daxabhaga area) in Bengal.

In the paper referred to, it was pointed out that among the majority of Hindus a "bride price" is charged. For reasons stated in another paper ("Effect of bride price, etc., on marital conditions among Hindus") a reprint of which is also enclosed, I recommend that attempts should be made by law to reduce the bride price to a nominal value. Subject to such reductions I recommended that half a son's share for a daughter would be just and the property should vest absolutely in the daughter. Otherwise the "sulka" (bride price) should be made over to the daughter as stridhan.

The proposal to give the daughter exclusive right to the mother's stridhan, debarring sons was criticized, by me, pointing out by examples that such an award would eventually lead to women holding larger shares of property than men. The details will be found in the paper on inheritance previously mentioned. I noted that in the present draft this defect has been partly removed and the son given half a daughter's share to the mother's stridhan in the old sense of the term, namely, property other than that inherited by the woman from her husband. But there is one serious defect. If the husband makes a gift of property in his lifetime to the wife, the daughter cannot claim a share to it, greater than the son, inasmuch as tradition prescribes that a son should look after his parents. A married daughter cannot do so, unless her husband undertakes the burden. An equal share for son as well as daughter is more equitable owing to these facts.

It should also be remembered that among the educated Hindus of the middle and upper middle class there is a tendency to register self-acquired property in land and buildings jointly in the name of husband and wife or even of the wife alone, to secure the position of the latter. This healthy tendency will be checked if the proposed Code is accepted and the woman's property (other than that "inherited from husband") goes mainly to daughters.

A second defect which I pointed out has not however been removed. Regarding the widow of the deceased, I pointed out that Hindu religious and social traditions justified an award of a share of the husband's property to her absolutely. I pointed out, that this share cannot exceed half the estate. If the estate is entirely self-acquired by the deceased husband, his brothers and their heirs cannot have any objection to inheritance by the widow of the whole estate. But if the property is inherited, the limit of half should be operative, for a childless widow (or one whose children are dead).

I have also pointed out in the paper referred to that there is no justification for placing the son's daughter in a sub-class, after the daughter's son. If their parents had been alive the two cousins would have had equal shares eventually. This anomaly has been rectified in the case of stridhan but not for the property of the deceased grandfather.

For the widow, with son's daughter and daughters' son living I have recommended that she should inherit half of her husband's property absolutely and the other half should go to her grandchildren on the per stirpes basis. If the widow is childless or has no children or grandchildren living and the property was acquired entirely by her husband, she may get the property entirely—subject to maintenance rights of dependant parents, etc., as noted in the draft Code. If the property is inherited, the childless widow (etc.) should get only half the property and the other half pass to the parents.

There is no reason in separating mother and father any longer as heirs, as women are being given rights to property. In class I, the parents should form a single sub-class, taking precedence as now, to brothers.

As I have pointed out in my paper on inheritance, a married daughter who has received a dowry being equivalent to the making over of the father's property (her share) in anticipation, is on a different footing. There should be provision in law for excluding such a daughter from inheritance later on, by a deed executed at marriage.

Marriage—Monogamy.—Hindu religious traditions have been on the whole in favour of monogamy. I do not propose to quote from the ancient law books, as a very elaborate work on this subject was published by my great grandfather Pandit Iswar Chandra Vidyasagar, nearly a century ago when he tried to stop polygomy. The Committee may if necessary look up that work in any good library.

I should like to add merely that the present legal right of a Hindu to contract a polygamous marriage is an abuse of what was sanctioned in old times as a carnal form of union as opposed to the sacramental marriage. Hence monogamy, can, with the sanction of Hindu religious traditions be enforced in sacramental marriage. For civil marriage it is the rule!

I may add that the absence of enforcement of monogamy in Hindu marriage has placed the Hindu wife in a very humiliating position when compared to a wife taken in civil marriage. In a recent case decided by the Nagpore High Court, a young Hindu, who had married a Hindu wife first and then contracted a second marriage under the Civil Marriage Act in England, was held to have committed adultery when on his return he lived with his Hindu wife. In other words in the eye of our judges, the Hindu wife is no wife at all, if a subsequent marriage takes place under a law that insists on monogamy.

Degrees of relationship prohibited.—The terms "uncle," "niece," "aunt," "nephew," are used vaguely in English to lump together a large number of kinsmen as well as relatives by marriage. They should be replaced by mother's brother, sister's daughter, father's brother, brother's daughter, mother's sister, sister's son, father's sister, brother's son. I have left out the uncles and aunts by marriage as neither Hindu Law, nor the Civil Marriage Act debar at least some of these marriages. I know of a case where an orthodox Brahman married, with full approval of village elders, his deceased wife's brother's daughter. An Englishman would call it a marriage of an uncle with a niece.

Sapinda bar.—In theory, an orthodox Hindu avoids a sapinda in marriage. In practice, the rule is not observed strictly up to the seventh generation on the father's side or the fifth generation on the mother's side. No one keeps a record of the twenty thousand relations thus debarred.

Whenever there has been any difficulty of getting suitable husbands for daughters, among families of high caste, the rule has been disregarded if a suitable bridegroom has been found within the sapinda relations—provided the relationship is not closer than that of third cousin. An examination of the genealogy of many well-known family of Brahmans of Bengal (for example that of Raja Rammohan Roy and his brothers, of the well-known Tagore family, of the collaterals of Iswar Chandra Vidyasagar) will prove my contention. The rider added by you "unless the custom or usage governing each of them permits" is inadequate, as in many cases, one party came from the orthodox section of the family breaking away from the older tradition. Hindu society has accepted these and many other families as Hindus. The Hindu Code as proposed will turn them out of Hindu society and deprive liberal Hindu society of its leaders. I may add that orthodoxy can be satisfied by keeping "agnatic sapindas" out of marriageable persons in sub-clause (d) of clause (3). The alternative

clauses (3), (4) and (5) are unsatisfactory and should be deleted. Consequential changes should be made in the sections on "Nullity and dissolution of marriage" to substitute "agnatic sapinda" for "sapinda."

Decree for dissolution of marriage.—The clauses have been properly drafted. Only clause (e) gives too long a period for the disease. This is not desirable on eugenic grounds. The period should be shortened.

A reference to the learned treatise on "Widow Remarriage" by Pandit Iswar Chandra Vidyasagar will furnish the Sastric texts in support of the proposed law of divorce, as the conditions under which remarriage is permissible (desertion, incurable venereal disease, lunacy, and becoming a sanyasi) are discussed there.

A society, like an organism, can live only if it adapts itself to changing conditions. Hindu society is now in an economic and political setting which is different from that prevalent for about a thousand years or more prior to the modern times. Women can now go about, receive education, earn their livelihood and marry late. They are no longer married in infancy nor held in tutelage by the men throughout their lives. An attempt to continue social customs which went with complete economic and social dependence of women, now can merely cause social disharmony and prolong a maladjustment.

Many women, who have been put away by husbands for no valid reasons, are now earning their own livelihood as teachers, nurses and clerks. For social health, such women should be permitted to divorce their husbands and remarry. Similarly, impotence and lunacy at the time of marriage have rightly been held to invalidate marriage, as in the one case, the man cannot give a child unto the wife as required in sacramental marriage (it was a bar in the old days) and in the other he cannot take a wife, not being of sound mind. It is not also desirable to spread lunacy in the race. Virulent infective leprosy and certain types of venereal disease also are to be segregated.

The other grounds need no comment; they are quite sound, and in keeping with the present changed social and economic setting. The degree of maladjustment and the need for a change in the marriage rules ought to be apparent to every Hindu when he finds that Hindu married women are embracing Islam, simply to obtain freedom from a bond which should be sacred but had become in their cases, a shackle. As a defence mechanism of Hindu society, if not for other reasons, a law empowering divorce is essential.

Some persons have recently objected to the grant of equal rights in marriage to women on the ground that they are not equals of men biologically. Under modern technical conditions, this is incorrect. The difference in strength and stature between men and women, in any race, does not affect their efficiency in modern workshops. The British Cabinet Minister Mr. Bevin has stated in his recent speech in connexion with war production that contrary to expectations the seven million and odd women called up to work (from domestic occupations) have done the work of an equal number of men, instead of three women doing the job of two men, as originally anticipated (vide B.B.C. broadcast of his speech during this week).

Inter-caste marriage.—The elaborate provisions for determining the status of children born of inter-caste unions in the Sastras, and the fact that their position as members of society was definitely recognized, shows that such marriages have always been valid.

4. Hindu Women's Association, Calcutta (Mrs. S. R. Chatterjee—Honorary Secretary).

It may be pointed out at the outset that the necessity for the codification of Hindu Law at the present time has not at all been made out. The Hindu society has fairly understood the Hindu Law, existing for a long time, and is quite content with it, in spite of its imperfections, real or imaginary. At the same time the Committee has never felt that the present-day Hindu Law cannot be properly administered without its being crystallised in a cut-and-dried code. It cannot be pretended that the Code is a generous response by the legislature to any demand from the public; nor can it be said that even after its publication, it has received any substantial measure of support from the public. The little support it had has come only from a vocal section of the public, who form a microscopic minority in the society. Even there it would appear that some of its supporters are labouring under foreign ideas,

and some others under a false notion that a uniform Hindu code for the whole of the Hindu society will go a great way towards its unification. We are convinced that if the Bill, if properly placed before the public, by appropriate publications in the vernaculars, and in other ways, it will evoke so much opposition that even the most autocratic legislature will be obliged to take serious notice of it. Besides, can it be affirmed with any confidence that codification of the Hindu Law would prove beneficial? The Hindu Law, with its wonderful vitality and adaptability, has been meeting the needs of the community for centuries, by absorbing new ideas and discarding obsolete ones. To circumscribe such a law within the bounds of a code would be to give it a rigidity it never had, and would make frequent interferences by the legislature very easy, nay, plausible. It may be expected that it will become a plaything for politicians anxious for reform even for its own sake. In this connexion, it may be pointed out, without meaning any offence, that the existing legislature, dominated by non-Hindu elements, is wanting in any moral authority to impose its will on the Hindu society in its religious, social and family matters. Even if it were otherwise, it must be said by every fair-minded person that the drawbacks of such legislation far outweigh its supposed advantages; and, accordingly, we are strongly opposed to such codification.

The position, however, is worse, and even alarming, when, in the process of digesting, you attempt an alteration of the law in fundamental matters, as the Committee has done. Without offering a detailed criticism of the Bill in all those matters which are open to comment, we would confine our remarks only to some essential matters in which the law has been changed; and this, we find, has been done notably in two subjects, viz., marriage and inheritance.

If the sacramental marriage had been merely codified, perhaps not much harm would have been done—at least in the near future. Those impulsive or go-ahead young people, who want to avoid the restrictions of the sacramental law, can well take advantage of Act III of 1872, as at present, or its counterpart, viz., the civil marriage rules provided by the draft code. If so, what was the necessity of diluting the sacramental marriage with such un-Hindu ideas, as divorce, remarriage of wives, *sugotra* marriage or marriage outside caste? We emphatically record our protest against the introduction of such heterodox principles into the Hindu law of marriage.

To begin with monogamy and divorce. That polygamy is an evil will be admitted on all hands: At the same time it will have to be recognized that it has practically disappeared from Hindu society. In the seventies of the last century an attempt was made by Pandit Iswar Chandra Vidyasagar to stop it by legislation. The attempt did not materialise presumably because it was thought unnecessary by the Government and the thinking section of the public. Since then, it has continually been in the decline, so much so that it would not be far wrong to say that at present it is non-existing in the higher classes in Hindu society. I need not attempt to go to the causes of such decline—better education, better ideas of the relation of the sexes, growing self-consciousness on the part of females, economic difficulties and such others. These and other causes, which are in operation, and will grow more with the passage of time, have led in fact to a practical adoption of monogamy as a rule of life in the higher orders in Hindu society. It seems, therefore, that the legislature might well leave this matter to the good sense of the parties and the force of public opinion. It must, however, be admitted, that in the lower orders, where conjugal ideas are more or less lax, bigamy is sometimes found. If on such people you impose monogamy, you would induce them to abandon the Hindu society and enter another social order where polygamy is allowed by law and tolerated by public opinion. Such entrance is easy, and is even considered meritorious by the new society which will offer every facility to the convert. It would not have been so if the legislature could prevent polygamy in Mahomedan society as well. But as that is not to be, my Association feels that, by making monogamy the law for the entire Hindu society, you are really helping to weaken it by defections. So in the higher classes the rule against polygamy is at best unnecessary, and in the lower classes it is harmful to the society. Besides, the opponents of this measure may well rely on another consideration in

their support. Monogamy and divorce go together, as they must, and this the Committee has recognized. My Association, however, is strongly opposed to the introduction of the practice of divorce in sacramental marriages, if for no other reason, at least, because it will do more harm than good to the unfortunate woman. Having regard to the present conditions in Hindu society, even maiden girls find it difficult to get suitable husbands. The Hindu Widows' Remarriage Act has remained in force for nearly a century, but how many widows have got themselves married? A divorced wife would be in a worse position—she will have to remain single, like a spinster or a widow, without the advantages of either position throughout her life, in matters of inheritance, maintenance and so forth. So my Association is advised to object to the introduction of monogamy and divorce in the new Bill. Their right place is in the civil marriage which the Committee has quite properly given to them.

Another matter is of equal importance—I mean, the question of the validity of inter-caste marriages. In this respect the Bill, as introduced in the Assembly, is certainly to be preferred to the draft proposed by the Committee. When you have two classes of marriages, the sacramental one and the civil one, side by side, there is no need to introduce these special kinds of marriages into the former. To call such marriages "sacramental" ones would be a misnomer. Whether one likes it or not, the caste system in Hindu society cannot be ignored, and will have to be tolerated. If the Committee is bent on abolishing the caste system in Hindu society by legislation, it should do so in a mere straightforward way. But the Code does not purport to reform the Hindu society by legislation even if that were possible, and is merely codifying the law with such changes as, in the view of the framers thereof, are demanded by the changing conditions in society. In a word, those who would like to contract inter-caste marriages are at liberty to do so, but only by way of civil marriages. To call such a marriage a "sacramental one" will not make it so, nor will it be so regarded in society. The same remarks apply to *sagotra* marriages.

The changes proposed to be introduced in the law of inheritance, however, are of such a drastic character, and are calculated to have such a far-reaching effect on the society, that we cannot but express our views thereon somewhat strongly. Let me not be misunderstood. My Association has gone into this matter very thoroughly, and after anxious and prolonged deliberation, with such assistance from experts as was thought necessary, have arrived at certain definite conclusions. An emphatic expression of such opinion is due to its strong feeling in the matter, and must not be taken to be disrespectful to the committee, who appear to have performed their task with the utmost ability and care. But my Association would be failing in its duty if it omits to point out that the committee have, in their desire to harmonize conflicting views and lay down equitable rules, failed to keep in view some of the general principles of the art of legislation, and also some of the fundamental ideas of Hindu law. The Committee must be aware that although Hindu law does not ordinarily favour a multiplicity of heirs, it is very liberal in the matter of maintenance. So, in the usual type of cases, although the property is inherited by the sons and grandsons, a large number of persons, such as the widowed daughter-in-law, parents, grandparents, unmarried and widowed daughters and even married but indigent daughters, illegitimate children, etc., are to be provided with maintenance. If so, where is the compelling necessity of being more generous to many of such persons, by admitting them to the class of the very first line of heirs? Of course, if the question is one of giving them a heritable right in preference to the Crown or distant relations, or even to alter their position in the order of inheritance, no serious objection can be taken. But to benefit them by cutting down the rights of the very front line of heirs is an innovation which can be justified only on grounds of the utmost necessity. A detailed examination of all the provisions of the law of inheritance may not be profitable, and I would confine my remarks to two matters of outstanding importance, viz., the daughter's half share and the absolute estate of females, in the belief that the views of my Association, many of whose members belong to or are connected with families having properties, will be duly considered before rejection.

The committee has undoubtedly noticed the natural disinclination in Hindu society to allow properties to pass

to a different family, and have given partial effect to it by providing that a daughter should take half the share of a son. This half share was evidently suggested by a similar rule in the Islamic law, and it was perhaps thought that the rule should be acceptable to the Hindu society, when it is tolerated by the Muhammadan community, among whom the idea of agnacy is almost equally strong. The committee, however, has ignored one undoubted fact which has a great bearing on the question. It will appear that although the Islamic law enjoins a plurality of heirs such as the daughter, parents, etc., together with the sons, the Muhammadan society is strongly opposed to it, as will appear from the fact that after a good deal of agitation, the Muhammadan community had the Waqf Validating Act passed by the legislature. This Act permits a Muhammadan to tie up his property for ever in his family composed of agnatic descendants, without the risk of its passing to any other family by sale or gift or even by inheritance. At the same time it would be permissible to him to make any provision for maintenance among his descendants or other persons just as he chooses. Thus, by making a *waqf-al-awlad* (waqf for the benefit of descendants) a Muhammadan can for ever successfully avoid female inheritance, or even inheritance by males of other families, and can do much more. We are informed that almost all Muslims in Bengal, having properties of some considerable value, have, in recent times, prevented female succession for ever by a single document, framed in accordance with that Act. On the other hand, we are satisfied that nothing similar to it can be done under the Hindu law. People sometimes tried to do it under colour of a *debutter*, and have invariably failed; the Hindu law, in its rigorous application of the rules of honesty, would ban illusory *debutters*, and even the limitation of the office of *shebari* to one's male descendants. The only way in which a law of inheritance can be by-passed by a Hindu is by the exercise of the testamentary power every time. That this is not easily feasible will not be disputed; and even if this is done, the payment of the heavy probate duties under the existing law and the costs of litigation following a will, such as probate cases and administration suits, will be a heavy drain on the estate. We have it on good authority that a fairly considerable estate will not survive three generations, if female heirs have to be kept out by successive testamentary instruments.

In this connexion it would be instructive to take note of the effect of this provision of the Muhammadan law on Muhammadan society. By reason of the inheritance of females, semi-strangers, such as the daughter's husband and others, become co-owners of the family property, leading to its fragmentation, very often preceded by feuds, riots and litigation. The economic depression in Muhammadan society was mainly due to this collective inheritance, prior to its being checked by the Waqf Act. My Association shudders to think what the fate of the Hindu society will be if the same rules were applied. Already the suspicion is gaining ground that one of the objects of the proposed legislation is to weaken the Hindu community by striking at its economic backbone, as is being done in other ways.

The protagonists of the Bill have appealed to the principles of natural justice or fairness in support of the rule of the daughter's inheritance. A little reflection, however, will reveal the unsoundness of these pleas. The committee seems to have partially accepted the principle, recognized in Hindu law, that a married female becomes a part of the husband's family, and will have to look to it for her rights of property. On this principle the widow, mother, grandmother, etc., are given a right of inheritance in some cases, and a right of maintenance in all cases, and even a share of the property on partition,—all in the husband's family. If so, why should the married sister get a portion of her brother's inheritance? This would place her in a position of vantage as compared with her brother. Even in Muhammadan law she is not treated so well. In Muhammadan law the childless widow, as such, gets a quarter share and some share of her father's estate. In Hindu law a sonless widow gets the whole estate of her husband, so that any addition of a substantial share, received from her father's family, would be a superfluity, obtained at the cost of her brother. Muhammadan ladies of some position often think it beneath their dignity to take their legal shares in their father's estate; and we can assure the Committee that respectable Hindu ladies do often regard

any considerable gift or bounty from the father's family as inconsistent with their self-respect. So the proposal would be disliked even by those for whose benefit it is mooted, as is the case with my Association. It may also be observed that the alleged support to this provision of the Code coming from some females is more due to the fact that sometimes people are moved by catch-phrases, such as "rights of women," "equality of the sexes," and the like, than by a clear appreciation of the full implications of the Bill.

It may also be pointed out that the risk of fragmentation of the father's property, consequent on female inheritance, has been sought to be met by the committee by a provision to the effect that the brother would be allowed to purchase the sister's share at a fair price. This, however, is hardly a suitable remedy. The brother would, more often than not, be in want of sufficient cash for the purpose, and will, if he desires to exclude the sister, be under the necessity of risking his own share also by raising money thereon. At the same time such purchase will do little good to the sister, for the purchase-money is very likely to pass to the hands of her husband or sons, to her prejudice. So this would benefit those outsiders rather than the sister, to the serious detriment of the brother.

The proposed absolute rights of women would be liable to similar objections. The rule in Hindu law regarding "woman's estate," as it is called, is not due to any idea of the inferiority of women, but is calculated to secure to the family the ultimate return of the property after its fullest enjoyment by the female owner, and to prevent it from passing on to strangers. The only sensible objection which has been raised against the present law is that when the female owner wants to sell the property, she cannot get full value, and that such a sale very often leads to litigation with the reversioners. This, in itself, is hardly a sufficient plea; and even if it were the suggestion that a certain change in the law of procedure, by which the woman would be allowed to sell the property with the previous sanction of the Court, would meet the objection fully, is well worth consideration. In short, my association stands for the integrity of the family property, as every female of some foresight ought to do, inasmuch as the benefit supposed to be given to her is counterbalanced by serious disadvantages. If, as a daughter, she would get a benefit, she would at the same time have to tolerate a reduction of her husband's portion (which is really hers) in favour of her husband's sister, or her son's portion in favour of her daughter (which would really be her son-in-law's). These disturbances in the settled order of inheritance, which has been accepted by the community a long time ago, should not be attempted, except at the bidding of the community itself, or a very substantial section of it, and not at the instance of a few ardent reformers. It need hardly be pointed out that reformation of social and personal law and usages should not be forced on the people except with their consent.

Similarly the body of rules regarding the devolution of *stridhan* property is a matter to which my association takes serious objection. Here the committee has proceeded on the Indian Succession Act regarding the abolition of all distinctions between the sexes, so that son and daughter (whether maiden or not) are allowed to come in simultaneously; and even a son's son and a daughter's daughter inherit together. Nay, more. The female child has been placed in a better position than the male child, for the latter would get only one-half of the former's share. Perhaps the committee thought it fair that in the mother's property the female child should get double the share of a male, as a counterpoise to the rule that the son would get double the share of a daughter in the father's estate. But we would emphatically point out that the existing rules of Hindu law have not been shown to be unfair, nor has any case been made out for a change. At present, son and maiden daughter are allowed to come in the first instance, the married daughter being excluded by them. The reason evidently is that the married daughter is primarily a concern of her husband's family, and the maiden daughter with an inheritance would more readily find a suitable bridegroom than otherwise. At the same time the son and son's son are primary objects of a woman's affection and bounty. The mother would not like to treat her son as less than her daughter by one-half, or her daughter's daughter, who is regarded more or less as a stranger, as equal to two sons' sons. In the view of my association,

in the matter of *stridhan*, a digest of the present law would be more in accordance with natural justice and the idea of the females owners themselves than a wholesale change thereof as suggested.

5. Maharaja of Burdwan.

Leaving aside the question of religious aspect of the draft code, it is apparent that social and economic aspects of Hindu laws on inheritance, marriage, divorce, etc., have been completely overlooked or ignored in the draft Code. The introduction of the principle of 'Faraz' under the Muhammadan law in the draft Code, if made law, would lead to the destruction of Hindu social culture. No doubt succession to agricultural land falls within the Provincial List but the explanatory statement of the draft Code hastens to assume that after the Code has been enacted by the Central Legislature, the Provincial Legislatures will speedily extend its relevant provisions to agricultural lands also.

In a mainly agricultural country with a Hindu population of over 70 per cent where fragmentation of agricultural holdings due to the already existing laws of succession is agitating the minds of agricultural economists and when consolidation of such holdings is the need of the day it is curious that the authors of the draft Code have invented and introduced in the draft new elements to inherit property of deceased Hindus. The authors of the Code will do well to convince the Hindu public that their new set of successors will not stand in the way of the development of rural and agricultural economy of the country. I draw their attention to the relevant points on this issue to the Report of the Bengal Land Revenue Commission and invite them for a reply on the issue.

The psychological factor of the average Indian regarding extreme fondness for his villages and homestead land, I am afraid, has not been considered by the framers of the draft Code. To rely on a change of this psychological factor of an illiterate population of over 75 per cent is childish if not madness. This sentiment has acted adversely in the working of the Muhammadan laws of succession so far, as Bengal is concerned. That their rural economy in the province has practically collapsed is a 'fait accompli' in consequence. Men in authority in other provinces may speak on this point for their respective provinces. It is for the framers of the draft Code to enlighten the Hindu public if they had collected necessary data on the working of the Muhammadan laws of inheritance for a comparative analysis from economic point of view. If they have done so it is proper for them to place them before the public before inviting their opinion and criticism about the draft Code. If on the other hand they have not collected such or any other data on the point and have relied on conjecture, their decision or finding cannot and should not be relied on such a vital matter, because conjecture is not truth.

Inclusion of foreign elements in a family property has generally accelerated disruption of family, resulting in economic decline. Data on such points may be collected from Civil Courts, Settlements Records and other appropriate channels. Have the authors of the draft Code tried to collect such data? Equally important is the collection of such data from other countries and their examination from social and economic point of view or comparative analysis with a view to get the best out of it, if possible. All these matters require thorough investigation and critical examination which require not only considerable time but I think is absolutely impossible in these years of stress and strain due to war condition.

Death Blow to Hindu Culture.

From the social point of view the draft Code, if made law, will be a death blow to Hindu culture. New provisions for the laws of marriage and divorce will complete the cultural conquest of India which has yet remained unconquered for thousands of years in spite of multifarious ups and downs in her history. Statistics again of cases of divorce and other relevant data on the point of different countries is essential before we change the existing law. I will invite the Select Committee to enlighten us on the point before they seek our opinion.

It appears to the mind of the Hindus generally that a microscopic minority deviating from the high and lofty

ideals of Hindu philosophy and placed temporarily in comparatively better position are feeling uncomfortable for their future generation, but we Hindus believe and are firmly convinced that the big tree of Hindu religion is wide enough to give them shelter and accommodate them as it has always done and the Hindus can assure them and their descendants of a proper place and their chances of being authors of other series of "Ayiteriya Brahman" will remain open. It is no argument to deviate from the established rules of centuries to accommodate some fallen cherubs and thus to encourage practically breaking up of the Hindu family tie unless strongly backed by unrepentable and clearest logic.

Coming next to the religious aspect of the draft Code, all that can be said is that the essentiality of Hinduism is the absolute faith in the "Vedas" and the life after death. "Pinda" theory is a necessary corollary of the latter and the law on succession of the different schools of Hindu law is based on this theory. If the Code is changed as envisaged by the Select Committee, it is proper to omit the word "Hindu from the draft."

Definition of "Caste" optional registration of marriages, principle of determination of maintenance, etc., in the draft Code, if made law will invariably lead to multifarious complexities and multiplicity of litigation which ruins families and is a curse to the poor Indian. There are other controversial matters which it is not possible to discuss in a short note.

The draft Code seems to me to be too hasty, ill-conceived and not based on logic and should be kept in abeyance till the termination of the war.

6. U. C. Mahtab, Maharajadhiraja Bahadur of Burdwan, President of the meeting.

Resolution.—That this conference of various organizations representative of Hindus in this Province as also of the larger public interested in the draft Hindu Code is definitely of opinion that the proposed Hindu Code is uncalled for and inopportune; that the conference is further of opinion that it is opposed to Hindu social and religious ideals and that it will adversely affect the interests of Hindu society and accordingly urges that the Bill should be dropped.

7. Maharaja S. C. Nandy, M.A., M.L.A., of Cossimbazar, President, All-India Anti-Hindu Code Conference and Committee.

There is no demand for this Hindu Code from the general Hindu public. The demand that has come, is only from a microscopic minority whose bias is more towards Western ideas and concepts than to the spirit of Hinduism. Hence the proposed Hindu Code does not represent any real desire for reform from bona-fide Hindu public opinion.

The Indian Legislature is composed of both Hindus and non-Hindus. Even the Hindus there represent non-Muhammadan constituencies and as such are not likely to represent Hindu religious and social interests in a proper manner. Hence apart from the question of competency of the Indian Legislature to take up religious reform through legislation, there is a further question that such a legislature composed of members from the various communities should not undertake this sort of legislation affecting the vital interests of one community only. I should also like to point out that even the All-Parties Conference which produced the Nehru Report accepted the convention that no law affecting a particular religious community should be passed unless a special majority, say three-fourths of the members of the legislature belonging to the community affected, agree to the same.

The British Parliament is committed to the general principle of non-interference with religious matters. I do not know how the Indian Legislature can take up this question of interfering with vital religious customs and practices of the Hindus, which is in direct conflict with the main principle of Queen's proclamation and similar other charters issued by the British Government.

Apart from the general considerations, I would like to point out that this exceptional war-time is particularly unsuitable for undertaking a reform like this. Even the world social order itself is undergoing revolutionary changes. The pace of this change may be accelerated in every country after peace is restored. On this background, a reform of Hindu law hastily introduced during war time may become hopelessly out of date in the postwar years.

The draft Hindu Code attempts to introduce uniformity in Hindu religion. This uniformity is a negation of Hinduism itself. Moreover it is an impossible task which would further complicate the religious and social issues involved in this reform. We should also remember that the fundamental aim of Hinduism is to find unity in diversity and the entire net work of the diverse, social and religious practices are but a fine balance to realize a common unity of purpose. Any reform which is ill-informed is likely to disturb this balance and produce more mischief.

The Family is the basis of Hindu society, and it is based on an adjustment between the rights and obligations of the different members of the family—including females. The Hindu Code introduces so-called rights of women without taking into view the corresponding obligations. Hence it will sow the seed of disruption of the Hindu joint family, and family life in general. It will also lead to undesirable fragmentation of Hindu properties.

The family system is an excellent social security plan. If family is destroyed, no alternative scheme is offered to fill up the gap. In Great Britain, for example, there is the unemployment relief or old age pensions. And in the postwar scheme of affairs, we hear of a Beveridge of social security. But no such plan is in the offing in India.

As a result of this Hindu Code there will be a general weakening of the Hindu community, politically, economically as well as culturally.

No Hindu can view this with equanimity.

Sacramental marriage is the backbone of Hindu society, and it is rather preposterous to define the rituals to be observed by law.

Monogamy is in vogue both for economic and moral reasons. Legislation is unnecessary to enforce the same, as any such enforcement may lead to undesirable vices. Divorce is not yet an acute problem in Hindu society.

Inclusion of daughter as heir is not found in any school of Hindu religion. It is entirely a foreign concept. The respective rights of the son and daughter should correspond to their duties and obligations, as enjoined by the Hindu view of life, which is both material and spiritual. As a matter of fact the authors of the Code try to introduce the principle of individualism and the theory of female rights, which are not acceptable to Hindu culture.

The Muslim community have the practice of marriage between cousins. They have also the facility of creating Wakf Trust. Hence they can retain property within their family to some extent. Even then there is a general tendency of disintegration of Muslim properties. I think this experience should not be repeated in the case of the Hindus, particularly when they have no means to check the process.

The illiteracy among women will help mischief-mongers to create family factions and division. This will be a dangerous consequence of giving the rights of property to Hindu women.

Civil marriage is a safety valve for those with ultra-modern ideas. If any amendments are needed these may be made in Civil Marriage Acts or elsewhere. But Hindu law should not be tampered with to serve the needs of non-Hindu ideas and concepts.

8. British Indian Association, Calcutta (P. N. Singh Roy, Esq., O.B.E.—Honorary Secretary).

My Association finds that the Hindu Code starts from the desire of avoiding the evils of piece-meal legislation on the subject and that the central object of the Hindu Law Committee appointed by the Government of India was to evolve a uniform code of law which would apply to all Hindus "by blending the most progressive elements in the various schools of law." The draft Code deals with intestate and testamentary succession including maintenance, marriage and divorce, minority and guardianship, and adoption. These topics are in the Concurrent Legislative List of the Government of India Act, 1935, and as such the Central Legislature is competent to deal with them.

2. My Committee has given close consideration to the draft Hindu Code and to the sentiments leading to its evolution. It regrets to find that the Hindu Law Committee has not taken into consideration the fact that the life-centre of Hindu society resides in villages and not in cities where Western education and Western mode of living are confined to a select number of people without any visible effect on the entire fabric of Hindu society. To

students of sociology the widening of the gulf between city and village in India is one of the tragedies of the modern scheme of things, and the few vocal women in the cities, drunk with Western education and ways of living, who pass off as progressive elements in society, do not represent the vast numbers of our women living in cities and villages as adherents to the social and religious practices of Hindus. The draft Code suffers from undue emphasis on the demands of those few who float like uprooted elements in our society. The Association notes with surprise that the objections put forward by representatives men and women of the property-owning community have hardly been taken into account, and the Hindu Law Committee is not evidently impressed with the case of those who form an integral part of Hindu society and who have a vast stake in the country; it has shown impatient anxiety for the importation of so-called progressive doctrines on the plea of uniformity.

3. The Association finds that the draft code in the matter of intestate succession provides that it shall not apply—

(a) to agricultural land except in the Chief Commissioner's Provinces;

(b) to any estate which descends to a single heir by a customary rule of succession or by the terms of any grant or enactment;

(c) to any property of a Hindu governed by the Marumakkattayam Aliyasanthana or Nambudri law of inheritance.

The foregoing will show that the uniformity proposed to be achieved by the Hindu Law Committee is not at all obtained. Besides agricultural properties which cannot be dealt with by the Central Legislature, exceptions are provided for in respect of other properties.

4. It is well-known that the Mitakshara recognizes two modes of devolution of property, namely, survivorship in the case of joint family property, and succession in respect of property held in absolute severalty by the last owner, whereas the Dayabhaga recognizes only one mode of devolution, namely, succession. The draft Hindu Code defines "heritable property" as that property which passes by inheritance as distinct from survivorship. This definition is practically neutralized by clause 1 of Part III-A of the Code.

The Association finds that the Bill deals a death blow to the doctrine of survivorship and also to the right by birth in property obtained by sons by succession from their fathers in the case of a Mitakshara Joint family. To obtain uniformity, clause 1 of Part III-A of the Code abolishes the principles of survivorship in toto as widow and daughter are recognized as simultaneous heirs with the sons, and in consequence even an undivided interest in coparcenary property will devolve by succession. It is therefore illusory to find the definition of "heritable property" in clause 2 of Part II of the Code as the property which passes by inheritance as distinct from survivorship. The proposal thus seeks to bring the law in the Mitakshara jurisdictions into unison with the Dayabhaga law. It thus force the separation of the joint family property and seeks to accelerate its dismemberment for the professed ideal of uniformity.

5. The doctrine of religious efficacy is the guiding principle under the Dayabhaga school. The order of sapindas, according to the Bengal school, is son, grandson and great-grandson. The wife is the sapinda of her husband in the absence of male issue; the daughter is a sapinda because her son offers pinda. Spiritual efficacy as the principle guiding rules of succession must fail in the case of all female relations. The foundation of the doctrine of spiritual benefit is the Parvana Sradha ceremony. Sapinda, according to the Mitakshara, means a person connected through the same pinda or body, but according to the Dayabhaga, it means a person connected through the same pinda or funeral cake presented to the ancestors at the Pravara Sradha ceremony. Widow and daughter being recognized as simultaneous heirs of son and grandson in the draft code, the doctrine of spiritual benefit as laying the foundation of the Dayabhaga rules of succession is affected. It involves a direct assault on the religious sentiments of Hindus governed by the Dayabhaga school.

6. The draft code provides that if a separated Hindu under the Mitakshara or any Hindu under the Dayabhaga dies intestate, the widow and daughter who are simultaneous heirs of son and grandson will take the property

absolutely. The present law is that the widow's interest even under the Hindu Women's Rights to Property Act of 1937, as amended by Act XI of 1938, is the limited interest technically known as the Hindu Woman's Estate. It means that she is entitled only to the income of the property, but she cannot make a gift of the property nor can she sell it unless there is a legal necessity for the gift or for the sale, and on her death, the property will pass not to her heirs, but to the next heir of husband. Under the draft Hindu Code, the woman will take the property absolutely as if she were a male heir. That changes the basic principle of succession. The limitation on Woman's estate was not a recognition of the inferiority of women but an acceptance of the principle that the opportunities for the exploitation of the woman's estate should be narrowed down in the interests of women themselves and of the property concerned. My committee does not favour that a female will take the property absolutely and that she will become a fresh stock of descent.

7. My Committee finds that the draft Hindu Code favours daughter at the cost of the son. It can be gathered from the following provisions:—

(a) The intestate's daughter who is a simultaneous heir along with son will take half a share.

(b) The daughter whose consummation in life is in wifehood will take one share as the widow of her husband.

(c) Son shall take half the share of a daughter in respect of the mother's stridhan, not inherited by her from her husband. Daughter thus gets half a share in her father's property, she gets one share of the mother's stridhan. But son cannot travel to a different family; so he gets one share of his father's property and half a share of the mother's stridhan. Both males and females take property absolutely and can become fresh stocks of descent. In this wise, the favour shown unto 'daughter' is not called for, especially when a Hindu father is bound to maintain his unmarried daughters and when unmarried daughters are bound to be maintained out of the estate of their deceased father. It is also stated that a father-in-law is under a moral obligation to maintain his daughter-in-law and that "on his death the moral obligation is changed into a legal obligation as against his estate in the hands of his heirs." The High Court of Calcutta expressed the opinion in *Mokhada v. Nundo Lall* (1901) that daughter was entitled to maintenance as against her father's estate, provided she could not get maintenance from her husband's family. The Association is however prepared to lend its support to legal allotment of cash-money for daughter or daughter-in-law out of the property of the deceased father or deceased father-in-law as the case may be. But the room for fragmentation of properties should not be widened by making daughter and daughter-in-law absolute sharers of the property.

8. On a review of the draft code regarding intestate succession, the Association finds that it will accelerate the fragmentation of properties, invite complications by the provision of women taking the property absolutely, to create family disruption by the introduction of strangers as sharers of the property (the Hindu woman ceasing to be a member of the father's family after her marriage) and impair domestic peace by accentuating the legal rights of simultaneous heirs. The devolution of property by wills in contravention of the order of intestate succession will be a paradise for lawyers as such wills will be contested to the detriment of happy relations amongst the sons and daughters of the deceased. The Code will increase litigation and dismember properties for mere fun. It will thus deal a death blow to the property owning community, although the agitation in favour of such a Code is carried on by persons who are mostly not owners of properties.

9. In clause 5 of Part III-A, dependants are enumerated for the purpose of maintenance. The Association is not prepared to lend support to the granting of maintenance to any minor illegitimate son, or any unmarried illegitimate daughter or to a concubine, as the right of maintenance should extend only to the dependant members of the family. The grant of maintenance to illegitimate issues involves their recognition and acceptance as members of the family, and this will indirectly poison the social fabric in proportion as illegitimacy is indirectly supported. Hindu society should be allowed to develop on lines consistent with certain basic features, and there should be no encouragement, direct or indirect, to immoral ways

of living. The recognition of illegitimate issues is an instance in point, and illegitimate children should not be accepted as members of the family. Similar is the case with a concubine who is after all taken out to be a family disgrace, and the right of maintenance should not ordinarily be extended to her. But an exception may be made in the case of a concubine who was chaste before her connection with the deceased and who will not marry or lead incestuous or adulterous life in future.

10. Clause 6 of Part III-A relates to the amount of maintenance. The Association finds that in determining the amount of maintenance, regard shall not be had to the income of the widow of the deceased from her own earnings or any other source (the stridhan being excluded), but in the case of any other dependant, the income from his or her own earnings shall be taken into account [vide sub-clauses (g) and (h) of clause 6. of Part III-A]. The Association does not favour this discrimination, and it pleads for uniformity in the case of the widow and the other dependants.

11. My Association notes that in Part IV of the Draft Code, Marriage and Divorce, two forms of Hindu marriage are contemplated a sacramental marriage and a civil marriage. Monogamy is considered as the guiding rule of marriage, as even in a sacramental marriage "neither party must have a spouse living at the time of the marriage." The Association extends support to the principle involved in it, but the rule of *factum valet* may be allowed to operate in sacramental marriages where a man will have a wife living at the time of his marriage. In section 6 of Part IV, it is provided that sacramental marriages are not to be deemed invalid in certain cases, but a suitable provision should be inserted there recognizing sacramental marriages where a bridegroom has a wife living.

12. Marriage, according to Hindu Law, is a holy union for the performance of religious duties. It is therefore necessary to restrict the provisions of the nullity of marriage to the minimum in the case of sacramental marriage. In the opinion of the Association, the question of nullity should only arise in respect of marriages where no consummation can take place, marriages within prohibited relationship, marriages between sapindas, marriage of a lunatic or of a congenital idiot, and marriage of a woman whose husband was living at the time of the marriage. Accordingly, sub-clauses (i) and (iv) of (1) of clause 29 should be modified. The Code, Part IV, is however silent on the issues of parents whose marriages will be declared null and void. If marriages are declared null, children born of such marriage, are to be considered as illegitimate, and as such in the opinion of the Association they are not to be, and cannot be, treated as members of the family. This gives rise to an intriguing situation which should be satisfactorily dealt with.

13. In clause 4 of Part V of the Draft Code relating to Minority and Guardianship, it is contemplated that no guardian is to be appointed for the minor's undivided interest in joint family property. The Association holds that this should be the ordinary practice, but it should be left to the discretion of the Court if facts are placed which give rise to legitimate suspicion that the interests of the minor are not safe in the keeping of the adult member of his family. In such exceptional circumstances, a permissive clause should be there in the appointment of the guardian with a view to safeguarding the legitimate interests of the minor.

14. Clause 28 of Part VI of the Code relating to adoption refers to the particulars to be contained in the application of adoption. The Association is of the opinion that a sub-clause should be inserted so that it should also be mentioned if the adopter is a bachelor.

On a review of the Draft Hindu Code, the Association finds that the Code in its Part IV (Re: marriage and Divorce), Part V (regarding Minority and Guardianship), and Part VI (regarding Adoption), registers an improvement on the existing law, and those parts are undoubtedly helpful, although objectionable features are found here and there, but it records strong opposition to Part II of the Code (regarding Intestate Succession) as it involves assault on the socio-religious practices, dismemberment of non-agricultural properties and creation of discontent, distrust and suspicion in the family. The legislative interference in the personal laws of Hindus, connected as they are with age-old religious practices, is unwise, if it is not called for, and the Association considers the proposed

legislation as uncalled for, and unjustifiable interference. It will break many homes, ruin the properties, increase litigation and introduce corrosive elements in the social fabric. The Association therefore records its strong disapproval of Part II of the Code (relating to Intestate Succession). The foregoing criticisms are submitted for the sympathetic consideration of Government so that the Draft Code may be amended on the lines indicated.

9. Mr. Nirmal Chandrá Pal, M.A., B.L., Lecturer, Dacca University, Dacca Hall; Ramna, Dacca.

I am entirely in favour of codifying Hindu Law. Besides the usual advantages of a codified law known to every lawyer it seems to me that Hindus would derive two more advantages from such codification. In the first place it will give, as pointed out by the Hindu Law Committee, a sense of unity among the Hindus in the different parts of India which is bound to develop a national solidarity among them. Every student of History is fully aware how the development of a common law in England helped the different nationalities inhabiting that country in the beginning of the middle ages, to form a united British nation. From a national point of view on the eve of the introduction of the Federal form of Government for India the case for a unit form of codified Hindu Law for the Hindus of the different provinces of India is irresistible.

In the second place, it seems to me that there is a great humiliation in recognizing the Christian judges of the Privy Council as the final interpreters of our shastras. Let them be the final authority for interpreting British Indian Laws. I wonder if those who claim to be governed by the shastras and oppose codification realize this humiliation.

The Draft Code has, it appears, mainly embodied the existing law with some very notable exceptions, namely:—

(i) It has given absolute proprietary rights to all female heirs and abolished the distinction between stridhan and widow's estate. I am entirely in favour of this welcome change. Hindu Law is essentially evolutionary in nature and any change which improves the condition of women cannot be against the spirit of Hindu Law. This is consistent with Yagnavalkya's text as explained by Vignaneswara. Every lawyer knows that the rule of limited interests of Hindu females was accepted by the Privy Council on the authority of the Dayabagha which again based it on a text of Katyayana, which does not entirely support the view. Therefore, it is erroneous to suppose that it is against the spirit of Hindu Law.

From the practical point of view also it will benefit the Hindu Society because it will stop a considerable number of law suits which crop up due to the limited right of Hindu women.

(ii) It has made the daughter a simultaneous heir with the son.

This has evoked most bitter criticism as it affects the vested interests of sons. Being an advocate of equal legal rights of men and women I am in favour not only of making sons and daughters simultaneous heirs but of giving them equal shares. Natural justice and affection demand that it should be so. Those who oppose daughter's right of inheritance are obsessed with ideas of joint family and think that the interest of the family would suffer if the daughter takes away a portion of the father's property to another family. This argument would have some force if it were found that the brothers continued the father's joint family even after his death and did not break it up. But in modern conditions, in almost all cases, brothers separate after father's death though in some cases the ancestral home may not be actually partitioned for some time. At least such is the condition now among the Bengalee Hindus. If the father's family does not continue intact after his death it is difficult to understand what is meant by saying that the interests of the family suffers. This argument merely shows that we are anxious to retain the privileges which males enjoyed due to the joint family system even if a joint family system has disappeared from the society. When daughters will get a share of their father's property, the problem of dowry will be solved to a considerable extent and they will have greater prestige in their husband's house. Economic independence will give the wife a dignity which is desirable for more reasons than one. This in my opinion will lead to greater peace and happiness in the family.

During the last quarter of a century a large percentage of girls in middle class Hindu families are remaining unmarried and it has become urgently necessary for the

father, before his death, to make some kind of provision for them. From this point of view also the daughter sought to be made simultaneous heirs.

Those who oppose the provision seem to think that wealth consists of land only and talk about subdivision of holdings, forgetting the fact that so far as the present Bill is concerned it does not apply to agricultural land at all. And the application of the Partition Act has made the argument regarding the subdivision of immovable property extremely weak.

I am opposed to the change that the draft Code has introduced in the position of a predeceased son's widow. She should be given the same rights as she has under the Deshmukh Act. The provision for maintenance is not enough. I am not convinced by the argument of excessive fragmentation.

Being an advocate of equal rights of men and women I would like to see all distinctions between mother and father, and brother and sister, to be abolished.

I do not like rule 11 in Part II relating to hermits. As this rule does not apply to the Sudras, questions will always crop up in law Courts for determining who is a Sudra. It will perpetuate the caste distinctions for all time to come. The Code should embody only those general rules which will apply to all Hindus irrespective of caste.

I am entirely in favour of the devolution of stridhan adopted in the Code with these slight modifications that the mother and the father should be made simultaneous heirs and sons and daughters should take equal shares.

(iii) Clauses 3, 4 and 5 of Part IV (Marriage and Divorce) are a great improvement upon the clauses 4 to 7 of the Marriage Bill introduced in the Assembly and I am strongly in favour of the change. I wish sub-clause (d) of clause 3 could be omitted as, in my opinion, the provisions of sub-clause (c) are enough for prohibiting undesirable marriages.

The most welcome change has been introduced by the provisions of sub-clause (a) of clause 3, namely, enforcement of monogamy. This will improve the moral tone of Hindu marriages and give a recognition outside India. We are no longer an isolated people and we cannot ignore the public opinion of the outside world. There is no doubt that even to-day monogamy is the rule and polygamy rather an exception in Hindu society but unscrupulous persons taking advantage of this defect in our law desert their wives on most flimsy grounds and marry again. So long as polygamy is recognized it is hardly possible for the man to realize the sanctity of the marriage tie. From the point of view of the Hindu female, this will improve her status and not leave her at the mercy of her husband. I strongly support the provision.

The omission of a provision that the parties to a Hindu marriage must belong to the same caste is another most welcome change. Caste marriages will still continue for those who want to observe them but this Code will merely enable those who do not want to follow the caste rules in marriages, to contract inter-caste marriages and still continue to be recognized as Hindus. This reform was long overdue and every right thinking Hindu will welcome this change.

(iv) The provision for dissolution of marriage in clause 30 of Chapter III of Part IV is a corollary to the law of monogamy. Due to the recognition of polygamy at present, there is no limitation to the right of a man to take another wife and the absence of any provision of divorce operates only to the disadvantage of the wife. So conservative Hindus have never felt the necessity of such a provision. The framers of the Code have been extremely cautious and allowed annulment without loosening of the marriage tie and destroying the Hindu family ideal. The grounds mentioned in clause 30 are good grounds even now for the wife to live apart and defeat a suit for restitution of conjugal rights. This is neither good for any of the parties nor conducive to good morals. This clause is, in my opinion, a very desirable provision and without it the law of monogamy will lead to great hardship.

Being a teacher I am in touch with the young men of the country and am glad to find that most of them are in favour of these reforms. The students of the University of Dacca held a well-attended debate on the provisions of this Code and the motion in favour of the Code was passed by an overwhelming majority.

10. "Bani Bhaban," Uluberia, Howrah District.

It is indeed a matter of profound regret that the Draft Hindu Code which is directly beneficial to the Hindu society and indirectly to the Indian nation, has been opposed in Bengal by many notable organizations and distinguished men of status and erudition, especially by the Mahasabhis. But it is not the true opinion of the country. There are many who support the Code but despite their hearts' desire, they have not appeared before the Committee, but of fear, lethargy or policy, to give their evidence. The educated youths of the country cannot reject the Code and in the interest of the country nobody should dishonour it. The dumb millions of the country are generally orthodox and the power-loving people do take advantage of this appalling ignorance of theirs and in the name of "religion in danger" they try to command their confidence and allegiance. The rejection of the Code at present by leaders of the Province is nothing but their preparation for winning elections in future. On behalf of the country, let us, therefore, apologise to the members of the "Rau Committee" and solicit the favour of their trying to make the Bill an Act as soon as possible. The votes of the illiterate mass of evidence of their orthodox or selfish representatives can never bring any social or political reform. A revolutionary eradication of anarchy in the society is a necessity and it is law formulated and passed by the public-spirited patriotic legislative body that can help it substantially. The capitalistic tendency of the stronger sex and the higher caste works against this Code and before socialism steps into the country, the society should be immediately and healthily reformed.

Analysis of merits of the Code.

(1) *Right of inheritance.*—If the women are equals of men, they should have equal right to the property of their fathers and husbands. Why should they be debarred from claiming and getting it, if they are indispensable to men in every important sphere of activity? The fragmentation of paternal property is what is objected to by many, but that should be tolerated in consideration of the woeful plight of thousands of dependent women, especially the widows and the unmarried girls, who are considered to be the living luggage of the family. The question of giving right to the husband's property from the very day of marriage is absurd and if it gets sanction of law, it will make marriage, in the majority of cases, unhappy and unfortunate. The right of inheritance to paternal property will give real economic freedom to the women and thus greatly solve the rigid and pernicious problem of "Dowry system of the country."

(2) *Monogamy.*—India is tired of increasing population and it is now the time when there should be control of births. Considering this and morale of the country, monogamy should be forced and those who do not want legislation in this respect on political grounds are not morally correct.

(3) *Sagotra marriage.*—It is justified. History proves that there are very few men on earth who can claim their blood to be pure. The accommodating spirit of the Aryan civilization has resulted in fusion of races and mixture of blood in India, particularly in Bengal. Hence the question of sagotra marriage, however unhealthy may it be in the opinion of a group of scientists, does not arise. If it is sanctioned by law, the 'Dowry system' too will be fangless.

(4) *Inter-caste marriage.*—It will help political and heart unity of the Indians and the hard nut of "Untouchability" and "Dowry system" will be easily broken.

(5) *Divorce.*—It is an evil, but a necessary evil, there is no wonder that in the world of cheats and slips, the marriage in many cases may prove to be a damned failure and hence to mitigate sufferings of the unhappy pairs, the gulf of whose hearts can never be bridged over, there should be provision in law for peaceful dissolution of marriage. Besides, the law of divorce will impose a check upon cheap marriage.

Main objections (put by the Sanataniests).

- (1) If economic freedom is given and divorce allowed, the chastity of the women will be in jeopardy.
- (2) The sacred injunctions of the Hindu scriptures being transgressed, Hinduism will face a very grave crisis.
- (3) There should be no legislation in matters connected with religion.

Refutations.

(1) Chastity is a spirit that grows from within by moral culture and it should not be a burden that is thrust from without. If economic liberty is a curse, the males have to forego it. If it is a blessing, restriction in the case of females has got to be abolished or to be made impartial. The males enjoy economic freedom, but do they lose character for it? The women are in fetters, but are they all chaste? Why does prostitution go on in the country? If economic freedom degrades a person, economic slavery ruins him or her. If the men are alright, the women cannot be wrong. Divorce is better than secret debauchery. Impart sound education to one and all and nothing can be unsound. The drastic step may make an unhappy beginning but it will take us to an auspicious end. The damaged present should be demolished for a strong and bright future.

(2) Scriptures are man-made and they are meant for men. If men and women require them to be changed for their own welfare, they ought to be transgressed, if the human society is dynamic, how can the social laws be static? Besides, history proves that the law-givers even have not been able to abide by the strict laws made by them. Dasarath's marriage with Sumitra, a Sudra woman, was not objected to. Chandidas was not excommunicated from the society, he is still respected by the higher caste. Though horn of a Sudra mother, Vidura was given a high distinction in the society. "Anuloma marriage" was sanctioned by the scriptures.

(3) Nothing can be binding without legislation. When there was no "Sarda Act," there was preaching through press or on the platform against child marriage, but did it become effective? It is very difficult and in some matters impossible to change the human mind through sermons. There is no want of scriptures on earth, still there is no end of sin. The "Wait and See" method expedites the death of a patient who is dying. If there is gangrene anywhere in religion, it should be operated upon. Whatever is bad, be it religion or something higher, should be reformed or removed.

Appeal.

Considering the abovementioned points, the members of the "Bani Bhaban" keenly appreciate and thankfully support the noble endeavour of the "Rau Committee" and in the greater interest of the vast country they earnestly appeal that the Committee should strain every nerve to pass the Bill in the Assembly, even if it is deprived of the due encouragement that it should receive from the country. They request the Committee to enlist "Bani Bhaban" as supporter of the Code.

11. Indian Association, Calcutta.

At the outset, it should be remembered that British India consists of several provinces and there are a very large number of States comprised in India. The habits, social rules and customs as well as the language of the people of the Provinces and States are not only alike, but may be said to be very different from one another.

The original authorities, which are the governing authorities now, in the different schools are as detailed below:—

I. *Benares School*.—(1) Mitakshara of Vijnaneswara (latter half of the 11th Century). (2) Visveswara Bhatta, author of Subodhini and Madana Parijata (12th Century). (3) Madhava Acharya, author of Parasara Smriti (14th Century). (4) Kamalakara, author of Vivada Taudava (1612). (5) Lakshmidhara, author of Kalpataru (14th Century). (6) Nanda Pandit, author of Keshav Vaijayananti (1599-1633). (7) Mitra Misra, author of Vira Mitrodaya (17th Century). (8) Lakshmi Devi, better known as Balam Bhatta (latter half of 17th Century).

II. *Mithila School*.—(1) Vijnaneswara. (2) Chandeswara, author of Vivada Ratnakar (1314 A.D.). (3) Vachaspati Misra, author of Vivada Chintamani (beginning of 15th Century).

III. *Bengal School*.—(1) Jimutvahana, author of Dayabhaga (15th Century). (2) Raghbandana, author of Dayatatva (16th Century). (3) Sreekrishna, author of Daya Karma Sangha (18th Century). (4) Jagnanatha, author of Vivada Changarnava (original of Colebrooke's Digest of Hindu Law (end of 18th Century).

IV. *Dravida School*.—(1) Vijnaneswara. (2) Divananda Bhatta, author of Smriti Chandrika (12th Century). (3) Madhava Acharya, author of a commentary on Parasara Smriti (14th Century). (4) Pratapa Rudra Deva,

author of Saraswati Vilasa (14th Century). (5) Varada Raja, author of Vyavahara Nirnaya (end of 16th Century).

V. *Maharashtra School*.—(1) Vijnaneswara. (2) Nila Kantha, author of Vyavahara Mayukha (17th Century). (3) Madhava Acharya.

VI. *Guzarat School*.—(1) Vijnaneswara, author of Mitakshara. (2) Nila Kantha, author of Vyavahara Mayukha.

From the above, it is clear that almost all the commentaries on Hindu Law, which govern the personal laws of the Hindus, were composed between the 11th and 18th Century when the country was governed by the Muhammadan Emperors or the British Government and not by Hindu kings. The early British administration and the Brahmanical laws felt themselves altogether unable to perform the task of administering the same without recourse to constant help from the pandits.

The Hindu Law system is not and does not profess to be exhaustive; on the contrary, it is a system upon which new customs and new propositions, not repugnant to the old law, may be engrafted from time to time according to circumstances and the progress of society.

Sir Asutosh Mookerjee (in I.L.R. 33 Cal. 315, 319) says "We are not prepared to hold that the rules of Hindu Law are so inelastic as to be capable of application only and such descriptions of interests in property as formed the subject-matter of transactions at the time when the rules were first formulated. Indeed, if the rules of Hindu Law were so narrowly construed and applied, it would be impossible to administer them, because in any case, the courts would be called upon to hold a preliminary enquiry as to when a particular rule was first laid down and also as to what kinds of interests in property were recognized at that time."

Sir Gorroodas Banerjee, in his Hindu Law of Marriage and Stridhana (5th Edn., pages 7 and 8) says "Hindu Law is a body of rules intimately mixed up with religion. The system was highly elastic and had been gradually growing by the assimilation of new usages and the modification of ancient text-laws... When its spontaneous growth was suddenly arrested by the administration of the country passing to the hands of the English and a degree of rigidity was given to it which it never before possessed."

The above observations show that the Hindu Law is not unsettled and rather the elasticity of the law has enabled or rendered matters in controversy to be set at rest satisfactorily. Codification is necessary when the law is unsettled. The whole of the Hindu Law is well settled like any other codified law.

The views of the majority (barring a negligible fractional minority) or may the people of the whole country are not in favour of codification. And codification of the personal laws of Hindus if agreeable may only be regarded as justifiable, as Sir C. P. Ilbert says, "Due regard being paid to the feelings of the people generated by difference of religion, of nation and of caste." Halsbury says "A code is a want developed by progressive and unscientific legislation and the political relations of the citizens to each other give a form and tone to the laws which may ultimately produce confusion and contradiction" (Vol. I, Intro. cviii, cxix.) The rules of Hindu Law as applicable to the different schools have neither shown any such indication as stated above, nor the decision of cases in points of law ever referred observed apprehensions of that nature.

Austin says the opponents of codification suppose codification to mean an entire change of all the law obtaining in the country. The alteration of the existing law and the process of merely stating what the law is, are two different functions and the confusion between the two has marred many an effort to get a clear and intelligible code. (Jurisprudence Lec. xxxix, Students' Edition, page 312.)

Halsbury has also said that it is a rare exception to change the law in codifying Act (Vol. I, Introduction cxix).

Sir James Stephen says "By codification, I mean the reduction for the first time to a definite written form of law which had previously been unwritten or written only in an *unauthoritative* form such as that of text-books and reported cases." (Hunter's Life of Earl Mayo, Vol. II, page 47.)

Codification may be considered either (i) in the abstract, that is whether a good and complete Code is better than a body of law consisting of judiciary or "Judge-made" and

customary law, or (ii) in the concrete, that is whether having regard to the circumstances of a given community it is expedient to attempt the reduction of the law to a code.

Sir John Salmond says "Codes like all express enactments require interpretation and the cycle recommences." (Jurisprudence, 9th Edition, page 59.)

The many various objections to codification are also known.

Mr. John D. Mayne has said "But I can easily imagine a very beautiful and spacious code which should produce much more dissatisfaction and expense than the law as at present administered."

The present codification of Draft Hindu Code shows that codification is sought of certain branches of the Hindu Law as now in force in British India, which however, was agreed upon as undoubtedly undesirable instead of codification of the whole Hindu Law, the difficulty in doing so having been felt by the Committee.

It must not be out of place to point out here that the principle of religious efficacy or spiritual-benefit or theory of *pinda*, has been disregarded in the preparation of the list of heirs, and as laid down in all the schools. This is opposed to and cuts at the very root upon which the Hindu Society rested its rule so firmly and followed for so many centuries past without any manifest opposition.

The Native States may not adopt the Hindu Code, even if it be passed and the people there may choose to follow the law as appertaining to these States.

Upon a consideration of all the above, Indian Association begs leave to submit that codification of complete Hindu Law is not expedient nor possible and should not be attempted particularly at this juncture of time when the whole world is practically passing through war conditions; and after wartime which is in view, all nations are likely to meet in a peace conference in which the economic and political relations of India to other States of the world as well as component parts of the British Commonwealth and America will be decided for a long number of years to come, and hence it is submitted that it will be unwise for India to proceed now with such a legislation which may be characterized as communal. In the interests of solidarity of India, it will be well if the Committee could afford to advise the Government and the Legislature at least to postpone the consideration of the Bill till after the war.

The Mitakshara Law is sought to be obliterated with regard to joint family and the principles of succession in disregard of the principles underlying those matters.

The definition of "Hindu" does not cover all possible causes or classes. A question may be raised about Muhammadans who follow the Hindu rule of succession, or in other matters, e.g., as limited estate of widows.

In the definition of "custom" and "usages", the words "long time" are elastic.

PART II.

Intestate Succession.—The first point which attracts the attention is the position that of the daughter. In the list of enumerated heirs the daughter is placed just after the "son" as a simultaneous heir.

It should be remembered that such a position was never given to a daughter in any school of Hindu Law. The provision of a daughter before her marriage is clear and she is entitled to proper maintenance and her marriage expenses. It is customary to give a befitting dowry to her in the shape of ornaments and valuables at the time of her marriage. After the marriage she is entitled to suitable maintenance according to the social status and position of her husband. After her husband's death she becomes an heir in the family of her husband and inherits the estate of her husband—her position in a Dayabhaga or Mitakshara family does not make much material difference. Now if the daughter takes a share of her parent's property along with her brother and again gets a share of or the property of her husband, her position becomes better than that of her brother and the disruption or even ruin of the parent's property may be caused by such a provision when she goes into a stranger's family or is surrounded by strangers. As mother or grandmother she is entitled to a share on partition.

She might also possess personal property or stridhan. Distinguished lawyers who have written authoritative text books in different branches of Hindu Law never expressed any opinion in favour of the change as proposed. Hence the suggested distribution is opposed.

PART III-A.

Provisions common to testamentary and intestate succession.—As an instance for answer upon the law as intended to be in operation, may be asked what would be the husband's right to stop maintenance of his wife by testamentary disposition.

Provisions on the lines of the Indian Succession Act do not appear to be necessary.

PART IV.

Marriage and Divorce.—This Association opposes the introduction of monogamy as insistent upon a statute. The reason being that if it will be so then there must be also provided in the law rules for divorce, otherwise the common practice as now observed, e.g., of conversion to Islam temporarily and only for the sole object of gaining the end, will continue to be adhered to. And it is known that soon after such conversion and divorce under the Muhammadan Law, the party again reverts through the Arya Samaj to be a Hindu. This is certainly either from a social or moral point of view a mockery and detrimental to the nation's character.

Marriage in many societies is based upon or said to be a contract. Among Hindus it is a sacrament and the tie is for life and for the performance of religious rites in this world after death and is indissoluble and this relation is defined by the law and cannot be left to be regulated by the wishes of the parties.

The Hindu Law does not provide for divorce and this is apparently for the good of the society and it is also beneficial to women.

Divorce being unknown to Hindus, the position of divorced women can easily be imagined and surely in a marriage negotiation a divorced woman will always stand lesser chance than a maiden, whose marriage has become a difficult problem nowadays.

Regard being had to the position of wife after divorce as well as that of the children of the marriage and particularly in villages, it is objected, and the grounds for such a provision in the Draft Hindu Code do not appeal as necessary or expedient.

In view of the present ideas of the society about marriage, monogamy should not be made a rule by statute. It is most unusual for a Hindu to marry while he has a wife living though there is no legal bar. But if it is made illegal and penal by legislation, a Hindu who desires to take a second wife will do so by changing his religion, which is certainly detrimental to society. A Hindu who marries while his wife is living occupies a very uncomfortable position in society.

The provisions of *civil marriage* should not form a part of the Hindu Code. It should be a separate matter and subject of distinct legislation with necessary compliance to registration.

Inter-caste marriage may be solemnized under the provisions of civil marriage. The several illustrations noted in the Draft Code point out that the definition of marriage is incomplete not exhaustive and cannot be made to cover many ordinary and possible cases. Inter-caste marriages are even now allowed in Hindu Society.

Because opinion is not expressed on all points, it should not be supposed that they are approved.

12. Mr. Sunit Kumar Chatterji, M.A. (Calcutta), D.Litt. (London), F.R.A.S.B., Professor, Calcutta University.

The following observations are made from the point of view of a liberal Hindu who distinguishes between civil law and theology who has vividly in mind the fact that law is eminently an outcome of social usage guided by an ideal which has also its roots in life and who is always conscious of the fact that Hindu Religion and culture in their various aspects are a complex which is the result of a fusion of diverse racial groups and presents and will continue to present varieties of human experience in different stages of evolution.

I am completely opposed to the idea of a *Code of Hindu Law* applicable to all Hindus throughout the country which evidently is the intention of the Hindu Law Committee. Such a Code, in my opinion, goes counter to the history of the evolution of Hindu Society and Hindu Religion. It is admitted on all hands that Hinduism is not a single religion with a unique creed demanding subscription to it from all and sundry, and it is not a creed with a single book—it is more a federation of different kinds of religious experience and realisation rather than a single type of religious

experience and realisation. Hindu Society embraces humanity at different stages of evolution. Herein lies the most noteworthy speciality of Hinduism. Hindu social and personal law also follows this ideal. Taking note of the geographical and economical as well as human and social factors, divergence in usage and the consequent divergence in law are contemplated in Hindu culture as a matter of course; and this idea has been followed in practice all through. Hence so many schools of spiritual law and so many types of customary law. The great Hindu doctrine of *adhikaribeda* has to be taken note of in this connection. Natural evolution, rather than revolution imposed from outside such as will be the inevitable result of the proposed Code, would appear to harmonise with the development of Hindu Society in its various ramifications. As such, as a student of Hindu History and Hindu Society I am by conviction opposed to such drastic changes proposed by the Hindu Law Committee, including the promulgation of a single code. There is a general tendency of the Hindu mind to transcend all attempts at reducing things to a standard type. Natural growth is the ideal which is always in front of it. I think a similar point of view also dominated the evolution of law in England. The English genius has never been very friendly to codification; their personal law, their law of contract as a section of their social law, and even their constitution—these are based on conventions, on usage, and on precedents, and yet the English seem to be getting on all right. I fail to understand this haste in getting up a single Hindu Code, when Hinduism presents much diversity in spite of its underlying unity. If some portions of Hindu Law and usage did not seem to accord well with the time-spirit, there could always be an occasion to amend them by new interpretation in the shape of adjudication and commentary or by piecemeal legislation, and by the application of the principles of natural justice and equity through properly constituted authority enjoying the confidence of all concerned. Life is a growth, and a movement, and a code is a static thing; Hindu Law in all its divergencies reflects life, and a rigid code intending to be all-inclusive will hamper its growth.

Having expressed myself in general terms against the principle of codification of Hindu Law which embraces a people composed of so many diverse racial and cultural elements, I as a Hindu with a certain modernistic outlook now give my views on a few important subjects which the proposed code seems to deal with.

I. PRELIMINARY.

1. *Short title, extent and commencement.*—(a) The expression 'The Hindu Code' in my opinion is an impossibility when we take into account the nature of Hinduism. We can call it 'A Hindu Code'.

(b) It would be too drastic to seek to extend its scope throughout the whole of British India. So long as there is no complete unification of the whole of India (British and Feudatory India both), it would be too ambitious to think of bringing Hindu personal law under a single code. A section of Indian Muslims now think in terms of Hindusthan and Pakistan. Why this anxiety to have a law for Hindus all over British India as a single State when the very unity of that State has been called into question? The Central Legislature should first of all reiterate its view that India is a single State, incapable of division, before it proceeds to legislate on a pan-India basis.

(c) The idea is preposterous and I could call it indecent haste, to try to proceed to legislate in this urgent and cavalier fashion. We should remember, and remember with a certain amount of reverence, that we are legislating for some 250 millions of people with a history and a system of law and social usage going back through a series of continuous records to at least 3,500 years from now. There should be at least ten years of investigation before any decision is taken in such a vital matter as codification of Hindu Law.

2. *Application of the Code.*—I think that a convert to any form of Hinduism should be given the option of following so far as he himself is concerned his original personal law. Details in this connection are matters for legal experts.

4. *Custom and usage.*—A rule which is in accordance with equity and justice need not be very long practice in order to have the validity of 'custom' or 'usage'. Otherwise, stagnations would result.

5. The definition of *Stridhana* is much too wide. The definition should be in consonance with principles accepted in connection with Intestate Succession (II, 13) discussed below, the idea being in any case not to jeopardise the integrity of the family by making interference from outside elements easy.

Part II.

Intestate Succession.—5. *Enumerated heirs—Class I—Heirs in the compact series.*—Here daughter has been included, and under II (7) (d), the daughter is to get half a share of a son.

This brings in quite a new principle in Hindu succession, and many have characterised it as revolutionary, and as a definite move towards Islamising a vital Hindu social usage. With primogeniture still obtaining in England, I fail to appreciate the anxiety for 'reform' in this matter in our law. In a society where a woman goes to live with her husband, as a daughter she has a peculiar position in her father's family, which is quite different from that of a son; she is, if unmarried, a prospective member of a different family, and this has been recognised by the Hindu idea of transferring her to another *gotra* or clan by marriage. The father and the father's people (brothers, etc.) must see that she is properly trained in the way of life and is properly educated, and is then married suitably, with a proper dowry; and here the responsibility of the father's family ceases. But after the woman has passed on to another family by marriage, her husband's people and others will be allowed to interfere into the affairs of her father's family, taking advantage of the new *locus standi* proposed to be conferred upon her. This will, I very much apprehend, give rise to a very undesirable state of domestic disharmony and will affect all families. The present custom is working quite well and has stood the test of time, and some bad cases need not stampede us into the adoption of a worse law. It will of course force partition, and as a corollary bring about a widespread fragmentation of the family property.

I understand that the Muslims have found their law of Succession, not economically sound for the family, and by means of a *Wakf* law they have made succession to the family estate (as manager of a *wakf* trust) limited to male members only of the family.

11. *Hermits.*—(i) I think the law should recognise as a 'hermit' only such a person as would renounce the world formally by performing the requisite religious ceremonies (e.g., the *Viraja Homa*) for which there must be evidence acceptable by law, or by some form of public declaration, of which the Law can take cognisance. The Sanskrit terms mentioned in the draft, and similar other terms, must be defined to avoid complications and litigation.

(ii) (a) and (b).—The 'self-acquired property' of a 'hermit' who has 'renounced the world' appears to be contradictory, and against the spirit of Hindu Religion. Moreover, as there are cases of men and women who come back to the world after having formally 'renounced' it more than once, some provision should be made to meet such cases. The right of a 'spiritual brother' or a 'virtuous disciple' to the property of a hermit should be entertained only under very special circumstances (e.g., continued identification of the 'hermit' with a particular order for at least twelve years).

13. In the interests of Hindu women themselves, and of the economic life of Hindu Society as a whole, very careful consideration should be given to the proposals made in the draft, and we should not be swayed off our social moorings by an exaggerated zeal for 'bettering' the condition of our women. The 'unexpurgated case' against feminism centering around the physical and mental difference between man and woman, combined with the peculiarities of the Indian social systems, should always be kept in mind. I think some special protection is necessary for women in all societies, and particularly in Indian society as things stand at present.

I am not in favour of giving women the same rights over property as men. My impression is also that the average Hindu woman of middle class families, highly intelligent and experienced in the ways of life, although some of them may be lacking in school or college education, is emphatically against it. I apprehend that attempts may be made by unscrupulous persons to take advantage of the rights proposed to be given to women, and undesirable elements will be encouraged to break the economic solidarity as

well as basis of a great many Hindu families. A Hindu Law Code should not assist all fissiparous tendencies patent as well as latent in Hindu Society to bring about a dissolution of the family solidarity of the Hindus.

Part IV.

Marriage and Divorce.—Part IV (2) recognises Civil marriage, and clause (7) details the requisites of such marriage.

I think the dignity and seriousness of marriage as one of the greatest events in life (forming the basis of a future family) will be disastrously impaired and the family will suffer consequently, by introducing marriages without a religious background. This would suggest to members of the Hindu community that marriage can be divorced from idealism. I think we should most strongly oppose civil marriages without any religious ceremony, and a Hindu marriage, in order to be valid must bear in it the impress of Hindu culture and Hindu idealism through some sort of recognised or reasonable religious ceremonial.

A Hindu marriage, with its essential religious ceremonial, may be registered at the option of the parties, and it should not be made compulsory, forcing the conscience of certain groups who still regard marriage as essentially a religious and spiritual matter.

Under Part IV, section 3, proviso (a) makes it imperative that a Hindu marriage must be monogamous in every case. I think in the interests of Hindu Society, some allowance must be made for a marriage to take place in the case of a man whose wife is living and is suffering from an incurable disease, or is barren, or refuses to live with her husband, or is proved to be unchaste; and this proviso should be modified accordingly. Relief may be afforded to the wife by making it obligatory for the husband to support his wife, or the wife may seek relief later by divorce, which is to be allowed under certain conditions, for which see below.

Part IV—Chapter III, Nullity and Dissolution of marriage.

Clause 30.—I think some provision for divorce under reasons stated in 30 (a)—(f) should be made in Hindu Society, not only to offer relief to the aggrieved parties but also to save them from the humiliation of converting themselves formerly to another religion in which they do not believe, to annul the marriage. But such divorces should not be made easy for either party. After the Court has taken cognizance of a case under reasons stated in (30) (a)—(f), there should be a Board of Arbitrators consisting of responsible members of the group or groups to which the respective parties belong and approved representatives of both the spouses in equal number, and their finding (as a special body of jurors in each case) will be given due weight by the judge. The judge or judges hearing divorce cases affecting Hindus must invariably be Hindu. Remarriage of divorces should be allowed under Hindu Law, special provisions for which should be made by legal experts who are also Hindus, and such remarriages, in addition to being celebrated by a religious rite, should also be registered as a Hindu marriage.

13. Marwari Chamber of Commerce, Calcutta.

The Committee of the Marwari Chamber of Commerce have given their careful consideration to the Draft Hindu Code and their views are as hereunder:—

(1) *Codification.*—At the outset, the Committee feel constrained to observe that codification of the entire Hindu Law as proposed, will instead of settling the law as it is, unsettle the same. No Code, however carefully prepared, is perfect. The law applicable to the Hindus has now been settled to a great extent by a long series of judicial decisions. By codifying the same, Courts will have to interpret the wording of the Code instead of law as it existed before the same was passed; and there may be conflict of judgment as it is in every codified law at present and it may lead to unnecessary litigation. The codification, therefore, can only be supported if the amendment proposed in the existing system of Hindu Law is of such a vast nature that nothing but an entire codification can possibly do it. My Committee, however, think that the revolutionary changes are firstly not desirable, and secondly, the legislature as at present constituted should not embark upon a revolutionary change in the personal laws of the entire Hindu population of this vast country and

should wait till a national legislature is established and the vast majority of the Hindus can consciously appreciate and approve such fundamental changes. My Committee does not approve of the revolutionary changes in the personal laws of the Hindus at present.

(2) *Uniformity.*—The next thing which the framers of the Hindu Code have sought in making the proposals is to make the law uniform throughout the entire Hindu Society. My Committee, however, think that instead of creating uniformity the proposals will create great diversity and confusion. For instance, a Marwari who comes from an Indian State may have got properties in different States and in different provinces. Some of the States may adopt the Hindu Code and others may not adopt the same. So the properties of the Marwari will follow one policy of succession in one of the States and another policy of succession in another State. So far as British India is concerned, it cannot be stated as to whether all the Provincial Governments will apply the Code to agricultural lands or not. Therefore if a province does not apply the Code to agricultural lands such agricultural lands will be governed by the Hindu Laws as it existed before the Code is passed whereas the other lands will be governed by the Code. Then again, the movable properties are proposed to be inherited according to the domicile of a person, so if it is proved that he is domiciled in an Indian State, one rule will apply, if he is proved to have a domicile of British India different rule will apply. As the question of domicile will always be a difficult question to be solved even by the Court of Law because of the difficulty to decide as to what are the intentions of the person, i.e., whether his intention is to make the place where he lives as his home. For a Marwari who has got some residential ancestral house in Rajputana, one Court may decide that he is domiciled in British India, and another Court may hold that such a Marwari is domiciled in a State. Therefore, the question of succession will be a very difficult question to decide with regard to the location of the properties as well as the nature of the properties, movable or immovable. This may lead to litigation and from the economic point of view this may prove injurious to the society. India is a vast sub-continent with people of different manners and customs. The people of Madras have got different manners and customs, ideas and culture, etc., than the people of Rajputana and Bengal, and it seems to be rather an impossible task to reconcile the different ideas which prevail in the different parts of the country. Uniformity, however, desirable cannot and should not deny the vast population in the different parts of the country the freedom to follow their own cherished customs and laws; they must have freedom of action and freedom to pursue their own ideals and thoughts. My Committee therefore feel that instead of simplifying the Hindu Law, codification will make it more complex, and my Committee are of the opinion that from the economic standpoint the attempt cannot prove successful or acceptable to the general mass of the Hindu Society.

(3) *Mitakshara joint family.*—Save and except Bengal the whole of the Hindu Society in India including the States are governed by the Mitakshara School of Hindu Law. There are minor differences in Bombay and Madras Schools of Hindu Law but the fundamental structure of the Hindu joint family is the same. The Code proposes to do away with the right of survivorship and the right by birth which are the fundamental characteristics of a Mitakshara joint family. So far as the right by birth is concerned, sons have at present right in their joint family properties by birth. By passing of such Code, sons are being deprived of that right. My Committee do not consider it desirable that persons who have got right under the present law should be deprived of their rights, and the most valuable rights, by passing of the Code. My Committee think that it cannot be justified because it leaves the sons at the mercy of the father and the sons will have no voice. At present the devolution of property is automatic in a Mitakshara joint family. As soon as the head of the family dies, the devolution is governed by the simple law of survivorship. The family is saved from the troubles of letters of administration or succession certificate, and the entire family structure remains intact. My Committee therefore feel that such fundamental changes affecting the vast Hindu population should not be undertaken.

(4) *Succession.*—The Hindu Code proposes to make the daughters as simultaneous heirs with the sons. My Committee feel that by making the daughters as simultaneous heirs, the position of the girls instead of improving is likely to deteriorate. The vast majority of the population in India has practically no property and they have to live from hand to mouth. At present they consider it to be their religious duty to give away their daughters in marriage and for the purpose they consider no sacrifice to be too great in order to find out a suitable match. The dowry system which is in vogue is an outcome to a great extent of the desire of the fathers and the brothers of the girls to give their daughters or the sisters in marriage to suitable bridegrooms. In spite of the agitation for its abolition, the dowry system still prevails in the country in all its nakedness. If over and above this, the daughters are given shares in the properties, the prospective bridegrooms will also consider this aspect of the case and the marriage of the daughters will be a bigger problem than at present, if this idea also gets into the head of the bridegrooms and their families as to what property the girls will get by way of inheritance. Attempts have been made to stop dowry system, but they are bound to fail because no prospective bridegroom can be satisfied with the prospect of his wife getting her father's property by succession after the death of her father, which may take place, God knows when. So the craze for dowry will not be satisfied by simply giving right of inheritance to the daughters and on the contrary it will complicate the position of the girls to a great extent. Daughters in a Hindu family are generally burdensome because of the difficulty of marrying them. If a father wishing to save his family from the prospective troubles which may come from the side of the family of the married daughter, disinherit her, the position of the daughter in her husband's home becomes hopeless and if he does not disinherit her, strangers will come in to share his properties. It is not possible for the girl to be absolutely free from the influence of the father-in-law's family, and it is but common knowledge that whenever economic interests conflict there is quarrel and litigation between brothers who live in the same house and under the same shed. So it is bound to end in disruption of family property and family love and affection.

Specially the Marwaris are business people. They run their business with capital which they might have got by credit, and if a member of the family dies, at present no outsider knows practically what the family's position is but if after the death of one member of the family the daughter's relatives become partners in the business, then either they must continue as partners or the firm must dissolve. If the firm is carried on then the daughter and

her relatives must be taken in as partners of the old firm whether other members of the family like it or not. If they do not like it then the firm must be dissolved and started anew, and the process must be repeated every time when a member of the family dies, which is very harmful from the business point of view and which, my Committee feel, will not be for the welfare of the Marwaris.

So far as the position of the girls is concerned they enjoy the same amenities of life as the economic position of their father can provide. When they are married they get the amenities which the husband's economic position can provide. If they are widows, according to the Hindu ideas, they do not require much to live upon practically having to live an ascetic's life. The idea that the position of the women in the Hindu Society is extremely bad is not correct. If it is bad, it is so because for want of education and culture; by giving them shares in the property of the fathers their condition cannot improve. It is also to be considered that India is very poor, very few persons possess substantial property. Ninety-five per cent of the people have no property to distribute. If they have got some small plots of land it will lead to disintegration and fragmentation of land which will be most uneconomical to cultivate. If we take the population consisting of 50 per cent boys and 50 per cent girls, fragmentation will be at least double. My Committee, therefore, consider it undesirable that the daughters should be made simultaneous heirs with the sons.

(5) *Order of succession.*—Under Clause 5 of the Hindu Code, a daughter's daughter's daughter is preferred to a brother's son or even a father's father. It is not understood as to on what principle this order of succession has been based. If a man dies leaving his father's father or other near relatives, he should get the property in preference to a daughter's daughter's daughter.

(6) *Absolute estate.*—So far as the present Hindu Law is concerned it gives the women a limited estate. Hindu Code proposes to give the women absolute estate. The stage of advancement of womenfolk is such that if they are given full ownership rights the property is likely to be wasted and the present restriction regarding alienation by women is made in order to preserve the property to the family. As a matter of fact the normal function which the women have been performing is such that they have not to carry on any avocation or business. The main consideration is the question of maintenance. From this point of view we consider that giving of the absolute rights may not be desirable as it is sought by the proposers of the Code.

As my Committee has dealt with the economic aspect of the matter we do not propose to deal with the other question that the Code involves.

14. Mr. Sachin Chaudhury, Mr. K. K. Basu and Mr. B. Das, Barristers-at-Law, Mr. Nirmalchandra Sen and Mr. Rabindranath Chakravarti, Advocates, Mr. Rabindrachandra Kar, Solicitor and certain others.

Suggested Amendments.

Part.	Clauses.	Deleted.	Altered	Reasons.
I	3 and 4	Delete the whole	.....	Redundant.
	5 (a), (b), (c), (d), (e), (f), (g) and (j).	Do.	.....	Do.
	6	Do.	.....	[See paragraph 3 (iii) of the Explanation below.]
II	1 (iii)	Do.	.....	Redundant.
	2 (i) (c)	Do.	.....	Do.
	2 (iii) (b) and illustrations.	Do.	.....	Do.
	4	.....	Delete the word 'male' and the word 'absolutely' inserted after 'shall devolve'.	Paragraphs 2 (2) and 6 of the Explanation.
	5	.....	For 'his' substitute 'the'.	Do.
	5 Class I (i)	.....	Insert 'or husband' after the word 'widows'.	Do.
	7 (a)	.....	Substitut 'each of the widows' for 'all widows together'.	Do.
	7 (d)	Delete the whole	.....	Do.
	9 (4)	Do.	.....	Redundant.
	10	.....	Insert 'or her' after 'his'.	Paragraphs 2 (2) and 6.
	14 (c) (i)	Delete the whole	.....	Do.
	14 (c) (ii)	Delete the portion after 'intestate's death'.	.....	Do.
III-A II	5 (viii) and (ix)	Delete the whole	.....	Section 438, Criminal Procedure Code, is sufficiently wide.
	5 (4)	Do.	.....	Redundant.
	6 (1) (h)	.....	Insert 'other' after 'in case of any'.	Do.
	7	Delete the portion 'without just cause'.	.....	Do.

Suggested Emendations—cont.

Part.	Classes.	Deleted.	Altered.	Reasons.
IV	The alternatives to clause 3, 4 and 5.	Delete the whole	.....	Paragraph 3 (ii).
	4 (2)	Do.	.....	Paragraph 6.
	7 to 22 (inclusive)	Do.	.....	Paragraph 3 (iii).
	23 (1) (a)	.....	Substitute "of a Hindu for the purposes of—his or her marriage"—for "of a Hindu marriage."	Paragraph 6.
	25	Delete the whole	.....	Paragraph 3 (iv).
	26 to 28	Do.	.....	Redundant.
	29 and 31	.....	Delete these clauses and substitute instead—* the provisions below.	Paragraph 3 (iv).
	30 (a), (c) and (e)	.....	Substitute "three" for "seven" years.	Paragraph 3 (iv).
V	.....	Delete the whole	.....	Redundant.
VI	.....	Do.	.....	Paragraph 4.
Schedule I	.....	Do.	.....	Paragraph 3 (iii).
Schedule III	.....	Do.	.....	Do.
Schedule IV	.....	Do.	.....	Do.
Schedule V	.....	Do.	.....	Do.
Schedule VI	.....	Do.	.....	Do.

To be substituted for Clauses 29 and 31 of Part IV.

"29. (1) Subject to the provisions of this Act, the provisions of the Indian Divorce Act shall apply so far as may be to all Hindu marriages solemnized before or after the commencement of this Act.

(2) Either party to a marriage may also present a petition praying that his or her marriage may be declared null and void on the ground that when the consent of his or her guardian is requisite under the provisions of Chapter I such consent was obtained by force or fraud.

Provided that such petition shall be dismissed if the Court finds that the petitioner has subsequently, with his or her free consent, lived with the other party to the marriage as husband or wife.

(3) Where a marriage is annulled on the ground that a former husband or wife was living and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or when a marriage is annulled on any other ground children begotten before the decree is made shall be specified in the decree and shall in all respects be deemed to be the legitimate children of their parents."

Explanation.

1. The emendations suggested herein are mainly in respect of those provisions which fail to accord to women an equality of status which it appears is the basic principle governing the major innovations recommended by the Code in Intestate Succession and the law regarding husband and wife. It is recommended that some of the provisions or those portions thereof that appear redundant be deleted on the principle that a statute of this type should be as little wordy as possible.

2. (1) On the head of Intestate Succession the Code recommends abolition in effect of (a) Mitakshara joint family and (b) of limited estate held by women in inherited property, and provides for simultaneous succession of (i) widow and daughters along with the sons, etc., to the property of a male intestate and of (ii) sons and daughters to the mother's stridhana.

(2) In respect of the provisions of simultaneous succession above named, it is not appreciated why there should be any disparity in the proportionate shares inherited by male and females. Surely an equal proportion between sons and daughters should have been a simpler provision and more in keeping with the policy of the Code.

(3) No comments are made herein regarding the abolition of the joint family for the reason that the views of Dayabhaga Hindus on this point will necessarily be academic. On principle the joint family should be abolished even where Mitakshara Hindus are concerned. The proposed abolition of the "Widow's estate" is certainly a progressive step, putting an end, as it does, to an artificial and anomalous conception that leads to endless disputes.

3. (i) On the law regarding husband and wife the Code introduces (a) monogamy and divorce, (b) optional registration of "Sacramental" marriage and (c) civil marriage as an alternative to the sacramental.

(ii) In our opinion the alternatives to clauses 3, 4 and 5 of Part IV are more complicated and are not therefore to be preferred to the original clauses.

(iii) Excepting where equality of status has not been accorded to women no amendments have been recommended regarding proposed law of marriage and divorce. On registration of sacramental marriage however our view is that if registration of such marriage is to be effective there should be uniformity and registration should be made compulsory. The provisions for an alternative civil marriage are redundant and should be deleted. The Act of 1872 (as amended by later Acts) is available to any Hindu desirous of contracting a civil marriage. Parallel provisions may lead to doubts and uncertainties and consequently to litigations.

(iv) Since the Draft Code seeks to establish uniformity among Hindus all over India we consider the granting of rule-making power to the Provinces inadvisable. For the same reason we recommend a uniform practice regarding divorce and nullity matters as per Annexure "B" hereto. Three years desertion, etc., is more reasonable ground for a decree for dissolution.

4. We feel provisions for adoption have outlived their utility and they are now a burden on the Hindu social frame work.

5. Since "Dattahomam" has been abolished in respect of adoption ceremony provisions for "Saptapadi" before the "Sacred Fire" in marriage can likewise be abolished. Apparently clause 4 (1) of Part IV of the Draft Code is wide enough to preserve all ceremonies in vogue in respective localities. Similarly since "Caste" has not been considered necessary in case of marriage there is no reason why it should be any more necessary for any other purpose. In fact it is high time that "Caste" should be abolished for all purposes.

6. The underlying policy of the Code being obviously to do away with legal inequalities so far as women are concerned, we have suggested emendations where the proposed provisions have fallen short of the ideal. Thus, as has already been pointed out, emendations have been suggested where the proposed provisions regarding succession and divorce do not amount to an equal treatment of men and women.

15. Dr. P. C. Biswas, M.Sc., Ph.D., Lecturer, Calcutta University Anthropology Department.

Any modification to the existing Hindu marriage rules and laws should be based on religious and scientific principles of life.

The scriptures of the Hindus and in fact of all the Aryans reveal that the modification of the marriage rules as proposed in the bill are detrimental towards the ordered progress of humanity and fulfilment of the object of marriage.

The Aryans rely on the principle of spiritual supremacy over bodily cravings.

The world conflict hints unmistakably towards solution of all problems in the light of attainment of—spiritual supremacy over material power and glamour.

Let us wait and see how the future world adjusts itself on spiritual principles after the great conflict is over and then amend our social laws and rules.

In the scriptures of the Hindus, and other nationalities, the duties of the husband and wife are clearly laid down. These have withstood the test of time as well as biological, anthropological, sociological and psychological experiments even to the present day. These laws and rules are based

on experiments made by ancient sages and the humanity for ages. Is it wise to shake the solid foundation of the Hindu life and home based on religious truths and drift into confusion, worry and agony as seen in other parts of the world? A comparative study even of the non-Aryan—Santals, Khals, Villa, Nagas and other aborigines of the world will show how these tribes even desperately keep to preserve the religious aspects of their marriage rules. The progeny always deteriorates as a result of that crossing between inferior types. To purify the race the genes of superior type must be inherited by posterity otherwise the race and the nation is sure to retrograde.

The existing Hindu marriage laws and rules are perfectly in conformity with the biological and ecological conditions of life in India and the environmental and other factors have been taken fully in account in framing the marriage rules as laid down in scriptures.

The existing Hindu marriage rules and laws are quite complete and those, who framed those laws considered all the aspects of life minutely. Any attempt to modify these laws will lead to upsetting of spiritual, moral and social structures. Mann's marriage rules and laws are perfect and in framing those laws he took into account not only social but also eugenical aspect of marriage life. Manu has mentioned in marriage rules that those, who are mentally and physically unsound, should not marry at all. This is why he did not think it necessary to introduce divorce in our Hindu marriage.

Divorce is the enemy of marriage, and if made easy, might prove destructive to the very institution of the family. The divorce law tempts both men and women to commit adultery by making it the only gate to freedom and possible happiness. Therefore it is, in its nature and results, a shameful and wicked law. When we pass from laws to practice we find that the divorce rate varies greatly in different countries of the world. In many of the broken homes there are children whose lives and general outlook becomes marred by the separation of the parents. According to World Almanac, over 100,000 children are affected directly by the divorces granted annually in the United States. We should therefore be careful in introducing this law on our society.

In modern times women demand equality in every sphere of life. This is quite inconsistent with the duties of a wife. Max Runge, a Gynaecologist of Germany, asserts that "the women is in no way equal to the man, but possesses absolutely different qualifications." Besides physical difference there are important psychic difference in women. The inconsiderate response to every "stimulus" marks an important psychic difference in woman. The renowned psychologist Mobius of Germany says that there is a mental and spiritual inferiority in woman as compared with man, somewhat as a child may be considered weak-witted by comparison with adults and in the same manner as a decrease of mental ability becomes visible earlier or later with growing age. Mobius ascribes want of judgment and lack of creative imagination on the one hand, and absence of independent thought on the other, to be peculiarities in women. He speaks of their incapability of self-control, their emotional vehemence and dissimulation. He closes by saying 'After all the weak-mindedness of the female not merely exists but is a necessity'; and he demands 'Protect the woman against intellectualism.'

I appeal to the members of the Committee to consider the more important aspect of marriage. People must be educated to consider marriage seriously. The majority of young people contemplating marriage hardly give any thought to its significance as an institution to perpetuate the race and civilizations. For this reason the passage of suitable State laws and regulations making it imperative for persons contemplating marriage to undergo rigid physical and mental examination. Person found to be deficient from either the mental or the physical standpoint should be prevented from marrying or be allowed to marry only after they have undergone operations which would make it impossible for them to reproduce offspring. If educated properly, the vast majority would undoubtedly insist on such a procedure. In European and American countries laws have been introduced in this line and they have got a very good result. In America about thirty States have passed these laws. Gosney and Popence in an interesting book have reviewed the results obtained in California through this method of reducing the undesirable

population, and have indicated the many benefits that have been derived from this practice.

19. Mr. T. C. Das, Senior Lecturer in Social Anthropology, Calcutta University.

I shall deal with some of the clauses of Part II of this Code from a sociological standpoint. In some of the sections of this draft Code we find undue preference given to the fair sex. Thus in clause 5, clause 1, 'mother' is placed before 'father' in the order of succession. This is also found in clause IV of the same section where "father's mother" is placed before "father's father". In clauses V and VI, the same tendency is observable in the first two cases of each. Again in clause 14 of Part II while indicating the order and mode of succession to *stridhan* the "mother" is placed before the father and "mother's heirs" before the father's heirs. This preference to the female parent over the male one has no basis in the Hindu social organization. Hindu society all over India, except some parts of the south, is patriarchal in nature. The Hindus of this area have patrilineal descent, patrilocal marriage, patropotestal authority. Between father and mother, the former always holds a superior position in all respects social, political, economic and religious. Under these circumstances to put the mother before the father in matters relating to inheritance is definitely against the natural tendencies of the Hindu society. It is in fact anti-social. There is no sociological justification for such an attempt. Therefore we propose that in all those places referred to above the father may be placed before the mother.

In clause 21 of Part II it is proposed that if "a Hindu has ceased or ceases to be one by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives unless such children or descendants are Hindus at the time when the succession opens." When a Hindu is converted to another religion, his children, born after such conversion, belong to the new religion which he embraces. Section 21 presupposes that such children may come back to the Hindu fold when they will be again entitled to inherit the property of their Hindu relatives. Hinduism is not a proselytising religion; conversion to Hinduism is not possible. In Hindu religion there is no ritual of conversion even. There are *prayaschittas* or penances for sins committed by a man. But there is no shastric ceremony by which a man or woman belonging to another religion may be converted to Hinduism. In recent years some of the Reformist Organizations have started conversion to Hinduism by a number of rites which have no uniformity. So, if this section is to work smoothly, then we should prescribe the essential ceremony or ceremonies for such conversion just as it has been done for sacramental marriage (section 4 of Part IV). Otherwise confusion will arise leading to litigation.

Moreover this concession is not a healthy provision for the growth of religious conviction. An individual may veer from side to side under the influence of inheritance. Suppose a Hindu 'A' turns a Muhammadan during the lifetime of his father 'B'. A son 'C' is born to him after this conversion. 'A' predeceases his father 'B'. Now 'C' in order to inherit the property of B, may seek readmission into Hindu fold without having any conviction in Hindu religion. On getting his part of the inheritance he may again come back to the Muslim fold. Neither the Hindus nor the Muhammadans will have any respect for such weather-cocks. This will turn them into opportunists which is against social well-being.

From another side also this clause is dangerous to the Hindus. Abduction of Hindu girls—married, unmarried and widowed—by Muhammadans is a common thing in the villages of Eastern Bengal where the Muhammadans are in absolute majority. Clause 21 will now add an economic incentive to the already existing other incentives. If a widowed girl be abducted and converted to Islam and is married to a Muhammadan the latter will enjoy along with the bride, the property she has inherited from her husband and probably also from her dead father or other relatives. So this will be a natural stimulus to the abduction of Hindu women of all ages. In order to facilitate the inheritance of property by a number of renegade Hindus section 21 of Part II jeopardises the social and moral safety of a large number of Hindu women and together with that happiness and welfare of these families. This section

also deprives the children born before conversion, if they do not follow the father, from inheritance of property from both the father and the grandfather. This is another social injustice.

PART III-A.

II. Maintenance.—The expression 'maintenance' is defined in sub-section (i) of section 3, as 'provision for food, clothing and residence.' I propose to alter it into 'provision for food, clothing, residence and education' on the following ground. In clause 5 where the dependants are enumerated we meet with a number of them who are minors. Mere food, clothing and residence to such minor dependants are not sufficient to turn them into useful members of the community. They must be properly educated. Education is the birth right of every citizen, though unfortunately it is not regarded as such in India. If a minor be not properly educated he will be a burden on the society and may ultimately turn to immoral ways.

PART IV.

Marriage and divorce.—Part IV of the draft Hindu Code introduces four new measures in the laws relating to Hindu marriage. They are the following:—

(1) Complete removal of restrictions on inter-caste marriage; (2) partial removal of restrictions on inter-religions marriage; (3) introduction of divorce in Hindu society; (4) prohibition of polygamy, i.e., marriage of one man with more than one woman either simultaneously or one after another.

We shall deal with these four new measures one by one. Caste is an ancient institution of the Hindus; it is, in fact, the back-bone of the Hindu social system. Every other cultural trait of the Hindus is integrated to this institution. Commensuality and connubium are the two pedestals of caste-system. In our general discussion of the basic principles of Hindu inheritance we have already shown that one of these, namely, commensuality, is doomed to disappear, within a short time. The present war has given the deathblow to this lingering trait. Connubium is also being slowly affected. Education has broadened the outlook of Hindu men and women. At the top of the society women are coming out of their seclusion more and more as the years roll on. European ideals have set the balls rolling. There is greater freedom of intercourse between the young of both the sexes now, than quarter of a century before. The inevitable result is an increase in love-matches. Mutual selection of spouses is now far more frequent than before the last Great War. The present war has given a considerable impetus to this condition. As a result the caste connubium is bound to be affected. Under these circumstances, I think, the abolition of restrictions on inter-caste marriage is a timely measure. It is a piece of permissive legislation. No one is required to marry in a caste other than that of his own. The orthodox Hindus may continue to observe all the restrictions imposed upon them by their society. No one will hamper them. The proposed law does not force them to give up their old customs. All that it demands is a little freedom for those members of the Hindu society who wish to select their life-mates from any caste they like. It is a just demand and the orthodox part of our society should gracefully concede to it. History shows that inter-caste marriage was a normal affair in the Hindu society at a period of which the orthodox people are now proud. Society abolished at a later stage under some pressure and thereby kept itself intact. Now, again, new circumstances have come into being and if our society fails to react to them properly there will be maladjustment which is, perhaps, the greatest malady of the social body. A living organism always undergoes change. Whenever it is unable to adopt itself to a new environment it is sure to meet with destruction or degeneration. Society also behaves like a living organism. It also changes under stimuli. But occasionally it loses this capacity and grows an outer shell within which it thinks of leading a sheltered life. This is not a healthy condition. It is degeneration. So long as the Hindus absorbed the different invading hordes like the Bactrians, Scythians, Huns, and others, they flourished. But when they lost this capacity they began to grow a shell which manifested itself in connubium and commensuality. Even at present we find instances of this kind of degeneration among the primitive peoples. The Hos of Kolhan have developed these traits in order to preserve their own culture from the attack of the Hindus. Other instances can be

easily multiplied. This is not a healthy condition. Under these circumstances Hindu society should not object to this permissive legislation.

The next measure which this part of the Code introduces is partial abolition of restrictions on inter-religious group marriages. Clauses 3 and 7 of Part IV prescribe that sacramental and civil marriage, respectively "may be solemnized between any two Hindus." According to clause 2, sub-clause 2 of Part I of this draft Code a 'Hindu' means a 'person professing the Hindu, Buddhist, Sikh or Jaina religion.' In the last illustration of this section Brahmos and Arya Samajists are also included under this term. So under this Code a Hindu proper will be allowed to marry a Buddhist, Sikh, Jaina, Brahmo or Arya Samajist and vice versa without any difficulty. This is a natural and logical elaboration of the first measure. We need not be afraid that every Hindu proper will seek for a partner in one or other of these religions as soon as this draft Code is enacted. Society moves slowly; it does not accept changes by leaps and bounds. So mere legislation will not induce the ordinary members of the Hindu society to change their customs at once. It will only remove the legal disabilities to such a union. The social, religious, economic, geographical and cultural difficulties will persist for a long time. They cannot be so easily removed.

The third new measure that we find in this part of the draft Code is the introduction of divorce in Hindu society. Though this is also a piece of permissive legislation yet it embodies an element of compulsion. When both the parties to a divorce bring it about by agreement it is harmless so far as the individuals are concerned. But when it is imposed by one of the parties on the other it may be a source of much misery to the latter. Cases of divorce for proper causes are few and far between among peoples who practise it at present. The true cause of divorce in most of these communities is sex hunger. Variety in sex life is a very important urge in human society. It is so intense in certain classes of people that they take recourse to any subterfuge in order to satisfy their lust. Where polygamy is prohibited, divorce becomes frequent. If divorce also is made difficult to obtain it drives these people to brothels. It is a vicious chain; it enforces a class of people to commit greater and greater mischief to themselves, their partners, and to the society as a whole. Not only this; divorce breaks the family and leads to the unhappiness of the children. These are grave considerations which dissuade us from supporting this measure. We do not believe that those who really need divorce will get it. On the other hand it will be a terrific weapon in the hands of unscrupulous people who will employ it to further their nefarious purposes. Though the framers of the draft Code have not allowed barrenness or ill-treatment as causes for divorce yet they have kept one clause which will nullify all their strictness. This is sub-clause (f) of clause 30, Part IV. A man or woman may get a decree of dissolution of marriage by the simple expedient of keeping a concubine.

If we look at divorce from another side we find that it will lead to increase of immorality among women. Most of the Hindu women are dependent on their husband or sons. If divorce separates a woman from her husband then she will have to depend on her own resources, which as we know, will not be sufficient, in most of the cases, to provide her with food and shelter. We cannot think of a solution by marriage. The Widow Remarriage Act is more than fifty years old yet very few widows find a chance of remarriage. So there is little hope for finding any relief from this side too. In India women are not generally trained to earn their livelihood independently. So without sufficient property and without sufficient training for earning a livelihood they will be naturally driven to prostitution. Indian sociologists are painfully aware of this fact. Whenever a woman, is nowadays, separated from her husband either by death or by other means, if she has no means of livelihood, she invariably drifts towards this life of shame. Divorce will increase their number. This is a far greater social evil than the good we expect from this measure. In view of these facts I am against the introduction of this measure.

We now come to the last of the four major changes which the Code proposes to bring about; i.e., prohibition of polygamy (marriage of one man with more than one woman either simultaneously or one after another). This is

also another ancient institution of the Hindus. In Bengal it attained its highest development in Kulin polygamy when cases of a single man having more than eight wives were not rare. This extreme state of affairs was prevalent only among a particular social group, namely, the Bhanga Kulins among the Rarhi Brahmins. Even in 1866 we find that this extreme condition did not prevail. In the report of the Committee appointed in 1866 by the Government of Bengal to report on the necessity of legislating on the subject of polygamy among the Hindus, it is stated that 'spread of education and enlightened ideas as well as the growth of a healthy public opinion on social matters among the people of Bengal, has so sensibly affected this custom that the marrying of more than one wife, except in cases of absolute necessity, has come to be looked upon with general reprobation.' Even in those days, the Report states, that marriage of more than four or five wives by one man among the Bhanga Kulins was very rare. Education has made much progress since that Report was written, three quarters of a century ago. Public opinion has practically pushed the custom to the wall. Personally I have not witnessed a single case of polygamous marriage in my life and I have not heard of more than half a dozen cases of polygamy. As a social anthropologist I have always keenly observed such cases. On analysis most of these cases are found to have been due to causes other than lust.

Polygamy is a recognized institution among the primitive peoples, all over the world. But even primitive men do not indulge in it merely for lust. Where the extreme form of polygamy is found in primitive society as in Africa it is always due to economic causes. The wives are the labourers. But such a condition is unthinkable in India. In this country polygamy has never been taken recourse to merely for supply of labour either by the backward or advanced peoples. On the other hand, poverty is an effective check to the polygamous habit. This is true in primitive as well in advanced communities. Most of the people in India cannot afford to have more than one wife at the same time. Polygamy is the product of maladjustment. In Africa it is due to economic maladjustment and in Bengal to social maladjustment. Therefore, if we wish to stop this custom we should try to remove the true causes of maladjustment. A social custom cannot be repressed by law without producing maladjustment in some other sphere of social life. The present attempt will produce such a maladjustment in the following case.

Birth of a son is an absolute necessity in Hindu social system. On him the parents depend for maintenance during the old age. After death, the son is required to perform a large number of ceremonies for the spiritual benefit of the parents. The masses still believe sincerely that the souls of the dead parents will hanker for a palmful of water from the son. They cannot have peace in the next world if there be no son to perform the funeral rites. Such is the great necessity of a son to the Hindu. Now, according to the draft Code, if a man happens to have a barren wife he cannot have a son except an adopted one. Even that is not an easy affair for an ordinary man who is often unable to spend the requisite sum. He is not allowed by the proposed law to divorce the barren wife, nor can he marry a second wife during the lifetime of the first. Under such a condition he will have to take recourse to subterfuge in order to get a divorce. This is maladjustment forcing social degeneration.

In Bengal polygamy has practically disappeared. Education, public opinion and female emancipation have pushed it out of the field. If ever it is found anywhere now, it has a solid basis and it deserves existence in such cases. To introduce divorce, in order to abolish polygamy will, in my opinion, lead to greater mischiefs than the sporadic cases of polygamy. We should allow society to uproot this evil as it has been doing so long, slowly and gradually. No legislation is necessary for this purpose.

I shall now deal with the different clauses of the draft Code against which I have objection:—

Sub-clause (b) of Clause 1, Part IV.—This clause is incomplete. Many near relatives have not been included in it. As a concession to strong Hindu sentiment marriage of the children of two brothers has been prohibited absolutely. A similar sentiment also is found against marriage of children of two sisters. But this has not been prohibited in the same manner. There is no justification for it.

Sub-clause (a) of Clause 3, Part IV.—This clause should be abolished altogether. I have already adduced my reasons for it.

Clause 5 of Part IV.—This clause nullifies sub-clause (e) of clause 3 of Part IV. As there is no penalty clause to uphold sub-clause (e) of clause 3, everybody will flout it. The framers of the Code are of opinion that there is no necessity for strictly observing this sub-clause except in cases of force and fraud. I beg to differ from them. In cases of civil marriage this principle has been very stringently followed. In sub-clause (4) of clause 7 we find that both the bride and bridegroom will be required to take the permission of their respective guardians till they have completed the 21st year. The stringency is evidently due to the fact that the framers of the Code wish to provide sufficient safeguards against this new method of bringing about marriage, which, they apprehend, will be subversive of the healthy influence exercised by the guardians even in sacramental marriages especially as the rite to be performed may be either party. So I propose that sub-clause (e) of clause 3 should be replaced by sub-clause (4) of clause 7, clauses 5 and 6 should be changed in this light.

Clause 28 of Part IV.—It is claimed that this clause has been introduced to check the dowry evil. The clause is incomplete, inadequate and useless for the purpose for which it has been drawn up. The dowry consists of money or goods or both. The Code proposes that this property is to be kept in trust by the transferee for the benefit of the wife till she completes her eighteenth year when this property is to be transferred to her. This clause does not put any limitation on the value of the property to be thus kept and transferred. So the parties are at liberty to pay or to extract as much as they like or can. There is no provision in clause 28 or in any other clause to stop it. Dowry turns into an evil where it transcends the ordinary limits of a marriage gift. But it is very difficult to fix up the possible limits of ordinary marriage gifts. There are different classes of people with different capacities for payment. Even the capacity for payment is regulated by the feelings and sentiments of the giver. So it will turn out a very complicated affair to prescribe suitable limits for dowry for all classes of people. Moreover this will not give the desired relief. Anybody who is willing to pay more than the scheduled rate may do so directly. Law cannot possibly stop such direct payments between individuals. Even an extra efficient C.I.D. will not find it possible to check such payments. So clause 28 will not bring any relief to the dowry oppressed guardians.

This clause further implies that all payments made on the occasion of marriage are for the benefit of the wife. As a matter of fact this is not so. Majority of the payments are made to the bride's guardians (not to the bride) either to help him for the loss of a worker of the family who has been brought up at its cost. None of these ideas entitle the bride to have the benefit of the payment made by the other party. The framers of the Code have taken into consideration only that microscopic section of the population which pays for the bridegroom.

I do not wish to add anything more here. I have already shown the futility of taking inadequate legislative measures against dowry in connection with the Bengal Dowry Restriction Bill, 1940, introduced by Mr. S.N. Biswas on the 6th September 1940 in the Bengal Legislative Assembly (vide Modern Review, December 1941, pages 589 to 594).

PART VI—ADOPTION.

Sub-clause (2) of Clause 12.—A very important socio-biological principle involved here. The draft Code holds that the primary right to give a son in adoption lies with the father even against the will of the mother. She need not be consulted; her dissent may not be given any consideration. Biologically both father and mother are equally active in the birth of an issue. But the personal contact between mother and child is far more direct and durable. It extends over the ten months of gestation and a few years (especially among the poorer classes) of lactation. The child is more dependent on the mother during the first few years of its life when it remains in a helpless state. It is the mother who helps the child to grow out of this helpless

state. This intimate relation between mother and child is naturally responsible for the greater intensity of affection which we usually find between them. The father certainly does not stand in the same position. The affection between father and son cannot have the same intensity. This is the natural law. Under these circumstances, I do not find any justification either social or biological to endow the father alone with the authority to give away a son even against the will of the mother. In other parts of this Code a systematic attempt has been made to improve the position of women even against economic and social interests of the country and community but here the Code stops short and even legislates against the just and reasonable demands of motherhood. This is indeed strange. It is therefore, propose that the consent of the mother must be taken in every case of giving away a son in adoption as long as she lives.

Clause 13 (ii).—The draft Code prescribes that a boy should belong to the caste of his adoptive father. Here the Code recognizes the Hindu social organization but only in part. Castes, according to this Code, mean the ancient varnas, viz., Brahman, Kshatriya, Vaisya and Sudra. In many parts of India there are only two varnas, now, namely, the Brahmans and the Sudras as in Bengal and Madras. But each of them possesses a large number of small or big social groups each independent in its functions and occupying the same position in modern Hindu social organization as the varnas, perhaps held in ancient times. Caste connubium and commensality are not nowadays practised in relation to the ancient varnas, but in connexion with the sub-groups of each of these varnas. Therefore, functionally these sub-groups are of the same status as the ancient varnas. So, instead of insisting on the fact that the adopted son must belong to the varna of the adoptive father we should insist that the former must belong to the same sub-caste as that of the latter. The adopted son comes to live in the family and society of his adoptive father. He can naturally demand a peaceful social life for himself and his descendants. Now, if in Bengal a Namasudra boy is adopted by a Kayastha father which is allowed by clause (ii) of clause 13 he will not certainly find a very peaceful social life. The two social groups are equally, if not more widely, different from each other as the Brahmans and Sudras of old, in social status, manners and customs and culture. Kayastha society will never allow such a person to occupy any position in their community. This will be repeated whenever adoption will take place between two different sub-castes even. We have no social or moral justification, under these circumstances, to allow a person to endanger the social happiness of a minor. Therefore, I propose that clause (ii) of clause 13 be suitably modified with an eye to the modern conditions of the caste system in different parts of India.

Sub-clause (v) of Clause 13.—The age-limit for adoption, as prescribed in this clause appears to be unsatisfactory. A boy who has attained the fifteenth year but has not completed it may be given away by his parents to another man without paying any heed to his opinion. By the time a boy reaches this age he develops likes and dislikes; he becomes conscious of his personality. This is a condition which may not help in fulfilling the purpose for which he is adopted. In most cases he will not be able to forget his past associations. The training he has received has become fixed in his mind and it will be difficult to eradicate it altogether. But this is essential for peaceful family and social life. His habits have already been formed and they may not fit into the life which he will be required to lead in future. These are some of the socio-physiological difficulties of adopting a grown up boy. Adoption, to be successful, must be limited to a lower age. We would prefer the twenty year to be the uppermost limit. Thus, during the formative years of life, which start from about this age the adoptive family will be in a position to train him up in its own atmosphere and according to its own ideals. The changes of conflict in such cases will be far less than what would occur under the arrangement proposed by the draft Code.

17. Raja Bahadur Manilal Singh Roy, C.I.E., of Chakdighi.

The draft Hindu Code favours daughter at the cost of the son. It can be gathered from the following provisions:—

(a) The intestate's daughter who is a simultaneous heir along with son will take half a share.

(b) The daughter whose consummation in life is in wifehood will take one share as the widow of her husband.

(c) Son shall take half the share of a daughter in respect of the mother's stridhan, not inherited by her from her husband. Daughter thus gets half a share in her father's property, she gets one share of her husband's property in the roll of a wife; she gets one share of her mother's stridhan. But son cannot travel to a different family, so he gets one share of his father's property, and half a share of the mother's stridhan. Both males and females take property absolutely and can become fresh stocks of descent. In this wise, the favour shown unto "daughter" is not called for, specially when a Hindu father is bound to maintain his unmarried daughters and when unmarried daughters are bound to be maintained out of the estate of their deceased father.

On a review of the draft Code regarding intestate succession I find that it will accelerate the fragmentation of properties, invite complications by the provision of women taking the property absolutely, create family disruption by introduction of strangers as sharers of the property (the Hindu woman ceasing to be a member of the father's family after her marriage) and impair domestic peace by the accentuating the legal rights of simultaneous heirs. The devolution of property by wills in contravention of the order of intestate succession will be a paradise for lawyers as such wills will be contested to the detriment of happy relations amongst the sons and daughters of the deceased. The Code will increase litigation and dismember properties for mere fun. It will thus deal a death-blow to the property owning community, although the agitation in favour of such a Code is carried on by persons who are mostly not owners of properties.

I feel very strongly on the provisions of the draft Code regarding intestate succession. I record my opposition to them. The other parts of the Code register on the whole an improvement on the existing state of things, and I am in general agreement with them, although with specific provision I have my disagreement. In short, the part regarding intestate succession calls for strong condemnation and I enter my protest against it.

18. Professor S. N. Das Gupta, C.I.E., I.E.S. (Retired).

The object of the Hindu Law Committee appointed by Government was to formulate a sort of universal Code which would offer for legislation certain suggestions regarding the three departments, namely, Succession, Marriage and Adoption, such that there may be an uniform Code for all Hindus in British India so as to obviate the evils of piecemeal legislation in different localities. First of all I do not see any necessity why there should be an uniform law Code for such a great country like India where different races with different legal and customary traditions live. Customs in different localities grow into law and such a growth particularly in civil institutions ought to be left to the general change in public opinion and should not be initiated from outside. The history of the development from the time of the Grihya Sutras to the time of the Nibandhas shows the same tendency and this tendency also appears in the gradual changes and modifications of Hindu Law during the British period. There are elements of Sastric law which though valid as Hindu Law, e.g., the Gandharva and Rakshasa marriages. It is not intelligible why piecemeal legislation in marriage should be regarded as an evil and why a change in the marriage laws should necessarily be accompanied by a change in the law of succession. As ideas change with regard to certain forms or articles of marriage there may be a law effecting changes in that respect. It is not also understood why people following Mitakshara according to custom, tradition or religious sense should have a code of law which is the same as those that follow Dayabhaga or that there should be a newly formulated code of succession which is neither Dayabhaga nor Mitakshara, nor Mayukha which should be applicable uniformly to different people who follow the different scriptures. Such a legal code cannot justifiably be called a Hindu law code but a new law code introduced for the Hindus. In such circumstances why for the sake of uniformity one should have not one law code for all people living in India as the Indian Penal Code. Introduction of this law code drives away the Hindu Smriti Sastras as governing marriage, succession and adoption and should hence be regarded as striking at the root of the basic

structure of the Hindu religion. For it is the fundamental principle of Hinduism that all Hindus should follow the Hindu Smṛiti Sastra which includes the time honoured local customs as well. One cannot offer the new fangled code sastra as a substitute for Hindu Sastra.

Moreover the framers of the code have not been successful in attaining any real uniformity. Thus the alternative clauses 5 and 6, of Part IV, do not seem to be in agreement with original clause 3. Again in succession to property in clause 27, regarding the Marumakkattayan and the Aliyansanthana or Nambudri is allowed to stand as an exception.

Preliminary.

In page 2 the word caste has been used to denote the four primary varnas but in actual usage we have to deal with the sub-castes and it is often very difficult to discover or prove the nature of the relation that subsists between a sub-caste and a Varna.

The meaning of the word Stridhana is far wider than is provided for in the Smritis.

Succession.

The clause 7 which deals with the manner of distribution among simultaneous heirs, the provision that each of the intestate's daughters shall take half a share whether she is married, unmarried or a widow, rich or poor, with or without issue or without the possibility of issues seems to be very unjust for the following reasons:—

(1) The principle of inheritance according to the Smritis is based upon the principle of the capacity of any person who offer pinda to the deceased. Daughters should therefore be as a rule excluded from inheritance so long as there are sons. Daughters incapable of issue should therefore be absolutely excluded, if the Hindu principle of inheritance be at all regarded being of any value.

(2) In modern times one has to spend for the education and maintenance of a daughter even more than one has to spend for educating and maintaining a son. Even if the education expenses be the same the daughters have to be provided with ornaments and clothes costlier than those that are provided for the boys. When a boy closes his educational career he almost invariably earns for the family or at least provides for his own expenses. If the boy marries, he generally receives dowry and other things which come to the family and lessens the burden of the master of the family. A daughter however may become extremely expensive not only at the time of marriage but also in the subsequent years when presents have to be made on different occasions of the year. It is well known that this is a source of great hardship to the master of the family or when the master is dead to the brothers. Under the circumstances it will be unjust and unfair that in addition to all these expenses the daughter should carry to her new family a half share.

(3) It would have been intelligible if the law had provided for the maintenance of a widowed daughter or unmarried daughter (if she does not earn) and if the law had provided that, it would be the duty of the sons to provide for the marriage of their sisters. But the law here requires that every daughter rich or poor should get half share. For the daughter who is richly married the provision of the half share would be a superfluity as against the hard struggles of the brothers. Again if the sisters get automatically a half share each then naturally the brothers would not think of maintaining her or paying the expenses of her marriage. Moreover if a house is left by the father the brothers can no longer live in it; for the house has to be sold up for paying the shares of the sisters. Two or three brothers may amicably live together in a house for a good long time but the sisters will be living in a different family and every such dwelling house has necessarily to be sold up for the payment of the sister's share. When the law provides shares to the daughter of an intestate even if the latter leaves his property to the son by will, this will naturally produce bad feelings and a considerable amount of litigation over the validity of the will. It is true that the present law could not touch agricultural landed property which lies at the disposal of the provincial Government yet if the principle of this law is once accepted it would naturally pass over to agricultural land also. And the division of shares will lead to fragmentation of land which is already the cause of much evil. Again in cases where there are more daughters than sons the master of the

family may have completely ruined himself in educating and marrying the daughters and in the end may have very little left for his minor children. Out of this little the lion's share would go to the majority of the sisters and the minor brothers may become the burden of society for their maintenance and education though they might have been able to carry themselves on with what was left by their father. On the other hand the rich sisters might enjoy their shares merely as a superfluity.

Sacramental marriages.

Sacramental marriages in Hindu Smṛiti Sastra is contracted for the sake of the birth of a son who may offer pinda to the father. Marriage is also regarded as a special kind of gift for that purpose. The ruling out of polygamy may in certain cases where there is barrenness, defeat the fundamental purpose of marriage. It also repudiates the fundamental idea of marriage as receiving a gift of the girl given in marriage. Since polygamous marriages are ruled out in the case of civil marriages the ruling out of polygamy is quite uncalled for in the case of pure sacramental marriages particularly when it is allowed that even sacramental marriages may be registered. Parties that may so desire that the husband may not remarry so long as the wife is living whether she be barren or not may follow the civil marriage or strengthen the Sacramental marriages in that respect by a registration.

This is also particularly important because the law does not make any provision for incompatible marriages and does not even allow separation. Even in Roman Catholic marriages divorce is not allowed. There is provision for legal separation.

Polygamy has been prevalent among Hindus, Buddhists and Jains from time immemorial. At the present day it is not generally customary particularly among gentlemen of high rank who have not more than one wife. If there are exceptions that is for exceptional reasons. The forcible stoppage of polygamy may be an encouragement to concubinage particularly as in the case of maintenance, etc., the concubine and the illegitimate sons have not been ruled out, nor is the keeping of concubine regarded as illegal.

It appears when the note to article 4, page 15, that the panigrahana and the saptapadigama are not to be regarded as essential and this destroys entirely the sacramental character of marriage.

There is no provision for judicial separation in case of incompatible marriages. If polygamous marriages are to be absolutely annulled the law ought to provide judicial separation with or without maintenance as the case may be.

Again clause 30, of Part IV, provides for decrees of dissolution of marriage but the grounds on which such dissolution are granted are sometimes quite frivolous. Thus it is said that if a person becomes ill so as to require continuous care and treatment for not less than seven years either party can successfully apply for dissolution of marriage, and this seems to be quite an inhumane provision for dissolution of marriage. When either party becomes ill for no fault of his or her, it ought to be the bounden duty of the other party to serve or attend him or her and not to dissolve the marriage. Again in the case where a person appears to have manifested signs of venereal diseases not contracted by him but as appearing through heredity no party should have a right of marital consummation for the disease not being due to the fault of the party but to the fault of the forefathers. Under such cases there ought to be provision for judicial separation, or when the husband or the wife contracts the disease by their own fault, dissolution of marriage may be allowed in case the disease is found incurable. Again adultery by itself or gross misbehaviour and cruel treatment on either side are not regarded as being just and sufficient cause for divorce. It is only when the husband has a concubine or the wife is a concubine of another man or leads the life of a prostitute that dissolution of marriages is allowed. The provision of the law for dissolution seems to be too inadequate. In any case there ought to be sufficient provision for dissolution of marriage where the parties appear to be incompatible.

Regarding adoption it is not intelligible why the Dattaka-Mimamsa view according to which a woman may be

adopted as daughter should be absolutely ruled out. The code as a whole seems to be particularly generous to women and the principle of pinda as determining succession has not been properly followed. It is not understood therefore why a woman should be deprived of the right of being adopted particularly by the Dattaka-Mimamsa.

19. B. N. Roy Chowdhury of Santosh.

1. *Codification.*—Hindu Law is based on sruti, smriti and custom. The first two are supposed to be the words of the deity as revealed through the rishis or sages. It is an impossible attempt to codify such a law.

In some sense, Hindu Law is already codified. The principal smritis, namely the Institutes of Manu, Yajñavalkya and Narada, are samhitās or codes. But they are not codes in the modern sense. To attempt to codify them in the modern sense is impossible unless they are radically altered. In one or two cases, laws have been passed to alter the Hindu Law as laid down in such codes. But such alterations are against the established Hindu religion and too much of it should be avoided.

If it is intended to promulgate a code of law based, not on personal laws but on modern ideas and the present day standards of equity and good conscience, then, why restrict it to the Hindu community alone? A uniform code should be enacted applicable to all communities like the Indian Penal Code or the Contract Act. Take the example of Wakfs. What a hue and cry was raised amongst the Moslems after the Privy Council decision in Fata Mahomads case necessitating the promulgation of the Wakf Validating Act of 1913. Are the Hindus to be differently treated? Furthermore, the Shariat Act of 1937 has abolished custom but did not dare to go behind the Moslem personal law. But this contemplated code aims at going behind the Hindu personal law. It is useful to remember that Sir Hari Singh Gour made a brave attempt to codify the Hindu Law but failed.

The diversity of custom and usage in different parts of India makes it impossible to make a uniform code. This the framers of the code realize, but the attempt to overcome it has given rise to the unfair result that a great burden of violent changes in the law is imposed on the Dayabhaga system of law. This is partiality.

Economic value of joint family system.—The present contemplated code is calculated to destroy the already crumbling system of the joint family. Thoughtful people regret this, as, in India, in the absence of employment benefits, the joint family system is a great safeguard and acts as an effective insurance against economic ills.

The poverty of the Moslems is to a great extent attributable to inheritance by females and fragmentation of estates and holdings, requiring resorts to wakfs, etc.

Provision for daughters.—A separate provision for daughters will divide existing properties into too many shares and give rise to uneconomic fragmentations of estates. A stranger in the shape of son-in-law is brought in, which will lead to litigation.

Large estates should rather be sought to be protected by an extension of the principle of Primogeniture or the tying up of estates in tail male, as in England and other civilized countries.

Giving of properties to females would be justified, if women were more literate and capable of looking after their own affairs. It is now premature and will introduce a great deal of mischief in which women will be the greatest sufferers.

Provision is already there for widow of predeceased son and widow.

Regarding unmarried daughters the present provisions are working well. If she has a separate share it might be to her detriment rather than benefit from a practical point of view.

1. The various grades of stridhan may be abolished, and or simplified. Limited estates should remain.

2. Inheritance of females in different parts of India may be made more uniform. A sister may be made an ordinary heir (instead of a simultaneous heir) also under the Dayabhaga as under the Mitakshara now.

Divorce.—This is utterly repugnant to the Hindu idea of marriage as a Samskara introduction of divorce would be ruinous to the interests of females and would affect them more than males, until they are more literate and able to look after their affairs and earn their own living.

A few instances of hardship do not justify a sweeping change in the existing law.

Sagotra marriages.—Utterly against the science of Eugenics. Thoughtful people see in such prevention the marvellous foresight of the ancient sages.

Inter-caste marriages.—Should be condemned. It has been the means of perpetuating, through the ages, the dominant characteristics of a particular Varna.

There is the Civil Marriage Act, and, those who wish to go through such marriages may do so. The scope of this Act may be enlarged.

Some such prohibition is existing even in all advanced European countries.

Monogamy.—Polygamy has died a natural death. Monogamy without divorce is not practical.

General comment.—Any attempt to change the personal law of the Hindu is contrary to the letter and spirit of the Queen's Proclamation. After all, who is to thrust this piece of legislation down the throats of the unwilling Hindus?—the so-called Hindus of the Central Legislature with their Moslem and Christian brethren in the said legislature! This is a further step towards the vivisection of India. Do the Government want more wills and more probate duties?

To attempt to stamp out social evils by compulsory and hasty legislation, without improving the background of education, has uniformly been infructuous everywhere in the world. For example, there is the Widow Remarriage Act. How many widows remarry? The Sarada Act! This has proved a ridiculous failure. Prostitution is illegal in England: Has it stamped out prostitution?

20. Bengal Provincial Hindu Mahasabha.

The Hindu Mahasabha's stand will appear from the resolution which was passed at the Bilaspur Session of the All-India Hindu Mahasabha. We are not for blind maintenance of the status quo but we should remember that throughout the chequered career of India's national life our social and religious system, and our laws regulating family life, succession, marriage and adoption have been the result of organic growth. Conquerors have come and gone, Empires have flourished and perished, but the Governmental machinery never attempted to interfere with the growth and evolution of Hindu social or religious life. For the first time in the history of Hindustan a legislature, which is based on a constitutional machinery devised in the interest of an alien power, and not representative of the national life, is attempting to make radical innovations in our social life. We should not forget that there is a fundamental and living unity in Hindu Law. In our impatience we ought not to forget that Law itself is subject to Law, that it is no arbitrary expression of the will of a few law-givers, but is itself a thing obedient to a cosmic process. Hindu Law is the expression of juristic process that has run through the ages and is in itself an achievement of the highest order. We ought not to subject the Hindu Code to the cross-currents of party politics or to make it amenable to the will of Legislators who have neither any mandate from the nation nor reflect the general will of Hindu India.

The protagonists of codification often live in an unreal world. Modern experience has, to a large extent, shaken, if not destroyed, the fascination for codification current in the last century. Particularly our experience of the Indian codes has been disappointing. The British people, who are one of the greatest commercial nations on the face of the earth have not yet got any codified law of Contract or of Tort. The Sale of Goods Act was passed in England after a similar Act was passed in India. The Indian Contract Act has been severely criticized by competent jurists and has produced uncertainty, ambiguity and lack of cohesion, profitable to the members of the legal profession. It has been said by a distinguished jurist that law based on precedents, is constitutive and inductive. Codification is, to a large extent, "the authoritative generalization of Jurist-Law." Naturally, codified law is tortured and twisted by interpretations and gather various glosses, mostly contrary to the intention of the makers of the law.

The process of modern legislation has been very unsatisfactory and modern Acts and Ordinances have been muddled products. A great Judge has remarked that the

bad drafting of modern statutes has put the Judges in an embarrassing situation. The serious handicap of a code is that once enacted it checks natural development and arrests all attempts to harmonise legal notions with progressive ideas of social development, independent of the artificial process of Parliamentary legislation. It may be said that since the Hindus lost their independence, the adjustment between law and social conditions has been arrested and that the domination of British Courts has impeded the growth of Hindu Law.

In spite of the fact that under modern conditions the growth of the Common Law of Hindus has, to a large extent, been fettered, innovations and improvements have been made. Codification will render impossible any innovation or redress which can be effected by judicial interpretation of ancient texts or commentaries. Unless there is an organic and living contact between the Nation and the Parliament, Codified Law is apt to be stereotyped law. Where there is no national Government, where the real effective power of legislation is in the hands of people not responsive to national will, it is to be seriously considered whether Hindu Law should be allowed to be altered radically by the Legislature. After all, in the midst of our bondage and our political and economic servitude, we have successfully preserved our social and religious life unsullied by the sacrilegious attack of all alien conquerors. The call of national unity or "Akhand Hindusthan" is fascinating indeed. But should we, in the name of Akhand Hindusthan, allow a legislature, so unrepresentative of Hindu India, so dominated by an irresponsible executive and so completely out of tune with national life, to make Hindu Law the subject matter of legislation? It is to be remembered that under the Hindu Code the laws of intestate and testamentary succession shall not apply to agricultural lands except in the Chief Commissioner's Provinces. Therefore, for three-fourths of the entire Hindu population and for the bulk of the social wealth of the country the Hindu Code will be a dead letter. There will be a mere uniform Hindu Code for the urbanised or anglicised Hindus. The cause of "Akhand Hindusthan" will be hardly furthered by a Hindu Code which will merely touch the fringe of Hindu India and will possibly provide ample scope for local and domestic feuds and litigations in the numerous courts of India. Should we not wait till we have a really representative legislature and at least a semblance of national Government with a mandate from the Electors before we allow our legislators to indulge in such experiments as the Codification of Hindu Law?

We show in the annexure the criticisms we beg to put forward on the provisions of the draft Hindu Code.

Those ladies of the well-to-do classes who are now voicing their approval through the Press, either do not require this addition to their assets, or have already got it in one shape or other. Amongst these classes it is usual to provide for the daughter at the time of the marriage, in the shape of ornaments and presents to the bridegroom for securing one of means and education. They are also provided for by the "Wills" of their parents. In considering the benefit to the average Hindu women or to the Hindu society this vital class may be eliminated.

Amongst other reasons given in support of the Bill one is that we have proceeded so long on a wrong interpretation of the "Shastric Texts." Since the matter is not beyond doubt, and the accepted interpretations have stood the test of time, we ought not to accept a new one lightly, without considering its serious effects upon the social and economic structure of Hindu society which as we have endeavoured to show will be disastrous.

A further reason given is the introduction of uniformity. This has not been achieved as the Bill itself excludes the southern schools of Hindu Law. The various schools now sought to be unified can be explained as customs and usages which have acquired the force of law in the different provinces amongst people of different stocks, but instead of treating them as mere customs and usages, the law-givers and 'Smritikars' preferred to have the authority of 'Manu' for their local law by interpreting texts differently. In fact in a vast continent like India inhabited by people of different stocks with widely different culture, manners and customs, it is difference and not uniformity which is to be expected, and the Hindu Law has very wisely provided for customs and usages overriding the written text of the law.

Then again, the time and place are also inopportune. We are in the midst of a world-war, which though we are not participating in actively, has made the securing of food, clothes and medicines, a very difficult problem for most of us, leaving us hardly any time to devote to non-urgent and non-essential things like the consolidation and amendment of our law. The legislature, in which the Bill has been introduced, is hardly representative of the Hindu masses, in fact most of them have no votes for the Indian Legislative Assembly. Let there be a new Assembly on the basis of adult suffrage and let an election be fought on the issue of the proposed changes; then and then only, can the Legislature and our Rulers be certain, that they are making no mistake in interfering with the personal law of the Hindus. There is no hurry to change the law which has stood for thousands of years; why not wait till we have a thoroughly representative Assembly?

As Hindus, and seeing that the Muhammadans are now setting themselves up as members of a different nation, who must have a separate home-land of their own, we have the strongest objection to alteration of our-law by the votes of Muhammadans. They must have no say in the matter; our law being a part of our religion, it is only proper that it be altered by Hindu votes alone.

Annexure : Comments on the provisions of the Code.

The Preamble.—The expediency of amendment and codification of the branches of the Hindu Law has not been made out.

PART I.

Clause 1 (2) Extent.—In India there are large territories which are not comprised in British India, where the authority of the Indian Legislature does not reach. In these areas the Hindu Law as is now applicable will still prevail. This will lead to conflict of laws.

Clause 1 (3).—Why not defer the operation, till ratified by a Legislature elected on the basis of adult suffrage, male and female, or by a plebiscite of the Hindus? The definition should include Hindus by religion, e.g., converts to Hinduism also, also Animists and the so-called aboriginal population and to all illegitimate children of Hindus.

Clause 3.—Custom and usage regarding any matter dealt with in this Code shall supersede its provisions, if they are definite and reasonable.

Clause 5 (j).—"Stridhana" should have the same meaning as it has under the present law.

Clause 6.—If the Special Marriage Act, 1872, is going to be amended, the Code should provide for marriage of Hindu men and women with men and women professing any other religion, each party having the option to retain his or her religion. The first schedule should be amended accordingly.

PART II.—INTESTATE SUCCESSION.

Clause 1.—"This part shall not affect any custom or usage or special rule of law relating to succession or devolution of property prevailing amongst the Hindus in any local area, community, group or family nor shall it apply." Add this provision to clause 1, 2 (c), lines 2 and 3; delete "but not a Dasiputra".

Clause 4, line 2.—Delete "in this part" and (a), (b), (c) and (d) and insert "by the school of Hindu Law or by the custom and usage by which he was governed."

Clause 5.—Delete "We do not find amongst the enumerated heirs, the widowed daughter-in-law or grand-daughter-in-law." In any event delete "daughter" in class I (1)—Heirs in compact series.

We find that the daughter's daughter who may be the member of a family unknown to the deceased, is preferred to the sister, sister's son, brother's daughter and sister's daughter whom we often find to be the members of the same family as the deceased and for whose maintenance the average Bengalee feels a responsibility though there is no obligation, legal or moral.

If the law is at all to be amended we should recognize these obligations.

Clauses 6, 7, 8, 9, 10, 11.—Omit.

Clause 13, line 2.—After "by her" insert "before or".

Clause 14, line 3.—Delete word "follows" and the whole of (a) and (b); insert "it did before the commencement of the Code".

There is no sense in making a married daughter to whom the mother may have given an adequate portion of her ornaments at the time of her marriage a co-heir with a son or unmarried daughter who has not got such portions.

In most cases the "stridhana" consists of ornaments alone. Should a daughter's son and daughter's daughter be co-heirs with son's daughter?

Clause 19.—Proviso should be omitted.

Clause 21.—The convert should himself be disqualified from inheriting.

Line 3, after the word "religion" insert "he or she and the".

Clause 26.—There are certain diseases and effects which render a man incapable of managing or holding property. There should be disqualifications on account of lunacy, idiocy, incurable and congenital deafness and dumbness, etc., and such persons should be given rights of maintenance, or even the whole of the income, but not any right in the corpus of the property.

PART III-A.

Clauses 1 and 2.—The abolition of the principle of survivorship, will radically alter Mitakshara law and should not be made without the consent of the people governed by such law.

Clause 3.—Maintenance should include "expenses of marriage, medical treatment and education" and these should be added after "residence".

Sub-clause (ii) to be deleted.

Clause 9.—The following should be substituted:—

"A dependant's claim for maintenance shall be a charge on the estate of the deceased or such portion thereof as may be determined by a decree of Court". Without a charge the right would be illusory.

PART IV.

It does not appear why we are changing our marriage laws. Monogamy should not be made compulsory by law.

Clause 2 should be amended by recognizing customary form of marriage such as "Kanthi-Badal", "Sindurdan", "Sagai", etc.

Clause 3.—Sub-clause (a) to be deleted.

Sub-clause (c).—After "Pravara" add except in the case of Sudras.

Clause 24.—Omit.

Clause 28, line 7.—After "benefit of the wife" insert "and the husband".

Line 8.—Substitute "any of them" for "she", delete "to her Stridhana" and insert "to his or her heirs".

Clause 29.—Delete clause (i) (v).

Clause 30.—Omit.

Clause 31.—Omit "No provisions of the Indian Divorce Act should apply."

PART VI.

Clauses 1 and 13.—All forms of adoption sanctioned by the Hindu Law should be permitted.

Clauses 5, 12, 13 and 15.—The present law should be maintained on these points.

21. Dr. Anantprasad Banerji Sastri, M.B.E., Vachaspathi, Vidyabhusana, M.A. (Cal.), D.Phil (Oxon), Principal, Sanskrit College, Calcutta.

I. In the Explanatory statement it is said "The Committee had it circulated to leading lawyers in India". It is not even stated that the leading lawyers were Hindus. This procedure is not satisfactory. The draft Code should have been translated into the different languages of the parties concerned and circulated to representative Hindu organizations. Cleverness in drafting is no substitute for a Hindu outlook and Hindu way of life.

II. In Part II, 9, under General Provisions, before clause 15, a provision should be inserted in the following terms. "where after the commencement of this Code, the property of any male Hindu (including his interest in joint family property) devolves by testamentary or intestate succession on his son, daughter, son's son or son's son's son, the latter shall restitute the property if he or she accepts conversion into another religion."

III. Under Part IV clauses 7-22 are provisions for civil marriage. All these provisions should be omitted. It is one thing for a Hindu to continue to be styled a Hindu even after performing certain actions repugnant to the ideas of Hinduism, it is another thing to sanction such actions in a Hindu Code. This difference should not be obliterated. The special law permitting civil marriage among Hindus should stand as at present as a separate piece of legislation.

Mr. 22. A. K. Das Gupta, Sub-Deputy Magistrate, Dewanganj, Mymensingh.

I had discussions with a large number of my friends and so my opinion may kindly be taken to be that of the young officials. I put down our opinion as follows:

We whole-heartedly support codification of Hindu Law which is overdue. All the Hindus must be governed by the same law; inter-caste marriage is particularly important and is the *sine qua non* for the unity of the Hindus. Great leaders often indulge in high-sounding lectures. Recently replying to the civic address presented to him by the Madras Corporation, Dr. Shyaman. Prasad Mukherjee observed "We must learn how to sink our differences and bow to the imperishable spirit of the common motherland of ours." But these statements lose all value when we come to know that there are still a very large number of Brahmans who will refuse to dine with members of other castes not to speak of having matrimonial alliances with them. This holds good for other castes in respect of castes inferior to them. The time has come when we should really sink our differences, social and political. I know many who take things prepared by Muhammadans but not anything touched by a scheduled caste man. And we brag of our catholicity.

Another point in the Draft Hindu Code which is very important is *Sagotra marriage*. Is not sagotra marriage legal according to the existing Hindu Law? For according to Manu "Non-sagotra marriage amongst the three twice-born castes is recommended." So non-sagotra marriage is recommendatory and not mandatory. This point has been clarified fully in Golap Sastri's book on Hindu Law. If, however, legislature still thinks that there is some irregularity in it, it may kindly be put in the list of valid marriages and not merely in that of *factum valet* marriages. With regard to prohibited degrees we agree with Mr. Atul Gupta, Advocate of Calcutta High Court, and think five degrees on the father's and three degrees on the mother's side are sufficient. I heard from my father (late Prof. J. N. Das Gupta, M.A., D.L., Dean of the Faculty of Law, Dacca University) that there was no legal bar to sagotra marriage. Sagotra (*go+tra*=cow+land) means those who had common properties and were under a common preceptor. Brahmans say that sagotra members amongst them come from the same origin. Assuming, without admitting that that is so, we suggest that the prohibited degrees stated above are sufficient and we need not go back to a remote, uncertain common ancestor; for we can then even go back to Adam and Eve. Nay, we may even say that according to Darwin we and monkeys had originally common ancestors. We do not know what the unreasonable *Sanatanists* want to say. Let them bark, the caravan will go on. We must have Hindu law codified.

23. Mr. Basantlal Murelali, Calcutta, Secretary, Nawjivan Sangha and ex-President, All-India Marwari Agarwal Mahasabha.

In my community we have got many educated and influential persons who are in favour of the proposed Hindu Code.

Regarding the provisions of intestate succession in the draft Code providing the daughter with a share, whether married or unmarried and giving full rights and absolute estates to widows will not only remove the arbitrary discrimination against daughters but will also serve as the first step towards the uplift of women as a whole. Unless economical and financial rights are given to women their uplift is not possible. The arguments put against these rights being given to women are mostly economical and sentimental. I think the foundation of Hindu Code is not economical, and we cannot judge its usefulness in rupees, annas and pies.

Monogamy must be made a rule. With monogamy we should have civil marriages.

Regarding divorce I think it is a necessary consequence of monogamy. The grounds enumerated in the draft Code for declaration of a marriage as null and void, are very moderate. Absence of provision for divorce has now resulted in many cases of avoidable life-long misery and in some cases the women have to accept Islam as the only escape. These are not "a few extreme cases". Divorce is also not alien to us.

Oppositions to social reforms are usual. Even law, stopping the Sati Pratha was opposed. The Sarada Act's example is very fresh before us. It was opposed by eminent people including lawyers. But to-day, we know the advantages derived from these laws. I quite agree with you that legislation is one form of education and it should have an educative effect on the people. The argument that the State should not interfere with customs, serves no useful purpose. With the change in time, customs must change. Change is the sign of life. One medicine cannot be administered for all diseases. Repugnant customs must go, if not by voluntary organization, then by laws.

In conclusion, let me say a word to those friends of my community who have made it a mission to oppose the draft Code in season and out of season. Let me ask them with all the respect they deserve, what pains have they taken to gather the opinions of womenfolk on this Code? If not, what right have they got to pronounce their judgment on a matter vitally connected with women without consulting them?

24. All-India Anti-Hindu Code Committee.

1. In the explanatory statement the Rau Committee says that it has been appointed by the Government of India for the purpose of formulating a Code of Hindu law which should be complete as far as possible.

In another place in paragraph 4 it says that one of the objects of the Committee is to evolve a uniform Code of Hindu law which will apply to all the Hindus by blending the most progressive elements in the various Schools of Law which prevail in different parts of the country.

Our contention is that the Rau Committee has gone beyond its scope of reference as put forward in the explanatory statement; they have incorporated the principles of Muhammadan law as regards succession. There is no provision that daughter will come as simultaneous heir in any school of Hindu law. This incorporation of principles of Muhammadan law falls outside the scope of reference of the Committee. We do not think even in the most progressive elements of Hindu law, simultaneous heirship of daughter is recognized. As far as this goes, the entire scheme of altering the mode of succession falls to the ground.

2. There is neither any demand nor any necessity for the codification of Hindu law. No High Court has ever complained for the absence of Code in Hindu law nor has any demand been made by the community, nor even was a Committee appointed for this purpose by the Government. The Committee, on the other hand, propose the necessity of codification *suo moto*. Codification is not necessary because it takes away our personal law. It will make us creatures of statute; we will be no longer governed by 'Dharmasastra'.

3. *Uniformity*.—One of the main objects of the Committee in codification is the unification of Hindu law throughout the country; it may be said that artificial unification as achieved in the present Code is much harmful. The present diversity of usages and customs in Hindu Society does not disturb its uniformity of culture and therefore any interference with that will bring in chaos.

Moreover, uniformity has become impossible in the Code itself. In Southern India, in the Marumakkattayam, Aya Santana and Nambudri laws, the provisions are left untouched. The Code further does not apply to topics governed by Provincial Legislation such as agricultural property. Again joint family property is also to be governed by the existing law. All this goes to show that uniformity will be impossible by the very fact, of the Code being enacted into a law. Codification will further increase litigation and invite frequent and hasty legislation.

4. *Women's rights*.—The other main object of the Committee in the present Code is the removal of sex disqualification in the case of women. This removal of sex disqualification as formulated in the Code is not only unnecessary but absolutely foreign to Hindu social ideas. Women under the existing law are given as much rights as the social structure and conditions require. Introduction of foreign ideas is not demanded by the Hindu ladies themselves except a microscopic minority composed of persons who cannot represent the bulk of the Hindu Society. It is not only improper but positively dangerous to proceed on the views of such persons for introducing revolutionary changes affecting the remaining

99 per cent of the Hindu ladies who are opposed to such modifications. It has been overlooked that the responsibilities of the son in the family are altogether different from those of the daughter; the respective rights of the son and daughter should be commensurate with their responsibilities. It should not be forgotten that rights in Hindu Law are based on duties and are not merely advantage.

5. *Daughter's share*.—The inclusion of daughter in the group of simultaneous heirs with half a share of the son is not found in any school of Hindu Law. Unmarried daughters are entitled to maintenance and marriage expenses even at the hands of their brothers who have not inherited any property from their parents. Calculating in terms of rights and shares the girls are bound to suffer much more than the supposed benefit to them.

6. Absolute estate of women is not recognized in any school of law. Under the existing law a widow is entitled to a share on partition but otherwise she is entitled to maintenance. The widow and daughter both whenever they inherit, they inherit as life owners the estate to revert either to the heirs of the deceased or the daughter's son as the case may be. The provision in the draft Code for giving absolute estate for all the family heirs is neither warranted by the 'shastras' nor by the social constitution.

7. *Order of succession*.—Class II of the enumerated heirs is neither prescribed by the textual law nor necessary on principles of consanguinity.

8. *Stridhan*.—As pointed above 'stridhan' should not include inherited property. The female is given more rights even than the male heirs because a son according to Mitakshara School of Law has not got absolute rights of disposal, etc., of property inherited from his ancestors, because his son will have rights over it by birth. In the words of "Adhivedanikadiancha" Adi, etc., should be construed to be of the similar nature and not of the different nature.

9. *Succession of stridhan*.—It is strange that even mother and father are included as heirs to 'stridhan' of a woman whereas a Hindu, as such, would never like to think of inheriting such property. Son should not inherit along with the daughter in case of 'stridhan'.

10. *Maintenance*.—A wife who is living apart from the husband for cogent reasons should also be entitled to maintenance. Brother's widow, brother's son's widow, brother's son's son's widow, father's brother's widow, father's brother's son's widow and other widows belonging to the same family should also be entitled to maintenance.

11. *Marriage*.—The marriage rules as proposed are entirely unacceptable to the Hindu Society. Hindus cannot recognize inter-class and 'Sagotra' marriages at any cost. The essentials of sacramental marriage according to 'sastras' and prevailing customs should be retained; in fact the sacramental marriage with the proposed modification is merely the same marriage in disguise.

12. *Civil marriage*.—Hindus cannot agree to civil marriage being recognized as a form of Hindu marriage at all before marriage by consent of the parents of the girls must be regarded as essential.

13. *Divorce* is repugnant to Hindu sentiment and as opposed to the 'sastric' injunctions. The passage in 'Narad' and 'Parashar' is incorrectly interpreted to mean divorce whereas it deals with cases only after betrothal. Hindu marriage once performed is always indissoluble.

14. *Monogamy* is a general rule of practice in Hindu Society whereas polygamy is permitted where necessary. Hindu family being essentially a patrimonial family polygamy may be necessary, therefore, no legislation against polygamy is either called for, or necessary and, any legislation for compulsory monogamy is nothing but mischievous cause for, if nothing else, at least it will lead to divorce.

15. There are various other objections to the other parts of the Code which have not been mentioned here in this short note. On these grounds amongst others the attempt to codify the Hindu Law should be altogether abandoned, and Act 18 of 1937 repealed as proposed by the Rau Committee.

25. Mr. B. P. Himatsingka, B.A.; B.L., Temple Chambers, Calcutta.

It pains me to go through the articles appearing day in, and day out, in the columns of newspapers and magazines, all over India, vehemently protesting without rhyme or reason against the proposed Hindu Code. This voice of protest seems to grow louder and masquerades

as the public opinion expressed by an overwhelming majority. Even ladies whose welfare the Code has at heart, are said to be dead against it. From Bengal where the percentage of literate is much larger than anywhere else comes a call to do away with such a Code and give it a decent burial or at least to throw it into the waste paper basket as quickly as possible.

Behind this continuous uproar, the incessant hue and cry, there is a thundering, blazing life a flagrant blatant concoction of facts. The so-called mammoth meetings held in Calcutta and other places as a mark of protest against the Hindu Code do not genuinely mirror the feelings and opinions of the audience attending them. Nay, the recorded evidence is also a forgery in some instances, and may be taken to be forced in most other cases. To put it mildly, much that has been said or written against it lacks spontaneity. Husbands, especially Hindu husbands, have since time immemorial, enjoyed the time-honoured privilege of domineering and tyrannising over their wives who are under all circumstances expected to be submissive, docile, and slavishly and blindly obedient. They are very often the victims of their husbands' whims and caprices. Being inspired and influenced by their self-centred, whimsical, unreasonable, conceited and vain-glorious husbands, poor women cannot but be mere tools or puppets whose sole aim in life is stated to be to please, by all means, those to whom they have been married. This being so, *members of the fair sex are no better than their masters' voice. Like dumb, driven cattle they are not allowed to state what will be conducive to their welfare.*

Should an attempt be made to ascertain their views concerning the much maligned Code, they will, I am sure, lend their effective support to it. It is high time that the clauses, the proposals and implications of the Code were clearly explained to them. They should be told that the Code in question among other things aims at—

(a) Emancipating women and recognizing them as human beings equal in all respects to their menfolk, (b) putting an end to the privileges exclusively enjoyed so far by male heirs and successors, (c) making away with the forces of reaction, conservatism and diehardism, (d) ameliorating the wretched condition of womenfolk by taking the wind out of the sails of obscurantists who set their face against reforms, (e) creating an atmosphere of peace, goodwill, healthy and sincere co-operation between men and women, (f) removing untouchability which has been a stumbling-block in the way of progress.

On the whole, the proposed Code is a blessing, much as its opponents and hostile critics may fret and fume. History bears witness to the fact that all proposed reforms are, at the outset, condemned and cursed with hell, book and candle; but their bright features are appreciated by the coming generation. In the teeth of bitter opposition many a bill have been enacted into law in the recent past—Sarada Act, Widow marriage, Civil Marriage Act. The deeper the ignorance of the masses, the bitterer is their opposition. Nevertheless, reason prevails over unreason, fanaticism and prejudice in the long run and prompts the enlightened section of society to stick to what is right and beneficial.

'Old order changeth, yielding place to new' fell from the lips of an eminent Victorian poet whose observation is worthy of a broad-minded statesman and has a ring of universal truth about it. It applies to India no less than to England or any other country of the world for the matter of that. To swear by the Shastras, to quote chapters and verses from scriptures and holy books in season and out of season, is to put back the hand of the clock of progress and hark back to the dead past which hangs like a mill-stone round the necks of reactionary people. Those persons, who have vested interest, blind faith and false sense of prestige and pride, manage to shut their eyes to what does not suit their pleasure and convenience. Blinded by prejudice and selfish motives they do not pause to consider that different injunctions have been given by the sages of the hoary past to meet varying needs and ever-changing circumstances. "*Adapt or perish*", is what one of the world's greatest thinkers—I refer to H. G. Wells—says. Is it not true to say that the Hindu Society is in a decadent and deteriorating state for failure of its adaptation to the altered conditions? *Good laws ought to replace obsolete and out-of-date injunctions and rules laid down in scriptures.* There will always

be false lights and perilous rocks in the shape of reactionary forces. Even among learned judges there are not a few who hesitate to break down the barriers of absurd and insane customs. But the citadel of silly orthodoxy must be battered and wiped out of existence, if Indians, especially Hindus, are to keep pace with the progressive nations of the world and to have a place in the vast Universe.

The proposed Hindu Code will, to be sure, be an important land-mark, nay, a turning-point in the history of India. *We must go the whole hog with it and see it codified.*

26. Lady Abala Bose, Secretary, Nari Sikhsha Samiti, Vidyasagar, Bani Bhawan and Mahila Silpa Bhawan, Calcutta.

As one who has been in touch with the hardships and genuine distresses of women, particularly of the poor middle classes, I feel that it is my duty to add to the voice in support of the urgent need for redress of their position in Hindu Law. A large number of unfortunate and unhappy women are unable to obtain relief from Hindu law as it is administered to-day. It has resulted in their being thrown out of the family. It was in order to give protection to widows in unfortunate and distressing circumstances that some of us felt compelled to start the Vidyasagar Bari Bhawan in 1919. At this institution widows are maintained free, are educated and trained in a variety of handicrafts so that they may earn a living and regain their self-respect. All this is due to the widow having no money, for we find these widows are sought after by those very relatives as soon as they are able to earn.

Since the Institution has been started, we have trained 5,800 women and have enabled them to earn and become self-respecting members of society and to regain their foothold in society from which the law has deprived them; a large number of them are widows and girls who have been thrown out of their father-in-law's house and having no claim under the parental roof, were placed in unfortunate circumstances. I feel strongly that the Hindu Code should make provisions for the daughter's right of inheritance as well as widow's right to absolute property. It is only when the right to parental property is recognized that it will be possible to redress their grievances in some measure. This stands to reason as all Dayabhaga property is subject to wills and a claim as a daughter-in-law can be over-ruled by a will. Social security can be better ensured if the natural right of the daughter is given recognition.

May I point out that there are hundreds of cases in Bengal to-day as also elsewhere, where a woman has no redress, when the husband marries again or where she is subject to extreme cruelty and torture in the home?

Our women for ages have borne all their suffering mutely, but with the advance of time and progress of society, they now come out of the home, where they were kept as "untouched by the Sun" as the saying goes and are bravely trying to face the cruel world for the sake of their children.

It is no use trying to talk of joint family system now-a-days as it is slowly crumbling to pieces. As regards division of paternal property, who does not know that as soon as sons are earning independently they leave the paternal house and property which soon becomes a ruin if a widowed daughter is not there? She does not think of her rights, but keeps up a lonely vigil as long as she lives and dreams of the old days, while the sons are building separate houses in town.

Unfortunately owing to ill-health and advanced age, it is not possible for me to give evidence before you. I hope you will give my letter sympathetic consideration. My good wishes go with you in your endeavour to make provisions to remove some of the most glaring injustices which are threatening to overwhelm Hindu Society.

27. Mr. Prativa Mitra, President, A.I.W.C., Mymensingh Branch.

We support the general principles underlying the Bill. But there is one important point regarding the succession of female heirs to which many of our members, beg to invite your attention.

The position of the female heirs in Bengal is comparatively better than in other Provinces, where the Mitakshara Law prevails. And the introduction of the Hindu Women's Rights to Property Act, if passed with some more rights to some other female heirs may go a great way to relieve

their difficulties. We think if provisions are made therein for unmarried daughters for their maintenance and marriage expenses as also for widowed daughters as a charge upon paternal properties, it may serve to meet the necessities of the situation. The provisions for giving absolute rights to all daughters to their paternal properties both movable and immovable would disrupt the social and economic structure of the Hindu joint family system, and the policy of keeping the property in the male line, which has worked well so long in the interest of the Bengalee Hindu Society. Any attempt to the contrary, would create constant ill-feelings and litigations amongst brothers and sisters. Some are of opinion that at best a share in the movable property of the father including cash and Bank balances, may be given to the married daughters.

As regards marriage and divorce, we think with the growth and progress of our society, provisions relating to them have become a necessity, and we support it generally.

28. Burdwan District Mahila Atmaraksha Samity.

Our Samity has been strongly agitating in favour of the Code ever since it saw the light of day. Though the provisions of the Code fall short of the full requirements of the times, particularly so far as the inheritance portion of it is concerned, yet our organization, which is pledged to fight for the political, social and economic rights and status of womanhood, considers and most firmly and emphatically declares the Bill to be decidedly a step forward towards our goal.

The unnaturality of a daughter being deprived of her father's estate has been allowed to outlive by another unnaturality of a disunited structure of society. This bill shears off both disabilities and pushes the long oppressed women kind onwards to realizing the goal of progress. While marriages of the type already provided for in the Bill have been taking place oftener than orthodoxy could check by stigmatisation, it led to many unnecessary inconveniences simply because it was not legalized by a particular law.

In the opinion of our organization intricacies of law should be adapted to the needs of a people. The rights of a people cannot be sacrificed to serve the inadequacies of a mediaeval law.

The Hindu Law Committee have taken upon them the noble task of raising the status of Hindu women, nay, of the women of India, for they are part and parcel of Indian Womanhood and the section most unprotected by law.

We do anxiously wait for the day when the Code will be crystallized into an Act.

29. Indrani Devi, Secretary, Sriniketan Mahila Samaj, Sriniketan P.O., Birbhum.

I shall gladly stand for the Code if some amendments are added to the main Code removing the following objectionable points—

(1) Amongst the middle class Hindus there is a custom of giving dowry to the daughters when they are given in marriage. This already vicious custom would be made more harmful if the daughters are entitled to have shares in their father's property. The advocates of the Bill are of opinion that the dowry system will cease to exist automatically if the daughter of a family gets a share in her father's property. But this is a mere conjecture and I should say, a foolish one. Neither the bridegroom nor his party would wait for the end of the bride's father. And the result would be disastrous to the poor father of the bride and his sons. They would lose everything for the daughters of the family, who would get lumps of their father's property twice—(1) when they are given in marriage and (2) when their poor father ceases to live. The dowry system in its right form (not in the form in vogue in the present society) is an attempt to do justice to the daughters of the family, who are not to get any share of their father's property. But if the law allows the daughter to have a share of her father's property then the custom of giving dowry to the daughters should be abolished. Thus it is obvious that the proposed Bill is harmful to the poor and middle class Hindus who are more in number than the rich Hindus. Admitting that the daughter-in-law would bring in what the daughters would take away from the family, I cannot but oppose the Bill considering the strained relations, discord and quarrel

between the brothers and sisters, brothers and brothers-in-law and between the brother's children and the sister's children which are the logical products of the Bill.

(2) My second objection is that the daughter ought to be bound by law to support her aged parents with her brother if she is entitled to get a share in her father's property.

(3) Thirdly the daughter must be bound by law to bear a share of her deceased father's debts with her brother. There can be no right without duty.

If there are some provisions in the Bill removing the abovementioned objections, I would gladly support the Bill which is meant for the good of the society as a whole.

I express no opinion as regards the Hindu Marriage Bill.

30. Indira Devi Chandul, President, Santiniketan Mahila Samity, Santiniketan.

The two general grounds on which I support the principles of the Bill, are—

(a) It seeks to codify and simplify and unify the existing diversity of the Hindu law; thus tending to unify the much divided peoples of India, and (b) it attempts to bring some sort of equality into the glaring inequalities between Indian men and women, thus standing for justice and fairplay.

Though not a Sanatanist myself, I don't think there is any valid reason for even the orthodox Hindus raising the battle-cry of 'Hinduism in danger', as the law of succession is not included in any religious precepts, but belongs to the secular portion of the Hindu scriptures, I understand. And even if marriage is considered to be a sacrament it cannot claim to be above the laws of justice and equity which should guide all human relations. Also, no society can live and grow unless it adapts itself gradually to altering circumstances.

Hinduism has thus modified itself formerly to suit changing conditions; the only difference now being that the advent of the British makes it imperative for us to have recourse to their law, if we want any reform.

5. Certain modifications and amendments of the Bill have been proposed by certain writers, but I need not enter into details now. I need only repeat what I began by saying, that I fully support the two main principles of the Code, viz., (a) giving the daughter a fair share in her father's property and giving women absolute ownership; and (b) annulling and dissolving marriages under certain obviously iniquitous conditions and leave the details to be filled in by experts.

31. Mahila Atma Raksha Samity, Tamiluk, District Midnapore (Uma Nag, Secretary).

1. It is not considered expedient to codify the entire Hindu law on the lines adumbrated in the draft Hindu Code; but the Samity is of opinion that amendments should be made on those branches of Hindu law for which the Rau Committee was appointed.

2. Hindu women's right to property should be amended and the position of the unmarried daughter should be protected making clear position for her maintenance and marriage expenses to be met out of her paternal estate as charge on the same. It would be far better and healthier to make provision for a pre-deceased son's widow and the widow of a grandson whose husband and his (husband's) father pre-deceased the latter's father than providing the daughter with a share with her brother or his son or grandson in her patrimony which she might usually spend during her husband's lifetime and no residue might be left to fall back upon when she becomes a widow in the lifetime of the father-in-law or grand father-in-law. If the daughter is given a share along with her brother in her father's estate the inevitable result would be disruption of the joint family—the normal feature of the Hindu society. Further more, constant ill-feeling and embitterness, crop of litigation and deterioration in the value of property would be the natural consequence and would bring ruin to almost every family. Thus the position of the daughter herself would not improve in the least. When the Muslim society has been fed up with this pernicious system and its abolition is desired by it as a very good riddance, it is a pity that the draft Hindu Code should have borrowed a condemned system which has eaten into the very vitality of the Muslim community.

As regards Hindu woman's estate, the Hindu women's right to Property Act should be amended on the lines of the draft Hindu Code with slight modifications. The

three widows contemplated in the Act should have absolute right of enjoyment during their lifetime (including the right to alienate absolutely the whole property without legal necessity) but if anything is left after their deaths the inheritance is to be traced from the owner from whom they inherited. The daughter who inherits her paternal property should also inherit absolutely and on her death her descendants and husband should inherit in the order according to the existing Hindu law but, in their absence, father's heirs should get it.

The order of succession as given in the draft Code is in conflict with the spirit of the Hindu law and the sentiment of the Hindus generally. It is inequitable and will clearly be productive of very great injustice in many cases.

As to marriage and divorce the Sanity is of opinion that it will not be beneficial to women, generally. Hindu marriage is a sacrament and as such it cannot be dissolved lightly at will. Hindu law gives provided no law for divorce and this was for the sole purpose of maintaining peace and harmony in society and perhaps for greater benefit to women than men. There might be an insignificant number of cases of so-called hardship but by far the largest number of marriages in the Hindu society is successful. So there is no justification for the provision of divorce on the analogy of contractual marriages. Easy divorces would create havoc in the family life and make unhappy homes.

As regards inter-caste marriages the Hindu Law of marriage should be amended by legalising marriage between different castes effected according to Hindu rites and ritual.

32. Mrs. Sellammal Natarajan, Kalighat, Calcutta.

We are not lawyers or Pandits and we only suggest, what in our experience we have found to be defects in our society which require remedies. We support the proposals of the Code as reasonable and essential to improve and preserve Hindu society under modern conditions.

Our main points are monogamy, divorce and property rights. All three are connected with one another.

Monogamy.—Monogamy must be strictly enforced. In our experience we see many cases in which wives have been unreasonably and even cruelly discarded for the flimsiest reasons.

Divorce.—For cases of hardship there should be a remedy by divorce. But divorce should be granted only in exceptional cases; it should be made as difficult as possible. It should not be admissible for petty suspicion of conduct or even for change of religion. We certainly do not want to make divorce as easy as in Western countries.

Property.—Women should have absolute rights of property. To begin with, half a share is a compromise which can be adopted. The risk of division of property should not be much as it is there wherever the number of children is large—be they boys or girls.

Girls should have property rights for the following reasons:—

I. They must have more education these days and education means expense. They may have to continue education even after the death of their father for several reasons:—

(1) for the social service in the country; (2) to get suitable matches; (3) to get employment they may have to undergo technical education. They may have to support their aged parents or even to assist their husbands in the same profession such as doctors. Even they may have to assist their husbands who are not lucky as lawyers or doctors. The more the family income, the better for the children and other members of the family.

II. Women who do not want to get married or remarried must have some means of their own.

III. Without property rights divorced women may be left in the streets.

So in our opinion monogamy, divorce and property rights should go together.

33. S. G. Mookerjee, Esq., Subordinate Judge, Rajshahi.

The Hindu Law is the personal law of the Hindus. They are governed by their own law as regards succession, inheritance, marriage, religious institutions and caste. Various schools of Hindu Law prevail in different parts of India. A uniform Code of Hindu Law which is applicable to all Hindus is, therefore, desirable. The draft Hindu Code is not, however, exhaustive. The Bill seeks

to amend and codify only certain branches of the Hindu Law. Piecemeal legislation for codification of the entire Hindu Law is not desirable.

The arrangement of the clauses in the draft Code is objectionable. The clauses should be numbered consecutively for convenience of reference.

"Stridhana" as defined in the draft Code [Clause 5 (j), Part I] includes property acquired by women by inheritance or otherwise from a male or female. Clause 13 (Part II) gives absolute rights of property to women over all inherited estates and Clause 14 deals with order and mode of succession to stridhana. "Stridhana" should not include property inherited by females from males whether from the father's side or from the husband's side. A woman may inherit the ordinary property of a male such as her husband, father, son and the rest but she should take only a limited interest in the property inherited. On her death the property should ultimately come to the intestate's next heir. I am not in favour of abolition of Hindu women's limited interest and giving them absolute rights of property over all inherited estates.

Clause 5 of Part II deals with enumerated heirs. Sub-clause (1) of Class I mentions simultaneous heirs. There is no cogent reason as to why daughter should be a heir simultaneously with son in inheriting the property of an intestate. A woman when she is married passes completely out of her father's family and becomes a member of her husband's family. A married woman should have no interest in paternal property. Under the Hindu Law a son is under a legal obligation to maintain amongst others his aged parents but a daughter is under no such obligation. Under the proposed Code the son will inherit his father's estate along with his mother and sister. The son will have to maintain his paternal family but the daughter who will inherit from her father as well as from her husband will enjoy the inherited property in any way she likes and she will have no responsibility. In all fairness the daughter should not be a heir simultaneously with the son. The draft Code ignores the religious aspect of inheritance. Under the Daybhag School of Law the spiritual benefit is the governing doctrine. Those who cannot give spiritual benefit to the deceased cannot claim absolute right in the inherited property. Daughters are not capable of offering spiritual benefit to the deceased.

Then the evil of fragmentation of holdings and the fear of the property being lost to the family will have to be considered. In my opinion giving of absolute rights of property to women over all inherited estates will ultimately lead to disintegration of family property. The natural desire of keeping the property in the family cannot be ignored. It cannot be denied that in Hindu families the sons look to the ancestral property for support of themselves and their families. The law of succession is closely interrelated to the law of marriage. The Hindu Law recognizes and enforces prohibited degrees in marriage. There are strong physiological reasons in support of the rules of Hindu Law on this subject. Amongst the Hindus the property cannot be kept in the family by marriage of persons in close relationship with each other. In Christian and Muslim societies marriage between cousins is allowed but such a marriage is repugnant to Hindu Law and is abhorred by the Hindus. It will never be possible to make the Hindu Laws of marriage as liberal as the Muslim Laws. If daughters inherit properties from the father and acquire absolute right over the said properties the family property will be broken up and considerable portions thereof will pass to the distant families. Such fragmentation of properties is not desirable from the social standpoint.

If it is decided that a daughter should be given a share of the property left by her father and that she should have absolute right over it there should be a distinct provision that any co-sharer in the paternal line will be entitled to claim pre-emption in respect of that share on payment of the proper price of it as soon as she seeks to alienate it or to have it partitioned.

If it is decided to give absolute rights of property to women over all inherited estates and if the present definition of "stridhana" as given in Clause 5 (j) of Part I of the Code is to be maintained the scheme of inheritance to Aujatak according to Daybhag should be adopted. According to Clause 14 (b) (8) (c) (i) of Part II a son shall take half the share of a daughter (except where the stridhana property is inherited from the husband).

Clause 7 (d) which deals with manner of distribution among simultaneous heirs says that each of the intestate's daughters shall take half a share. It does not say that each of the daughters would get half the share of a son. It should be clearly stated in Clause 7 (d) that each of the daughters would take half the share of a son.

Clause 4 of Part III-A of the Code (Maintenance) deals with right to maintenance of certain dependants out of the estate of the deceased. No provision has been made regarding the personal liability of a Hindu to maintain certain relations. A Hindu should be under a legal obligation to maintain his wife, minor sons, unmarried daughters and his aged parents whether he possesses any property or not. So the father must be under a personal obligation to maintain his minor sons and unmarried daughters and the son must be under a personal obligation to maintain his aged parents.

The right of maintenance should not be affected by a will. A Hindu should not, therefore, be permitted to dispose of his property by will so as to affect the right of maintenance to which a person is entitled under the Hindu Law. A wife should be entitled to maintenance even though her husband abandons Hinduism. A female's right to maintenance should be conditional upon her continued chastity.

The words "except debts contracted for immoral purposes" should be inserted after the words "contracted by the deceased" in clause 8 of Part III-A (II Maintenance) of the Code.

Clause 3 of Part IV of the Code which deals with the requisites of a sacramental marriage says that neither party to a marriage must have a spouse living at the time of the marriage. This provision cannot be supported. Monogamy is certainly the best form of conjugal life but under the existing Hindu Law there is no restriction as to the number of wives and a Hindu may marry any number of wives, although he has a wife or wives living. Under the Muslim Law polyandry is not allowed but it is lawful for a Muslim to have four wives at the same time. There are arguments both for and against polygamy. Interference by legislation in this respect is not desirable. There are solitary instances of polygamy. The Hindus generally do not contract more than one marriage but if any Hindu does marry more than once it is not simply for the sake of polygamy. Requirements of diversified human nature should not be ignored. The provisions of clause 6 (a) and (b) (Part IV) are objectionable. A sacramental marriage between persons who do not belong to the same caste should not be held to be valid simply on the ground that such a marriage has been completed. A sacramental marriage between the parties belonging to the same *gotra* or *pravara* should not be held to be valid on similar ground. A man should not marry a girl if his father and girl's father are both descendants of a common ancestor in the male line.

The provisions regarding nullity and dissolution of marriages cannot be supported. Divorce is repugnant to Hindu ideas and ideals. The Hindu civilization is somewhat opposed to the Western civilization. The Hindus are more religious than worldly. Under the Muslim Law marriage is a contract but marriage according to the Hindu Law is a holy union for the performance of religious duties and it is not a contract. Divorce is entirely opposed to the spirit of Hindu Law. A marriage from the Hindu point of view creates an indissoluble tie between the husband and the wife. There should not be any provision regarding divorce in the Hindu Code.

According to clause 4, Part V, no guardian is to be appointed for minor's undivided interest in joint family property where the property is under the management of an adult member of the family. This provision is not salutary. Provision should be made for safeguarding the undivided interest of the minor in the joint family property. The managing member may be appointed guardian of such interest where such appointment is clearly for the benefit of the minor and suitable conditions may be imposed upon him although under the Guardians and Wards Act, 1890, a guardian cannot be appointed for the undivided interest of a minor in the joint family property.

24. B. K. Basu, Esq., I.C.S., District Judge, Mymensingh.

I find no merit whatsoever in the draft. I do not believe there is any necessity for formulating a Code of Hindu Law on the lines proposed and I feel no admiration for the ingenuity and legislative zeal of the authors, both of which I consider misdirected.

I object to each and all of the innovations proposed by them as being harmful to the community.

35. S. N. Guha Ray, Esq., I.C.S., District Judge, Nadia.

1. Though I sincerely believe that a codification of Hindu Law after certain radical reforms have been effected in it, will in the long run be beneficial to the community as a whole, equally sincerely do I think that the time is most inopportune for such an attempt. In the first place, it is certain that vital transformations are going to take place in the social, economic and political structures of Indian life in the wake of the war but it is yet too early to foresee what shape they will assume. The draft Hindu Code is not merely a restatement of the Hindu Law as it is but contains certain radical innovations over which Hindu public opinion seems considerably agitated and which are bound to have far-reaching consequences. If it were a mere restatement of the existing law, it would have been quite unnecessary, because it cannot be said that the law is not clear on any material points. For the moment, I shall assume for the sake of argument that the innovations intended are essential in the interests of the community but even then, the period of abnormal uncertainty, storm and stress through which the country has been passing can by no means afford to the population affected by this legislation either that material background against which to visualise its likely consequences or that equanimity of mind without which it is hardly fair to expect it to be able to appraise its value. In the second place, the superannuated Central Legislative Assembly should not for obvious reasons be entrusted with the task of deliberating over such an important piece of legislation, affecting even at a modest estimate more than 200 millions. When this body was ushered into existence, there was not before the country this issue of the reform and codification of the Hindu Law so that the Hindu members of the Assembly cannot by any stretch of imagination, be held to be representative of Hindu public opinion on such an issue. In the third place, such legislation should not be initiated until and unless there has been an amendment of the Government of India Act so as to enable the Central Legislative Assembly to enact a uniform Code for all provinces regarding the inheritance of all kinds of properties, for otherwise, one of the avowed objects of the framers of the draft Code, namely, "to evolve a uniform Code of Hindu Law which will apply to all Hindus by blending the most progressive elements in the various schools of law which prevail in different parts of the country" is likely to remain in respect of agricultural land, a pious wish instead of being translated into a fact. In this connexion, it may not be out of place to point out that the exclusion of properties governed by Marumakkattayam, Aliya Santana and Nambudri Laws of inheritance from the operation of the draft Code has left another fairly wide gap in the unification of the Hindus which the Law Committee has aimed at through the Code. The fact that the Hindus of the Native States will still continue to be governed by their existing personal laws leaves another gap, probably equally wide. Social consolidation through the draft Code appears more or less chimerical. Besides, if the uniformity of the laws could achieve this end, one may pertinently inquire why the Mitakshara has not done so over the major part of India where it governs the Hindus and why the Dayabhaga has not done so in Bengal. A uniform Code of law may be helpful in the attempt at such a consolidation but it is after all, a very minor factor. What is far more important is the education of the public mind on proper lines so that it can be ready for a favourable reception of the changes if and when they are introduced.

2. As a restatement of the existing Hindu Law, the draft Code appears to be incomplete because it has left at least two important branches of the law untouched, namely, the joint family and religious and charitable endowments. An attempt at the codification of the personal laws governing a community is bound to be worse than useless when at the same time there is no attempt to make it comprehensive. The history of the events that led up to the preparation of the draft Code no doubt partially at least explains this incompleteness but that serious defect, explicable as it may be, appears to me to reduce its value as a Code to a very large extent.

3. If I remember aright, the whole draft Code came into being, solely because certain defects were discovered

in the Hindu Women's Rights to Property Act of 1937 which had been sponsored by Dr. Deshmukh who was by no means a jurist.

A number of bills initiated by several members of the Assembly, very largely to remedy the situation arising from that Act were then referred to a Committee along with the Hindu Women's Rights to Property Act and the Committee thought that in order to maintain the principles of that Act, a wholesale revision of the laws of inheritance was necessary, and so the Intestate Succession Bill first emerged from the deliberations of the Committee and as radical changes in the law of inheritance were bound to have its repercussions on certain other branches of the Hindu Law, namely, adoption, maintenance, marriage and stridhan, these also came within the scope of the Committee and the Draft Hindu Code sprang into existence. This goes to suggest that the Draft Hindu Code was not the result of a popular demand for reform and codification of the Hindu Law but really evolved from the well-intentioned, but ill-timed reformist zeal of a section of the members of the Central Legislative Assembly who do not appear to have been equipped with the legal knowledge or acumen essential for such a task. As a matter of fact, it is to the composition of the Committee responsible for the draft that the large volume of agitation against the draft Code which has found expression both in the Press and on the platform, probably owes a good deal of its appeal for the layman as well as the orthodox and conservative section of the community. In saying this, I do not for a moment suggest that we should all allow ourselves to be guided by what the layman or the conservative sections of the community may think or that we can in all fairness to the members of the Committee accept without question the estimate of this section regarding the valuable spade-work they have done. While, however, I shall be one of the last persons to refuse to give due credit to the exploratory work this Committee had done, I cannot at the same time ignore the feeling of dissatisfaction with the draft Code in general and some of its provisions in particular, because it seems to me to be a more correct reflection of the mind of the community in Bengal, than the stray views heard from time to time in its support. I think it is always a mistake to defy human nature in trying to reform society by legislative measures, however much they may be considered to be beneficial if taken in the abstract and to this the history of an enactment like the Hindu Widows Remarriage Act of 1856 for which no less a man than the late Pandit Iswar Chandra Vidyasagar fought and laboured so hard will bear ample testimony. To all intents and purposes it has been practically a dead letter though the heart-rending hardships and abuses for which it was intended to provide remedies still remain. It was far in advance of the times in which it was enacted, it completely disregarded the human element for which it was meant and it did not at all take into account the dead weight of custom and tradition which for various historical reasons had come to acquire an undesired measure of sanctity in the Hindu mind. That is probably the only reason why the effect of such a piece of legislation on the community as a whole has been almost negligible during the course of nearly a century. Nothing illustrates better than the effect of this Act, the great truth about the dependence of the potency of legislation on its psychological background embodied in the following observations of Sir William Jones: "It is a maxim in the science of legislation and Government that laws are of no avail without manners or to explain the sentence fully, the best intended legislative provisions would have no beneficial effect even at first and none at all in a short course of time unless they are congenial to the disposition and habits, to the religious prejudices and approved religious usages of the people for whom they are enacted." In so far, therefore, that the draft Hindu Code which, as I have pointed out, is not the outcome of a genuine public demand for a reform and codification of the Hindu Law, is a departure, from the ideas and ideals which still govern the community as a whole, though lapses from such ideas and ideals are occasionally to be met with, it must be recognized as an attempt, however well-intentioned, to foist on the community as a whole the advanced views of an infinitesimal section and as such likely to do more harm than good. The mental outfit of the community such as it is, is quite inimical at the moment to the legal structure that is going to be built upon it and in spite of this, such a

structure is built up, it does not need a prophet to say that in the life of the community incalculably greater strains are likely to be set up than exist at present and that in the process of its regaining equilibrium, the one or the other will have to go. If an unwanted legislative measure goes, not much harm will be done except what is involved in the stresses of the intervening period but if the mental foundation of the community sinks under the weight of the legislative superstructure, it will be nothing short of a calamity because there is a good deal in it that is of lasting value, mixed up or overlaid with a good deal that is harmful and bars progress.

4. I shall now deal with the most controversial provisions of the Code:

(1) Daughters are given half a share of the properties left by their fathers even in the presence of brothers.

(2) The life-estate of Hindu widow under the existing law is converted into an absolute estate.

(3) The provisions for inter-caste marriages and marriages amongst two of the same gotra or provara.

Personally I think the first and the third provisions are likely to be beneficial to the community in the long run, provided there are adequate safeguards against an over-fragmentation of property as a result of the first and against matrimonial connections between very near relations. The second, however, is likely to be of doubtful value. But whether these provisions are likely to benefit the community or not, they will certainly go a long way to upset the established order of society in many respects and such an unsettling measure should not be taken up for consideration at a time when for most people the day-to-day life itself has become a formidable problem, if not a nightmare and when the shape of things to come is not yet visible even in outline.

In conclusion I may be permitted to add that the draft Code should be dropped for the present with a distinct assurance that when after the war, conditions have settled down and the changes that are in the offing have taken definite shape, a committee consisting of eminent jurists and judges whose first-hand knowledge of the original texts from which the existing law has been derived is beyond question will be set up, if there is a demand from at least a half of the Hindu members of the new Central Legislative Assembly for it, for investigating in the first place whether the existing law should be reformed in certain respects and if so, on what lines, and whether the law as modified up to that time should be codified and in the second, for preparing a draft Code on the lines considered best by them if they think that there should be a codification. Meanwhile, social and legal reformers may go out amongst the people, study facts and explore the directions in which legislative reforms are called for and then try to educate public opinion on the right lines so as to prepare the ground for them, in order that when these reforms are effected, the community may make the fullest possible use of them in its eagerness to go forward along the path of well-ordered progress. If these suggestions strike some over-zealous legal reformers as a veiled attempt to shelve the question of the reform and codification of the Hindu Law, I may make bold to remind them that the race is won by the slow and the steady far oftener than the hasty and the swift.

36. The District Judge, 24 Parganas.

I fully agree with the main principles of the proposed Hindu Code and have only to offer the following suggestions and criticisms as regards some of the detailed provisions.

Part I—(a) Clause 5.—In the list of enumerated heirs, class 2, consists of descendants of the intestate up to the third generation. It seems to me proper that this should be extended to descendants up to the fourth generation. It often happens that such descendants up to the fourth generation survive an intestate and it would almost always be his wish that such descendants of his own should be preferential heirs to the descendants of his father, as enumerated in class 3. From the point of view of social and economic welfare, it also seems desirable that the intestate's own descendants should be preferred to his father's descendants.

(b) (i)—As regards the mode of succession to stridhan consisting of heritable property, except property inherited by a woman from her husband the husband is named as only the third preferential heir coming after (1) son and

daughter and (2) son's son and son's daughter and daughter's son and daughter's daughter. I suggest that the husband should be made a simultaneous heir along with the son and daughter. If, as is provided in this Code, on a man dying intestate, the widow becomes a simultaneous heir along with the son and daughter, it seems to me unjust that on a woman dying intestate, her husband would inherit only if she has left no son or daughter or son's son or son's daughter or daughter's son or daughter's daughter.

(ii) I am against the provision that on stridhan devolving on sons and daughters under entry in clause 14-B (i), a son shall take half the share of a daughter. The fact that it is a woman's property is no justification for giving the daughter a greater share than the son.

(c) In clause 11, which provides for the devolution of the property of a person who completely and finally renounces the world it seems to me necessary that there should be clear provision that if such a person returns to the world, the property, of which has already been divested in consequence of the devolution upon his heirs, would not return to him.

Part III-A-II.—"Maintenance" should, I think, include provision not only for food, clothing and residence, as mentioned in clause 3 (i), but also for a reasonable degree of education.

Part IV-A-Chapter I (a).—It seems desirable that the requisites as regards age, as provided by the Marriage Act, should be included in section 3:

(b) As the question whether a marriage has been solemnized in accordance with the customary ceremonies of the parties to the marriage often raises difficulties due to the dispute of what the customary ceremonies are, the provisions that a sacramental marriage may be validly celebrated with only two ceremonies—Panigrahana and Saptapadi—as originally provided, should, I think, be included in clause 4, in addition to the present two subsections.

(c) I suggest a provision as regards proof of marriages that a copy of the entry in the Marriage Certificate Book shall be received as evidence of the fact of marriage, whether civil or sacramental.

Chapter II.—(d) In clause 26 the words, "Provided that she shall be entitled to live separately without forfeiting her claim to maintenance from him" be substituted by "and also if she lives separately."

Chapter III.—(e) I suggest that the provisions for decrees of nullity of marriage and for dissolution of marriage be made applicable to marriages celebrated before the commencement of this Code also by adding the words "before or" between the words "celebrated" and "after the commencement of this Code." If these provisions are going to harm the Hindu Society, as the opponents of these proposals assert, they should not be made at all. If they are not considered harmful, but, on the contrary beneficial to Hindu Society as, I think, they are, there is no justification for restricting these only to marriages celebrated after the commencement of the Code.

(f) I suggest—(1) that the words in clause 30 (a) after "unsound mind" be deleted; (2) In clause 30 (c) the word "seven" be altered to "two"; (3) That in clause 30 (e) the words "for a period of not less than seven years immediately preceding the presentation of the petition" be deleted.

If a person is incurably of unsound mind, I see no justification for forcing his or her wife or husband to live with him for seven years before he or she can get a divorce. Nor do I see why a husband or a wife should be compelled to continue in a state of marriage with a person who has been suffering from venereal disease contracted elsewhere. I think also that desertion for a period of two years should be considered sufficient cause for dissolution of marriage. If a party can stand seven years of desertion without getting a dissolution of marriage, he or she may as well stand desertion for the rest of life.

Part V.—I suggest the deletion of clause 4 which provides that no guardian shall be appointed for a minor's undivided interest in joint family property; but in actual practice the appointment of guardian for a minor's undivided interest in a joint family property has often been found to be conducive to the minor's welfare. There is no reason why this right should be taken away from the Court.

Part VI.—The provision in clause 5 that any male Hindu who is of sound mind and has completed his 15th year has the capacity to take a son in adoption, is in accordance with the existing law; but it seems desirable that this position of law should be altered and only persons who have attained majority should be given the right to take a son in adoption.

37, S. Sen, Esq., I.C.S., District Judge, Howrah.

I welcome this draft Code as a valuable attempt to modernize some old and archaic provisions of Hindu Law and to adopt it to the needs of present day Hindu Society. It is well recognized that the course of natural development of Hindu Law was impeded or rather completely stopped several centuries ago as the result of a complex combination of circumstances. The political, social and economic conditions of the country each had its share in bringing about this result. Judicial interpretations of old authorities have, during the period of British rule, constituted practically the only serious and effective effort to bring about some changes in the atrophied system of Hindu Law, but the sum total of the same has been infinitesimal. Legislative interference also has been meagre in deference to the accepted policy of the British Government not to meddle in affairs which even remotely smack of religion. Social reformers have therefore, had to toil under the serious handicap of the consequent withholding of support by the Government and the legislature except in one or two isolated and glaring instances, e.g., Sutte, Widow Remarriage, Civil marriage, etc. The net result of this state of affairs has been that in spite of momentous changes in world conditions, Hindu Society, in its legal aspect, has remained practically where it was centuries ago. No society can thrive and develop properly unless its laws are adapted to suit its changing and growing needs in accordance with the constantly altering stresses and strains to which it is subjected from time to time. It is but natural in these circumstances that Hindu Law, as it now stands and is administered, is thoroughly unsuited in many respects and in many of its branches to the needs of modern Hindu Society. It is high time therefore that the whole basis of Hindu Law should be radically revised and recast after each main principle thereof has been subjected to a thorough and close scrutiny with a view to determine whether the provisions at present in force conduce to the well-being of an enlightened social structure of the modern world.

My humble opinion is that the authors of the draft Hindu Code have proceeded on the right lines in every branch of the law that they have taken up for revision and I am in general agreement with the changes proposed in the Code. I add below a few comments on some of the detailed provisions of the Code.

Part II—Intestate Succession.

A simple and uniform set of rules for succession has been proposed. These rules follow in my view the dictates of normal love and affection and satisfy all reasonable tests from a purely rational point of view as well as the sense of moral justice. The provisions of the two great systems of law—"Dayabhaga" and "Mitakshara" have been ably combined with a view to give the whole of Hindu India a unified and simplified system of the law of succession which is in keeping with modern trends.

The only provision which requires, in my opinion, to be reconsidered is Clause 19 of Chapter II (*Unchaste wife disqualified*) I would delete the proviso to the clause which practically makes the provision unworkable and useless. A husband, even if he knows about the unchastity of his wife, will be normally extremely loth to take the matter to a Law Court for having a declaration in respect of the fact and will perhaps simply cut off all connection with his wife. It is preposterous however that a wife (to take an extreme case) who has forsaken her husband and publicly taken to the profession of a prostitute should be eligible to take a share in the husband's properties after his death merely because the husband preferred not to ventilate the scandals of his family in a Court of Law. I see no justification in this proviso.

Part III-A.

Chapter II—Maintenance.—A clause should be added to the effect that no female relative will be entitled to any maintenance unless she lives a consistently (sexually) moral life. Rare or occasional lapses on isolated instances should not disentitle her however, so that chances

of reform may not be altogether barred for want of maintenance. It should be ensured however that a prostitute or a concubine should not benefit at the expense of other more deserving relations—male and female.

Part IV—Marriage and Divorce.

*Chapter I—(Celebration of marriage)—Clause 3 (e).—*The minimum age for a bride to give her own consent to the marriage without any reference to the consent of the guardian to the marriage has been fixed at too low a figure, in my opinion. I would recommend that the clause should be recast so that consent of the guardian must be obtained when either the bride or the bridegroom is below the age of 21 years. This will prevent hasty and ill-considered marriages and will be in keeping with the parallel provision relating to Civil Marriages in Section 4.

*Clause 23 (1) (a).—*A consequential change will be that the word "sixteenth" in this clause must be substituted by the word "twenty-first."

*Clause 23 (1) (b) (4).—*Only an elder major brother should be eligible to be a guardian. It would be absurd if a brother who is a minor or major but younger to the bride or the bridegroom is made the legal guardian for her or his marriage.

*Clause 23 (1) (b) (5), (7) and (8).—*The paternal or maternal uncle or other relative should be above the age of 21 years to be eligible as a guardian of marriage.

*Clause 23 (1) (c).—*There is some printing mistake in the clause as printed. No opinion can be expressed unless the correct clause is available.

*Chapter II—Consequences of marriage including duties of husband and wife—Clause 26 (c).—*I would frame the clause as follows:—

(c) if he is guilty of such cruelty or ill-treatment as to render it unsafe, undesirable or reasonably impossible for her to live with him.

In line 4, for the words "to any relative of the other party," the words "to the other party or any of his or her relatives" should be substituted in order to check dowry being paid to the bridegroom himself with impunity. After the word "transferee" in line 5, the words "other than the wife herself" should be added.

*Chapter III—Nullity and dissolution of marriages—Clause 29 (2) Proviso.—*A minor should be protected even if he or she has lived with the other party as husband or wife and the following words should be added at the end of the proviso:—"provided further that no such consent given by a minor shall be deemed to be free consent within the meaning of the proviso."

Part V—Minority and guardianship.

*Clause 3 (a).—*A child is hardly capable of living apart from its mother at the age of 3 (three). I would suggest the word "seventh" for "third."

*Clause 4.—*This section should be deleted. Very often an adult co-sharer managing a minor's share of undivided family property is the person most interested in depriving the minor of such share by various devices and the minor needs protection from the Court. The Court's hands should not, therefore, be fettered by a provision like this.

*Clause 8.—*A consequential change would be to omit the words within brackets, viz. (other than the undivided interest referred to in clause 4).

Part VI—Adoption.

*Chapter I—Clause 5 (1).—*Adoption of a son by a minor Hindu male does not appear to be called for. A minor is not allowed to enter into the simplest of contracts. There is no reason why he should be allowed, in an enlightened system of law, to take such a serious step as to adopt a son to himself. I would suggest the twenty-first year instead of the fifteenth as suggested in the clause.

*Clause 5 (2).—*Similarly, unless a widow has express authority from her husband, she should not be allowed to adopt a son to her husband till she has completed her twenty-first year. When she has such authority, she should have the capacity to adopt after completing the fifteenth year. The clause should be amended accordingly.

*Clause 12 (4).—*Both in the case of father and mother giving a son in adoption, the minimum age for capacity to give in adoption should be fixed at twenty-one years.

*Chapter II—Registration of adoption.—Clause 28.—*Some further particulars should be required to be furnished, viz. (ix), names of near relatives of the boy adopted,

(x) caste of the adoptive father and the boy adopted, (xi) whether the adopted boy was married on the date of adoption, (xii) gotras of the adoptive father and the adopted boy and whether the latter's "upanayan ceremony" had been performed before adoption, (xiii) whether the boy had already been adopted once before.

*Clause 29.—*Special notice should also be served on the near relatives of the boy adopted in order to give them a chance of contesting the validity of the adoption and securing the welfare of the boy adopted against any underhand or undesirable transaction in the guise of adoption.

*Clause 30.—*The Court should also be *prima facie* satisfied of the legality of the adoption before directing registration of the adoption.

38. Mr. Rai N. N. Sen Gupta Bahadur, District Judge, Burdwan.

Personally, I am not very much in favour of any radical change in the existing law which is based entirely on a religious technology and has stood the test of time. It is always open to anybody to have his own way in spite of the apparent rigidity in the existing rules with nominal sacrifice. An overwhelming majority of the local Hindus is against the bill.

39. H. K. Mukharji, Subordinate Judge, Burdwan.

The rules of Hindu Law with regard to intestate succession, widow's estate and marriage are all based on Hindu Sastras and they are intimately connected with Hindu religion and Pinda Theory. These rules have been existing from time immemorial and the present Hindu masses do not seem to be dissatisfied with them. They, I believe, do not welcome any change.

Though there has been a great change in the Hindu society in modern times that change appears to be confined to the upper class of educated Hindus. The Hindu masses are as conservative as before and any change in the rules of succession, Hindu widow's estate and marriage would not be welcome and beneficial to them. Any radical change in these rules would have the effect of shaking the foundation of Hindu society: The masses of the Hindus being still illiterate and conservative as before the time for change of these rules does not appear to be ripe as yet. Moreover, the jointness of the members of a Hindu family would be rudely shaken by any such change.

40. K. S. Bhattachari, Esq., M.A., B.L., Munsif, Third Court, Burdwan.

The rules of Hindu Law with respect to marriage, succession, intestate and widow's estate have been existing from time immemorial and they are based on the Hindu Sastras and are the offspring of the Hindu religion and the Pinda Theory.

The majority of the Hindus are as conservative as before, and they will not possibly welcome any change of the existing rules. Also any abrupt or radical change may, instead of proving beneficial, have the effect of shaking the foundation of Hindu society. The joint family system in the Hindu society may also die out altogether by any such change.

41. H. Banerjee, Esq., I.C.S., District Judge, Faridpur.

The main modifications suggested relate to (1) the abolition of the double code of morality as between men and women in Hindu society, (2) inequity of the principles of inheritance as discriminating between male and female heirs and (3) rigidity of marriage laws.

The first includes the provision for monogamy, the second for inheritance by daughters and the third for a civil form of marriage overlooking caste and other restrictions.

All the measures are in my opinion welcome as they are based on sound principles of morality, equity and reason. Monogamy and equality of rights of both sexes are essential to knit together the society into a healthy body. The third measure is necessary to adjust the society with the changed times.

Only one point of detail strikes me which may be considered for inclusion. It is in keeping with the spirit of the Draft Code. An express provision for the right of pre-emption in favour of male heirs may be introduced under paragraph 12 of Part II of the draft.

42. S. C. Ghosh, Esq., Subordinate Judge, Birbhum.

The Draft Hindu Code deals with intestate and testamentary succession and matters arising therefrom including maintenance, marriage, divorce, minority, guardianship

and adoption. Law should move with the progress and reform in society. This is what the draft seeks to do, in a humble way. It is gratifying to note that the definition of "Hindu" has been widened so as to include a convert to Hinduism and any person professing Hindu religion. A liberal interpretation should be put on the word "Hindu" blending all progressive elements in the society. The most revolutionary change which the draft seeks to introduce is on the domain of inheritance and succession and marriage and dissolution of marriage. On the whole the draft is undoubtedly an improvement on Hindu Law now in force.

As regards the provisions of the Draft Hindu Code I beg to offer the following comments:—

Part I—Clause 2 (2).—It would be better to include aboriginals too to avoid future conflicts.

Part II—Clause 3 (a).—The restriction imposed on movable property does not appear to be equitable.

Clauses 5 (l) and 7 (d).—There should be some restriction regarding the inheritance of daughters. It would be better if provisions be made only for indigent daughters. When making provisions for daughters' right of inheritance it should be considered whether they would inherit, if they change religion or marry a non-Hindu in the lifetime of the father or has become unchaste.

Clause 14.—Regarding succession to *stridhan* it will be better if only maiden and indigent daughters be counted as heirs.

Clause 19.—Should be made applicable to unchaste daughters as well.

There should be some provision made for disinheriting a Hindu widow and daughter if after inheritance they lead an unchaste life.

Part III—Clause 5.—Subsequent unchastity should be made a disqualification depriving a widow, daughter or son's widow from getting any maintenance.

Clauses 5 and 6.—Their solvency is also to be taken into consideration in determining the amount of maintenance and in further determining whether they should be given any maintenance.

Part IV—Clause 5.—Clauses 3, 4 and 5 of the Bill should be retained.

Clause 10.—There should be further provision for giving publicity of such notices at the places of residence of the parties and in notice boards of Courts.

Clauses 29 and 30.—Should not be made applicable to sacramental marriages and more so when the marriage has been consummated.

Part V—Clause 3.—Provision should be made for depriving an unchaste mother from the guardianship of a minor daughter.

Clause 4.—Provision should be made for guardianship of property of a minor, if the adult member of the joint family misuses the property or misappropriates the profits of the joint properties against the interest of the minor.

Part VI—Clause 5 (2) (a).—Great difficulties will arise if a widow be given the right of adoption without the authority of the husband.

If this provision be at all retained, there should be provisions made restraining her from adopting any son of her father's or mother's family.

43. A. S. Ray, Esq., I.C.S., District Judge, Birbhum.
I am in general agreement with the provisions of the Code and I congratulate the authors on their determination to abolish polygamy and to introduce divorce. I am, however, making a few necessary comments.

Part I—Clause 2 (2).—There are numerous Hindus who are either atheists or agnostics, do not go to temples, rarely call in priests, live in a cosmopolitan style and have nothing to do with the Brahma Samaj or the Arya Samaj. They do not profess the Hindu religion or any other religion. Yet they are recognized as Hindus by their relatives, by Hindu society and by Government. The proposed definition will leave them in an anomalous position. I, therefore, suggest the following amendment:—

"Hindu" in this Code, means a person who is by birth or conversion or marriage a Hindu, Buddhist, Sikh, Jaina, Arya or Brahma

Part II—Clause 5 (1).—Many Hindu or Brahma husbands have Christian or Jewish wives who are not converts to Hinduism. The term "widows" obviously means Hindu widows by birth or conversion. The term should include Hindu widows by marriage, lest they are

left stranded by their Hindu husbands. An English woman, by marrying an Indian, is regarded as an Indian by the existing laws of nationality or domicile. Similarly a non-Hindu woman, by marrying a Hindu, should be recognized as a Hindu without being called upon to change her religion. I believe the Christian or Jewish wife of a Muslim gets the benefit of Muslim Law of succession, without a change of faith. Likewise the Christian or Jewish wife of a Hindu should get the benefit of the Hindu Law of succession without a conversion to Hinduism.

44. S. K. Haldar, Esq., I.C.S., District Judge, Bārkarganj.

Under the existing provisions of the Hindu Law, unmarried daughters are entitled to maintenance till their marriage and to expenses of marriage from the estates of their father. The proposed law provides for shares to be given to married daughters, the intention, no doubt, being to improve the position of married Hindu women. In my view, instead of achieving this object the proposed law will have a contrary effect. After marriage, a Hindu woman is taken as a member of her husband's family. If a share be given to a married Hindu daughter, it will be extremely difficult for her to come and live in her father's family. The exercise of her right in her father's property will create endless dissensions among the heirs. Disputes will certainly arise, properties will be partitioned and litigations will increase resulting in gradual impoverishment of the people. A married Hindu woman will not be really in a better position than she is at present.

People will try to evade the provisions of the proposed law by executing wills or deeds of gift and this may lead to further litigation. When all these facts and circumstances are carefully considered, it will become apparent that the present law sufficiently protects the interests of females and no further provisions are warranted.

2. *Proposed law relating to Marriage and Divorce.*—My only comment is with regard to the proposed sub-clause (i) of Clause 29 (1), Chapter III—Nullity and dissolution of marriages. The sub-clause lays down that impotency, either on the part of the husband or the wife, shall be a sufficient cause for nullity of the marriage. Sterility on the part of the wife may be construed as impotency. If a sterile wife be divorced, the law makes no provision as to how she would maintain herself. This is a serious drawback and, in my view, adequate provisions must be made in such a case.

45. S. K. Sen, Esq., I.C.S., District Judge, Tippera.

1. Regarding intestate succession, I do not consider it desirable that all daughters should be made simultaneous heirs. Among most classes of Hindus, a dowry has to be paid on the occasion of the daughter's marriage, and it is unfair to the sons that the daughters for whom a good deal of expenditure on account of dowry has been incurred should again inherit as simultaneous heirs. If with the passing of the Code, the dowry system could be expected to disappear, the provision making all daughters simultaneous heirs would certainly be welcome, but since it cannot be expected that the dowry system will disappear automatically I would suggest that only unmarried daughters be made simultaneous heirs and that married and widowed daughters be added as a separate group of heirs after the first group in Class I. At the same time, I would suggest adding widowed daughter-in-law in the first group of simultaneous heirs in Class I; they are now included in the first group of simultaneous heirs under Deshmukh's Act of 1937.

2. I would support the provision making women absolute owners of property inherited. But regarding the succession to women's property, I would suggest that sons and daughters should inherit equally in Class (b) (1) of clause 14. Under the Dayabhaga system, that is the law regarding a *jantuk stridhana*, and I am of the opinion that the rule should govern all kinds of *stridhan* other than property inherited from the husband. I would oppose the provision making a son entitled to one-half only of a daughter's share. There is no need to balance the provision that a daughter (or an unmarried daughter) is to get one half of a son's share; for certain rights to succession given to women have not been balanced by similar provisions in favour of men—thus while a wife (and widowed daughter-in-law) would inherit as a simultaneous heir to a man, a husband (much less a widower son-in-law) would not inherit as a simultaneous heir to a woman's property.

3. Regarding marriage, while monogamy is to be commended on principle, I would strongly oppose making legal provision for rigid monogamy in Hindu Law. Hindu Law has permitted polygamy in certain circumstances, and I should point out that some western thinkers like Mr. H. G. Wells, condemn the strict law of monogamy of the western countries (vide his outspoken "First and Last Things"). Though the overwhelming proportion of marriages in Hindu Society is monogamous, there are certain sections in which polygamy prevails, and the law should not outrage their sentiments too suddenly, with the risk of driving them out of the Hindu fold altogether. I would therefore suggest that the clause "neither party must have a spouse living at the time of the marriage" should be omitted from clauses 3 and 7 of Part IV. At the same time, having another wife should be a ground for obtaining either separate-maintenance or divorce, so as to exercise a strong check on unlimited polygamy.

4. I am wholly in favour of the other provisions relating to sacramental and civil marriage, and those relating to divorce, but I think that monogamy not being rigidly enforced, the condition of having another wife should be made an additional ground for divorce and also for separate maintenance, at the option of the wife. Further, I should make the law of divorce applicable to existing marriages, and delete the words "celebrated after the commencement of this Code" from clause 30 of Part IV.

5. I have no criticism to offer regarding the other parts of the proposed Hindu Code.

46. R. S. Trivedi, Esq., I.C.S., District Judge,
Murshidabad.

I believe that the present attempt to enact an over-all reformed Hindu Code is a mistake. To codify Hindu Law is one thing and to reform the Hindu Law is another. I think that it will be best to codify Hindu Law as it is in the various parts of the country. Attempts to reform it so as to make it uniform and liberal should be made piece-meal. To make several far-reaching changes at a time is revolutionary. Such an attempt will have some undesirable results. In any case it is bound to have vehement opposition.

Even if a minor but substantial section of the community opposes such change, it should not be undertaken. No case has been made out for any action which may seem coercive. Civil Law is the result of a long process of evolution of society. To attempt to change it all at once may prove disastrous. Changes in Civil Law will always occur. But they will occur gradually. I think that it will be best to codify the existing Hindu Law first and then to take up particular reforms step by step spread over a considerable period so that friction is reduced to the minimum.

As to the details of the Bill I have to make the following comments:—

Part II—Clause 5.—Items 1 and 4 of Class II should be promoted to Class I and items 5 and 6 of Class I should be reduced to Class II.

Items 1 and 2 of Class IV should be promoted to Class III and items 4 and 5 of Class III should be reduced to Class IV.

Clause 7, sub-clause (d). A married daughter should not inherit from her father simultaneously with other simultaneous heirs. She should be placed next below item I of Class I.

Clause 8, sub-clause (4) should be omitted. At present a woman on marriage leaves her father's family lock, stock and barrel and enters her husband's family. This fact must be recognized. As long as this state continues she should have the right to inherit only as one of her husband's family; otherwise there will be unjust alienation of heritage.

Part II-A—Maintenance, Clause 3.—Omit "or to the bridegroom."

Clause 5.—Omit item (vi).

Part IV.—Omit altogether.

47. Rishindra Nath Sarkar, Esq., M.A., B.L., Advocate
Calcutta.

NO CODIFICATION OF HINDU LAW BE ATTEMPTED.

At the outset I record that codification of the whole Hindu law—as suggested by you in your Report dated 22nd April 1941 (a) and indicated in the preamble to the

(a) Vide paras. 25 and 26 of the Report.

Bill (b) or of certain branches of Hindu law as the preamble of the present draft states, should not be hazarded.

The authorities relied on in your Report in support of codification of the whole of the Hindu law are separately arranged and discussed.

Committee on opinion of experts.—Mr. John D. Mayne, whose name is still a by-word to the Courts and lawyers regarding his exposition of Hindu law, has said, which your Committee has quoted, "The age of miracles has passed, and I hardly expect to see a code of Hindu law which shall satisfy the trader and the agriculturist, the Punjabi and the Bengali, the Pandits of Benares and Rameswaram, of Amritsar and of Poona. But I can easily imagine a very beautiful and specious code, which should produce much more dissatisfaction and expense than the law as at present administered" (c).

As an editor of the last four editions (Fifth to Eighth) of Sastri Golap Chandra Sarkar's Hindu Law, the undersigned endorses every word of Mr. Mayne's quoted above.

Sir Dinshaw F. Mulla in the preface to the Sixth Edition of his Hindu Law stated (also quoted by your Committee): "These and other matters on which there is still a conflict of authority indicate the necessity of codifying the Hindu Law, if the Hindu Community is anxious to save enormous sums of money wasted in litigation in the process of crystallizing the Hindu Law." He, however, did not say anything about such codification in his Seventh Edition or the last Edition which he published.

You preferred to follow Sir Dinshaw Mulla what he expressed in the sixth edition.

One may respectfully differ from Sir Dinshaw's reasoning urged in support of his view for codification of Hindu law, (if that view could be said to have not been subsequently changed by him), and point out that if codification minimizes litigation then each edition of Sir Dinshaw's valuable commentary on the fourth codification in 1908 of the Code of Civil Procedure drafted on the lines of the Supreme Court Rules of England, would not have enormously increased in volume each time by additions of new case-law and amendments after amendments of that Code.

Codification is necessary where the law is unsettled. According to your Committee, many of the rules of Hindu law are fairly well-settled (d) and one can boldly assert that the whole of the Hindu law is well-settled as any other codified law of any civilized country. It can be said without fear of contradiction that every new enactment will be the subject of new interpretations and will unsettle the well-settled law and will be a fruitful source of litigation instead of minimizing them.

Sir John Salmond's Jurisprudence, which has undoubtedly an international repute says, "that the value of codification is no longer esteemed as highly when Sir John Salmond wrote. Codes like all express enactments require interpretation and the cycle recommences" (e).

"In recent years the estimate of superior value if legislation in the sense of the direct declaration of new principles has declined. All nations with codes have found much "interpretations" necessary, and Acts intended to codify English law in part have required very many interpretations" (f). "The American Restatement may be regarded as an attempt to achieve the same purposes" (codification) "by means of a generally accepted Digest owing to the complexities of the American Constitution making a code impossible, which is probably a more scientific method" (g). Moreover, from past experience it can be said that one may not at all expect even a satisfactory drafting of the Bill codifying the whole of Hindu law. Soon after a small Act of five Sections (Hindu Women's Rights to Property Act) was passed in 1937, in 1938 an amendment with retrospective effect had to be made (h). Then came a number of amendments which led to the appointment of the Hindu law Committee (i).

(b) L. A. Bill No. 26 of 1942, page 85, Part V of the Gazette of India, dated Saturday, May 30, 1942. And page 41, Part VI of the Calcutta Gazette, dated Thursday, January 27, 1944 as amended by the Joint Committee.

(c) Para. 7 of Preface to 1st Ed., and p. 12 of your Report.

(d) Page. 12 of the Report.

(e) Jurisprudence, 9th Ed. (1937) p. 59.

(f) Jurisprudence, 9th Ed. (1937) p. 212, Note, 142;

are mine.

(g) *Ibid* p. 219, Note 148.

(h) See pp. 1-2 of Hindu Women's Rights to Property Act (1944) published by the undersigned.

(i) See pp. 3-4 *ibid*.

Committee on instances from Indian States.—You stated: 'Baroda codified the several branches of Hindu law*** and a retired Chief Justice of Baroda High Court informs us that it has proved a boon to the people.' More recently Mysore codified the law relating to Women's Rights in Regulation*** so far as we are aware the Regulation is working satisfactorily."

Your Committee would have done well had they followed the United States of America and examined the result of codifying English law in part (j).

I do not venture to compare England and the United States of America with Baroda and Mysore States.

Committee on Swiss Civil Code.—To the impatient reformer you have commended the example of Switzerland in evolving the present Swiss Civil Code. None of the procedures which your Committee gathered from Ivy Williams and noted in your Report (k) seems to have been followed here.

There a great jurist was commissioned. Here we do not know who drafted it.

There the great jurist took six years to prepare the preliminary draft. Here the draft law of succession and marriage was completed within a year and the complete code was ready within three months.

There another commission of jurist and representatives of all sections examined the preliminary draft. Here the same Committee reconsidering it.

There the codification began in 1893 and the Code came into force in 1912. Here it will come into force from 1st January 1946.

Switzerland is a Christian country. Here in British India Hindus, Moslems, Shiks, Christians, Jews, &c. besides Hindus with six schools of law reside.

Switzerland is as big as the district of 24 Parganas which is one of the 28 districts of Bengal which again is one of the eleven Provinces of British India.

Joint (Select) Committee to which the Bill to amend and codify the Hindu Law on Intestate Succession was referred, do not say whether they at all considered the opinions of men and societies of men or of societies predominated by men. But they have incorporated long lists of women's associations in their report (l).

So this Committee's opinion must be treated as one-sided. *Agricultural lands.*—When the Central legislature cannot codify law of succession on agricultural lands there is no utility of codification.

The Hindu Law Committee now feel codification of the whole Hindu law not possible.—The Committee stated: "The recommendation which we should like to stress most strongly is that relating to the preparation, in gradual stages, [avoiding "the risk of piecemeal legislation" (m)] a complete code of Hindu law***(n). In the similar object in view the L.A. Bill No. 26 of 1942 relating to intestate succession the preamble stated: "It is expedient to codify the whole of the Hindu law."

Now the preamble of this Draft Code states: "it is expedient to codify certain branches of Hindu law."

So your Committee in drafting now feel the difficulty of codifying the whole of the Hindu law which the universally admitted great jurist and expert on Hindu law condemned (o).

Conclusion.—I, therefore, humbly request your Committee to reconsider your views and suggest that codification of complete Hindu law is not expedient and suggest the amendment of only those portions of Hindu law for which your Committee was originally appointed.

PART I.—PRELIMINARY.

A Hindu Women's Rights to Property act to be amended.

I humbly suggest that the Hindu Women's Rights to Property Act should be amended for which your Committee was originally appointed.

In the position of the daughter should be properly protected making clear provision for her maintenance and marriage expense to be met out of her father's estate as charges on it.

The provision for a predeceased son's widow and the widow of a grandson whose husband and his father both

predeceased the latter's father is of greater necessity to women than providing the daughter with a share with her brother (or his son or grandson) in her patrimony which she might usefully spend during her husband's life-time and nothing may be left when she becomes a widow in the life time of her father-in-law of grandfather-in-law.

PART II.—INTESTATE SUCCESSION.

I. Should daughter get a share along with putra.

Injurious to son and daughter if both inherit.—This question shall be discussed from the point of view of every nationality where the institution of marriage is in vogue. The authorities of *Srutis, Smritis, Puranas* and commentaries are avoided in examining this matter, as they are not held in much respect by many Hindus even.

Every man or woman is a member of a family at every stage of his or her life if married, and the smallest unit of such family consists of the husband and wife. The son and daughter are gradually added to it on birth as members. The State in legislating is to look to the best interests of the family including its individual members.

The property enjoyed by a family might belong to all, but let us now confine to the property of the husband, as in every country where no matriarchal form of family exists, it is the husband who is made liable to maintain them all. The father dies leaving some property, the existence of the mother being left out of consideration for the present, the son and daughter begin to enjoy the property left by their father.

The daughter is married and demanded her share in her father's property from her brother to which the brother may say: "enjoy your husband's property with your children and I shall enjoy the father's property, just like your husband, with my wife and children." *If this is followed there will be no disturbance of peace in any family by constant partition of property leading to litigation in either family.* Partition between brothers is discussed later on.

Women's position under existing Hindu law.—The Hindu law-givers, therefore, judiciously made express provision for woman, but not for man, at every state of her life.

Before marriage.—The daughter is entitled to maintenance befitting her position and status in the family and similar marriage expense out of the deceased father's estate (p). If the brothers separate before her marriage, she is entitled to a quarter share of what a brother is entitled to according to the Mitakshara school if partition takes place before her marriage (q), or a provision for proper maintenance and marriage expense in partition made according to the Dayabhaga school.

If the father dies without male issue, the wife having predeceased him, the daughter inherits the estate absolutely. But except in the Bombay school, her right of alienation is confined to legal necessity only and her heir has been denied of the right of succession to this property by British Court (r).

After marriage.—After her marriage she is similarly entitled to get maintenance in accordance with the social status and position of her husband from him and on his death out of his estate (s).

After husband's death.—If her husband dies without any male issue, she inherits the whole estate of her deceased husband, subject to certain limitations as regards alienation and the order of succession after her excluding her heirs.

If the husband governed by the Mitakshara school was joint and was at all desirous of his wife inheriting his interest in the joint family, he could easily do so by merely expressing his desire to separate from the joint family in unequivocal terms (t); otherwise, the wife is entitled to proper maintenance (u) befitting her social position and the status of the family out of the joint family estate in which her husband had an interest. Be it noted that maintenance charges include residence, establishment, food, clothing, expenses for religious ceremonies and the like, in the style suitable to the position of the claimant and of the family. The property must have been charged for these, but the Courts have held that these expenses must

(p) Sarkar's Hindu Law, 8th Ed., pp. 124, 279.

(q) Mit. Ch. I. Sec. vii, paras. 5-7; Sarkar's Hindu Law, 8th Ed., p. 278; Subbaya v. Ananta 53, M. 84, 97; 1919 M. 480.

(r) Sarkar's Hindu Law, 8th Ed. pp. 566-567, particularly p. 564, foot notes (p) and (q).

(s) Sarkar's Hindu Law, 8th Ed., p. 132.

(t) Sarkar's Hindu Law, 8th Ed. pp. 389-391.

(u) Ar provera's case, 11 M.I.A. 75; Balkishan v. Rana Narain, 30 I. A. 130.

(j) Vide: para. 7 p. 2 above.

(k) Vide: para. 18 of the Report.

(l) Vide: Calcutta Gazette, Thursday, January 27, 1944, Part VI, pages 11-48.

(m) See para. 35, line 14 of Report; italics are mine.

(n) Vide: para. 36, lines 1-3 of the Report; italics are mine.

(o) Vide: page 1, para. 4 above.

be make a charge on the property by a decree of the Court. The Hindu Women's Rights to Property Act places her in the position of her deceased husband in the Mitakshara joint family (v).

If the husband leaves behind him his widow and also sons, the widow is entitled to a share equal to that of her son under both the Mitakshara and Dayabhaga Schools. Legislation ensuring proper enjoyment of these interests have been provided in Section 3 (3) of the Hindu Women's Rights to Property Act which again requires amendment.

As mother and grandmother.—The mother and grandmother also are entitled to shares when the male descendants (sons, grandsons or great grandsons) make a partition.

Her other property.—Besides the above rights a woman might possess her own property known as the *stridhana* property. Each Hindu woman possesses such property, —apart from immovable property, if any,—namely, her ornaments, the value of which is not insignificant compared with the status of the family to which she belongs.

No one is supposed to take greater interest in the daughter than her father regarding the daughter's rights in his estate. It can be asserted with absolute certainty that we seldom find a rich father to devise a share to his daughter equal to that of a son unless under a very exceptional circumstances. This is the best index for the general view on which the law of succession is to be based among every nationality, i.e., in the order or manner in which the deceased owner would have liked.

Therefore, the position of daughter is perfectly secured under the existing Hindu Law.

The evil caused to the daughter by the Hindu Women's Rights to Property Act (w) should be removed by the amendment of this Act for which your Committee was appointed.

Evil that may befall in families of son and daughter if daughter given a share.—Now let us consider the result that will ensue if the daughter is given a share along with her brother in her father's estate as you want to incorporate in the draft Code.

By marriage, under the existing law, the daughter loses her status in and goes out of her father's family. She will then naturally demand her share, if she becomes so entitled, under this new law. The inevitable result will be the disruption of the joint family, the normal condition of Hindu society. We are leaving out of consideration the position of the minor daughters, where there are more daughters, than one, when a partition takes place at the instance of the eldest daughter after her marriage. Later on the position of brothers is considered when they separate.

While she is busy in realizing her share from her brother, her husband's sister, like herself, perhaps at the same time, is trying to get hers from her brother out of her father's estate. The result will be that her husband's property will similarly be reduced by the same law, almost to the same extent, as she has carved out of her father's estate in possession of the brother. The husband's estate being reduced, her source of maintenance and consequently that of her family will be reduced. If she inherits the husband's estate she will get less perhaps by the same extent which she has obtained out of her father's estate. And if she becomes entitled to a share in her husband's estate, she will get a reduced share by perhaps the same proportions as she may get from her brother.

Therefore, the total quantity of property available to the husband and wife in both the brother's and husband's families practically remains the same, and the only change effected will be that a stranger, that is, sister's husband or sister's vendee, will be thrust in as a co-sharer in both her brother's and husband's families, to the great inconvenience of both, as will appear from what is more fully explained below.

In the majority of cases the actual shares of the hut and the land that a daughter may get under the proposed law, will be of no actual use to her, as the marriage of the daughter usually takes place with a bridegroom of a different place where she is bound to reside with her husband. But if she actually comes to live in her father's house with

her husband, a stranger, which is not likely, it will bring untold misery to both the families. She will, therefore, have to sell her undivided share for both she will seldom find a purchaser, as similar process of partition and proposal for sale will be constantly occurring in very Hindu family after the marriage of each daughter, under this proposed law. Even if she gets a purchaser, he will not offer proper price, at any rate, of the portion of the dwelling house, as he will not be able to enter into immediate possession under section 44 of the Transfer of Property Act until a partition is effected by a protracted litigation entailing heavy costs. Or he may then get, after so much trouble, a proper price for that portion from the co-sharer if the latter exercises his right of pre-emption under the Partition Act. Therefore, constant ill-feeling, crop of litigations and deterioration in value of property will be the result and will thus bring about ruin to every family.

The brothers remain joint for some time after the death of the father, generally so long as their mother is alive and they continue to remain so until their sons do not attain an age when quarrel begins.

Partition between brothers.—Cannot bring about a similar situation as between brother and sister because a majority of cases they may, and generally, separate in mess but live, as before, in their respective rooms, or, if possible, get it partitioned by metes and bounds and enjoy their allotted portions without much risk of their privacy being violated as they belonged to the same family. Their customs, habits and manners of living being the same, they live in peace and amity, a condition not possible among strangers. Whereas, the daughter who is bound to live in her husband's family under both modern and "archaic" laws, must, in the generality of cases, sell her portion of undivided or divided share in her father's property to a stranger, as her brother may seldom be in a solvent position to purchase her share.

The brother's son and daughter will, likewise, have to pass through the same procedure, i.e., constant partition and sale of daughter's shares will be going on unnecessarily in each Hindu family and at every step of devolution of heritage.

Daughter's property.—There may be some who believe that the position of the daughter will be improved as she will have her separate property and her husband shall not be able to deal with such a share at his pleasure and she may keep her property separately for her own use.

But that position she will seldom be able to maintain. A Hindu wife even if her share be immovable property and not liquid cash, (to which, however, in large majority of cases, her share in her father's estate will ultimately be converted), willingly allow her husband to dispose of her properties—immovables and movables—including even ornaments when her husband is in pressing need. It may be urged that a wife is forced or prevailed upon to part with her properties. But this difficulty will not be solved if she gets a share of her patrimony under the proposed Act. Even properly educated, intelligent and strong-minded wives of almost every nationality will do so out of their true and not cupboard love for their husbands, to save them from ignominy and trouble. The Hindu wife on the other hand, cannot dream of keeping anything to herself when her husband is in dire need of money to meet a pressing necessity.

Husband's property.—But in the case of the husband the question of using the property exclusively to himself does not arise because the old Hindu law which is intended to be changed, and Section 488 of the Criminal Procedure Code which is still extant, impose on the husband the liability of maintaining the wife and their children.

Where is the equity in the proposed law?—Whereby the husband's inherited estate is forcibly reduced in providing shares to his sister or sisters and at the same time the poor husband is pinned down to the liabilities to maintain his wife and their children without ratable reduction of this burden, at any rate, by the amount of share he had to part with for his sister or sisters.

Why not the wife be made liable to maintain the husband and her children when your Committee is giving her more property than man? If the woman wants any share let her have it by all means with the burden attached to the property and relieve the husband's liability for her and of her children's maintenance by a proportionate amount and the wife's property be charged for the same.

Women given more property.—The following statement will demonstrate that equal status cannot be adjusted in a

(v) See pp 33, 57-64, Hindu Women's Rights to Property Act, 2nd Ed. 1944, published by the undersigned; complimentary copy forwarded to you.

(w) The evil caused to a daughter: Vide pp. 49-51, Hindu Women's Rights to Property Act, 2nd Ed. (1944) published by the undersigned. Complimentary copy sent to you.

better way than that given in the existing Hindu law. For proper enjoyment of those rights some safeguards are to be imposed on account of case-law. So long the brother and sister do not separate under the proposed law their position may be deemed equal.

A daughter gets a share whatever it may be and let that be represented by the letter "x."

So long as the husband is alive she will possess "x" plus her own maintenance and that of her children from her husband who may only possess property "y" out of the property inherited from his father after giving his sister a share equivalent to "x". If the husband dies, she is in possession of "x" but gets "y-1" represents a share equal to that of her son in her husband's family. Thus of woman's position under the proposed Act will always be better than man and not equal.

Men whether superior to women?—Position of Hindu women, like those of other nations, is no doubt apparently subordinate to men. In Hindu law and in practice the position attributed to women is superior to men.

Controversy regarding the relative position of men and women is as hoary as Time; and the present position in every society has been arrived at by mutual adjustment in the relation of men and women for their mutual advantage based on experience gained since the dawn of human civilization; otherwise, a condition different from the existing order of things would have existed in society.

There are communities in India (x) where the matriarchal system of inheritance is in vogue, but we do not find, on account of this apparently superior proprietary position of women, any noticeable number of women of thought and action superior to men among those communities. In England and America, men still hold responsible and seemingly honoured position in spite of the women in these countries said to possess better status than Hindu women.

A certain class of Hindu women are obsessed with the idea that their position is inferior to men and may change is always good. But let us have their frank confession about the position which each of them occupy in the family to which she belongs. The position of wife or mother in the family is much superior compared with the husband or son and that of brother and sister is equal.

Law during Muhammadan rule.—The various commentaries of the *smaitis* with the exception perhaps of the *Mitakshara*, came into existence during the Muhammadan rule, and none of these discuss the question of providing a share for a daughter along with her brother in the father's heritage. The daughter along with her brother get a share in the father's estate according to the Muhammadan law, and, therefore, it cannot be said that the Hindu commentators of this period were ignorant or unmindful of the daughter's cause. Nor did the Rulers of that period ever take any step to remedy the so-called injustice done the daughter by the Hindu law-givers.

Views of learned persons.—*Balam Bhatta*, fictitious one of *Lakshmi Devi*, the reputed lady commentator of the *Mitakshara*, did not observe even that the daughter is inequitably treated in Hindu law.

Neither Dr. *Troylaksha Nath Mitra* the Tagore Professor on "Hindu Widows", nor Mr. *Rajkumar badhikary* the Tagore Law Professor on "Hindu Law Inheritance", nor Sir *Goorudas Banerjee* the Tagore Professor on "Hindu Law of Marriage and Sridhan", nor Dr. *Priyanath Sen* the Tagore Law Professor on "Hindu Jurisprudence" did ever express any view that the Hindu law of succession regarding the daughter requires any change as proposed in your Draft Code. Nor did Mr. *John D. Mayne* or *Shastri Golap Chandra Sarkar*, both distinguished writers on Hindu law, ever felt that the position of daughter required any revision in the manner suggested by you.

II. Hindu Women's Estate.

Hindu women's estate.—Should be amended and incorporated in the Hindu Women's Rights to Property Act in the lines of your Draft Code on the subject with slight modification. The three widows contemplated in that Act shall have absolute right of enjoyment during their life-time (including the right to alienate absolutely the whole property without legal necessity), but if anything is left after their deaths the inheritance is to be traced from the owner from whom they inherited.

(a) "Marumakkathayam law for." (See *Kundan v. Anadi*, 1929 M. 509). Among the Garros of Assam the like system is prevalent.

The daughter when inherits her father's property shall also inherit absolutely and on her death her descendants and husband shall inherit in the order according to the existing Hindu law but in their absence father's heir shall get it.

But I disagree with the reason quoted in your Report, namely, the Hindu Women's limited estate is described as "the greatest single obstacle to the emancipation of women" (y). As I have indicated elsewhere (z) I confess, I do not understand what is meant by emancipation of women. Mr. *Bernard Shaw* who does not require any introduction, thus says:

"Unless woman repudiates her womanliness, her duty to her husband, to her children, to society, to the law and to everyone but herself, she cannot emancipate her."

III.—Women's Right Curtailed in your Draft.

(i) *Mother*—is placed much lower in the order of succession. Son inherits her but she is placed after, son, grandson, great grandson, widow, daughter and daughter's son.

(ii) *Grandmother*—is similarly placed much lower in the order of succession.

(iii) *Predeceased son's widow* is deprived of the right given under the Hindu Women's Rights to Property Act. Her position requires greater protection than giving a share to a daughter, inasmuch as, her interest was properly protected by Hindu law but for the drafting of Hindu Women's Rights to Property Act. No protection is given to predeceased son's widow in certain circumstances under the existing Hindu law as interpreted by Courts.

(iv) So also the case of the *grand daughter-in-law* whose husband and father-in-law both predeceased the latter's father.

The rights given to the widows referred to in Clauses (iii) and (iv) above by the Hindu Women's Rights to Property Act are about to be denied to them by the proposed repeal of the Act by this Code.

N.B.—The case of a daughter when she becomes a mother and grandmother or a widow as indicated above in Clauses (iii) or (iv) is to be provided for if the Code is insisted on.

IV. Order of succession against Hindu Principles.

The order of succession as drawn by you is against the spirit of Hindu Law and the sentiment of the Hindus. It is inequitable and will work great injustice in many cases. I have cited above (a) some instances.

V. Mitakshara Law.

The *Mitakshara* law is proposed to be completely changed and no sign of joint family law, in either of the two principal schools of Hindu law, is preserved.

The spirit and utility of joint family is not appreciated nor liked by many persons with western culture; many of them do not recognize relation like a brother or sister if he or she is not so fortunate like them. That is the spirit behind the proposed abrogation of Hindu joint family.

PART III.—TESTAMENTARY SUCCESSION.

There is no necessity of this part in imitation of the terms used in the Indian Succession Act. The use of the word "intestate" ought to be deleted from the body of the Code in Part II, and the Clauses of the Bill in this part be revised accordingly, if you are bent upon having the Code.

PART IV.—MARRIAGE AND DIVORCE.

(i) *Divorce not beneficial particularly to women.*

The institution of marriage is present in every human society in some form or other. In many societies marriage is said to be a contract; it seems to be incorrect as such marriages are based on love and that the consideration is love. But among the Hindus it is a sacrament, union being strengthened by the love following the marriage. The sole guiding factor for the continuance of a happy life in every marriage is love. Then how can this sacred connection be a subject-matter of contract?

But some may, while supporting the above view, be inclined to think, what is the harm if marriage based on love be made tenable for a period, instead of enduring for the life-time of the parties? Parties to the marriage of dissolution of marriage every year, look down upon the

(y) F. 21, para. 32 of the Report.

(z) F. 12 Hindu Women's Rights to Property Act, 2nd Ed., (1944).

(a) See topic V above, p. 12.

according to them, should be the best judges whether their marriage should or should not last during their lives or is to be terminated by divorce. No. The relation between sexes is to be defined by the law of the realm and it cannot be safely left to the parties. There must be sanction for any breach of such rule for peace and prosperity of the society.

Divorce not allowed in Hindu law.—The Hindu marriage, however, cannot be dissolved. But it was laid down by *Narada* and *Parasara* that "another husband is ordained for women in five calamities, namely, if the husband be unhealed of, or be dead, or adopt a religious order, or be impotent, or become outcaste"; and, therefore, dissolution of marriage must be presumed to have been sanctioned. But the Hindus never followed *Narada* or *Parasara*. There are, however, certain forms of divorce sanctioned by the custom of certain lower classes of Hindus, which, again, the educated amongst them never follow.

There cannot be any law so perfect as to afford relief to all variety of cases in any particular statute; but at the same time there is no wrong for which there is no remedy. If the parties cannot live together, let them live apart, if the one leaves the other unjustly the law for restitution of conjugal rights is there; if one is cruel to the other they can live separate, but if it be excessive the criminal courts are open.

The Hindu law-givers provided no law for divorce and this was for the peace and harmony of the society and for greater benefit to women than men in particular. Women require protection of men, however the modern women may question and try to disprove it, it is a patent fact. No attempt should be made to disturb it to meet insignificant number of cases of so-called hardship.

Wife's position after divorce.—Let us consider who will be the worst sufferer—the husband or the wife—should a divorce take place.

Among the Hindus a maiden's marriage has become a very difficult problem, unless her guardian be in a position to provide her with a handsome dowry. [Hindu law has made provision for it (b). No law can provide any rule for an impecunious guardian unless the State provides funds].

What benefit then a divorced woman would derive, if she shall have little chance of getting another husband? A divorced woman in a marriage negotiation holds a very inferior position to a maiden, and an intending bridegroom may naturally have reasons to suppose that his married life may meet the same fate as that of her former husband if he marries her. Moreover if she possesses children her case would be hopeless. So a patched up peace is far better.

Physical defect of a spouse.—In some of the enactments providing divorce one of the grounds for dissolution of marriage is the physical defect of a party. If this be a ground for divorce then why should we not have a law for abandoning a cripple, a blind or the like issue of a marriage? These children are as useless as a useless husband or a similar wife. Why should an old invalid parent be maintained as he or she bestows no good to the family except trouble and unnecessary expenditure?

Position of children.—Considering the problem from the point of view of the issue of a marriage the divorce law is more harmful than beneficial.

Village women.—In enacting such a law in India the legislators should not forget what would be the fate of divorced women in villages who do not want to go in for another marriage but are quite incompetent to earn their livelihood. The community as a whole is to be taken into consideration and not individual cases of hardship.

Actual facts.—If the extra-judicial evidence of the divorce cases and the post-divorce history of the parties be studied, one would at once suggest the repealing of existing law on divorce where it exists. A nation's marriage law is to be based on sanctity and with an eye to the well-being of the issue who will form the nation of to-morrow.

The holy relationship of the husband and the wife, united either by the Hindu, Moslem, Christian or any other form of marriage, mostly subsists during the lives of each other. In prosperity or adversity, in sickness or in health they cling unto each other.

Divorce law how looked upon.—The great thinkers of an advanced society like that of England, in spite of their law of divorce and inspite of there being innumerable cases

parties to a divorce suit. The great living modern writer of England says regarding marriage: "What God hath joined together no man shall put asunder: God will take care of that." In a recent appeal before the House of Lords [*Fender vs. St. John Midway* (1938) A. C. 1, 34-35]. Lord Russell in the course of his dissentient judgment says: "The institution of marriage has long been on a slippery slope. What was once a holy estate enduring for the joint lives of the spouses is steadily assuming the characteristics of a contract for a tenancy-at-will." The characteristics of a divorced lady in a very civilized country marriage with a main ground for depriving a King of the only enviable Throne existing on the face of the earth. These clearly support what the earliest of the Hindu Sages laid down more than 2,700 years ago and so scrupulously followed even to the present day by the Hindus.

Should there be a Hindu law of divorce.—Let us assume that the Hindus should have a law legalizing divorce. Should it be dependent on the pleasure of the individual parties to the marriage or be made contingent on some grounds to be decided by a Court on some data embodied in an enactment? In short, the divorce law is to be fixed between a wide range, from strictest restriction tantamount to no divorce, to divorce at the option of each party to a marriage without the consent of the other party and without any restriction whatsoever. The Bill that was introduced in the Central Assembly on 9th January 1939 but has been rejected, was unilateral like the Muhammadan law, but unlike it, in that Bill the wife only was intended to have the right to divorce and not the husband and that on proof of certain grounds and not on the humour of the party. Therefore an artificial barrier put at one place or at another, allowing or disallowing a divorce, has no charm nor reasons behind it unless there be absolute bar or no bar at all.

If there be a proper demand for such a law by the mass no body can resist such a law. But there is no such demand and if it is thrust upon them against their wishes, no Hindu should pass sleepless nights over it, as it will be similarly availed of as the Hindu Widew Remarriage Act of 1856.

The Ayesha (c) or Ahesha (d) Bibi rule for dissolution of Hindu marriage by the wife is not the index of a demand which the society should count or countenance.

(ii) Inter-caste marriage.

The Hindu law allowed *anuloma* and *pratiloma* marriages between different castes. Marriages between different castes in Sylhet and Chittagong are still prevalent. So the Hindu law of marriage be amended by legalizing marriage between different castes but according to Hindu rites.

CONCLUSION.

(i) Except what is stated above I express no opinion on the other portions of your Draft Code.

(ii) I must not be supposed to approve the other suggestions. I am against codification of Hindu law, but I am in favour of the amendments indicated above.

(iii) I cannot but congratulate you and the members of your Committee for the hard, thankless & amateur task over which you have bestowed your honest labour.

(iv) In view of the gravity and importance of the subject relating to matters of public interest I intend to circulate copies of this letter to important persons in different parts of India.

I cannot but conclude without expressing my thanks to you for kindly asking me to express my remarks on your Draft Hindu Code.

48. Sati Devi and others, Tribeni, Hooghly District.

We entirely agree with the comments and views expressed by Mr. Rishindranath Sircar, and are of opinion that if the codification of Hindu Law be allowed to pass, it would act like a foreign stone introduced into the heart of the Hindu Society so that the lacerated wounds may not join and heal. It will be a perennial source of fresh trouble in the Hindu Social structure for its ultimate destruction and ruin. We admit there is room for embellishment and improvement of the Hindu Law, but the change suggested in the revised Hindu Code is rather an illusion and a snare. To remodel the holy ancient Hindu institutions on the line taken up by the Committee is nothing but a profanation and a crime. A sympathetic heart and a

(b) Vide: Page, 6, para. 2 above.

(c) 33 C. W. C. clxxxix. (d) *Amrita Bazar Patrika*, Calcutta, 2nd September 1914.

nonconstructive imagination with an eye to the past, present and future are necessary adjuncts for engrafting a new organism of the body of the old Hindu polity so that it may consubstantiate with the original body as a natural growth and not remain as an exboosed carbuncle to be followed by gangrene, coma, collapse and death. The codification of Hindu Law should not be rushed through. An utopian idea like this will act as a moral earthquake into the social Hindu structure, doing good to nobody, but affecting all by its pernicious and poisonous tentacles.

Mr. 49. P. Dinda, Bar.-at-law, Midnapur.

I generally support the provisions of the draft Bill.

I warmly support the underlying principles of the provisions dealing with intestate succession recognising the right of daughters and widows to inherit properties. In our daily life we often come across cases of injustice, hardship, helplessness of our womenfolk which make one revolt against the existing Hindu Law and custom.

Regarding the institution of marriage I am strongly of the opinion that it must be made monogamous by law. In our Hindu society it has become a practice in recent times to marry one wife at a time. A man in the educated society having two or more wives is an object of public derision. Such being the fact generally obtaining in the Hindu Society, it should be translated into law and there should be no opposition to it.

As regards divorce I should say that our social conscience demands that there must be legal straightforward facilities for this social remedy. We must keep pace with times. In Bengal a large number of girls are getting higher education every year and having an outlook of life greatly different from that of ancient times. Although a Hindu marriage has got a spiritual bearing, it cannot remain totally so in a mundane world in its modern context. Ideas of relationship between man and woman have undergone radical changes. The tendency is rather to revolutionise it. We must not overlook these hard facts. In the records of Courts we have come across a number of cases of educated women seeking divorce on the ground of inhuman torture, both mental and physical. These Hindu women had to be converted first to Islam to get divorce. Because the Hindu law and custom do not allow it. Similarly very frequently we read reports of suicides of married women on the ground of torture by husbands or husbands' people. In every society there are quite a good many heartless husbands; it is especially so in our Hindu Society where custom and religion are one-sided and allow husbands to enjoy freedom verging on licence.

Therefore, it is absolutely necessary to make provision for divorce on the ground of torture. I am of opinion that in the draft code a provision for divorce on the ground of torture too should be included.

50. Mr. Bankim Chandra Mukherjee, M.A., B.L., Advocate, High Court, and Member, Legislative Council (Bengal), Rupuspur Village, Gopalpur P.O., Birbhum District.

I find that a definition has been given to the word 'Hindu'. This definition seems to be an artificial one and may be widened. The aborigines and Adibashis should be expressly included within the definition. There are also persons or their ancestors who went out of the Hindu religion but have now again come back to Hinduism by Sudhi or re-conversion; they should also be included.

With reference to the saving of custom and usages in clause 4 of the Bill, the second proviso as to what would constitute a discontinuance by a family of the custom and usages should be clearly indicated.

The definition of heritable property in Part II, clause 2 of the Bill excludes the interest of a coparcener governed by the Mitakshara School. Under the Deshmukh Act of 1937-38, intestate interest of a coparcener does not devolve on the coparcener under the rule of survivorship but devolves on the widow of the deceased by succession.

Clauses 1 and 2 of Part III (a) of the Bill abolish survivorship and also the right by birth to any property obtained by sons by succession from their fathers. If

this is so, it is very difficult to understand why the definition of heritable property excludes property which belongs to an intestate in his or her own right and passes by inheritance as distinct from survivorship. The principle of survivorship applies to the members of a joint Hindu family governed by the Mitakshara school of Hindu Law. If the principle of survivorship and right by birth is abolished, there is no meaning in restricting the definition of the words "heritable property." It should be abolished in order to arrive at a uniform Code of Hindu Law as is stated to be the principal object of the Committee. The retention of the principle of survivorship introduces confusion and complication which ought to be avoided. I think the principle of survivorship should be abolished and all members of a joint family should be deemed to hold the property not as joint tenants but as tenants-in-common and the share of each member should be heritable property as in the case of Dayabagha school of Hindu Law. In the case of the definition of "son", the Committee should consider whether Putrikaputra should be included in the definition of son. Under the Hindu Law Putrikaputra was recognised as a kind of adopted son and although according to recent decisions it has been declared to be obsolete, people would like to have it revived, because a person having no son but a daughter's son may be inclined to take him in adoption as a Putrikaputra as recognised by the Hindu Shastras.

With reference to succession to the property of males as provided in clause 4, Part II of the Bill, I would like to make the following observations. I think married daughters and widowed daughters should be excluded and my objections are given below:

In Hindu society daughters after their marriage pass out of the family of their father and are absorbed in the family of their husbands. A Hindu generally has to spend money in the majority of cases beyond his means for the marriage of his daughter. Debt is often incurred to meet the marriage expenses and this debt would certainly fall on the entire inheritance. If a married daughter and a widowed daughter are given a share in the property of the father, it would mean a fragmentation of the inheritance, and, as is generally the case, if the property is small the unmarried daughter would be hit hard because she will have to depend for her marriage expense on the share which she will get from her father's property. Neither her brother nor the married and widowed daughter will care to spend anything out of the estate for her marriage expenses. On the contrary married daughter and the widowed daughter should look to the estate of their husbands for their maintenance. This matter will have to be considered in the chapter on maintenance. A widowed daughter, if she cannot get maintenance from the estate of her husband, will have to be given maintenance from the estate of her father as is provided in Hindu Law and a provision should be made for this purpose in the maintenance chapter of the Hindu Code for the widowed daughter.

Now looking to the enumerated heir in class 1 under clause 5 of Part II, we find that the widow of a predeceased son has been omitted. The reason for omission is that she should look for her maintenance from her father's estate; as I have given my reasons for not allowing a married or widowed daughter any share in her father's property, I think she should be included as a shareholder in place of a predeceased son. If a predeceased son has left sons, then she will get a share along with her sons.

With reference to class 2 in clause 5, daughter's daughter has been placed after son's daughter. I think the position of daughter's daughter should go down after son's son's daughter in item No. 4. In class 3 sister and sister's son should come before brother's son's son. Sister is an heir under Bombay school but not any other school. I think in the absence of other heirs sister should have preference to brother's son's son. As a matter of fact so far as my objection as to daughter's daughter is concerned, the members of the Committee having acknowledged the position of son's daughter's son on the principle of spiritual benefit should have placed daughter's daughter after son's daughter's son. The only ground for preferring daughter's daughter is propinquity.

So far as clause 7 is concerned, I think the share of a widow should be equal to that of a son. The provision of giving only one share collectively to all the widows would set prejudicially to the widows when they are more than one. It is only rarely we find more than one widow now. Therefore in the very few cases where the deceased has left more than one widow they should get a share equal to the share of a son. So far as unmarried daughter is concerned, if the married daughter and widowed daughter are excluded as I have suggested, then the unmarried daughter should be given a share equal to the share of a son.

So far as sub-clause (4) in clause 8 is concerned, the succession of a female to cognates or cognate of a cognate would introduce a confusion and should be omitted. If a married daughter or widowed daughter is excluded, there is no reason why this clause should be retained. An unmarried daughter only gets a share from her father in order that there should be no difficulty in getting her marriage done suitably according to the condition of her father's estate.

With reference to clause 10 intestates, fellow-student seems to introduce a vagueness. 'Acharya' should also be defined. It generally happens that if Preceptor of the Intestate is dead, the Preceptor's sons, who are called "Guru Bhats" come in. They may be specifically mentioned and they should come after the disciple in order of seniority but before the fellow-student.

So far as clause 11 is concerned, the question as to how a person becomes a hermit should be specifically mentioned. Under Hindu Shastras, performance of 'Biraja Hom ceremony' is considered to be a decisive factor in determining whether the person has become a 'Jogi' or a 'Sanyasi'. This matter should be cleared up.

With reference to clause 12, this seems to be an improvement in this bill; the provisions of the Partition Act would, however, not be appropriate and therefore instead of applying the Partition Act special provision may be incorporated in the body of the Code itself in place of clause 12 providing that the share of the woman should be put up for sale by the Court amongst the male shareholders.

With reference to clause 13 as to property inherited by a woman there is a strong objection to give her unrestricted power of sale and the objection should be considered to be substantial in some of the instances which I am giving below. Provision should be made for giving authority to a woman inheriting the estate of a male to obtain permission either from a Munsiff or from a Subordinate Judge according to the value of the estate which she has inherited from a male for enabling her to sell the property in case of legal necessity. Generally speaking, she should have no power of unrestricted sale or unrestricted gift. A woman, take for instance, a widow who has inherited a large estate from her husband, say a large zamindari, if she is given unrestricted power of sale she would generally intend to give it to her paternal relations in preference to her husband's relations. This is not desirable and should be avoided. There are, however, cases where a woman finds it difficult to maintain herself when the property is a small one or when the male predecessor has left debts to dispose of the property at full value; if she is able to give an indefeasible title to her transferee after obtaining necessary consent from a Court, she would get full value for her property. In the proceedings for obtaining consent, notice may be served upon the reversionaries and the order of the Court should be final.

With reference to clause 14 as to the order and mode of succession to 'Stridhan', I would like to make the following observation. In clause (a), provision has been made only with reference to the property which devolves upon a woman from her husband but the same rule should also apply in the case of property inherited by a woman from male relations such as parents and the like. Clause (b) should be restricted to 'Stridhan' property so called.

With reference to clause 19, dealing with, unchastity, I think the question should not be restricted to a decree of a Court of law during the lifetime of the husband. If it is proved that the husband had banished his wife on account

of unchastity, even after his death the wife should be considered to be disqualified from inheritance. A husband generally does not like to bring discredit to himself and his family by bringing the matter to a Court on account of his wife's unchastity and, therefore, the provision of clause 19 should be modified. Provision should also be made for divesting the wife or the widow from her husband's property for subsequent unchastity and thus remedy, to a certain extent, the grievances of the Hindu community as to the case of 'Kerikolikani' decided by the Privy Council.

The provision in clause 24, sub-clause (b) of Part II clearly indicates that the Members of the Bill have done away with joint tenancy when two or more heirs succeed to a property of an intestate as is provided by the Mitakshara school of Hindu Law. This is also to be found in Part III of the Bill and this is an additional reason for changing the definition of heritable property in clause 2, sub-clause (b) of the Bill by abolishing the principle of survivorship altogether from the provisions of the Code as is the case in Dayabagha school of Hindu Law. That would be unification and would remove a good deal of confusion and uncertainty. As a matter of fact a time will come when there will be no joint tenant if the provision of clause 24, sub-clause (b) is retained and therefore survivorship should be abolished altogether and all property held by members of joint Hindu Mitakshara family should be treated as held by them as tenants-in-common from the time the present Bill comes into operation.

With reference to Part III under the law as at present understood, the Hindus are governed by the Hindu Law. The introduction of Indian Succession Act, 1925, for testamentary succession would tend to introduce uncertainty and confusion. Either the sections ought to be specified or the provision should be deleted altogether leaving the law as at present understood untouched. Part III (a) again lends additional strength to my argument for changing the definition of heritable property in clause 2, sub-clause (b).

Maintenance chapter.

The word 'dependant' in clause 4 has been enumerated in clause 5. Widowed daughter and unmarried daughter have been included there and the widow of a predeceased son has also been enumerated. The operation of clauses 4 and 5 would increase litigation to such an enormous extent that it would make the provision for maintenance useless and in the majority of cases operate as an engine of oppression for dependents enumerated in clause 5 to the persons who inherit the property of a deceased having relations of the nature of dependents enumerated. There is no reason why the widow of a deceased son should be assigned a subordinate position in her husband's family and should be inferior to the position of a daughter. As I have already indicated that a daughter should not get a share but should get maintenance, if she cannot get sufficient maintenance from her husband's estate, from her father's estate as provided in clause 5 and therefore she should be removed from the category of heirs of her father as I have already stated before. The provisions for maintenance should be more simple in case of enumerated dependants.

With reference to concubines in clause 5, I do not think the provision should be retained. It is very difficult to imagine a concubine remaining chaste and it would be very difficult to prove if the matter goes to Court as to whether the connection was not incestuous or adulterous.

With reference to marriage expenses as provided in clause 6 in the Maintenance Chapter, reference to 'Srutia' will possibly lead to uncertainty. The matter should be left to the decision of the District Judge in case of dispute. I would, however, suggest that the Committee might consider or fix whether the Court mentioned in clause 6 should be limited to the Court of the District Judge. The word 'Court', I do not think, has been defined anywhere in the Code.

With reference to clause 7 of the Maintenance Chapter, it is better to clarify what just cases would indicate if the matter is left to be decided by Courts. It would be very difficult for the widow to prove her case by bringing witnesses. This would only lead to friction and possibly in every case will lead to litigation.

With reference to clause 9 again, unless maintenance is made a charge on the estate of the deceased, the provision for maintenance will practically become nugatory. There are certain classes of relations whose maintenance is obligatory under Hindu Law and is a charge on the property of the deceased that is going to be practically abolished by the provision of clause 9.

Marriage and divorce.

With reference to the provision of the new clause 3 in the Bill, the alternative form as to clause (b) should be retained. If instead of alternative form new form 3 is to be retained, then sub-clause (b) to clause 3 of the alternative Bill should be added to the new clause 3. Clause 5 of the Code should be retained also. The remark as to inter-caste marriage in the marginal note to new clause 3 of the Bill seems to suggest that sub-clause (b) of clause 3 in the alternative form has been removed from new clause 3 with the object of embodying general law only. A proviso may be added to the new clause 3 after adding clause (b) in the following form:—

“Provided that where custom or usage permits, inter-caste marriages may be held to be valid.” Sub-clause (b) of clause 6 would be objectionable on the same ground and should be modified so as to include only inter-caste marriages where custom or usage permits them.”

With reference to Civil Marriages in clause 7 the age of the girl might be reduced to 18 or even 16.

With reference to guardianship and marriage, the maternal grandfather should come before the paternal uncle. In the absence of the mother and paternal grandfather, a girl generally resides with her maternal grandfather rather than paternal uncle.

Nullity and dissolution of marriages.

This is a most controversial chapter and is likely to raise a clamour from the orthodox section. According to the present stage of the society, marriage is, to all intents and purposes, monogamous, and except for very strong reasons, one does not find instances of polygamous marriages. Marriage under the Hindu Law and especially sacramental marriages are indissoluble and should not ordinarily be allowed to be made the subject of divorce. As there is provision in the Bill for a civil marriage between any two Hindus, and if it is considered indispensable that provisions for divorce should be kept, then the chapter of nullity and dissolution of marriages might be made applicable only to civil marriages. Divorce is a subject which is repugnant to the idea of sacramental marriages under the Hindu Law and would introduce a confusion in society which should be avoided if possible. No objection can be taken, however, of the grounds of divorce as stated.

Minority and guardianship.

With reference to clause 4, Part V, I think the Court should be empowered to appoint a guardian even for the intestates interest of a minor in joint family property.

Adoption.

Clause 7, with reference to manner of giving authority, may be made more popular by allowing authority to adopt to be given by a declaration before a notary public or before a Magistrate or Honorary Magistrate, duly certified and sealed.

With reference to clause 19 as to termination of a right of a widow to adopt, I think, when a son of her husband dies leaving a widow surviving him, the authority should not terminate if the son's widow had his own authority to adopt. The question of divesting a son's widow of the property in consequence of the adoption by the widow may arise, but that may be adjusted by making provision for the adopted son to succeed during the lifetime of son's widow by giving either a share of the son or sufficient maintenance. With regard to the question of capacity to give an adoption, some provision may be made for enabling an orphan to be taken in adoption as the law is going to be codified. Restriction, as provided in the Bill in clause 12, seems to exclude the possibility of adopting an orphan. Some form of ceremony ought to be prescribed even if 'Dattahom' is excluded in cases when there is a change of Gotra.

Clause 19, sub-clauses (4) and (5).—With reference to sub-clause (4) agricultural land has been sought to be included here on the ground that inasmuch as adoption is in the concurrent legislative list the effect of an adoption including the divesting of property and agricultural land is *intra vires* the Central Legislature. Leaving aside the question as to whether the subject is *intra vires* or not, it would be better to leave the entire subject of agricultural land to be dealt with by the Provincial Legislature and the Central Legislature should not legislate on this matter.

Clause 21 seems to render valid anti-adoption agreement for restricting the right of a father or mother to dispose of property. There are also anti-adoption agreements under which the adoptive mother or the adoptive father, generally the adoptive mother, is entitled to retain control of the property which should devolve upon the adopted son after adoption; also to have a share of the property larger than the share which the adoptive mother will be entitled to if the property is small. There are authorities on the subject and the law is conflicting and some provision ought to be made to validate such agreement and thus remove the doubts that now exist.

The word 'coparcenary' in clause 25, sub-clause (a) ought to be deleted and the word 'joint family' substituted. The word 'coparcenary' is used generally in reference to the Mitakshara joint family with the right of survivorship. As joint tenancy has been abolished, this word should be substituted. The right of adopted son to challenge transfer of property should also be carefully considered inasmuch as under the proposed law property inherited before adoption is held in absolute right by the widow, if, however, the right of widow is restricted to a limited estate, as I have proposed, giving her liberty to transfer a portion of the property for legal necessity with the sanction of the Subordinate Judge or Munsif, as the case may be, in that case the adopted son should have no right to challenge the transfer because it was effected with the permission of a competent authority. It should be considered, therefore, whether this clause should be allowed to be retained.

I have given above my views on the clauses of the Bill. I would, however, submit generally that the legislation being of a very important nature affecting the entire Hindu community not applying to agricultural lands should be postponed till after the war and after the Central Legislature is reconstituted in accordance with the new constitution. We do not know what the new constitution will be, and whether the provinces would have full power to deal with legislation on the subject proposed to be codified or whether the subject of inheritance to agricultural land, should be placed in the concurrent list so as to enable the Central Legislature to deal with the entire law of succession with regard to all classes of lands in British India. I may mention that in the Bengal Legislative Council a resolution was adopted by which a request was made that legislation on the subject should wait till after the war. The Congress party in the Central Legislature is not attending except on rare occasions. We have seen the report of the Select Committee on the Intestate Succession Bill and it was found that there was serious difference of opinion among the members of the Select Committee and there are some provisions which could be passed only with the help of non-Hindu voters violating the convention that in consideration of social measures affecting one community only, members belonging to the other communities should not take part. The question of divorce which is proposed in the Bill and other questions may lead to similar difficulties. The present Bill no doubt has removed some objectionable features in the last Bill and seeks to abolish the distinction as to Mitakshara families and Dayabaga families, and if the principle of survivorship is abolished, the definition of heritable property changed, it would really mean a unified system of Hindu Law throughout India. It will, however, have to be considered whether the proposed legislation, which cannot affect agricultural land should be introduced now, regard being had to the fact that 85 per cent of the people live in villages and do not own any property other than agricultural land. According to Floud Commission Report, in Bengal, the average area of land owned by a family is 4 acres. If the

Committee wants to examine me, it may be done at Calcutta with seven days' notice so that if I am out of town I may come back for the purpose.

51. Prakash Chandra Bhose, Esq., Advocate, High Court, Calcutta.

On a plenary view of the Bill, I must say that I agree in some respect with the underlying principle of Part II and I deprecate the rest and residue of the Bill: To be explicit the Bill should have been to implement Act XVIII of 1937 as amended in 1938 (Central Act XI of 1938). The Hindu Law of the present time may very well be said to regulate social, economic and civic aspect of the community to fit in with the needs of the time. The interference even of Government was necessary in some cases to eradicate social evils which went in the name of religion. It is a fact that the Hindu community had been content with *patris virtutibus* and its attempts to adjust itself were very few and far between. True it is that law is the product of the wisdom of centuries but it is also true that what was necessary at the protatic stage cannot be the law for all times. Treatises and commentaries of old days evince the proposition. Leaving aside the archaic laws but starting with Jimuta Vahana, the protagonist of Bengal School of Hindu Law (Dayabhaga or Inheritance) and extract from the still more celebrated Mitakshara point to the same end. It is to be observed that the same law was never prevalent throughout the length and breadth of India. So unification of laws by one Code with a view to govern all professing Hinduism in varied practices shall not and cannot regulate the needs of all Hindu societies. It is a matter of record that Smriti Chandrika in South India, Chintamani, Ratnakara and Vivada-Chandrika at Benares and the Mayukha among the Maharratas regulated the several societies of the time. The Bengal school alone took for its guide Jimuta Vahana's treatise which is at variance with almost all other treatises on material points particularly with Mitakshara. On this account, the treatises of Raghunandana's Dayatara was in vogue. Commentaries were very numerous. These are the clear evidences that the law-makers of ancient days had felt the necessity of individual community and had to shape laws by way of explanation and exposition. Thus the High Divinity ascribed to the laws at their inception have whittled down to man-made laws thanks to the conglomeration of commentaries and legislation direct or indirect.

Like the silver lining on a dark cloud this proposed piece of legislation has a portion to commend—I mean (Part II) Intestate Succession. In the existing law of inheritance of the Bengal school it is indeed amusing to find that a man's great-grandson is his immediate heir while the son of that great-grandson is very remote heir and his own sister is hardly an heir at all. We find that Maurya law gave the daughter absolute inheritance. Yajnavalkya placed "wife" and "daughter" in the same position. It is incomprehensible that succession in Hindu Law shall go down at the first instance through male line alone according to propinquity shutting inheritance by daughter. Certainly a daughter is in no way inferior to a son so far as propinquity is concerned. If it is for saving a family from disintegration and disruption, the reason appears to be not sound. "Many rules of Hindu Law are fairly settled" cannot hold good for all times. Necessity compels settled rules to be unsettled. The Hindu Women's Rights to Property Act (Act XVIII of 1937) has been passed by the Indian Legislature to remove the just grievances of the Hindu society. Further, the reception of the Hindu Women's Rights to Property (Amendment) Act, 1938 (Central Act XI of 1938), abundantly proves that long-felt grievances of Hindu society have been removed.

Synthesis of Hinduism owes its origin in sacramental marriage as the religion is based on "Pinda" theory. The chapter (Part IV) dealing with marriage and divorce appears to be a stout wedge in the religion itself. Retrospective examination for several immediate decades of years will show that abhorrence of sacramental marriage had not been looming large in the social structure. If the Bill has been ushered in with a view to forge a united nation, the idea is well and good. But in that case a bill for Muhammadan Code one can seriously expect, will

leap to light very soon with a view to establish the cornerstone of the political firmament. In the Bill two forms of Hindu marriage have been introduced, viz., (1) a sacramental and (2) a civil Marriage. We all know that even now there are provisions for civil marriage in law available to persons who desire to take advantage thereof. Why then civil marriage is attempted to be engrafted on Hindu religion one fails to comprehend: Further why a sacramental marriage should be supplemented by registration of marriage is beyond Hindu conception.

In the ancient days the consequences of non-sacramental marriage were not to be trifled with. In this case the husband had to make a decent settlement "Vritti" for the wife befitting his position. This settled property and her ornaments constituted her *stridhana* according to Kautilya. It is to be found in other religions where "Divorce" is not foreign "Marriage Settlement" has been made condition precedent to a marriage which is indeed rational. Attempts are being made in the Bill to introduce "Divorce" without making any rule for ensuring "Marriage Settlement," the reasons may be best known to the legislature but to my mind it is in contravention to the basic principle of law and justice. Divorce means a legal dissolution of the marriage contract by a Court or other body having competent authority (*a vinculo Matrimonii*). This was not in the contemplation of Hindu Jurists excepting a few references in Artha-Sastra. If it is found that conscientious opinion of those to be governed by the law that divorce in some form or other has become necessary in the present condition of society, an enactment for the purpose only may solve the problem and there is absolutely no necessity to usher in the comprehensive task of codifying Hindu Law at this juncture of Total War.

In my opinion, the Bill should be left as it is and Hindu Women's Rights to Property Act, 1938, shall be amended by giving equal share to each daughter along with the son and the other heirs under the Act or in other words the estate of a deceased in case of intestacy shall be divided equally among the daughter or daughters and the enumerated heirs: Provided that each daughter will hold and enjoy her distinct share in the estate during her natural lifetime only.

Subject to what has been stated I deprecate the rest of the Bill as unnecessary and uncalled for.

52. Rai Bahadur Bijay Bihari Mukharji, Advocate, High Court (Retired Director of Land Records and Survey Bengal).

The two main subjects that the Hindu Code deals with are (1) succession (2) marriage including divorce. The two other comparatively minor subjects are (3) maintenance (4) adoption. I mainly confine myself to the former two and in them again to the general principles chiefly, and incidentally to the details and the other two.

2. The objects of the Code are that (a) a uniform Code of law will be conducive to Hindu solidarity and (b) that women should be freed from what is held to be unequal treatment.

Before I start I would only remind the Committee and such members of this unfortunate country who consider themselves as "progressive" and are anxious to adopt what they think "modern" ideas in the words of Plato which I quote. Plato referring to an individual reformer said "He may think as he liked about the legends of Zeus and Hero but he must keep his thoughts to himself; a man who brings into contempt the name of his country is the deepest of criminals, he deserves death and nothing else."

Plato was the gentlest and wisest of law-givers.

The "Dayabhag" system is in vogue at least for five hundred years. As the date of Jimutabahan is still uncertain the contention of some that he was contemporaneous with Bignanesvar cannot be dismissed without stronger proof. There is the further consideration that Jimutabahan might have only given a Sastric interpretation on an existing well-established and well-recognized custom of much older origin. There is no historical proof and indisputable evidence that the law of succession in Bengal was different before the 15th or 11th century.

In the absence of such proof and the quietness with which the system was accepted led to a very strong presumption that the system interpreted as Dayabhag by Jimutababan was an organic growth of a very longstanding. If this presumption be correct or at least the certainty that for about five hundred years this state of affairs has continued unchallenged be right the point at issue is whether circumstances have been created for a change and what are these circumstances.

3. The main points sought to be revolutionized are :—

(a) Succession—daughter's share as a simultaneous heir, the full estate for the woman ;

(b) the marriage provisions—(1) optional registration of sacramental marriages and Sagotra marriage (2) Non-sacramental marriage procedure.

3. There have been lots of wills registered in Bengal ever since the Indian Registration Act was passed and the Government has copies thereof. The Government could easily collect statistics to show how many wills were prepared granting absolute right to women, absolute share to daughters approving of non-caste marriages and showing approval of these by bestowal of properties. These statistics could easily be gathered by the Government. My experience, fairly intense in connection with official life in working the land systems I state that wills on these points in defiance of the Dayabhag is rare, on the other hand cases are not rare when people have modified the succession by the Indian Succession Act to conform to the principles of Dayabhag and even among Mahomedans, marriage is restricted to groups and Christians seek castes for marriages.

4. I suggest that in various cases of succession and of marriage before the Courts ever since the Indian Civil Courts Act was passed the attempts to get round the principles of Dayabhag in Succession and from the principles of marriage have been extremely few. The Government can easily get statistics to conclude whether the Dayabhag law of succession or Hindu marriage system in Bengal have lost hold on the Hindus. If the statistics, in number and in facts do not show that dissatisfaction with existing law exists very strong, reasons must be forthcoming why the law and system in vogue for so many hundreds of years for such a large number of people should change and by the procedure adopted. The present day knowledge of Biology genetics and Psychology is still very incomplete. The modern war or rather series of wars that have been going on and will still go on will prove the complete break down of Christian civilisation and once more prove the cynicism of Nietzsche that "there was only one Christian and he was crucified." Mass murder, mass plunder, mass exploitation, and mass falsehood are not traits which humanity ever thought as aims of civilisation. An ideal is welcome but the realisation of the ideal is the desideratum. The realization is possible only if the social units are so prepared that the large number of units are capable of such realization. Here comes the problem of social organization. Eupsychics and Eugenics are both essential to the building up of such social merits. Hence come caste and rules of succession and of marriages. The expression of western civilisation of the last fifty years tallies more or less exactly with the expression posited for *Danavas and Dasuyas* in Upanishad and Puranas. They are the expressions of *Varna Sankaras* or children of marriages with different *Sankaras* or *Psychic trends* under conditions which give free play to animal passions. Love is a growth which grows under certain environmental conditions operating on the human protoplasm. It is not "love is engendered in the eyes and with gazing fed" as Shakespeare said and Divorce cases dispense Rules of succession and Rules of marriages have very definite social objectives.

The social system of the Hindus is "unique." Its elastic power, its virility to produce human types of exceptional powers inspite of trials and tribulations is a proof of its strength. The Assyrian and Babylonian and other contemporaneous and later civilizations have disappeared. Hinduism still persists and but for its political subjection, is alive. Its social system—caste—its metaphysical concepts though obscured by a foreign control of education and of life and its principles of life and living which need re-vivification are sources of unique strength and are

based on psychological and biological principles which are sound.

5. Hindu Law embodies these principles in social system. Dharma and life have been linked up. It is idle to suggest that Law of succession has nothing to do with religion. Quotations and misquotations from Medhatithi, who after all was one of the main commentators cannot disprove it. The acceptance of the pinda regulating succession by the people is proof, "Hindu Law," says Sir Gurdas Banerjee, "is a body of rules intimately mixed up with religion and it was originally administered for the most part by private tribunals" (Hindu law of marriage and Stridhan Page 7, 316 edition). This is a truer exposition than that sought to be put by quibblers of law who are rushing in to the realm of jurists. "Kula" conception was the sociological idea, with a definite purpose to build sub-conscious cohesive. The reasons urged for uniformity stand no scrutiny in politics (such as in the U.S.S.R.) and the Economics (such as in guild-socialism, etc.) the tendencies rather are for the freedom of groups of the same culture and economic trends. Dayabhag governed Hindus of Aragal are such a well marked group.

6. The present problem raises a constitutional question of great importance. Are problems such as these which govern inheritance and marriage problems without a previous passing by experts on these to be decided by people who are not governed by such laws or ideologies which may even be technical to them? The issues are too important to be rushed through.

7. The economic effect of these proposals—as seen through Law Napoleon in France and Moslem law in Bengal—will be disastrous.

8. I am therefore opposed to the main changes in law of inheritance and of marriage. About divorce I would adhere to Parasara.

53. Kshetra Mohan Sarkar, Esq., M.A., B.L., Advocate,
High Court, Calcutta.

I whole-heartedly support all the provisions of the Draft Bill for the codification of Hindu Law in respect of inheritance, marriage, divorce and other matters proposed in the Bill.

54. Mr. Ambika Charan Ray, M.A., B.L., Advocate,
Calcutta High Court.

- (i) I approve of the policy of codifying the Hindu Law.
- (ii) I approve of the recognition of the rights of women in the matter of inheritance among the Hindus.
- (iii) I approve of the policy of doing away with life-estates and making the rights of women to all her properties absolute.
- (iv) I approve of the fundamental principle that marriage should be strictly monogamous.
- (v) I consider that provisions for divorce are necessarily called for and that such provisions ought to be engrossed into the law.
- (vi) As the Hindus are at liberty to marry under the provisions of the Special Marriage Act, I do not think that there is any bar to the incorporation of marriage by registration in the Hindu Code.

The idea of having one law administered for all the Hindus of India is not only fascinating and ennobling, but is calculated to foster the growth of the national life of the Hindus.

I welcome the bold-departure made in the draft by conferring rights of inheritance to women. Provision for the rights of the wife, the mother, and the daughter (and sister in the Bombay Presidency) in the law that is now administered are so meagre that it may now very well be said that at least one half of the Hindu population in India now go without rights. Without stopping to consider how far the drastic change that has been sought to be made in this direction is consistent with the *shastras*, I regard it as a compliance with the call of the time. To still keep the women without the right of inheritance is an injustice in the matter of which the law ought to intervene without delay.

There must necessarily be some difference of opinion in the matter of the minor details, e.g., I would wish that the branch of one's own offsprings, viz., those classed as II should come before the father's offsprings, viz., the brother and the brother's son [numbered I (5) and I (6)]. But without raising any controversy in the matter of the details, I think, it may be left to future legislation.

55. Mr. Satish K. Datta, Government Member.

The first Chapter among other things deals with definitions. The second Chapter mainly concerns the right to succession. The present system of succession is based on pinda theory. Attempt has been made for the removal of the difficulties felt in society after the death of the propositus regarding succession to his property. The right of the daughter to have a place among the successors of the deceased is one of the main questions that affect the present system of inheritance in Bengal. The Hindu Women's Rights to Property Act was an attempt to remove some of the difficulties. The Federal Court, however, has declared this law to be *ultra vires* in cases of agricultural lands. There has already been a move for introducing the law of succession in the Hindu Women's Rights to Property Act by the Provincial Government. But the Hindu Women's Rights to Property Act has not given any place to daughters in the line of succession. This is the main gap though there are other dissimilarities.

The position of females including the daughter is really poor under the Mitakshara Law. They have absolutely no right except the right to maintain generally to the co-parcenary property left by the deceased. But under the Dayabhag the widow and the daughter are well-placed in the absence of sons and grandsons, etc.

The Mitakshara Law requires a change but the Dayabhag does not. It is perhaps well known to each Hindu in Bengal that the daughters have got no place in his property after his death. This dominates his principle at the time of his daughter's marriage and he spends accordingly.

Absolute right of the females to the property is a danger. Instances are not rare where the property in the hands of female heirs has been kept intact for the next reversioner for even hundred years. But instances are many where females have been "beguiled" to spoil the property. I do not understand the necessity of giving absolute right to the females in the property when it is large. When the income is insufficient, the female heir is entitled to transfer the property for her maintenance. This is a right with a rider technically called legal necessity.

The present system of right to inheritance has worked well since time immemorial and the proposed change will tend to fragmentation of property which will prove injurious to the society. In my view there is no necessity of any change in the matter of succession by females except making a provision for the marriage of maiden daughters by way of charge upon the deceased's property. I may point out without any comment.

How the number of wakfs has increased among the Mohammedans and one of the causes for the creation of wakfs in my view is to keep the property in the male line.

So far as other changes made in the draft regarding succession are concerned, I generally agree.

The third Chapter needs no comment. The fourth Chapter relates to marriage and divorce. With the growth and progress of society, provisions relating to marriage and divorce as made in the draft have become a necessity.

The fifth and the sixth Chapters relate to guardianship of the minors and adoption respectively and may be adopted.

56. Mr. Sanat Kumar Rai Chowdry.

Being an amendment and codification of the personal laws of the Hindus, the tests to be applied are: (1) the necessity for the Code so far as the Hindus are concerned, (2) general approval by the Hindu masses and (3) improvements in the conditions of life of the average Hindu, or of the Hindu society.

Regarding (1): Codification and amendment were never asked for by the Hindu masses. In recent times, Dr. Gour first suggested codification (not amendment) but that was for the convenience of lawyers, and judges. Amendment was asked for and partially made by the Legislative Assembly which contained a number of legislative legislators who consider themselves civilized and advanced and the old "Rishis" and "Smritikars" uncivilized and medieval. Their attempts and successes before the present Code, were really unimportant, because the amendments so far made have been to make certain women members of the family heirs, leaving the management generally to the males of the family. If there is a section of Hindu women, who style themselves progressive and modern, holding meetings, supporting the Bill and advertising their resolutions in the press, there are others, equally advanced, with stakes in the country and in the Hindu society, who are opposed to the Bill, but for one reason or other are not able to advertise themselves. Then there are the vast millions of Hindu men and women, living in villages, to whom such a radical change in their personal law, which is a part of their religion, is inconceivable, and who would be bitterly opposed to such changes did the same come to their knowledge.

This brings me to (2). No attempt has been made to get the Bill approved by the masses. Constitutionally, two courses may be adopted to get such general approval: (a) an election of the Assembly fought on the issue of the Hindu Code, (b) plebiscite after the widest circulation of the Bill in the different vernaculars of the people concerned. Neither of these courses have been, or are going to be, adopted, and it is not very difficult to understand the reason.

Regarding (3): When we are informed that certain non-Hindu members who had already had their own personal law restored to its archaic and primitive condition in the Shariat Act, were very eager to get the Bill passed, we scrutinized the Bill a little more carefully and found that the Bill if passed would (a) reduce the number of Hindus, a fact of great importance to the other community; (b) reduce the average Hindu to the position of a day labourer, by destroying his holdings, and thus lessen his power of resistance. It may be said that similar laws of succession amongst Muhammadans have not affected them. My answer is that it has. See the Statement of Objects and Reasons for the Wakf Validating Act, 1913. My further answer is that a Muhammadan of property, usually marries his daughter within the family and he can tie up his property for the benefit of children very easily, which a Hindu cannot. A further point is that the solidarity of the Muhammadans makes up for this individual weakness, but amongst Hindus we are already divided and incapable of joint action, and with this Bill our individual strength, upon which we have so long counted will disappear.

The objection as to fragmentation of holdings has been sought to be removed by making the Partition Act, applicable, but those who know will tell our legislators that 99 per cent of the average Hindu cultivators must borrow or sell if he desires to purchase his sister's share as proposed in the Bill.

From a pure Hindu standpoint, therefore, the Bill is a most mischievous piece of legislation fraught with grave danger to the Hindu community.

It may be said that the Bill secures for the daughter a share in the inheritance, and thus improves her condition. Let us look at the facts a little more closely. The number of Hindus in Bengal, in whose estate a daughter's share will be appreciable and will materially improve her condition, is negligible; it will not be even one in a thousand. The average Bengali Hindu has so little, earns so little that a daughter's share may be neglected for practical purposes, and it will not improve her condition in the least by giving her a share. It will simply create bad blood between brother and sister and lead to litigation and ruin. It will bring upon the Hindu that ruin which the Muhammadan legislators described in the Objects and Reasons of the Wakf Validating Act.

Those ladies of the well-to-do classes who are now voicing their approval through the Press, either do not require this addition to their assets, or have already got it in one shape

or other. Amongst these classes, it is usual to provide for the daughter at the time of the marriage, in the shape of ornaments and presents to the bridegroom for securing one of means and education. They are also provided by the "wills" of their parents. In considering the benefit to the average Hindu woman, or to the Hindu society, this vocal class may be eliminated.

Amongst other reasons given in support of the Bill, one is that we have proceeded so long on a wrong interpretation of the "Shastrie Texts." Since the matter is not beyond doubt, and the accepted interpretations have stood the test of time, we ought not to accept a new one lightly, without considering its serious effects upon the social and economic structure of the Hindu society, which, as I have endeavoured to show, will be disastrous.

A further reason given is the introduction of uniformity. This has not been achieved as the Bill itself excludes the southern schools of Hindu Law. It also excludes customs and usages which have acquired the force of law. The various schools now sought to be unified can be explained as customs and usages which have acquired the force of law in the different provinces amongst people of differing stocks, but instead of treating them as mere customs and usages, the old law-givers and "Smritikars", preferred to have the authority of "Manu" for their local law by interpreting texts differently. In fact, in a vast continent like India inhabited by people of different stocks with widely different culture, manners and customs, it is difference and not uniformity which is to be expected, and the Hindu Law has very wisely provided for customs and usages overriding the written text of the law.

Then again the time and place are also inopportune. We are in the midst of a world war, which though we are not participating in actively, has made the securing of food, clothes and medicines, a very difficult problem for most of us, leaving us hardly any time to devote to non-urgent and non-essential things like the consolidation and amendment of our law. The Legislature, in which the Bill has been introduced, is hardly representative of the Hindu masses, in fact most of them have no votes for the Indian Legislative Assembly. Let there be a new Assembly on the basis of adult suffrage and let election be fought on the issue of the proposed changes; then and then only can the Legislature and our rulers be certain that they are making no mistake in interfering with the personal law of the Hindus. There is no hurry to change the law which has stood for thousands of years, why not wait till we have a thoroughly representative Assembly?

As a Hindu, and seeing that the Mohammedans are now setting themselves up as members of a different nation, who must have a separate home-land of their own, I have the strongest objection to alteration of my law by the votes of Mohammedans. They must have no say in the matter, our law being a part of our religion it is only proper that it be altered by Hindu votes alone.

"Comments on the provisions of the Code."

The Preamble.—The expediency of amendment and codification of the branches of Hindu Law is not made out. There is no necessity nor is it expedient at the present time.

PART I.

Clause 1—(2) Extent.—Unfortunately in India there are large territories which are not British India, where the authority of the Indian Legislature does not reach. In these areas, the old and genuine Hindu Law will still prevail; this may lead to undesirable results. A financial magnate, say, of Bikaner, is going to develop waste lands or jungles in British India. The financier does not like the provisions in the Bill, he will no longer be willing to invest money in the development of the land. A non-Hindu will take the matter up causing loss in various ways to the Hindu community.

1. (3)—Why not delay the operation till ratified by a Legislature elected on the basis of adult suffrage, male and female, or by a plebiscite of the Hindus.

Clause 2—Hindus.—Although we use the term every day, it is difficult to specify the connotation with exactitude. It must be still more difficult to define. In the "Smriti",

the word used is "Dharma," and no worship of a particular kind or of a particular god is enjoined. A code of morals is all that is enjoined vide "Manu."

Necessarily, therefore, all who follow the said code of morals are Hindus whether they do or do not worship any god of the Hindu Pantheon. The number and names of such gods have not been ascertained. This will include Christians and Mohammedans who have different personal laws. The proper definition should be, "Hindu" means "any resident of India or any person born in India who is not a Christian or a Mohammedan." The definition given includes the so-called devil worshippers, and admits boarginees who are really Hindus, and are known as such in outside countries.

Clause 3.—Custom and usage regarding any matter dealt with in this Code shall supersede its provisions, if they are definite and reasonable. This should be substituted for the clause.

Clause 4.—Line 2, substitute "has" for "having" line 3, delete "has obtained the force of law."

Clause 5.—(i) Definition of "related" should include the following:—

illegitimate son, daughter, brother, sister, and the father's concubine.

Clause 5 (j).—"Stridhana" has the same meaning as before the commencement of the code. Insert this for the definition.

In spite of the fact that we find news in the daily papers of women attending meetings, discussing public questions and taking the place of clerks in offices, 90 per cent of the Hindu women are illiterate and unfit to manage properties. Absolute right should not be given in property inherited or obtained at a partition or in lieu of maintenance. According to the present law, these properties are saved to the family whereas the new provisions will take these away from the family and make it difficult for the next generation of widows and other members to get an adequate portion for their subsistence.

Absolute right was conceded to "Stridhana" because in case of her own acquisition she was deemed to have the capacity to manage and in case of gift at or after marriage which she had her husband's help in utilizing to her best benefit, it was thought that she could be entrusted with management. A young widow should never get absolute right to her husband's property because she will take it to her father's family or to her newly married husband, if she remarries.

Clause 6.—If the Special Marriage Act is going to be amended, the Code should provide for marriages of Hindu men and women with men and women professing any other religion, each party retaining his or her religion. The first schedule should be amended accordingly.

PART II.

Clause 1.—This part shall not affect any custom or usage or special rule of law relating to succession or devolution of property prevailing amongst the Hindus in any local area, community, group or family nor shall it apply; substitute the above for the first portion. Retain (i) and (ii); delete (iii).

Clause 2 (b), line 2.—Delete the words after "her own right," and the illustration and insert "and which is not subject to any contract or conditions in any grant, regarding its devolution."

2 (c), lines 2 and 3.—Delete "but not a Dasiputra".

Clause 4, line 2.—Delete "in this part" and (a), (b), (c) and (d) and insert "by the school of Hindu law or by the custom and usage by which he was governed"?

Clause 5.—Delete: We do not find amongst the enumerated heirs, the widowed daughter-in-law, who were till recently heirs under the amendments made.

We find that the daughter's daughter's daughter who may be the member of a family wholly unknown to the deceased and may herself be a stranger, is preferred to the sister, brother's daughter, and sister's daughter whom we often find to be the members of the same family as the

deceased, and for whose maintenance the average Bengalee feels a responsibility though there is no obligation legal or moral.

If the law is at all to be amended we should recognise these responsibilities and include the new female heir under the category of the dependants and make their maintenance a charge on the inheritance.

The widowed daughter-in-law and grand-daughter-in-law may be left in their present position as heirs taking a woman's estate because they are members of the same family and must be maintained.

We should leave the present category of heirs, their order of succession and their shares untouched except that the son and daughter of a concubine should be given shares, as heirs. This must be so in case of all castes or Varnas for now with the progress of Western education we do not recognise any distinction between a Dwija (twice-born-caste) and a Sudra. We do not recognise that they are in different stages of advancement and development and there must necessarily be different rules applicable. According to modern or ultra-modern ideas, to placate which, amendments which strike at the root of the Hindu social and economic structure are being suggested there is nothing wrong in concubinage, and we should not penalise the innocent offsprings of such illegal unions.

Clauses 6, 7, 8, 9, 10 and 11—Omit.

Clauses 8 and 9 are foreign to the spirit of the Hindu Law which regards spiritual benefit as a test for determining nearness. The family and family ties which play so great a part in the Hindu Law and social structure are completely disregarded.

Clause 13, line 2.—After "by her" insert "before or".

Clause 14, line 3.—Delete the word "follows" and the whole of (a) and (b); insert "it did before the commencement of the code."

There is no sense in making a married daughter to whom the mother may have given an adequate portion of her ornaments at the time of her marriage a co-heir with a son or unmarried daughter who have not got such portions.

In most cases "Stridhana" consists of ornaments alone. Nor should a daughter's son and daughter's daughter be co-heirs with son's daughter.

If amendment has to be made at all, special provision should be made for jewellery and ornaments which have been in the family for generations, coming from the mother-in-law to the daughters-in-law. Marriage expenses of daughters should be a charge on the ornaments left by a woman.

Clause 19.—Proviso should be omitted. A husband may not like to litigate about the unchastity of the wife for various reasons. In such cases although the wife was openly living with another she will inherit. A clause should be added providing for divesting of the property in case of remarriage or open cohabitation with a male by a widow.

Clause 21.—The convert should himself be disqualified from inheriting.

Line 3.—After the word "religion" insert "he and the".

Clause 26.—There are certain diseases and defects which render a man incapable of managing or holding property. These should be disqualifications: lunacy, idiocy, incurable deafness and dumbness; where the subject is incapable of being trained he should be given rights of maintenance, or even the whole of the income, but not any right in the property.

PART III.

The succession Act should be amended to make an oral will declared in the presence of one witness who is not a legatee, valid. A new part should be added making amendments in the transfer of property Act, whereby oral gifts which have been accepted, and oral death bed gifts declared in the presence of an independent witness shall be valid.

PART III.A.

Clauses 1 and 2.—These provisions should be inserted in Part II. Clause 3, Maintenance should include "expenses

of marriages, medical treatment and education" and these should be added after "residence"; sub-clause (ii) to be deleted.

Clause 5.—The word "dependant" should be defined as "any relations by blood or marriage who is without the means of subsistence or has no property in his or her own right sufficient for her maintenance." It should also include illegitimate children and the concubine.

The enumeration should include brother's widow, sister's daughter, daughter (married), widowed daughter, daughter's son, daughter's daughter, son's daughter and other females sought to be classed under heirs.

Clause 9.—The following should be substituted:—

"A dependant's claim for maintenance shall always be a charge on the estate of the deceased or such portion thereof as may be determined by a decree of Court. Without a charge, the right would be illusory."

PART IV.

It does not appear why we are changing our marriage Laws. We are adopting monogamy as the ideal and trying to enforce it by enacting it into law.

This is imitativeness on the part of the Hindu members of the committee, and a political move on the part of other, as it will certainly leave more girls unmarried than before, and reduce the Hindu population.

Our Religion unlike that of the Christian, sanctions polygamy. There is no inherent immorality in polygamy. Social needs also sanction it for we know that after the last war when there was dearth of husbands in Europe there was practical polygamy which was winked at by the law and the church.

Amongst the upper classes of the Hindus, monogamy has become the rule, but that is because a male is not able to keep more than one wife in the standard of comfort, which is usual amongst them.

But things are quite different amongst the labouring classes who form the masses. There an additional wife and her offsprings are not only welcome, but in some cases absolutely necessary. So long as the man is able to maintain her there should be no restriction or limit as to the number of wives.

Family quarrels are often the result of plural marriages, but in considering a matter like this and in changing the law it is the good of the community, and not of the individual which should be our guide.

Polyandry was prevalent at one time but it has now fallen into desuetude. Polygamy may have the same fate some day, but we ought not bring about change by legislation.

Where the needs of society demand it polyandry still is prevalent.

The needs of the society and not the custom amongst the upper classes now imitating the West should be our guide.

While on this topic, we find that the problem is different amongst the different castes and sub-castes.

Amongst some, girls cannot be married, because their fathers desire a standard of life for them which few bridegrooms can afford, or the bridegroom demands a dowry which very few fathers of girls can afford.

Amongst others the bridegroom cannot pay for a wife, and entire castes are becoming extinct.

Another class is growing up who do not desire to take the responsibility of marriage.

These matters should be dealt with by a change in the law if necessary.

Clause 2.—Should be amended by recognising customary form of marriage such as "Kantai Badal," "Sindurdan," "Sagai," etc.

Clause 3, sub-clause (a).—To be deleted.

Sub-clause (c).—After "Pravara" add "except in the case of sudras."

Clause 14.—Fourth schedule declaration form should be amended by inserting in item 2, the Christian, the Muhammadan, the Parsi or any other religion (as the case may be) or "I profess no religion at all."

Clause 24.—Omit.

Clause 28, line 7.—After "benefit of the wife" insert "and the husband" line 8, substitute "any of them" for "she." Delete "to her Stridhana" and insert "to his or her heirs."

Clause 29, sub-clause 5.—Delete.

Clause 30.—Omit.—If law is to be changed insert Parasur's condition for this solution of marriage.

Clause 31.—Omit.—No provisions of the Divorce Act should apply. The ordinary law for such petitions will be enough.

PART V.

Clause 10.—Omit.—De facto guardian should have the power to borrow or transfer for necessity of the minor. Insert a clause that the "estate" or the King is the guardian of all minors who have no natural guardian.

PART VI.

Clauses 1 and 18.—All forms of adoption sanctioned by the Hindu Law should be permitted.

Clause 3.—In a case where the law is being changed adoption of daughters should be permitted, specially by people who are able and willing to provide for the maintenance and marriage of the adopted daughter.

Clauses 5, 12, 13 and 15.—The present law should be maintained on these points.

Clause 21, line 2.—After "Boy" insert "or a girl".

Clause 25 (3) (b), line 1.—After "son" insert "or daughter"; Line 2.—After "his" insert "or her"; Line 3.—After "his" insert "or her".

Clause 28 (vi), (vii) and (viii).—After "boy" insert "or a girl."

57. Mr. Balaram Roy, Pleader, Burdwan.

The main principle of every social law is that it may be helpful to the harmonious, peaceful and healthy progress of the society politically and economically; so that it may be obeyed, religious sanctity is given. My humble suggestion will be from these standpoint.

Regarding succession.—(i) With regard to the business concern some provisions for safeguarding the integrity of the business may be made so that on the death of the sole proprietor it may not devolve on all the heirs of the deceased but to the eldest male member; this may be helpful to the stability and the growth of the business concern.

(ii) With regard to enumerated heirs in Clause 5, from Class I daughter may be excluded and may be included in Class II with predeceased daughter's son; so that outside and stranger's influence along with the sons in the family property may be avoided.

Such other amendments may be made in the light of the above amendments; but the provisions for the maintenance of the unmarried daughter should be made.

With regard to Stridhan in Clause 14 of Part II at sub-clause (b) (1) when the sons and daughters are simultaneous heirs the share of the son will be equal to that of the daughter, not half.

Clause 21.—Convert's descendants disqualified.—the converts too, shall be disqualified and deprived from inheriting the property of any of the Hindu relation.

N.B.—But in all cases amongst the females chastity and remaining in the Hindu religion will be the first criterion for inheriting the property of any Hindu relation.

In Part III.A—Clause 4.—Right to maintenance, "or when the share so obtained by a dependant" will be replaced by "where the share so obtained by a dependant by testamentary disposition"

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For if the language is not clear then the dependant inheriting property of the deceased may also bring a suit for maintenance which is not desirable.

PART IV—MARRIAGE AND DIVORCE.

At present monogamy should not be enforced, in the above light other modification shall be made.

"Sanga" form of marriage should be recognized.

Chapter III, Nullity, and dissolution of marriage. In Clause 30—Dissolution of marriage.

A clause should be inserted after sub-clause (d), the person converted to other religion should not be entitled to or allowed to bring suit for dissolution of marriage, on the other hand the other party will have the liberty to marry again and the person converted to other religion will not be allowed to marry so long the other party does not dissolve the marriage; for disobeying this a penal clause punishable under the Indian Penal Code may be added.

58. High Court Bar Association, Calcutta.

The proposed draft Hindu Code is an ill-considered, ill-advised and uncalled for measure; harmful and highly detrimental to the religious, social and economic interests of the Hindu Community and is diametrically opposed to the wishes, customs and sentiments of those on whom it is sought to be imposed and this Association strongly urges on the Government to drop the said Code.

59. Howrah Bar Association.

This Association is of opinion that in view of the fact that the proposed Code has been drafted by persons who are not in a position to speak with authority on behalf of the Hindu community and in view of the fact that the draft Code has been circulated only very recently, it is very difficult to give any considered opinion on the matter. This Association is further of opinion that the provisions contained in the draft Code are meagre and wholly unsatisfactory in remedying the defects which the Code is expected to do. This Association believes that the present time is not at all suitable for bringing in such drastic changes in the social laws of a people numbering two hundred millions and therefore, the bill embodying this draft Code should be thrown out for the present and a more useful Code be introduced by more representative men in a better atmosphere in a legislature more democratic.

60. Incorporated Law Society of Calcutta.

The members of the Society disapprove of the provisions of the draft Hindu Code.

61. Bar Library, Natore.

We are opposed to the Draft Hindu Code because it proposes not only to amend and codify certain branches of Hindu Law, though it professes to do so only, but, in reality, to replace the whole of existing Hindu law with a new set of laws wholly unconnected with the principal Hindu religion with which Hindu Law cannot but be closely connected as to a Hindu his religious life and secular life cannot be divided into two compartments—one not connected with the other; on the ground that the time chosen for this purpose is wholly inopportune because of the world war resulting in socio-economic disbalance which stands rudely in the way of men bestowing their best consideration to the proposed Code proposing a thorough recasting of Hindu Law.

2. We are entirely opposed to the proposed intestate succession on the following grounds—

(a) It offends against the principle which not only guides the laws of succession of the estate of the deceased Hindu, but the belief which can make a man really a Hindu.

(b) It will cause needless fragmentation of Hindu holdings without any compensatory relief to anybody in true sense.

(c) It will increase the number of litigations amongst the Hindus as a result of the strained feelings that the proposed Code will promote among simultaneous heirs.

(d) The only object it seeks to attain is to improve the condition of the woman which has been improved to a great extent by the Act of 1937 and the only person whose condition needs to be improved is the unmarried daughter. But that can be achieved by making her suitable marriage expense a charge on the property inherited by the sons and her maintenance till marriage; so there is no need in our opinion for a thorough change in the law of intestate succession which will be productive of so much evil. It is needless to say that we in our above observation have put aside as worthless the opinions of those who hold the idea that wives should not be dependents upon their husbands for their existence.

3. We are opposed to doing away with life estates as that will only encourage the cheats and swindlers to rob women holding absolute estate as the principle which guides life estate checks unscrupulous men to deal with life estate holders by throwing upon the transferee of a life estate the burden of proving the necessity of transfer. Life estate holders do not really suffer from any handicaps except—want of necessity—make alienation of life estate for good impossible.

4. We are entirely opposed to the proposed laws of marriage and divorce as they will do away with the principle, without attempting to follow which, and without believing which a man cannot claim to be a Hindu. A man is a Hindu because of his belief in Hindu religious theory, and because of his willingness to abide by the restraints that the law, which in the case of a Hindu is always associated with his religion, imposes upon him; it seems contradictory that one should not believe in the religious theory of Hindus and one should do away with all the principles of Hindu religion and yet he shall remain a Hindu. The only effect of this change will be to give a go-by to the Hindu religion and which we believe no one is authorized to do unless he is a religious reformer like Buddha.

On the one hand divorce encourages the polygamous nature of man and though the object of the Code is to make marriage strictly monogamous still it encourages the keeping of concubines by making a provision in the shape of maintenance: will it be worse if a man marries two wives instead of marrying one wife and keeping a left-handed mistress?

62. Secretary, Bar Association, Dacca—Babu Atul Chandra Rakshit.

The changes proposed in our Hindu Law as indicated in the draft Hindu Code are not only revolutionary in nature but will bring a complete change in the social, religious and political life of Hindus. We have given our anxious consideration to the proposed changes and we are of firm opinion that the proposed Hindu Code should be opposed. The Committee desire that the Code should be regarded as an integral whole, and that no part should be judged as if it stood by itself; we agree with the observation. The changes sought to be introduced are closely mixed up with, and inter-dependent on, each other and so it is imprudent and unwise to support some, rejecting others. Hence we oppose the entire draft Hindu Code. Piecemeal legislation is a dangerous evil.

The Hindu had a complete Code of Laws, both objective and subjective. The earlier notion of the Divine origin of Hindu Law was gradually modified to a considerable extent by learned commentators. And the conception of positive as distinguished from divine law, presented to us by the commentators, nearly approaches the ideas of modern jurisprudence. So, our Hindu Law is not dogmatic as some would suggest. The Hindu Law is clearly associated with Hindu religious, social and even political ideas. The Judge-made laws to-day occupy not a less important place in our Hindu Law. The liberal interpretation of some of the controversial principles of Hindu Law are already meeting the exigencies of the situation and coping with the changes. We are opposed to all hasty legislation in our Hindu Law. The changes proposed such as divorce, civil marriage, forms of marriage, intestate succession, etc., are wholly opposed and repugnant to Hindu ideas and ideals of Hindu life and society. This is a sufficient reason to reject the entire Hindu Code as sought to be introduced. We like

to impress upon the members one or two points regarding intestate succession and marriage.

Marriage.—The institution of marriage which is the foundation of peace and good order of society, is considered as sacred even by those that view it as a civil contract. According to Hindus, it is more a religious than a secular institution. Service, love, affection are the ideals of Hindu institution of marriage. We are not prepared to destroy those precious ideals of ours. The changes proposed will bring disorder and evils in Hindu Society which the Hindus cannot but condemn. The Hindu ideal of marriage is a holy union for the performance of religious duties. Hindu Law permits a man to have more wives than one at a time although it recommends monogamy as the best form of conjugal life (vide Dayabagh, Ch. IX, 5, 6, and Sree Krishna on same. Thapita, viz., Thapita 17 M. 235, 239—F.B.)

This recommendation has practically been adopted by the Hindus and monogamy is the general rule, though there are solitary instances of polygamy. So, no legislation on this score is called for on the other hand. Complete prohibition may shut the door to a real necessity. It requires no further arguments to reject the changes.

Succession.—We have already observed that the love and affection, with predominance of religion govern a Hindu family. Daughters, though they are not the legal heirs under the present Hindu Law get some share of the assets of a Hindu father in more than one way.

Politically too, we oppose such excessive fragmentation of the properties of a Hindu. This will weaken our position in relation to others and will gradually sap our financial vitality.

For shortness of time at our disposal, it is not possible to give more detailed reasonings for our rejection of the draft Hindu Code. We like that the opinion of the Dacca Bar Association should go in one voice opposing the entire draft Hindu Code. With changes introduced, the name "Hindu Code" will be a misnomer. It will be something else for somebody else, not for the Hindus.

63. Bar Association, Girdih.

1. Considering that the vast majority of the Hindu population of the country is still very backward in their education as well as social conditions and considering that dowry system in its harshest form is still in prevalence amongst them, it will not be desirable to allow daughters to be simultaneous heirs with sons. For similar reasons the widows as now should continue to have limited estates in the property succeeded to by her.

For reasons which it is needless to enlarge upon, a girl after her marriage is still wholly guided by the wishes of her husband or other members of his family who have very little affinity for the dignity or integrity of the family ties of her paternal family. Similarly younger widows are more under the influence of their parents' family than have attachment for their husbands' relations. The result is that if daughters or widows are under the influence of impecunious relations, they will be induced to alienate their shares to third persons so as to introduce not only fragmentation but also introduction of strangers into the family property.

2. The position and rights of widows and daughters as they now stand should not therefore be interfered with unless free and compulsory education amongst all boys and girls has been introduced.

3. The Act should not be applied to agricultural lands.

4. In Classes III and IV, father's father and father's father's father should precede; and not follow father's mother and father's father's mother.

64. Bar Association, Khulna.

Codification in general.—(1) The proposed codification is quite uncalled for, misconceived and inexpedient.

(2) The Hindu Law is pre-eminently based upon the sacred texts of the Sritis, Smritis, commentaries and ancient customs and in all important matters it has

been settled down by judicial decisions in the light of the same.

(3) The foundation of the existing law is the wisdom and insight of Hindu sages and scholars versed in the Sastras in which the Hindus have unflinching faith and regard, whereas the intended codification would rest upon the voice of a changing Legislature composed of persons most of whom are not Hindus and are completely ignorant of Hindu Shastras, Hindu customs, usages and tenets and even Hindu Law. It will naturally be looked upon with suspicion and distrust, and will lack the confidence of Hindu public. Hindu Law is based upon Hindu religion and the proposed codification is nothing but an attempt to strike at the root of Hindu religion and should not be adopted.

(4) The existing law regarding the subjects under consideration is far better and more comprehensive and is quite suited to the tastes and requirements of the Hindu Society.

(5) The proposed codification will unsettle the settled state of things and will give rise to numerous litigations and will bring in uncalculated chaos in the Hindu society.

(6) It will evoke serious discontent and criticisms inasmuch as it is in contrast with the existing law and usage and will bring in disruption in the Hindu joint family.

(7) The Hindu law is a vast, learned and fruitful subject of study. The codification of the most important branches of this law in a few cut and dry sections will bring it within the narrowest limits and will take away all the interest and utility in the study of this cultural subject.

Part II—Intestate succession to the property of males.

1. The scheme of succession seems to have been derived from some other law and is opposed to the fundamental principle of the Hindu Law, namely, the Pinda theory. It will satisfy neither those who are governed by the Mitakshara Law nor those who belong to the Dayabhaga school.

2. It is against the natural feelings and religious notions of the Hindus at large.

3. The simultaneous inheritance by sons and daughters will lead to unnecessary disintegration and alienation of property. The daughters being married outside the family will not be able to manage and enjoy the property to the same extent as the sons will, with the result that they will transfer their interest according to their sweet will.

4. Such a provision of law is revolting to the Hindus in general and will, in most cases, lead to testamentary dispositions of property making it as ineffectual as possible.

5. The position of the Hindu girls will not thereby be ameliorated for any practical purpose. The bulk of the property of Hindus living in village consists of agricultural land to which this law will be inapplicable, so it is better that no such law is made with regard to other properties as well.

Adoption of Partition Act, 1893, in certain cases.—This provision will fail in its object if a girl first secures a deed for partition and then marries into an outside family, or transfers her share to an outsider after the partition of the property according to her share.

Succession of Stridhan.—(1) It ignores the different kinds of stridhan, the caste of the woman and the form of marriage which are considered by the existing law for the purpose of succession.

(2) There is no necessity or justification for the departure from the existing law with regard to the order of succession as also to the share of a daughter which is half the share of a son in case of simultaneous succession.

(3) It is introduction of a share to daughter.

Sacramental marriages.—(1) No legislation for solemnising sacramental marriage is necessary.

(2) Bigamy or polygamy is looked upon with disfavour by most of the Hindus and is gradually falling out of use. Very few persons would marry again during the lifetime of

a wife, unless such marriage is necessitated by circumstances.

(3) The imposition of legal bar against a valid sacramental marriage during the lifetime of a wife will do incalculable mischief to the second wife in case such a marriage takes place without the knowledge of the bride's party. Remarriage of girls like that of widows even if legalised by statute will hardly be possible, in fact, among the Hindus and particularly among those belonging to the upper castes.

(4) The aforesaid restriction will lead to suits for dissolution of marriages by the husbands who are really bent on marrying a second time, and there will be hardly any difficulty in securing *ex parte* decrees of them as most of the Hindu wives are dependants against their husbands.

(5) In case a wife develops some serious and incurable disease after her marriage or is found incapable of bearing children, the husband will be forced even against his will and conscience, to secure a decree for the dissolution of the first marriage in order to effect another valid marriage. This will be more harmful to the first wife than death itself.

(6) In most families, sons are fewer than daughters. If this restriction is imposed by law, many Hindu girls will have to remain unmarried and this will tell seriously upon the morals and economy of Hindu society.

Optional registration of sacramental marriage.—(1) It is absolutely uncalled for. Sacramental marriage is rarely questioned in Courts of law and has seldom failed for want of proof.

(2) The provision for optional registration will induce the Courts to prefer a registered marriage to an unregistered one wherever there is a conflict between the two. This will put the time-honoured unregistered sacramental marriage on a very weak and precarious foundation.

Nullity and dissolution of marriage.—(1) This provision is against the basic idea of Hindu marriage which is always regarded as a sacrament or Samskara without the possibility of any divorce or dissolution.

(2) Such a provision will undermine the permanence and security of the hearth and home as also the pride of birth which have hitherto been the most enviable features of Hindu marriage, notwithstanding the political and economic vicissitudes of the Hindus.

(3) The very idea that marriage is indissoluble acts upon the minds of a marriage couple and leads them to forget and make up their difference and misunderstandings which are incidental to every married life, and secures an atmosphere of mental adaptation.

(4) Hindu society will be at great pains if a husband or wife be given the option of having their marriage dissolved on the ground of some serious and incurable disease, mental or physical, which may develop after marriage without any fault on the part of one's partner.

(5) This provision should under no circumstances be made applicable to sacramental marriage.

65. The Burdwan Bar Association, Burdwan.

The Association is of opinion that the Hindu Law which is based on the Hindu Shastras is complete and exhaustive and the Hindu society is based on it. Regarding the Bill on Hindu Law of Succession, the innovation sought to be introduced into the personal law of the Hindus by the proposed amendments, e.g., the new definition of the term 'Stridhana', the right of women over the same; the rule that a woman, even after her marriage shall not be deemed to be an agnate (as defined in the Bill) of her husband, the new enumeration of heirs, the rule of simultaneous heirship, the new order of succession to stridhana, right of inheritance are against the Hindu Shastras and are calculated to strike at the very foundation of the Hindu society.

The reasons set forth in the explanatory note attached to the Bill are not correct and convincing. Under the Dayabhaga School of Hindu Law the principle underlying the rule of succession is religious efficacy and not mundane consideration. The so-called disqualification attaching to women as to her right to property inherited from males,

property obtained by her on partition, property received by her in lieu of maintenance, etc., is also in accordance with the rules laid down by the Hindu sages whose wisdom and foresight are beyond question. Hindu civilization is as old as the hills and the Hindu sages created it and it has stood the test of ages. Whatever might be the opinion of modern Hindu lawyers such as Dr. Jayaswal, Dr. Mitter and others of their class regarding Manu and Yajnavalkya—Hindu India reveres them and expects the law laid down by them.

The fact that Muslims and women of certain other nationalities whose religion and society are different take full estate—is no ground for saying that the Hindu women should also have the same right. If full right is given to women in respect of properties inherited from males, the position of women will not improve—the result will be that they will fall into the hands of designing people and lose their properties. The new rule of simultaneous succession will have the effect of creating further subdivision of property with the result of increasing poverty especially amongst the middle class.

The position of children of anuloma marriage in the matter of inheritance is already provided for in the Shastras. According to the existing law the children of such marriage so far as their parents are concerned have the right of inheritance only—they are debarred from inheriting the relatives of their parents—and there is very good reason for the rule.

With regard to the Bill to amend and codify the Hindu Law relating to marriage, this Association is of opinion that the said Bill is unnecessary. Some of the provisions of the said Bill are subversive of the Hindu society. To meet the exigencies of the moment, if any, the Special Marriage Act, 1872, may be amended leaving aside the Hindus.

In short this association protests against the two Bills in question as they are against the Hindu Shastras and highly detrimental to the Hindu society.

66. Bengal and Assam Lawyers' Association, Alipore.

General.

1. There is no demand for an amendment of Hindu Law by the Hindu public. There is no such necessity for any such alteration.
2. Personal law of the Hindus should not be codified without giving Hindu public sufficient time to think over the matter.
3. A Code of law which has stood the test of thousands of years should not be changed without serious consideration or without serious necessity and demand.
4. The law should not be changed except upon the formation of a legislature the members of which would come after fighting their elections on this issue and upon Hindu votes, only or by plebiscite.
5. Certain provisions, if given effect to, will reduce the number of Hindus by reason of economic and social difficulties.
6. There would be worse fragmentation than amongst the Muslims.
7. Family life would be entirely unhappy amongst Hindus in general and their economic condition would be lamentable.
8. Uniformity in law alleged as one of the grounds nowhere exists, not even in the Code of Civil Procedure. Law varies with local conditions and the sentiments and methods of life, e.g., the laws framed for the Sonthals are not the same as for other Hindus. Even in the legislature some advantageous position has been given to some classes than others.
9. A reason has been assigned that women have now become educated and even members of the legislative bodies and consequently their rights of inheritance should be revised. Power acquired by them would not impose corresponding obligations upon others, i.e., might should not be right. They are provided with maintenance and

everything necessary for honourable life by their husbands and husband's relations. Further in the past we had women law givers, sovereigns, warriors, philosophers, mathematicians—even folklores have gone to the extent of women dacoits, but no demand was even made for change in their rights on that score.

10. It is amazing that while one Commission, viz., the Flood (Land Revenue) Commission reported after elaborate enquiry that means should be devised for preventing the fragmentation of holdings, another similar Committee is seen devising means that encourage and tend only to endless fragmentations.

11. We are tempted to quote what was observed on a different occasion by the late John Morley in his *Life of Burke*—"The old structure stands well enough though part Greek, part Hebrew and part Chinese, but you attempt to make it uniform, then indeed you would bring it down in an uniformity of ruins."

PART I—PRELIMINARY.

2. (2) The title "Hindu Code" is a misnomer, it does not consolidate the existing law: it rather subverts the same. Definition of "Hindu" is not clear. It is not clear if it governs those who follow only some branches of Hindu Law or Custom.

5. (b) "Caste" should include some sub-castes.

(c) "Full-blood" and "Half-blood"—uterine relations should be separately defined and provided for.

(i) "Related"—"Kinship" should be defined, if it includes relationship through same mother but different father. Definition of "Stridhan" is necessary.

PART II—TESTATE SUCCESSION.

1. (iii) "Or Nambudri" should be "Nambudri or Dayabhad."

Clause 5.—Should be omitted—we prefer adherence to succession as prevalent now.

Clause 6.—Order of succession as proposed is repugnant to Hindu instinct. It should be expunged.

Clauses 7—12.—To be omitted. Personal law should be followed where necessary.

Clause 13.—Women should not be given absolute right in inherited property. There would hardly be any necessity for styling any property as stridhan consistently with the other proposals of the Code. It would have been more appropriate under the circumstances to put it as 'any property' instead of 'stridhan property'.

Clause 14.—Order and modes of succession to stridhan property should remain as it is except that unmarried and destitute widowed daughters might be more liberally treated.

Clause 19.—Unchaste wife.—Proviso should be omitted and "unless . . . unchastity" should be omitted.

Clause 20.—Murderer and his descendants should be disqualified.

Clause 21.—Converts should also be disqualified.

'Heritable property' should be defined. It should include the liabilities of the intestate who might have made diverse gifts, and annuities that are to be paid by his son or pinda-givers.

Clause 23.—Existing provisions of law are to be retained. This clause should be omitted or altered as stated.

PART III—TESTAMENTARY SUCCESSION.

It is not clear if the whole of the Indian Succession Act is being made applicable. This should be explicitly set forth.

Testamentary succession should be made easier. Oral will under certain circumstances may be made allowable. Rules for the construction of Hindu Wills should not be as stringent as in the Succession Act.

PART III-A.

Clause 3.—Maintenance should include medical expenses and expenses for education and marriage.

Clause 4. "Male" in "male Hindu" in line 3 should be omitted. "Dependant" should be clearly defined as including persons who were receiving maintenance by living in the family.

Clause 6. (g) "Her" should be inserted before "stridhan" and the portion coming after "stridhan" should be deleted.

Clause 6. (3) "Or her own estate or earning" should be inserted between "circumstances" and "justifying".

Clause 8. Funeral expenses should be added to debts.

PART IV—MARRIAGE AND DIVORCE.

Civil marriage should not be included in Hindu Code.

Clause 1. (a) (i) Sapinda relationship should be as it is, including Trigotra rule.

Clause 3.—Clause (a).—Should be omitted.

Clause 3 (e). Age of the bride should be raised to 24.

Clause 23. *Guardianship in marriage*.—Mother should be excluded if she remarries.

Clause (b) 4. 2.—Step-brothers should be excluded.

Clause 26 (a).—Should be omitted.

Clause 26 (c) "Or undesirable" should be omitted.

Chapter III (*Nullity and dissolution of marriage*).—There should be no dissolution of marriage except under circumstances justifying it under the present Hindu Law.

31. Indian Divorce Act should not apply. Appropriate rules should be framed on the lines provided in Hindu Shastra.

PART V—MINORITY AND GUARDIANSHIP.

Clause 3.—*Powers of natural guardian*.—Mother should cease to be guardian if she remarries.

Clause 6. (2) Father should not be required to take permission of any Court.

PART VI.—ADOPTION.

Law of adoption should be left out specially as the widow has been given absolute estate. In case it is retained some control should be placed upon the widow in the matter of adoption.

67. The Rajshahi Bar Association (Babu Kshitish Chandra Sarkar, M.A., B.L., Secretary).

The proposed Hindu Code is in many respects against the feelings and traditions of the Hindus and is undesirable.

The giving of a share to a daughter in the presence of a son is not considered desirable or proper and would lead to disintegration of families and to litigations bringing ruin upon Hindu Societies. The idea of giving right of alienation to women over properties inherited from males is also foreign to Hindu idea and is not called for.

The proposed legislation cuts at the root of the principles underlying Hindu Law of succession and is not at all likely to be beneficial to the Hindus.

The position of mother, grandmother and widows and son's widows require consideration. The Hindu Women's Rights to Property Act, 1937, is a move in the right direction. Certain changes are necessary particularly to make the law applicable to agricultural properties.

The position of sisters, specially, unmarried sisters in the properties left by the deceased brothers and of daughters who are without provisions in husband's families, require better provision. Legislation may be undertaken to make better provisions for them.

Under the proposed Hindu Code, a female has a chance of inheriting both in her husband's family as well as in her father's family, and getting absolute right. Their position

would be thus better even than those of males. This is not necessary or justified.

68. The Tamluk Bar Association.

The Tamluk Bar Association disapproves of and strongly protests against the hasty and ill-conceived draft Hindu Code which ignores the social and economic aspects of Hindu Laws on inheritance and marriage. The introduction of the principle of the Muhammadan Law of inheritance, i.e., of Faraz, into the Hindu Code will lead to the destruction of Hindu social culture and ruin the joint family system. Fragmentation of agricultural holdings is agitating the minds of our economists and legislators. Consolidation of agricultural holdings seems to be the need of the day. It is curious that at this juncture the authors of the new Code have invented new elements to inherit the property of the deceased Hindu, thus aiding further fragmentation of Hindus' lands. No doubt, succession to agricultural lands fall within the special jurisdiction of the Provincial Legislature, but if Central Legislature enacts the Hindu Code, the Provincial Legislature will certainly extend similar provisions to agricultural lands. Joint Hindu family is the backbone of our society. We do not want the new law to throw this system to dust.

Everyone knows how the average Hindu is exceedingly fond of his ancestral lands and homestead holdings. Will he not be shocked by the idea that his ancestral lands and homestead holdings will henceforward pass by legislation to strangers and to different families allowing women opportunities to inherit both from their father and husband? Has the working of the Muhammadan Law of inheritance improve the economic position of the Muhammadans? If not, why introduce the Faraz principle into the Hindu Laws? The rural economy of the Hindu society may collapse as a result of this new experimental Law. Inclusion of foreign elements in a family property has generally accelerated disruption of family, resulting in economic decline. Even present Laws, such as the Partition Act, dislike and discourage coming in of strangers to possession of family property. Legislation on inheritance of Hindus requires thorough investigation and critical examination, which need considerable time. This is all the greater reason why the ill-conceived Hindu Code should not be made Law so speedily and hastily. Such an important issue should not be raised or decided, till after the next elections.

The Hindus, whose property, this new Code wants to dispose of so drastically, should be thoroughly intimated of its provisions and should be allowed sufficient time to criticize its provisions and to propose them if necessary. Legislation of such a controversial nature, which affects the lands of 70 per cent of the People of India, should not be taken up in a hot-haste manner, when owing to war, consideration of many urgent matters have been postponed.

From the social point of view, the draft Code if made law, will give a death blow to Hindu culture, and to Hindu society. Laws of inter-marriage amongst Hindus, Sikhs, Buddhists, and Jains and the right of divorce given by the new Code to women will disrupt and revolutionize our social life. Before introducing into our Hindu Laws such extraordinary changes, we should take statistics from Europe and America, of cases of divorces and other relevant matter to enable us to judge whether such drastic weapons should so abruptly be placed in the hands of women.

Moreover one-wife law must not be imposed on the Hindus who are for reasons well-known falling rapidly in number. If the law of one wife at a time be enforced, a Hindu having a barren and faithful first wife, will of necessity have to divorce her, to marry a second wife for upkeep of his line.

The present attempt to change the Hindu Law in the manner proposed is in short an attempt to wipe out from the face of the world the distinctive character, and individuality of the Hindus which has survived through ages of turmoils and vicissitudes, by introducing European and Muhammadan ideas of inheritance and marriage in place of distinctive Hindu ideas and thereby attempting to make Hindu Society a mere conglomerative reproduction, a

a time when the view has been accepted all over the world, that the people of each nation should be given opportunities to develop themselves in their own way.

69. The Bar Association, Midnapore.

The utility and the hazard of the attempt at the codification of the Hindu Law is, we think, as clear as noonday light. Unlike the Muhammadan Law and the English Law, which has grown out of the ancient Roman Law, the fundamental principle of the Hindu Law is that it is a personal law—*Lex Loc*—obtaining in a particular place and carried by a person of a particular domicile to his place of residence of different locality. Then again, the religious injunctions contained in the various smritis which do not agree with each other in all respects and are attempted to be reconciled by the commentaries, specifically called Nibandhas, and are declared by the highest court overseas to be authoritative, supply the principal source for the formation of the Hindu Law. We are fully aware of the principle laid down by the Privy Council, viz., "Clear proof of usage will outweigh the written text of the law"—in the case of *Collector of Madura v. Muthu Ramalinga* (12 M.I.A. 397) which usages may possibly be divergent. To compress down all these possibly incompatible elements and freeze them into a compact whole is, we think, absurd in the very nature of things. Moreover, the attempt is as uncalled for and injurious as to administer corrosive medicines to a sound physique. As far as our practical experience of a wide space of time goes, there has occurred nothing serious which calls for the introduction of a hazardous novelty by way of a Hindu Code, barring, of course, some minor anomalies and defects which can be cured by short legislations, as occasions arise. The ostensible object set up for the codification of the Hindu Law is the reduction and ultimate decimation of law suits which prove to be ruinous to the Hindu public in general. But we are confidently of opinion that if the Bill is carried through and passed into a Law, quite a mushroom of intricate cases will crop up in no time and not only will the law frustrate the object of its being but launch the already impoverished Hindus to protracted and expensive litigations, throw broadcast the seeds of discord in a family of joint members living in peace and amity, set the sisters and the daughters against their respective brothers and parents, and, in a word, upset the entire Hindu community and unnecessarily muddle the peaceful drifting of the Hindu life and even affect the religious feelings and the tenets of the Hindus which Her Majesty Queen Victoria declared always to be respected and untouched. The Bill completely loses sight of the fact that the secular properties of the Hindus, unlike the men of other nations, are not the means for the procurement of their temporary ease, comfort and luxury but for the furtherment of their souls in future lives and a Hindu without a belief in future life and *Karma* is not a Hindu at all. Then again the Bill very properly and modestly declares itself not to be a complete code and leaves untouched all agricultural lands. If so, why usher it at all and roughly raise the hornets' nest?

Coming to the body of the Bill, the definition of Stridhan is a new departure from the ordinary conception of the word as explained by the judicious of high repute. The law now is that property acquired by a woman from her husband or from a male relative is not her Stridhan. Thus, the property acquired by a widow from her late husband is not her Stridhan and she is restricted from its disposal as she likes, except for legal necessity. But under the proposed Bill, such property, i.e., property inherited by her from her late lord becomes her stridhan and she has absolute right of disposal over it. This change in the law will afford a handle to an impressionable green young female to squander away the property in frivolous pursuits and render her an easy victim to the designing and avaricious men who will be after her for her person and property.

Out of the two well-known and accepted principles of devolution of property by inheritance, viz. (1) the capacity to offer oblation and (2) the propinquity of the heir to the propositus, the framers of the Bill have confined themselves to the latter consideration only and have given a complete go-by, to that of the former, and totally ignored the religious aspect for the division of the property. The religious

aspect for the division, cannot be altogether lost sight of, as has been laid down by the eminent Jurists on Hindu Law and the Judges of the High Courts, including Their Lordships of the Privy Council.

The central idea pervading all the changes suggested in the Bill, as regards inheritance, owes its origin to the extra zeal and chivalrous spirit of dealing fairly to the fair sex—if it be not out of place we may mention that we yield to none in the expression of our respect for the weaker race and our woman worship is unique in the universe so much so that some of us worship the supreme Divinity in the shape of a woman—a thing unknown in the other religions. The Hindu Law which claims its origin from the deity has made ample provisions for the well-being and the decent living of the females in all the stages of her life, viz., her maidenhood, her married life and her widowhood.

Maintenances of girls and their suitable marriages are regarded as charges on the family property and according to the Dayabag under certain circumstances they even inherit property. After marriage, the husband has a legal duty apart from the impetus from nuptial love to maintain his wife in a befitting manner and according to his rank and status in life. Failure on his part in this respect, entitles the wife to get her maintenance through the courts, civil and criminal. When she is a widow, her maintenance is provided for by all the schools of Hindu Law. Governed by Dayabag, the widow gets the property, under certain circumstances, even though the son be in existence. Consequently, any change in the matter is not only unnecessary but is highly undesirable for it tends towards the disturbing of the social stability. We are not unmindful of the fact that stray cases may and do happen when a weak woman is pushed to the wall by her rapacious relatives. But we plead ignorance of any law in any country where the arms of the law are long enough to reach and meet all possible exigencies and can offer effective check to the perversion of its principles. On the other hand, we faithfully adhere to the trite old saying that "exceptions prove the rule." Devolution of property upon the daughters by inheritance is not only unknown to Hindu Law but is against its principles and the Sastras. Even during the Muhammadan rule, when the various commentaries of smritis came into existence, the authors did not think it wise to introduce the daughters as heirs along with the sons nor did the rulers raise any objection to the exclusion of the daughters from such inheritances. Devolution of property upon the daughters entails the disruption of the integrity of the family property and brings in its train the necessary evil of fragmentation of the family property and the consequent cropping up of innumerable suits.

According to the Hindu Sastras, after marriage, the daughter has got to adopt the gotra of her husband, she being regarded, in the eye of law, as a part and parcel of her husband. She has a right, and is bound, to reside in the husband's house and, naturally enough, she is, in a sense, severed from her father's family and is incorporated in that of her husband. Living as she does with her husband and his family, her attachment for the paternal family naturally cools down and it is not surprising that if she will get her father's property by inheritance as proposed she will dispose of it to strangers to the father's family and to undesirable persons, which will result in the disintegration of the property and in ruinous litigations. As a matter of fact we often meet with such instances, when the daughter inherits property under the Dayabag. Moreover, unfortunately female education in this country, especially in Bengal, is far below the proper standard, only a very small fraction receives the three R's educational training to manage a business far apart. Even educated females have evinced no business capacity. Women generally abide by the will of their husbands. Even in many cases strong-minded and educated wives out of devotion and love to their husband—part away with their properties when their husbands are in distress. So if any property comes to a woman by inheritance, as proposed in the Bill, it will pass out of her hands in no time and the object of the Bill will be frustrated. There is also the probability of the creation of ill-feeling between the domestic couple and the marital tie may sometimes be broken asunder. We, certainly, vehemently, object to

the devolution of property by inheritance, as suggested in the Code, to daughter's daughter, son's daughter, brother's daughter and sister's daughter.

In conclusion, we submit that there is absolutely no occasion for a change of the Hindu Law and not for the codification, at any rate, and we confidently believe that, if the Bill is passed into law, it will absolutely confer no boon to the Hindu society but, on the other hand, will prove to be a veritable curse. We, therefore, respectfully protest against the passing of the Bill into law.

70. Pleaders' Association, Tamluk.

The proposed Hindu Code is inequitable for the following reasons and should not be passed into law:—

(1) The spirit of the Hindu Code is directly against Hindu ideas and sentiments and seems to be an attempt to convert Hindu society into a Muhammadan and European society.

(2) The Code has not taken into consideration the Dayabhag system of Hindu under which the Hindus of Bengal have been governed for ages and to which they have been habituated for a long immemorable time.

(3) The Code attempts to give a direct hit to the religious sentiments of the Hindus and thereby violate the assurance in this respect given by Her Late Majesty Queen Victoria. Offer of Pindas is an essential element in Hindu religious rites and for its safeguard more than one marriage in the case of males, for the procreation of sons have been approved in all the Shastras. As an inferior alternative Dattaka Putras have also been approved. But the proposed Code aims to nullify it by introducing single marriage in the case of males in conformity with Christian ideas and Biblical teachings.

(4) The Hindu population of Bengal is fast decreasing and if the proposed single marriage of males be passed into law, that would be a further instrument for the extinction of Hindus.

(5) Divorce is an unknown thing in Hindu law and is abominable to Hindu ideas and sentiments. By its introduction the Code seems to aim at introducing Muhammadan and Christian ideas in Hindu society without taking into account the injurious effects on those societies.

(6) Regarding the law of inheritance the Code seems not to have taken into consideration at all the Dayabhag system of inheritance which is prevalent in Bengal and seems to introduce a system which is entirely topsy turvy to the existing one. The proposed law cannot be called a growth upon the existing one but revolutionary to it.

(7) By introducing daughter as an heir along with sons and by giving her permanent right in paternal property, the Code seems not to have taken into consideration the construction of Hindu family and the religious ideas on which it is based. It is objectionable for the following reasons:—

(a) Offering of Pinda is a religious rite highly beneficial for the spiritual benefit of the deceased. Sons are the only heirs who are enjoined to perform it. Wives and daughters and sons' wives or grandsons' wives are not competent to perform it if there be sons. As a duty has been imposed upon sons, so they have got a corresponding right to the sole enjoyment of property. It is unjust to impose that sons should go on performing this duty and bearing its burden while the female heirs should share the property with them without any burden.

(b) In all societies as well as in Hindu society it is the conception that girls should get married and live in a different family and would become a part and parcel of it. To allow her to drag a share of her paternal property along with her would be nothing more than a further fragmentation of the paternal property and disruption of family and loss of family happiness.

(c) The introduction of daughter as heirs would only be a cause of discontent and ill-feeling and would be without any appreciable gain to the daughter. If attention be turned to the working of Muhammadan Law regarding the inheritance of daughter it will be found that in the majority of cases the sons deal with the whole

property in absolute right to the utter disregard of the share of daughters.

(d) The marriage of daughters is a serious burden on the estate and no one knows what amount would have to be spent for it. At present the parents as well as the brothers do not flinch from spending any money for her proper marriage. By making the daughters sharers with sons there would be less incentive for the latter to get the former married at any cost. Thus most of the girls would remain unmarried which is directly against the spirit and injunction of the Hindu Law, as well as contrary to public policy.

The attempt in the Code to put a limit to the marriage expense of a daughter is unworkable and does not take into consideration the existing state of society. If the Government proposes any help in this matter be otherwise.

(e) The present Dayabhag system of Hindu Law is helping fragmentation of property in some cases injuriously. If further fragmentation be attempted, the sons who are the real backbones of all societies as well as of Hindus, would get unprovided and without any capital for improving the family as well as the society. In any society no females can stand comparison with sons.

(8) Widow of the deceased, the widows of sons and grandsons of the deceased, the unmarried daughters and other disabled heirs have a moral and a legal charge for maintenance on the estate of the deceased. It would not be a matter of much grievance if any such persons be given any share in the property for their maintenance, for their lives or for certain period as the case may be, instead of giving them absolute interest in the property.

(9) The gradual enumeration of other heirs is against the sentiments of the Bengali Hindus and is in utter disregard of the existing Dayabhag Law. The Code aims at introducing any number of female heirs some of whom in ordinary life may be unknown to the propositus and has given them preference over other nearest and dearest relations. It is difficult for a Bengali Hindu to conceive how a daughter's daughter or daughter's daughter's daughter and so on are preferential heir to sister's son, or grandfather, or an uncle or a great-grandfather and so on, with whom in the majority of cases the propositus lived in a family and who were the objects of affection to him, and who have helped him to be a man. The order of succession as given in the Code is unsatisfactory and is revolting to the Bengali Hindu idea.

(10) The aim of the Code seems to be to get in the females as heirs in as many ways as possible and by attempting to give them permanent right seems to aim at making the females well provided, so that they may be well-equipped to disregard the injunctions of their male relations and go on in their own way, which is highly injurious for the healthy, moral and spiritual atmosphere which is absolutely necessary in any society which may call itself civilised.

(11) Every law favours its followers. The Code has omitted to make a provision of disinheriting a non-Hindu, absolutely. If Muhammadan Law does not allow a non-Muhammadan to inherit a Muhammadan, the counterpart must be made in the Hindu Law as well. At the time when succession opens, the heir must be a Hindu.

(12) There should have been a provision enjoining Hindu children to be brought up in Hindu religion under the custody of Hindu guardian.

(13) There ought to be the provision for pre-emption among Hindus as it is obtained in custom somewhere still now. That right of pre-emption should not be saddled with observance of any technicality.

71. Netrakona Bar Association.

Members of the Netrakona Bar Association unanimously resolve that the proposed changes in the Hindu Law, as contemplated in the Draft Hindu Code, are highly improper on the following amongst other grounds:—

(1) Spiritual benefit has scrupulously been banished.

(2) Marriage to a Hindu being an obligation for continuance of family tradition and for payment of *Pitruvas*

the proposed Code, totally disregards the same and the Marriage Bill is contrary to the spirit and principles of Hindu Sastras.

(3) Divorce without dower debt, is an irrational proposal and it cuts at the root of Hindu ideology.

(4) In spite of removing anomalies, if any, as contemplated in the draft it will rather give rise to occasions for further anomalies.

(5) The changes proposed such as divorce in marriage, forms of marriage, intestate succession, are wholly opposed and repugnant to Hindu ideas and ideals of Hindu life and society.

(6) No uniformity can be evolved as contemplated in the Code for about one-third of the Hindu population, as defined in the Bill, live in Indian States, where the proposed law will not apply, rather it will severely shake the foundation of Hindu society.

(7) Inheritance under the Hindu Law being on the principle of offering *Pindas* to the deceased, the proposed inheritance Bill will shake the very principle of *Pinda*-theory and it would further mean fragmentations of properties, so as to reduce them into nothing against solidarity and strength of the Hindus as maintained by the present law.

(8) The proposed Code is not in keeping with the real spirit of the Hindu Sastras.

(9) The proponents of the Bill have totally disregarded the Hindu sentiment and culture and tradition.

Hence the decided opinion of the members of this Bar, is that the Draft Hindu Code, be dropped altogether, and the existing Hindu Law be retained and followed as it is.

72. The Secretary, Bar Association, Garhbeta.

I on behalf of my Association beg to record our emphatic protest against the proposed Hindu Code which my Association thinks to be one of the most ruinous and mischievous character which is going to hit at the root of the Hindu religion and society on the following grounds among others :-

(1) According to Hindu Law succession is moulded on the joint family system, the normal condition of Hindu society and on the principles of spiritual benefit. The proposed Hindu Code will bring in foreign elements into joint Hindu families to cause disruption and ruin of joint Hindu family and the principle of spiritual benefit is altogether ignored.

(2) The proposed Hindu Code will compel every Hindu to execute a will which will bring in endless litigations in its train.

(3) Owing to the physical, mental and intellectual weakness of females, ancient sages refused to grant them absolute right in properties inherited by them. If they be granted absolute right as proposed, clever and designing relations will deprive most of them of such properties. Further such provision will break up the integrity of the family property.

(4) Childless persons adopt sons. He who is unwilling to have his property devolved upon his natural heirs adopt sons. If the widow be authorized to adopt son, without her husband's permission, it will be defeating the intention of the owner.

(5) Compulsory registration of marriages according to Hindu rites and usages will bring in unexpected evils in Hindu society.

(6) The proposed Code will strike at the very root of the Hindu society which is based upon Hindu Shastras thousands of years old.

(7) Hindu marriage, which according to the Hindus, is not a contract but a sacrament. This religious aspect in marriage is going to be destroyed.

(8) The proposed sagotra marriage is not only against Hindu religion but will lead to corruptions which is foreign to a Hindu mind. By this the interest of the females will suffer much because suitable distant bridegrooms will be denied to them.

(9) Inheritance of unchaste wife will promote moral degradation.

So the proposed Hindu Code will unsettle and upset every settled law and usages prevalent among the Hindus from ancient times and bring in ruins of Hindu families.

73. Barisal Bar Association.

This Association is against Codification of the personal law of the Hindus which is closely allied to the religious feelings, sentiments and usage of the Hindus particularly by the legislature which is composed of people of various nationalities and religion and this Association is further of opinion that the law, even if passed, would be ultra vires of the legislature and further this law should not be passed at the present unsettled condition prevailing in the country owing to war and the famine condition.

As to intestate succession the principle upon which succession takes place has been ignored.

The giving of absolute rights of those female heirs who after marriage belong to families other than that of the propositus is likely to affect seriously the economic life of the Hindus generally. Take for instance the case of a daughter who after marriage belong to the family of her husband. She cannot ordinarily be expected to come and live with her brothers as she is maintained by her husband who is also responsible for the education of her children. In such cases it will be open to her to transfer her share to an outsider. There is no provision to prevent this by giving a right of pre-emption to the male heirs. The application of the Partition Act in case she sues for partition does not appear to be sufficient for avoiding this contingency. It appears that the framers of the Bill apprehend trouble for enjoyment of the property from the male heirs only. Trouble may very often be created by the female heirs who will be guided by the advice of their husbands. Then again we should realize what would happen after two or three generations and to how many different families the property would be devolved. The result will be a total disintegration of the family. It is most likely that in order to avoid such a contingency people will take recourse to create Debutters or make testamentary disposition of their properties which will increase litigation. In order to safeguard interests of the females proper arrangements may be made by Legislation for the education, maintenance and marriage and widowhood without any one else to maintain them. In view of these and other difficult questions that may arise the proposed Legislation does not appear to be beneficial to the Hindu Society.

Marriage Law as adumbrated is not necessary. The main principle of monogamy is practically followed all over the country and legislation at the moment is not called for.

If the marriage law is bad—the law of dissolution of marriage is worse and certainly repugnant to all Hindu ideas.

As to dissolution of marriage in the proposed Bill it will be open to the husband to obtain divorce on the ground of impotency or unsoundness of the mind of the wife. There is no provision in the Bill for the maintenance of the divorced wife. They will not be able to find a second husband to maintain them. If we consider the case of a wife who becomes insane after giving birth to two or three children and then continues to remain in such condition for seven years it will be open to the husband to obtain a divorce and turn her out of the house separating her from her children simply for the purpose of enabling him to marry again. The idea seems to be revolting to the Hindus.

74. Mr. Dhirmannath Mukerjee, Muktear, Midnapore.

The draft bill as a whole was framed with a spirit of utter disregard of longstanding usages and customs prevailing among the Hindu Communities and the proposed bill if passed into law would upset age-long Hindu cultures and tradition based on *suti* and *smritis* founded by *Rishis* of ancient age. It is known to all that the principle of nuptial bonds among the Hindus are not based on Civil contract between the parties but it is based on the highest dictates of *sastras* and it is regarded by them as irrevocable. Disregarding that if the system of divorce is introduced the peace and happiness so far remains between the married couple would soon fade away bringing a awful disaster within the Hindu families. The wives of Hindus are now regarded as a necessary accompaniment, for

the attainment of their religious salvation and they are the most useful elements of their household duties. Most of the Hindus in this country are too poor and they can manage to make their two ends meet with the active co-operation and assistance of their wives and that blessed tie would more and more be slackened if the proposed system of divorce is passed into law.

We often hear some sober Muhammadans complain that their properties are divided into pieces after their death by the system of female inheritances and if the proposed system of female inheritances of various grades are introduced among the Hindus the same calamity would surely befall on them. The proposed system of marriage among the Hindu sagotras has been highly condemned in our sastras and the Hindus in general would abhor it with their heart of hearts.

The word "sudras" as a class among the Hindus comprises within it as for instance highly cultured Kayasthas and also low class peoples such as Bagdis and Domes, etc., who are rather uncultured peoples; the proposed inter-marriage if introduced among them the future generation as the outcome of such marriages instead of being blessings to the society would retard its growth altogether bringing awful corruptions within it. It would not be out of place to mention here that the widow remarriages have been legalized some 50 years ago but unfortunately it is evident that the issues of such marriages even now are not acknowledged in our society in the same category with the issues of pure caste Hindus.

The present social bondage which is prevalent was introduced by Rishis of modern age and the Hindus would naturally like to acknowledge the dictates of men of like cultures and visions otherwise an attempt like this to remodel the Hindu society may to my humble opinion bring widespread discontent.

The proposed system of introducing monogamy amongst the Hindus would however be welcomed no doubt provided that a certain provision is made in it that a male issue in his married life may take another wife in some exceptional circumstances in case the husband prefers to make sufficient provisions for the support of his living wife. I quite agree with the framer of the bill regarding the proposed devolution of sridhan properties which I think would be thankfully acknowledged by our society but as the major portions of the provisions of the bill are not suitable to our society the bill as a whole ought to be dropped.

75. The Muktears' Bar Association, Burdwan.

This revolutionary Bill is no doubt intended for and is leading to remoulding a new Hindu nation, excluding the Muhammadans and Christians of India, by mixing up Aryans and non-Aryans, i.e., the Caste Hindus, to a common platform, both social and religious with the lowest aborigines that inhabit any corner of this British India and thereby severing them from their relations living in non-British areas for ever.

This is the sum and substance, that we could collect, at the aim and result of this uncalled for move, certainly due to some selfish or philanthropic activities of some so-called social reformers.

It is no doubt a horror to contemplate that such a revolution, that was never thought of even in Emperor Aurangzeb's time, can ever be brought upon the (Vedic) Barnasrami Aryans of India, so as to efface practically its existence altogether from the face of the earth.

We think it unnecessary to discuss the provisions embodied in the Draft Code one by one that are all, in our estimation, like so many bombshells aimed at and ready to blow down to dust a very old social structure, founded by a class of population of immemorable existence, inasmuch as, we have every doubt as to the right and authority of the said Reformers to give the start and to get the drafting of the Bill in consequence.

We, as professional men, having constant and close touch with village folks and having our abodes in villages that constitute the soul and body of the nation, have every knowledge of and are fully acquainted with the mind and heart of the caste Hindu mass population, men and women alike, who are the objects of and are to be subjected to the provisions of the Bill, and venture to say from our experience without the least hesitation, that the very ideas of the Bill and every provision of the same

would be a terror to them, inasmuch as they do not want nor do they expect any change whatsoever in their social and religious affairs.

We beg to add that the topics dealt with in the Bill, are all included in "Dharma" affairs that form the basis upon which the Baidik (non-vedic) Barnasramies the non-Aryans, stand, live and have been living since the Aryan's settlement in India. And we beg to add also that the word 'Dharma' literally meaning 'that which sustains' means and attributes to that, and every item of it, which sustains anything, inanimate or animate—class, body or individual in a particular status or grade and thereby maintains its separate existence in the world's register, i.e., its specialities, so, it will not be difficult to understand that, how up-keeping of a pigtail becomes Dharma to a Brahman and how every item of interference in the peculiar social construction of a Baidik Barnasrami by this kind of legislation would be a death-blow to him, ending in his total abolition, just as an iceberg when liquefied by application of heat. Questions of good or bad, gain or loss, right or wrong and white or black have no place here. The strict principle of a Baidik Barnasrami Sanatani Hindu is full acknowledgment of a paternity and firm adherence to paternal pathways of life based upon the theory of the son's representative character of the father in this world's office. Consequently, he wants to live a caterpillar all through and abhors being a honey-seeking butterfly on the very corpse of the caterpillar existence.

It will not be out of place to mention here, that the word 'Hindu' is the national or rather international denomination of the inhabitants of India irrespective of any caste or creed and that the name of our religion is not Hinduism, but Barnasram or Barnasraya meaning, a Dharma, i.e., a sustaining social organization based upon classification or a social design which shelters various classes of men. The word Hinduism is however a mistake from some time. Others may commit such mistakes, but we must suppose that one, who ventures to remodel his grandfather's society—the platform of his special existence must know its exact denomination and must understand also, that erasing 'Barna' from 'Barnasrama' is rubbing it off altogether from the world's index. Otherwise, we are totally hopeless.

This is, however, an undeniable historical fact, that when the Aryans from Caucasus migrated to India and settled here, there were a good many heterogeneous tribes of non-Aryan aborigines residing in the country, and because of the peculiar construction of the total organization, the Barnasrama of the Aryan grandfathers, the multifarious aborigines were also allotted with a particular seat on the Indian Aryan-Social gallery to sit on without becoming hindrance to each other and without intermingling the blood or in their heterogeneous practices in life. They, we know, are still existing as such.

Now, this is also as clear as daylight, that, this contemplated Bill by its ingenious provisions to be taken as a whole wants to engender a new species of human race by intermixture of Aryan and non-Aryan blood and by establishing social practices, lowermost in our present estimation all round.

It will not be unnatural if questions arise in the minds of the people to be affected by the Bill as to the details of the social reformer and it will not be surprising if their imagination fails to swallow, how a man of their own rank—one of pure Barnasrami Aryan origin can conceive for a moment his mother leaving him by the bedside of his disabled father, uncared for, and running to the bed room of her newly wedded husband and so forth.

We need not go too far by way of discussion because, as we ourselves do not want a bit of change in our household, social or religious affairs we have no mind as well, to dissuade anybody from his adopted pathway in life or to convert his move to ours. We fully acknowledge everybody's right to adopt any course of life he chooses in so far as his household, social and religious affairs are concerned and we shall be glad to be so treated by the philanthropic reformers of the present. We may suggest here by way of our opinion that, it would not be statesman-like on their part to spread dissatisfaction in any way at this time of almost starvation, but to prepare, first of all, field to sow seeds by spreading education in this uneducated country.

We believe that the course adopted by the Honourable legislative authorities in this matter, i.e., collecting people's opinions over it, goes to show that people's opinion about the Code is to be the only basis of their action and criterion of their decision about it. It is no doubt a consolation. But we are not in the know, in what way this method of collecting opinion will be utilized. The matters dealt with in the Bill, are not for the benefit of the state, nor of its subjects in general as to their peace and order, health or prosperity, but they are not merely family arrangement of a certain sect of subjects, but, we understand and every one having a bit of intelligence can understand, remoulding its basis of special existence in toto.

Under the circumstance our humble opinion is that the general method of majority preference in voting principle will not only be of no avail, but will be unjust and may amount to a tyrannical highhandedness over those who do not want it.

We know, the general principle of a civilized monarchism is not to interfere in religious, social or family arrangement of the subject nation. Had it not been so, there would have been no trace of this 'Barnasrami Hindu' in India midst long long foreign subjugation.

Apart from the Act of 1833 and the solemn proclamation of the British Monarchy, known as the Queen's Proclamation of 1858, we understand that the principle of non-interference honoured by the Muhammadan rulers will not be dishonoured by the far more civilized British nation and we also think it to be the honest, religious and legal duty of the British Government to protect this sort of interest of a very insignificant minority of its subjects even, from attack from outside and inside as well.

The effect and influence of foreign rule and of introduction of foreign education in society are not unknown to us, and we are not astonished to see that some of this society are claiming their origin to be of this society, both male and female, want to remould their society in the European fashion or so, or want to be led adrift like rolling stones on the bed of a river, towards eternity. We think it quite natural and we do not wish to stand on their way as we do not like to be interrupted by them, upon the general principle of non-interference in religious, social and household affairs. We, therefore, under aforesaid circumstances, and in conclusion beg to express our humble opinion that if the legislative authorities are at all inclined to make the Code a law, by crossing over the tedious diversity of opinions of the change-lovers, who are, we believe, mostly women having scarcely any touch with the village community of their own and who are scarcely in harmony with each other, may do so; and may add to or subtract from it anything they like provided that the definition of 'Hindu' as written in section 2 (2) of the Code be modified so as to make the law applicable to those who want the change and thereby excluding them who do not want any change: such as, writing out after the definition—"Provided he, after the passing of this law, duly enlists himself as a progressive or an advanced Hindu in a register duly kept by the Collector of the District, etc., etc." This kind of entry, we are sure, will do away with all the difficulties withstanding the passing of the law, by one stroke of pen, and its effect will serve as a test of the country's progress towards advancement every day.

We may mention here that the steps taken by the authorities for publicity of the Bill is still insufficient and the hurry expressed by the words "at an early date" in the explanatory statements, are still more dangerous.

We would like that the social reformers to proceed to villages to preach their progressive elements and to witness the country mother's broomsticks, ever uplifted against their progression as a token of disapproval.

76. Mr. Nalini Kumar Mukherjee, Advocate.

This important matter requires close scrutiny from every member of the Indian Bar as well as the general public. It ought not to be accepted or rejected in toto without a proper consideration and critical examination of its provisions in all their bearings. It has an important bearing, I presume, upon the destiny of India as well as the coloured races in the world. Its first provision which arrests attention, to begin with, is its nomenclature, specially the words "Hindu Code" and the definition of the word "Hindu" in the Code.

In clause 2 the 'Code' has been made applicable to all Hindus but 'Hindu' in the Bill means a person professing the Hindu, Buddhist, Sikh or Jaina religion, and any person who would have been governed by the Hindu Law or by any custom or usage as part of that law as now in force. A Brahmo or an Arya Samajist also has been included within the definition as well as a convert to Hindu religion. Deviation from the orthodox practice or express disbelief in any of the tenets of all these religions will not debar a person from being a Hindu. Thus we see all dissenters from Hindu religion have been included within the fold—while the converts to Islam and Christianity have been studiously excluded. But the number of converts to those two religions are not negligible and their faults in this direction, if fault they might be called, are not more serious than those of the Fire dissenters who have been readily included in the definition. The reformed Hindu is treated by the Sanatanists as less Hindu than the converted Muhammadan and Christian for, even now the Muhammadan and Christian converts in Bengal villages, in their culture and habits of life, are less different from the Sanatanists, except in religious practices or actual worship. Muhammadans and Christians in Bengal rear cattle, cultivate lands, and bring up their families just as the Sanatanists do. Under these circumstances we do not find any principle or reason for which these Muhammadans and Christians who can trace their origin to common Hindu ancestors should be stigmatised as non-Hindus by legislation. It would be rather more reasonable and proper that they should also be included in the Hindu fold as Islampanthi and Christapanthi Hindus as well as Nanakpanthis, Jainapanthis and Buddhapanthis and Rammohan and Dayananda panthis. They too worship one god and observe fast, charity and other devotional practices common to all religions.

2. *Amendment of Hindu Law.*—Hindu Law is based primarily upon Srutis or the Vedas as subsequently interpreted and adapted to circumstances from time to time by Smritis, Sadachar or reasonable customs or uses and equitable principles. So amendment of Hindu Law is a misnomer for this cannot be amended but with the change of circumstances and environment rules of Hindu Law may be changed from time to time to adapt them to the circumstances of society and environment conformably to the principles laid down in the Sastras. Hence the word 'to amend' should be replaced by the word 'to adapt' to the circumstances of the present-day world.

3. *Codification.*—The laws that we find in the smritis represent the legal aspect of a Varnastram or an economic structure of society then existent; but during centuries that have passed since then the economic structure has almost undergone a complete change. Indian society is now in economic chaos. None knows what will be his occupation tomorrow. But we all expect that after the war there will be a world Economic conference in which people of all countries will take part and evolve a scheme of economic development of the world as a whole in which every man and woman in the world will have some part assigned to him or her and they will have duties to perform and rights to have all their economic and social needs satisfied by their own earnings. Up to that time no permanent law can be made. We shall have to wait till then and meet the exigencies of the situation only by urgent legislation for adaptation merely. When we have passed through all the phases of this unstable society and find a stable world with a stable economic structure, then and then only we can hope for a codification of a permanent or durable legislation.

4. *Sagotra marriage.*—Each caste in Hindu society comprises numerous people of various gotras. So there is no necessity for marriage within the same gotra. If inter-caste marriage is allowed the number of marriageable grooms and brides will multiply. Hence the claim for sagotra marriage is untenable.

5. *Inter-caste marriage.*—Among the reformed Hindus, specially of the progressive section, purdah has been cast off. Women and girls now come into contact with young men in educational institutions as well as in business life. They also serve together in the same offices and factories as well as in charitable and social work. When young men and women come together in such manner they may contract *gandarva* or secret marriages, like *Dushyanta* and *Sakuntala*, and more often than not, they may likewise forget the incident in no time. Such secret

marriages cannot be prohibited by law or social injunctions. Therefore it is highly expedient to facilitate registration of such marriages with the least publication and with the least expense and trouble. But irresponsible people without much sense of duty may betray several women, one after another, without having any intention of shouldering the responsibilities of the husband. For this reason it is necessary that an oath of having no other wife alive must be condition precedent to registration of such marriages. Such marriages generally do not bring in permanent happiness. There are instances where Indians contracted such marriages and then left the wife and the children secretly to shift for themselves without at all caring to know anything more about them afterwards. But in such cases second marriage for the women will become difficult if not an impossibility in our society. Hence it is expedient that some law be enacted compelling such culprits to provide for the maintenance of the wife and children as long as they survive the desertion. But nowadays only inter-caste marriage will not be enough but marriage with Europeans, Americans, Africans, Australians, and people of other parts of Asia should be equally left open by registration. Such rules ought not to be incorporated in the Hindu Code but in a separate piece of legislation governing people who, for the time being, come to reside in India.

6. *Divorce*.—Nowadays even marriage once in a life for a Hindu girl has become difficult, if not impossible. After divorce no Hindu girl will be able in most cases to secure a 'second' husband. So there is really no necessity for divorce. If the couple cannot live together amicably they may live separately and the husband ought to be liable to provide for at least a bare subsistence for the wife if she does not live in adultery.

7. *Nullity of marriage*.—The above remark holds good in cases of nullity of marriage. But we can prevent such unhappy marriages if we now take care to get both the parties to the marriage examined by competent medical men or women before the marriage as to their fitness for the same specially when the husband or wife is taken from a family not previously known. Prevention is better than cure.

8. *Sisters inheriting with the brothers from the father*.—The prosperity of a nation depends upon its agriculture, industries, trade and commerce and other productive occupations. For this, capital, previous occupation and occupational training are necessary. Sisters generally go to their husbands and take up or help them in their occupation while the brothers or the sons take up the occupation of their father or their ancestors. Neither the sons nor the daughters are entitled to spend or squander away the corpus of the business of the family upon which depends the livelihood of the entire family including the sons, and unmarried daughters, widows and other dependants. Surely daughters inherit from their mothers. But this Stridhan property of the mother generally does not form the capital or corpus of any business, trade, or agriculture but consists only of personal properties like ornaments, etc. Distribution of such personal properties of the mother, in most cases, does not affect the 'sons' or 'brothers' in carrying on their ancestral business or earning their livelihood from the father's occupation. Hence distribution of mother's wealth is permissible to compensate the daughters. But when daughters are married to a family of equal wealth with their father, what the daughters will gain by inheriting the father will, in most cases, be lost by giving a share to their husbands' sisters. So on fair accounting there will be no gain but much trouble. Only in cases where daughters are married to poor families or their husbands lose their fortune by misfortune some provision for the poor daughters becomes necessary and is generally made by prudent parents, by will or gift. Provision may be made for granting probate of such wills to daughters without any cost. That will be more conducive to the happiness of society.

9. *Absolute interest of women in their inheritance*.—Absolute interest means a right of transfer. If the woman transfers her inheritance in no time she becomes a pauper and without provision for the rest of her life. Such right of transfer was given to occupancy ryots of Bengal by legislation as well as judicial pronouncements from time to time. The result was that when the ryots got the unfettered right of disposition they ceased to be ryots

and become labourers without any property. It is well known that in the last famine such erstwhile landless ryots suffered most for want of food. Not only that, the survivors have no fixed occupation to fall back upon. They have no attachment for agriculture and unlearned much of what they knew of it. So skilled agricultural labourers too are unavailable in Bengal now. Surely certain women have better capacity to manage estates, business and agriculture than their brothers. But by their ingenuity they can earn a large income which they will be entitled to spend without touching the corpus of the family. It will prove the truth of the adage current in Bengal that a daughter is worth ten sons. In case of sons, too, there ought to be some restriction on alienation, specially out of the family. But we do not like that our women will sell their inheritance and in after-life earn a pittance by working as coolies in mills. We want to avert such catastrophes.

10. *Monogamy of males*.—Already there are several unmarried girls almost in every family. Until some arrangement is made for providing a husband for each of them no rule of monogamy for men ought to be enacted. It might be necessary, as in the case of Solomon the Wise and the virtuous King Dasaratha that a large number of unmarried girls will be provided for, like married wives, in the houses of rich men where provision will also be made for their education, culture and training in fine arts.

In times of war when a large number of young men of all nations are being killed or mutilated in fields of battle enactment of strict monogamy may lead to undesirable results.

11. *Inheriting by the blind, deaf and dumb and the lunatics*.—As the law stands sons and grandsons of such disqualified heirs are entitled to inherit from the father of such disqualified heirs together with their brothers or their sons and grandsons. Surely blind, deaf and dumb persons and lunatics will not be able to manage their own affairs without extraneous help. Now they get maintenance from their father's estate. Inheriting a share in the same will not increase their happiness, comfort or peace of mind but they will be liable to be deprived of their inheritance by wily men and in such cases they will have nothing to gain but much to lose. We think that the existing law will be better for their well being.

77. Mr. F. Gopal Chandra Biswas, Pleader, Barisal.

1. *Inheritance and simultaneous succession of daughters*.—I am against it. Because (a) Dayabhag rule is based on the theory of spiritual benefit. Any change will interfere with Hindu religion which the Legislature is incompetent to do; (b) any such change will revolutionise and undermine the very structure of Hindu Society; (c) vast majority of the Hindus do not want but rather oppose it; (d) it will strike at the very root of what remains of the Hindu joint family system, resulting in fragmentation and disintegration without any appreciable benefit; (e) provision may be made for maintenance and marriage expenses of unmarried daughters a charge on father's estate instead of making them simultaneous heirs with sons.

2. *Monogamy*.—I am against making it a rule of law though it is at present mostly a rule of practice.

3. *Divorce*.—I am against it. It is opposed to the very spirit of Hindu sacramental marriage which is indissoluble and unlike a social contract. In cases of fraudulent marriages our courts have powers to declare them invalid and inoperative. In such contingencies there will be no necessity for dissolution of the marriage but simply a declaration that there was no valid marriage at all.

4. *Sagotra marriage*.—I support it but am against Sapinda marriages on eugenic grounds.

5. *Inter-caste marriage*.—I support it. Provision, however, may be made for its separate registration.

6. *Consent in minor's marriage*.—A girl before completing 18 years should not be allowed to marry with her own consent.

7. *Absolute estate of female heirs*.—I am against it. Because a large percentage of our females is illiterate and ignorant and there is every apprehension of its abuse.

8. *Adoption in absence of husband's prohibition*.—I support such adoption provided there is written consent on the part of persons affected by adoption.

9. *Testamentary power*.—It should continue unfettered as hitherto. I am against any kind of restriction of this right.

10. *Conclusion*.—I don't feel any necessity for any codification and have grave doubts of its possibility and

efficacy. I apprehend its deteriorating effect on social and economic condition of Hindus. With the gradual development of our society and specially of female education a time will come for liquidation of illiteracy and ignorance of our female folk when the proposed Code may not be a misfit and maladjustment.

78. Mr. Giridhar Mohan Ghose, Muktear, Mymensingh.

To avoid difficulty it is desirable the law should be simple, reasonable and conscientious.

(1) By the word "Hindu" it means any person who is Sanatanist, Buddhist, Sikh, Arya Samajist and Brahmans, Jain and Parsi and anyone who professes himself as Hindu and whose religious preceptor is born in Hindusthan except non-Hindus and the laws will be applicable to Hindus and to those converts who, by custom, follow the Hindu laws in their inheritance, rites, manners and custom though some of the sects may not follow strictly Hindu Laws at present but call themselves "Hindu" (the definition given by Hindu Maha Sava).

(2) Inheritance should be allowed as in current Hindu Laws, women giving a life interest to their husband's share even if the husband dies during the lifetime of his father having no child if the woman is not remarried.

(3) Stridhan as in current law.

(4) No convert to other faith will get the inheritance if vested even.

(5) Will as in current law.

(6) Any Hindu not within the prohibited degree can marry any Hindu woman without the registration of his marriage which is optional in any of the rites as desired by them as a spirit of toleration.

(7) Any Hindu man or woman can divorce his wife or husband on the following grounds and the divorce shall take effect on due and weighty consideration with the greatest reservation:—

(a) If any of the pair is unfaithful.

(b) If any of the pair is to be in jail for a long time if it is unbearable.

(c) If any of the pair is permanently disabled or diseased.

After divorce the wife will not inherit to her life interest to her former husband's or father-in-law's property as in the case of remarriage.

(8) Guardianship as in current law.

(9) Adoption as in current law with authority to adopt any Hindu of any caste, creed, sect or converts to Hinduism.

79. Mr. N. L. Battacharya, Advocate, Calcutta.

As a Hindu and a member of the legal profession, I beg to bring the following objections to the proposed Hindu Code to your kind notice. While generally adopting the arguments urged by the opposers, I specially mention the following grounds:—

(1) The limited jurisdiction of the present Federal Legislature frustrates your avowed object of Hindu "Sangathan" by means of a common code.

(2) Codification would bring in rigidity and would hamper the further growth of Hindu law according to the changing needs of the society.

(3) You are trying to improve society by means of legislation. This is not to be. Change in law is the effect and not the cause of change in social condition.

(4) Your action is too hasty in comparison with the enormous importance of the task before you. Slight error on your part may be disastrous to the interests of the Hindus. Surely you have no right to play with the fate of millions of Hindus.

(5) How can you presume that the revolutionary changes made by the proposed code would be acceptable to the people in general, specially when they are not the outcome of their demand? This is not a proper subject for experiments.

(6) In a democratic country, changes which shake the root of the society should only be made after giving the people sufficient time for deliberations and on ascertaining their opinion by adult suffrage and referendum. But your method of social reform resembles Nazism and Fascism!

(7) The present legislature is in no sense a representative of the Hindus. What right it has got to interfere in matters strictly personal to them?

(8) When progressive people like Muslims and Christians can do without a code, why should we Hindus be so restless to have one even in the midst of war?

(9) Your code will be a great help to the British Government in its divide and rule policy by dividing the Hindus into two hostile camps.

(10) By striking at the constitution of Hindu society you would divert the much needed attention of the Hindus from the national cause. This will mean postponement of Indian "Independence".

(11) Your code does not take into account the huge changes in economic condition, likely to take place after the war. However well drafted, your code would be unsuitable in a few years. Therefore, if you must make a code, better make it after the war.

(12) Your code disclaims the Divine origin of Hindu law. Have you fully considered the implications of this revolutionary change? The effect of the moral shock in substituting human legislators in place of God will be tremendous in all directions.

(13) You take it as a truism that by enlarging the proprietary rights of the women, they would be better off. It may not be so. It may be good for an English woman who claims equality with a man. But how can it be good for a Hindu lady who adopts "sacrifice" and "subordination to the husband" as her ideals?

(14) Your provision for daughter's inheritance would increase litigation. It is often impossible for brothers and married sisters to be co-owners. Therefore partition would be necessary in every case.

(15) By making law of intestate succession territorial instead of personal the difficult question of domicile would come in.

(16) Inheritance by daughters would greatly hamper joint family business.

(17) This provision would induce marriages in rich families by unscrupulous persons with monetary end in view. The daughter's share will be a fruitful cause of conflict between the son and son-in-law. In many cases the son-in-law is likely to take undue advantage of his influence over the daughter.

(18) The provision for inter-caste marriage would not benefit us in any way. If it prevails, the Brahmans as a class would lose their identity with no corresponding benefit. It is the Brahmans who have maintained the Hindu religion up to the present day. With their merger and mixing among the Sudras, Hinduism is sure to die. To those who argue that this would lead to our political upliftment, my counter-proposal is, that let us all be converted into Muhammadans so that unity and independence may be immediately achieved under the Pakistan heaven.

(19) The provision for monogamy is unnecessary and may be harmful. We are now too poor to maintain plural wives. Polygamy is now rare. If polygamy is prohibited by law, it may lead to wrongful divorce or conversion.

(20) Divorce would not give greater benefit to Indian ladies than judicial separation and maintenance. On divorce it would be difficult for Hindu ladies to secure husbands and they would lose the right of maintenance as well.

(21) Hindu marriage is now a sacrament. It purports to unite the husband and wife into one for all time to come. A typical Hindu lady actually tries to realize this end by merging and subordinating her individuality to that of her husband. Your code makes her a co-ordinate contracting party, imbued with the ideas of liberty, equality and diversity of interest with the husband. The above two positions are obviously incompatible. If both are attempted at the same time it would surely lead to confusion.

I must frankly admit that your proposed code draws pointed attention to the fact that Hindu society requires some reforms. In my humble submission it is the social reformers and not you legislators, who are the proper persons to undertake this task. Except inter-caste marriage there is nothing in your code which cannot be done by a Hindu without its aid. For example every father can give his daughter a portion of his property by will. But the fact that few actually do that shows that your new provisions are not acceptable to the society at the present day. Besides your hurry in putting the code into statute book is not justified. You cannot say that without enacting the code immediately a material harm is going to result. In my submission you should wait till the end of the war. Let deliberations continue in the meantime and let people realize the implications

of the changes suggested by you. When the war is over if after due consideration the Hindus by a majority approve your Code with amendments, if necessary, there is nothing to prevent it from being law. By waiting till the end of the war the possibility of error would be reduced.

80. Mr. Subosh Chandra Sen, Pleader, Midnapore.

The sources of Hindu Law according to Manu are (1) vedas or revelations, (2) smritis, institutions of principal sages handed down by words of mouth from generations to generations, (3) approved and immemorial usages, which satisfies our sense of equity and acceptable to reason.

Yajnavalkya improved upon it and added that an Act proceeding from good intention should also be declared as source. So that law is twofold—Divine and Human. Divine Law is contained in the vedas.

Human Law is in the codes of Manu, Yajnavalkya, Parasara and other sages.

The Calcutta High Court in 4 B.L.R., page 103 observed that Hindu Law of inheritance is based on the Hindu religion, and we must be cautious that in administering Hindu law we do not by acting on our notions desired from English Law inadvertently wound the religious feelings of the Hindus or lay down principles at variance with the religions of those whose law we are administering. The Privy Council has said in 13 M.I.A., page 373 that the Hindu Law contains in itself the principles of its own expositions. Therefore any change or codification of the Hindu Law require a deep study of the vedas and smritis and other shastras containing expositions of Hindu Law, which again requires a deep knowledge in Sanskrit without which the basic principles cannot be clearly followed.

No doubt Hindu Law should be changed, to some extent, according to the change of times. But that should be done consistently with the principles laid down in the shastras. It is not desirable that there shall be only one Hindu Code for all Hindus. Hindu Law is mainly personal and no codification should be made.

I. As to intestate succession, daughters should not be given any share along with the son. It is against Hindu shastras and borrowing the principles of Mahomedan and Christian Law of inheritance. By joint inheritance of sons and daughters there will be fragmentation of properties, especially daughters, after their marriage, live in their husbands' place under their husbands' or father-in-laws' protection. And daughters would naturally be disposed of, to transfer their shares to third persons, such third persons would create disturbance in the family. In India education has not been materially developed and most of the women are not educated and are not competent to manage their own affairs. Sometimes it is said that in India many women are competent administrators of zamindaries and their names are famous. But is the number, not extremely limited? The women fall an easy victim to their husbands and other relations which lead to squandering of the properties by them.

II. Property inherited by a woman or obtained by women by partition for maintenance should not be termed as "Stridhan property", and women should not have absolute control over them. It is against all principles of Hindu Law. If daughters are allowed to inherit along with the sons they might get more properties than the son as they will inherit from their husbands and other relations and their mother and that the same is inequitable. During the Mahomedan period even the women were not granted such rights.

III. Marriage according to Hindu shastras is not a matter of contract, but of religion and the tie is indissoluble and women should not be allowed to divorce their husbands as in the case of other societies where the marriage is based on contract. In this way the principles of other systems of societies are thrust upon Hindu society.

IV. The caste system should not be abolished and there should not be inter-marriage between different castes which will be against Hindu shastras.

V. As regards minority and guardianship the principles of Hindu Law should be followed as laid down in the texts.

VI. As regards adoption there are text-books of Hindu Law and those should be followed.

On the whole, I think that no codification of Hindu Law is necessary or desirable. The codification contemplated will destroy the very foundation of Hinduism and peace of Hindu society. Hinduism based on vedas and smritis,

and any legislation interfering with the principles of vedas and smritis will interfere with Hindu religion.

81. Mr. Babu Jyotirindra Nath Sen, B.L., Pleader, District Judge's Court, Comilla, Tippera.

(1) Daughter should not be made an heir along with son, grandson, great-grandson or widow as provided in Part I, section 5, first set of heirs, No. 1. Exception may, however, be made in favour of unmarried daughter leading a life of celibacy for purpose of spiritual culture of service for humanity or other beings or acquisition of knowledge.

(2) Part IV, Chapter 1, clause 3, sub-section (a).—Although it is eminently desirable that a man should have one wife only and that during the lifetime of his wife, he should not marry again, no such legal bar should be imposed upon him for there may be special circumstances where such marriage may be permissible, for instance (i) when during or after the war, the female population greatly preponderates over the male, it may be necessary to take recourse to polygamy, (ii) in case of persons having high social status and possessing immense wealth it may be necessary to allow more than one wife for preserving social morality and for protecting the first wife from danger to her life, (iii) there may be lifelong or continued illness of the first wife or she may be barren and it may be necessary in the interest of both the parties that a man should marry again.

82. Mr. Indu Bhusan Biswas, Secretary, Bar Association, Bagherhat.

(1) The Hindus are of opinion that their laws are of divine origin and that no governing body ought to interfere with their laws.

(2) The beloved Queen Victoria at the time of her assumption of throne declared not to interfere with the personal laws of the country.

(3) Revolution would have occurred if the personal laws of any other nation of the country be touched in the least.

(4) The Central Legislative Assembly, as at present, has no independence. The intention of the authority is to divide each Hindu family by passing the proposed law. The father, son, wife, daughter each will revolt against the other. If the Bill be passed the Hindus will be ruined, politically, culturally and socially.

(5) The social legislation like the present one should have been allowed to be voted only by the members of the communities concerned. A Muslim or a Christian is not expected to know the mental condition and religious mood of the Hindus and he is not entitled to vote for or against a Hindu social question. The Hindu social questions ought to be thrashed out in an assembly composed of only Hindu members. The Government of India Act, 1935, does not contemplate to put and pass Bill into law to ruin a community in a Council composed of persons of different religions. The author of India Act had no intention to codify the personal laws of the Hindus, Muhamadans or Christians.

(6) The present time is not an opportune moment to put the Bill on the anvil. The thoughtful Hindu leaders are rotting now in the jail and the world is passing through a critical time owing to the war situation specially in India which is the base for the eastern war. Nobody can think over a serious subject like the present one and the present Bill should be dropped immediately. The legislature should not be hasty in effecting such a vital change in Hindu Law that will go to the very root of the Hindu society at this time.

(7) There should not be any departure from the dictates of shastras. No absolute ownership to any female, no succession to any distant female, unchastity and apostasy should be bar to succession and will disinherit even after succession. Asvaarna marriage should bar a succession and custom and tradition being different in different provinces no uniform law should be attempted to be made.

(8) As regards the Hindu marriage it is a sacrament and an indissoluble union and the integrity of the family, the proper rearing of the next generation and the cultivation of the domestic virtues depend on this. The marriage will be thoughtlessly contracted if it can be easily dissolved.

(9) There is special objection to the chapter relating to guardianship and adoption.

(10) Clauses relating to intestate succession lead to sharp differences of opinion in the country and the advantages of codification are far less than the disadvantages of uncertainty of law and diversity of interpretation.

(1) The English Common law has never been attempted to be codified but it is growing strong every day and is the foundation fountain head of all that is best in the British system of jurisprudence. Even Hindu law has not suffered for want of codification all these years. It has been growing with the growth of British India Courts.

We venture to submit therefore that there is no necessity for codification of Hindu Law and the Draft Hindu Code, as published, should not go into the Statute Book and should be rejected in toto.

83. Mr. Kshetra Nath Mitra, Pleader, Bagerhat.

I am definitely opposed to this attempted codification of Hindu Law, inter alia, on the following grounds:—

(1) The present Central Legislature formed nearly 10 years back, does not represent and reflect the views of the electorate and of the country. Its constitution, partly political and predominantly communal and sectarian renders it unfit for taking a scientific and detached view of present day social problems and for legislating on Hindu Law.

(2) The time is most inopportune and illchosen for launching the proposed Code. It is yet totally impossible to visualize, how at least, Bengal Hindu Society will turn out, and what changes will take place in its structure as the result of the economic and sociological forces, inevitably striking at its roots, due to war conditions. A new middle-class is in formation. A re-shuffling of caste and class barriers, after the return to normal life, of various war service recruits, is by no means an improbability. In some respects, the proposed Code may not go far enough, and in some it may be far too forward. Attempts to codify an ancient and intimate system of law, like the Hindu Law, ought to be postponed till the present undercurrents speed themselves in shaping and forming our social structure.

(3) The proposed Code is an exclusively social one. Opposition to it has been voiced by many who are well-known for their progressive views and outlook, by many jurists, Bar associations, by the All-Bengal and Assam Lawyers' Association. Its supporters are also well known public men. Utility and scientific value of codification, may at least, be questioned. Having regard to those circumstances, the proposed legislation ought to be dropped. It is neither prudent, nor in the best interests of the people to press such highly controversial legal reforms.

Intestate succession.—The proposed Code introduces certain features whose far-reaching consequences on all classes, do not appear to have been fully envisaged. The educated and advanced section will know how to avoid their operations by making wills, and they will have fullest play only among the backward section of the Hindu community.

2. It is hardly necessary to point out that, parallel legislation, for agricultural lands, will soon follow this codification. The same arguments as now, will be urged and with greater justification and better logic, in support of the Provincial measures. Have the ardent supporters of the Bill, paved to consider its effects upon rural and backward sections? I don't know if movables like boats, carts, cattle, poultry, implements of husbandry will come within its operation, when the Code will be on the statute book. If they do, 80 per cent of our community, steeped in ignorance and poverty will not forget to curse the givers of this law.

3. The average area of agricultural holdings of 53 per cent of agricultural families of Bengal, is 3 acres and less (vide Floud Committee Report). It is also an unfortunate fact that the poorer classes breed in larger numbers. Against this background it will be a ruinous agricultural and economic policy to introduce the new female heirs. Attention of all well-wishers of the country should be focussed upon a policy of consolidation and not of progressive fragmentation of agricultural holdings. With Muhammadans, the institution of 'Wakf' as an effective means of saving property from fragmentation, has become widely popular in the course of the last 2 or 3 decades, even in rural areas. Validating and reforming acts have also encouraged this kind of disposition of land. There is no parallel institution in Hindu Law.

4. It is urged that by giving the females a share in property, their status and position will be improved, and they will no longer be in the humiliating position of an unwanted dependant. A study of the condition obtaining

among the Muhammadan, in backward areas, will open the eyes of those who are lending support to this measure, to the unfortunate complications that will follow a female inheriting even one acre of land. She will find herself an object of prey. Being naturally incompetent to take care of her share in common property she will become a victim of scheming and designing persons. Even at the present moment, life interests of widows, very often attract such fellows. How will the ignorant and helpless female benefit herself out of her inheritance and what will this much-desired independence avail her? For those who think in terms of share-scripts and securities and live and move in cities, this provision may be profitable enough. But to the 80 per cent illiterate backward and helpless women of rural India, it will be of no benefit. The male heirs generally live in close proximity and have more or less common feelings and loyalties. In the case of females married into other families, these conditions are entirely absent. So the female heir will only bring about disruption.

84. Mr. P. N. Bagchi, B.L., Pleader, Kushiha.

A. Inheritance.—(i) Interest in shares of female heirs such as mother, sisters and others as contemplated by this bill should be limited. This will save the properties being alienated and divided into fractional shares.

(ii) Widowed daughter-in-law should be given a place along with living sons and other sharers.

B. Marriage.—(i) Dissolution of marriage should be omitted from the scope of Hindu Law.

Hindu marriage is not a mere contract. It has got its religious aspect too, so once a marriage is completed, it cannot be dissolved by any reason. This is the command of the Hindu Sastres which I think should not be violated by legislation.

(ii) Sagotra and Sapinda marriage should be stopped totally, no matter of degrees and steps.

(iii) Civil marriage or marriage by contract should be outside the scope of Hindu Code. By experience, it is seen that this form of marriage is not at all suitable to Hindu Society. 80 per cent of such marriages became the source of many evils.

85. Mr. Sudhangshu Bhusan Chatterjee, Government Pleader, Kalna.

The changes proposed such as divorce, civil marriage, succession, etc., are wholly repugnant to Hindu ideas and ideals of Hindu life and Society. The Hindu ideal of marriage is a holy union for the performance of religious duties.

As regards the proposal of property division, excessive fragmentation of the properties of Hindus would weaken their position in relation to others and will gradually sap their financial vitality.

86. Mr. Sureschandra Dutta, Pleader, Khulna.

The Hindu civilization came into existence when the rest of the world was in darkness. The Hindu Law was promulgated by Rishis who could see the past, present and future. The Hindu Law gives promulgated laws on all subjects including the subjects proposed to be dealt with in the draft Hindu Code.

To change them is to change the dictum of all powerful rishis by ordinary human being who cannot say what will come tomorrow. Sir N. N. SARKAR who was the Advocate-General of Bengal and an eminent and renowned counsel of the Calcutta High Court, while he was Law Member of the Executive Council of His Excellency The Viceroy and Governor-General of India amended a very small portion of the Hindu Law Womens Right to Properties Act XVIII of 1937 containing practically one section only but he had to amend it again by Act XI of 1939 as in practical application insurmountable difficulties made their appearance.

The proposed amendment is far more wider than that. Hence the difficulties of it know no bounds.

People are dying of starvation, an abnormal situation has made its appearance, people are anxious to maintain their families, they are not in their proper state of mind. In such a crisis it is not proper for ordinary human beings to try to unsettle the laws promulgated by the rishis with the help of non-Hindus whose only interest is to destroy the Hindu families, Hindu cultural and Hindu civilization.

The Hindu civilization is still in existence, though there was onrush on it for a pretty long time as it is the best one. My suggestion is not to handle such a thing now and never.

Sources of Hindu Laws are four (1) *Śruti*, (2) *Smṛiti*, (3) *Sādācāra* and (4) satisfaction to one's own self.

The laws based on one and two are enunciated and promulgated by the *rishis* for the safety of the society and its component part human being,

Items 3 and 4.

There may be difference in them in different localities as all men are not of same temperament these laws may be changed but different committees will come to different conclusion. Proposal for change in succession to intestate's is not good the table when discussed will prove harmful to society. They as dictated by the *rishis* should not be changed.

The status of female heirs as have been ordained by *rishis* should be maintained, otherwise Hindu societies will be destroyed with properties within one generation.

Law relating to *Stridhan* as in the *Shastras* is sufficiently clear, no innovation or change in succession or definition is necessary.

Marriage is a sacrament whereas it is in other religions a contract; the latter is dissoluble but the former not; if dissolution is introduced in Hindu marriage it will cease to have its binding effect as sacrament and will be converted into contract and the glory and pride of Hindus will fall to the ground. And our civilization would disappear.

Those who like, can register their marriage even now but the sanctity should remain.

The proposal in the draft Code will not ensure to the benefit of the society but will dissolve sanctity of marriage. The effects of the proposed changes will be interference with Hindu religious rights with the vote of non-Hindus.

I therefore humbly oppose the proposal in the draft Code.

87. Mr. Satyachandra Mukherji, Advocate, Hooghly.

I am opposed on a question of principle to the amalgamation of *Dayabagha*, *Mitakshara* and other schools of law in one. This is opposed to our religion, social structure, laws, custom and usages in force for hundreds of years, which will revolutionize for the worse and is opposed to our law in matters of religion inheritance, adoption reserved by law to Hindus. This, in my opinion, is not calculated to do good to our society.

The order of succession enumerated in clause 5 of the Bill is based on this curious amalgamation and this division is extremely objectionable.

As regards details, I may observe that *daughter* has been put in the same class as wife and sons. This is opposed to both *Dayabagha* and *Mitakshara* and no principles exist to put them in the same class except to bring Hindus in line with the Muhammadans to a certain extent. Economically and equitably son and daughter do not stand on the same lines. Daily experience shows that a daughter at the time of her marriage in dowry and later on enjoys a fair share of her parent's property and the new arrangement if adopted will induce to disintegrate the family property and sow seeds of family quarrels and distrust between brothers and sisters. Hindus like Muhammadans will take resort to various deeds to deprive daughters of this right and it will do more harm than good to society.

There is no reason to put the *mother* before the father by reversing the present order.

The definition of the word *gotraja* in the Act has killed the *Dayabagha* principle according to which *Sapinda* relationship arises from the offering of cakes.

The second class of division has been brought in amongst *Dayabagha* people by doing great violence to them. The offering of *Pindas* is cherished by *Dayabagha* people and in fact by all Hindus and the second class of people do not offer cake generally.

Similarly the females in classes 2 and 3, in most cases are objectionable. Paternal grandfather and grandmother have been postponed without any rhyme or reason to Class II and Class III heirs and there can be no reason in changing the present order.

One thing can be said, on the score of natural love and affection about certain females who do not inherit now. A widowed daughter-in-law, if she be the daughter of a poor parent but the daughter-in-law of a very rich parent, is nowhere even if the father-in-law has got no other issue of the first class. I, for myself, will be prepared to give some right to the daughter-in-law, son's daughter

and her issue and the issue of the grandson on the score of natural love and affection but in a suitable place.

Clause 13.—I am opposed to giving a widow absolute right to property inherited by her from her husband. This is against established law. There is no point in making son's son, son's daughter, daughter's son and daughter's daughter co-heirs to a woman's *stridhan*. I will put husband immediately after son and daughter in Class I.

Clause 17.—The Hindu Law should not be applied to the issue of a man by a non-Hindu wife. A new provision should be made; if the Hindu Law is codified in any form by which a person's wife and children or some near heirs (of a Hindu) could share in his property, when he dies after changing Hindu religion, if the former do not also change their religion with him.

In Part III, clauses 1 and 2 are very objectionable. The doctrine of survivorship and rights to property by births abrogate these two provisions. The necessity of the continuance of these laws exist.

Marriage.—I am opposed to the changing of the present marriageable degrees.

I am also opposed to clause (2). There cannot be a civil marriage amongst the Hindus. The notion of marriage being a sacrament, that notion goes by and thereby is opposed to Hindu religion.

The provision of Clause 3 of Part IV, i.e., Clause (a) is revolutionary. It prohibits a male from marrying a second wife during the lifetime of the first wife for any reason whatsoever.

Clause 6 of the same division really sanctions marriage between different castes and in the same *gotra* or *pravar* indirectly. This is most objectionable.

Clause 7, *Civil Marriage*.—To call a civil marriage, a marriage under Hindu Law is to create a new Hinduism in India and can under no circumstances be agreed to by Hindus.

In Clause 29 of Chapter III proceeding for declaration of marriage being illegal and void on the ground of male partner's wife being in existence is objectionable.

Clause 30, i.e., the provision relating to Divorce is not acceptable.

Minor and guardianship.—Clause 6, 10 and other clauses are unduly harsh and restrictive. They will, in a majority of cases, do great harm and cause unnecessary waste of money, litigation and hardship and so are objectionable.

The effect of codifying this Hindu Code is in my humble opinion is to bring out a new sort of Hinduism which in matters of marriage and inheritance save their own established law, and the innovation now proposed strike at the root of Hinduism and I oppose the passing of the Code on the said grounds.

88. Mr. Devy Prasanna Mukherjee, M.A., B.L., Advocate and Zamindar.

The Hindu Law which is based on the Hindu *Shastras* is complete and exhaustive and the Hindu Society is based on it. Regarding the Bill on Hindu Law of Succession, the innovation sought to be introduced into the personal law of the Hindus by the proposed amendments, e.g., the new definition of the term "*Stridhana*" the right of woman over the same, the rule that a woman, even after her marriage, shall not be deemed to be an agnate (as defined in the Bill) of her husband, the new enumeration of heirs, the rule of simultaneous heirship, the new order of succession to *Stridhana*, the rule that the children of anuloma marriage will have equal right of inheritance are against the Hindu *Shastras* and are calculated to strike at the very foundation of the Hindu society.

The reasons set forth in the explanatory note attached to the Code are not correct and convincing. Under the *Dayabagha* school of Hindu Law, the principle underlying the rule of succession is religious efficacy and not mundane consideration. The so-called disqualification attaching to woman as to her right to property inherited from males property obtained by her on partition, property received by her in lieu of maintenance, etc., is also in accordance with the rules laid down by the Hindu sages whose wisdom and foresight are beyond question. Hindu civilization is as old as the hills, and the Hindu sages created it and it has stood the test of ages. Whatever might be the opinion of modern Hindu Lawyers such as Dr. Jayasawal, Dr. Mitter and others of their class regarding *Manu* and *Yasajvalkya* Hindu India reveres them and respects the law laid down by them.

The fact that Muslims and women of certain other nationalities whose religion and society are different take full estate is no ground for saying that the Hindu women should also have the same right. If full right is given to women in respect of properties inherited from males, the position of women will not improve, the result will be that they will fall into the hands of designing people and lose their properties. The new rule of simultaneous succession will have the effect of creating further subdivision of property with the result of increasing poverty, especially amongst the middle class.

The position of children of an anuloma marriage in the matter of inheritance is already provided for in the Shastras. According to the existing law the children of such marriage so far as their parents are concerned, have the right of inheritance.

With regard to the Bill to amend and codify the Hindu Law of marriage, I am of opinion that the said Bill is unnecessary. Some of the provisions of the said Bill are subversive of Hindu society. To meet the exigencies of the moment, if any, the Special Marriage Act of 1872 may be amended leaving aside the Hindus.

In short I protest against the two Bills in question as they are against the Hindu Shastras and legally detrimental to the Hindu society—and I humbly beg to suggest that any hasty legislative interference with the customs and traditions of a nation which has withstood the onslaught of invaders for several centuries, and has transformed immutable customs into codified law, chiefly based on the spiritual welfare of the soul, is unwise.

89. Mr. Tatak Nath Basu, Pleader, Chinsura.

The proposed Hindu Code sponsored by the Hindu Law Committee, of which the Chairman is Sir B. N. Rau has excited a good deal of discussion amongst the Hindu community. While some hail it as a Messiah long overdue, others characterise it as a revolutionary piece of legislation which will shake the very foundation of Hindu social structure. The pity of it is that critics are swayed more by emotion than by cool reasoning. Conservative lawyers have organized a revolt with the help of some prominent members of the Bar and Sanatanists are in full cry. It is, they say, a strident challenge to everything a Hindu holds dear as his personal law. I have seen a fairly lengthy opposition to the Bill by a prominent writer on Hindu Law, a vibrant appeal to the Legislature to stay its hand and to ignore the Bill. It is a piece of special pleading to make out that codification of Hindu Law is not expedient, is undesirable and is not possible. He is opposed to codification in general and makes the discovery that the wise are opposed to it. "The most celebrated system of jurisprudence known to the world begins, as it ends with a Code" says Sir HENRY SUMNER MAINE. "Twelve Tables of Rome" were the earliest of Codes, the father of jurisprudence in Europe. The Greeks had their Attic Code of Solon. In our own country, the Law of evidence was in a nebulous state. Voluminous English text-books had to be searched and much time and erudition were wasted before a point of admissibility could be settled. Then came Sir James Fitz James Stephen with his Evidence Act comprising within 157 sections the whole law on the subject. This is now recognized as a master-piece of legislation which has not yet been rivalled, though you may search the scriptures of human achievement in the field of legislation. Another celebrated English lawyer Sir Frederick Pollock prepared a Draft Civil Wrongs Bill in the year 1886. Had it been passed into law, the Law of Torts would have been crystallized and simplified. Codes may be said to be law in a tabloid form, easily assimilable by the profession and even by the laity. For a judicial officer guiltless of Sanskrit, a Hindu Code would come very handy and when confronted by the man of Law cum Sanskrit with some mysterious shloka from unsuspected and unheard of authority or some effete and old decisions which have been washed out he would be able to say "I am as good a man as you; Here is the whole law and I have got to decide according to it". Forensic erudition would no longer find any scope and a quick work-a-day decision would follow. Codification even of Hindu Law is not quite a new thing. Sir H. S. Gour prepared an excellent Code known as "The Hindu Code" and Sir D. F. Mulla in his "Principles of Hindu Law" put it in the form of sections. The latter's Muhammadan Law is an admirable attempt in the same direction. These are all very useful books and save much time, trouble, confusion and judicial urbanity. These, however, merely

embody the law as it now stands but unlike the Code now proposed, they do not suggest any amendment or innovation. For one thing, they show that codification is not only not-impossible but it serves a very useful purpose.

The portion of the proposed Code which has caused a good deal of criticism is that relating to inheritance whereby it is proposed to give a daughter not the same share as a son but one-half of it, as the Muhammadan law does in paternal property (other than agricultural land). A break with the past is what Mr. Stick-in-the mud most dreads. If a daughter gets a share, a stranger or as an irate critic dubs her or her husband, a "foreign element", would be introduced and the happy home of a joint Hindu family will know no peace; there will be "constant partition of property" leading to endless litigation. This is strange perversion of truth, deliberately turning one's blind eye to the realities of life in a work-a-day world. Partition suits between brothers, are they less frequent now, though the "foreign element" (sister) is absent and is family peace seldom or never broken? Three-fourths of the litigations in our Courts are partition suits between brothers or between cousins or uncles and nephews. It is said that daughters after marriage having other roofs to shelter under, will dispose of their shares to "foreigners" (a very arresting expression) and then Heaven help the poor peace-loving brothers. Do not brothers sometimes and if they happen to live far off for business or for service, often do the same and does not section 4 of the Partition Act afford adequate protection against such invasion of privacy? Happy home of a Hindu in a joint family! It is no use blinking the fact that the so-called happy home is (doubtless there are exceptions) a delusion and a snare. Almost every member has against others some grievance, real or fancied, which he harbours in his breast. Each one stands at armed attention *vis a vis* the others and the question when they will break out into open conflict is a question merely of prudence or of finance. I have heard it suggested again that paternal property will be frittered away and dwindle if a share goes to father's daughter. But what, if the sister was a brother instead. This is sheer bunkum and hardly honest. Vested interest is at the root of it. Moreover property is for use and distribution and a progressive age sets its face against concentration of wealth in one hand, as this breeds rich idlers. It is quite in consonance with the spirit of the age that daughters will not have a mere woman's interest, "widow interest" as men of law say, but an absolute interest.

There is an obvious and glaring injustice to daughters in the matter of inheritance of father's property and this escapes the advocates of 'hands off Hindu law', the smugs who think that everything that is divinely ordained. A daughter having or likely to have a son is a heir, but a widowed daughter without any male issue (of all persons the most helpless) is excluded. A most distant agnate whom the deceased hardly knew from Adam would come in and claim the whole property to the exclusion of one's own daughter (because forsooth a soulless widowed daughter offers no funeral oblations to the manes of the deceased). Similarly, the widow of a predeceased son was, till recently, i.e., before the passing of Hindu Women's Rights to Property Act, excluded from inheritance. But such tinkering legislation hardly meets the ends of natural justice and a bold root and branch innovation is called for. A sister is another instance in point. Except in Bombay and Madras, sister does not come in. Under every other system (Muslim, Christian, etc.), daughter and sister have a share given to them. Shastras are doubtless entitled to respect, even reverence, but injunctions, good at the time they were promulgated, like one-time good custom, may corrupt the world, and when they cease to be useful or when they conflict with one's sense of natural justice or humanity they should be boldly side tracked. Yajñavalkya has a *shloka* which says "practice not that which is abhorred by the world, though it is ordained in the sacred books." We no longer burn our sisters and daughters on the funeral pyres of their husbands; though when Lord Bentick on Raja Ram Mohan Roy's advice put his foot down, the Pundits were in open revolt and came out with some of the choicest weapons in their armoury. A bold legislator must make clean sweep of Sastric injunctions which sanction blatant injustice to a particular class or which do not fit in with the progressive ideas of a modern State. The proposed Hindu Code does not go far enough. I do not like this canny approach, but probably they had in mind the old tag *festina lente*. Our legislators

should throw off the shackles of slavery, the stupor engendered by the murky air of mythology and mysticism. Turkey under Atta Turk's guidance with hardly disguised contempt for Shariat abolished Moslem law of inheritance, adopted *en masse* the Swiss system, said to be the most perfect one in Europe. (The Hindu Law Committee has also commended the example of Switzerland.) Afghanistan followed in the wake, but perhaps a bit prematurely; for the enemies of Amanulla torpedoed all his reforms. Persia and Egypt are also not lagging behind. It seems to me that devolution of property as provided for by the Indian Succession Act with perhaps some local modifications would be most admirable and equitable. The cry of 'religion in danger' would doubtless be raised by a whole army of obscurants, but this cry will lose its potency for mischief as time wears away and wisdom dawns.

The draft Code provides for dissolution of marriage in certain contingencies and this portion has fluttered the conservative dovecoots and has frayed temper even more than that relating to inheritance. Hands off Hindu marriage; it is a sacrament, not a contract, nor a tenancy at will severable at the option of either party. Conjugal felicity will disappear on the passing of this 'outlandish Act' and outraged imagination conjures up many other unthinkable domestic tragedies. But the proposal of the Hindu Law Committee is modest enough in all conscience; the circumstances justifying divorce do not go beyond those laid down by ancient Hindu sages like Narada and Parasara. So there can be no justification for Sanatanists and others of their ilk holding up their hands in holy horror. Sastras sanction dissolution of marriage to be followed by remarriage on abandonment or desertion by husband for adultery, if the husband is unheard of for a number of years or if he adopts religious order, for impotency or for suffering from an incurable disease. A custom is a great favourite with Judges and once it is made out (a difficult operation as all practising lawyers know), the Judges give effect to it even in the absence of distinct Sastric texts. The recent case of Gopi Krishna decided by the Privy Council is a case in point where their Lordships countenanced a remarriage by a woman (thrice married and of twice-born class) on desertion by her husband. The new Code, if it survives the combined assault of vested interest and of no-changers and is passed into law, would merely give legislative sanction to what is now in a liquid state and would save much forensic time, labour and erudition. The opposition is an illustration of Hobbes's saying that "when reason is against a man, a man will be against reason." As for the apprehension that conjugal happiness will disappear from the holy land of Aryavarta with the magic touch of this newfangled legislation—well, this is hardly honest. Though there is considerable conjugal felicity in Hindu household, it must be regretfully admitted that instances are not rare of incessant bickering, of unrecorded war-fare between husband and wife, of bibulous rascals who come home tight in the small hours of the morning and indulge in their favourite pastime of beating of their partners in life. In such cases, a snapping of marital bond under sanction of law would be a welcome relief to both parties by sacrament bound. It is a pity the Law Committee did not take courage with both hands and bring the proposed legislation in line with progressive ideas of a fast moving world. A dissolution by mutual consent or mutual release (as in the case of Muslims) could have been made to operate as a complete discharge of all marital rights on either side. Many would welcome it as a relief from a nagging virago or a pugnacious pugilist who exercise, freely on his wife's person. Cruelty (habitual but not necessarily physical but what men of Law call 'legal cruelty') ought to be a good ground for separation. But perhaps the time is not yet. In God's good time, we ought to have a Code which will look realities in the face and make an end of all flap-doodle about husband being a woman's God on earth. Miss India has developed self-consciousness, has shed the spoonfed docility of her grannies and disdains to be regarded as a mere toy or chattel or "quasi-chattel" as an English Judge once playfully characterised the wife. She has read her Mill and Bertrand Russel and presses for recognition of her claim to equality of status with the sterner sex before the Bar of Indian humanity.

It has been said that the Divorce Law is uncalled for, as there is no demand for it among major section of Hindu

women, that they are a contented lot, they are paragons of female virtue and believers in the divine right of husbands! When the slave trade was abolished, many slaves were apathetic and a good few of them even went to the length of petitioning the authorities against the proposed emancipation. It is always the advanced few who lead, the rabble follows.

The apprehension is groundless that if the law is passed, it would put a premium on marriage dissolution. I fancy, I am safe in predicting that our girls will not turn rebels overnight and that divorce proceedings at least at the instance of women would be very rare. Notwithstanding that the Hindu Widow Remarriage Act, sponsored by that dynamic crusader the great Pundit Vidya Sagar, has been on the statute book for close upon a century, widow re-marriages have been few and far between. So placing the right to divorce on the statute will not set the Ganges on fire. Even the Muslims (a community far more conservative than their fellow countrymen, the Hindus, pace Mr. Jinnah) have their "Dissolution of Muslim Marriages" notwithstanding its divergence from centuries-old tradition, put on the statute book in the year of grace 1939. Are we to lag behind? As an escape from brutal husband and anticipation of a brighter life, so also relief from a life-long partner sworn to render your life miserable, a Divorce law with wider and more comprehensive provisions and facilities would not be altogether unwelcome.

The contemplated Bill, if passed into law, will slowly perhaps but surely come into public favour and our people will educate and accommodate themselves to the provisions of the law. The out cry against it will die down.

90. Mr. Purna Chandra Dutt, President, Bar Association, Kaina, District, Burdwan.

I. My opinion is based on my experience as a pleader with a practice extending over 44 years in a mufassal Court in Bengal and reflects the view-points of people in rural areas.

II. *Opinion.*—(i) I whole-heartedly support the draft Hindu Code and its provisions. My only regret is that it does not go far enough and offer a complete solution of the problems now confronting the Hindu Society.

(ii) Apprehended disruption of the family is a myth. Everybody has already developed in him a separatist and individualistic tendency. Throwing into the common stock of a part of his income by a fortunate earning member of the family has become a thing of the past.

(iii) Recognition of the rights of females is but what is needed in justice, equality and fairness.

(iv) I however suggest the following modifications:—

(a) Definition of 'Sapinda' is to be limited to 5 degrees on the fathers' side and to 4 degrees on the mothers' side.

(b) Gotra or pravara should not act as a bar to a valid marriage. Prohibition within "prohibited degrees of marriage" as defined is enough.

(c) Sons and daughters should in equal shares inherit the *Stridhan* of the mother.

(d) I have come across many cases in which when a man dies leaving a widow but no children or children's children but brothers and sisters all dependant on him, the relations of the childless widow whatever be the extent of the properties left by the propositus turn out the dependant brothers and sisters. So my suggestion is that to the list of "persons entitled to maintenance" the following are to be added:—

(i) a brother so long as he remains a minor.

(ii) a sister so long as she remains unmarried.

91. Mr. S. Taran, Pleader, Chandrina, Comilla.

I have gone through the Draft Hindu Code. The law has been amended to give some legal status to the Hindu Women of India. I should say that the said Code has been partial in consideration of the legal status of the women, who have lost their fathers or husbands or persons from whom they would inherit properties before the passing of the Hindu Code, i.e., 1st January of 1946. In my opinion those women should also be given that legal right and status otherwise it will be doing injustice and partiality against those women. Therefore the Code should be so amended as to give equal rights and status to all Hindu women of India without any consideration of the date of the death of the person from whom they inherit.

Therefore the words "after the passing of this Code" should be omitted everywhere occurring in the Code. I request you to accept my opinion and to amend the Code accordingly and oblige.

92. All-India Dharma Sangh, Basant Kumar Chatterjee and Chotay Lal Kanoria.

Hindu Law is based on the Vedas and the other Shastras, namely Puranas, Dharmas Shastras, Ramayanas and Mahabharata. The Vedas were revealed by God. The other Shastras are based on the Vedas. Hindu Law is therefore not liable to change from time to time.

Kings cannot change the Hindu Law as they cannot change the Shastras. Sri Ramachandra and Sri Krishna who were kings as well as incarnations of God have expressly said so. Thus Sri Krishna has said in Gita 16/24: (The Shastras are the authority for determining what conduct is right and what is wrong.)

Sri Ramachandra says:

Valmiki's Ramayana—Ayodhyakanda 56/23.

The injunction of the Shastras ought to be carried out.

Remember that this is Dharma.

Hindu Law being based on truth is not liable to change. It is true that certain acts which were permitted before have been prohibited in the Kaliyuga. This is due to the fact that men in the Kaliyuga are weaker morally than men in the previous Yugas and therefore should observe more restrictions. In some cases the penances proscribed in a later code are less severe than in former code. This is also due to the growing weakness of men. The principles on which laws are based are not liable to any change.

The broad result of the innovation would be to deprive married couples of a portion of their residence and give them a portion of a house at a distant place where they do not reside. The changes will thus affect adversely the interests of married couples.

In many cases the property left by the deceased will consist of a dwelling house and some agricultural lands in the village home. The present bill affects the dwelling house only. But it is expected provincial legislatures will enact laws on the same lines affecting agricultural lands also. A married daughter will get a share of her father's dwelling house and father's lands. But along with her husband she will be deprived of a share of their own residence and the agricultural lands in their own village by the sisters of her husband. If we consider the cases of all married women it will be obvious that the total property which will be received by all married women will be identical with the total property which will be lost by all married women. But in each case the value of the property received will be less than the value of the property lost. On the whole the lot of married women will worsen.

In addition to the devaluation of the property mentioned above the cost of litigation and partition proceedings will also go to reduce the total value of the property.

It is therefore very necessary to exclude houses used as residence by the deceased person and agricultural lands up to a minimum limit from the property which will be available for distribution.

At present Hindus spend money liberally (considering their general economic condition) for the marriage of their daughter. It is well-known that in many cases people borrow money and mortgage their dwelling house and agricultural lands to meet marriage expense of the daughter as it is known that the daughter will not subsequently claim any share of her father's property. If, however, it is known that the daughters will subsequently claim a share in the father's property there will be tendency to curtail expenditure at the time of marriage. It will reduce the possibility of securing a desirable bridegroom.

The expenses of the marriage of a minor unmarried daughter after her father's death will have to be met from the share of the property which she will inherit. But she cannot sell her share till she is 18 years old. Even if she is 18 years old she will naturally feel delicacy in enforcing a partition of her father's house and selling her share to meet her own marriage expenses.

There are often marriage connexions between British India and Indian States. Till now the same Hindu Law applied in both places. If the draft Hindu Code becomes law, there will be different law in the two families, which will be connected by marriage. This will cause confusion.

Different provinces may legislate differently regarding agricultural property. This will give rise to fresh divergence.

In clause 5 (d) of Part I preliminary it is stated that the word caste does not refer to any sub-caste. This will cause a change in the existing practice which will not be liked by the majority of the persons affected.

There are very few cases in which Hindus make wills in accordance with proposed changes. This shows that there is no general demand for such a change. On the other hand there are many cases in which Indian Christians other than Anglo-Indians make a will depriving their married daughters and Muslims take the help of the Wakf Act for the same purpose.

In clause 5 of Part III-A (ii) 'Maintenance' married daughters should be included in the list of relatives entitled to maintenance.

Marriage Law.—A husband will be able to divorce a wife suffering from certain diseases. But what about the maintenance of the divorced wife? The husband will no longer be liable and she may not have any independent means. The proposed law will, therefore, cause great suffering on women who will be divorced. In Bengal there are many cases in which Muslim ruffians kidnap Hindu women and the kidnapped women are often compelled to embrace Islam. There ought to be a provision that if the daughter gives up Hinduism she will not inherit any portion of her father's or her husband's estate as otherwise the lure of property will be an additional temptation for the ruffians.

The proposed changes in the Hindu Law of inheritance will adversely affect business interests. Sons-in-law will claim shares in the business of their fathers-in-law. It will give rise to very inconvenient complications.

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1. Hindu Law or Dharma Shastra is not man-made, it is revealed by God to the Rishis known as Smriti-karats, therefore to alter the provisions of the law by man is a clear sacrilege and interference with our religion.

2. The Hindu Rajas had only the right to administer the law according to the Smriti Shastras but they could not make laws. The people neither ever had nor have any right given them by the Shastras to change the Hindu Law. Therefore the Legislative Assembly even if it were constituted entirely of Hindus only has no right to interfere with Hindu Law much less the heterogeneous body especially after the British Government's declaration that personal law and religion of the Hindus should never be interfered with. According to our Smriti Shastras those who are not willing to obey them are *Nastikas* and so are not Hindus and are therefore not at all fit to interfere with our religion.

3. The overwhelming majority of the Hindu community, both men and women, who do not join in any agitation are against such interference with our religion.

4. The provisions are non-Hindu in character and are intended to destroy the Hindu society and religion in the garb of social law.

5. The Hindu society entirely stands on its Dharma Shastra or the Smritis; to alter it would be lopping of its legs on which it stands upon. Shastras are commandments or orders of God which a person calling himself a Hindu is bound to obey without questioning.

6. The Hindu Code is expressly intended to supersede certain provisions of the Hindu Dharma Shastras regarding intestate succession and marital relationship of the Hindus deriving its authority from the legislature and not from God (or the Dharma Shastras). Thus by force of man-made Law the Hindus would be forced to be un-Hinduised.

7. The members of the present Legislative Assembly do not possess the confidence of the voters by whom they were elected and do not at all represent the non-voters. There is not a single member in the Assembly who can say that he represents the Hindus; because he has been elected by a Non-Mohammadan Constituency and not by a Hindu Constituency.

94. Mahamahopadhyaya Chundidas Nyayatakarthi, President, Bungiya Brahman Sabha, No. 4-A, D. L. Roy Street, Calcutta.

The initial objection to such a legislation as the present one, is as has been repeated by us many times, that a legislature composed of heterogeneous elements—Hindus (most of whom are un-Hindus) and non-Hindus, is not competent to legislate on religious matters which are

inherent in our social rites and customs, much less on Hindu religious laws which were evolved by the wise and far sighted Rishis of old from the Vedic texts, the secrets of which cannot be precisely appreciated by the people of modern times having no culture of the Vedas and Shastras far less any insight in them.

The religion of the Hindus stands on Revelation and therefore cannot be handled in any way one likes.

From other points of view also the legislature is not competent to legislate on religious matters. Some of these are—

(1) The British conquered the country nominally from the Mahamadans and really from the Mahrattas neither of whom had any power to interfere with our religion. The British therefore cannot claim that they have derived the right of such interference from the conquered rulers. In fact they have never claimed that right, on the contrary, they have repeatedly proclaimed that they will never interfere with our religion. In conformity with the above principle they enacted some Parliamentary Statutes which clearly assured us religious non-interference by the State. In later years, the said Statutes however were repealed one after another but that has not in any way conferred any positive power on the State to interfere with our religious matters. Before the introduction of the Act of 1935, Bills on religion and religious rites could be introduced only with the previous sanction of the Governor-General. In the Act of 1936, religions and religious rites do not occur in the lists of subjects for legislation and consequently the question of previous sanction has been omitted altogether. Marriage and succession do occur in the lists no doubt, but as religions and religious rites have been omitted, marriage and succession occurring in the list should be interpreted to refer to the non-religious parts of those subjects.

(2) Queen Victoria's proclamation (of non-interference in religion) is a living document with many crores of the Indian people as was exclaimed by a number of M.P.s while discussing the Government of India Bill in 1935.

(3) Even if the Legislature is legally competent to legislate on religious matters, its members cannot surely be considered to be qualified enough for the purpose. This is also the opinion of competent authorities like Hermann Finer and others even in these degenerate days.

(4) Even if they were so qualified, where is the demand for such reforms as have been contemplated by the Rau Committee? How many Hindus and what part of the entire Hindu population have demanded such revolutionary changes in the Hindu Society? Is not their number and proportion infinitely small? Are they Hindus properly so called? We should remind the Government and the legislators of what Sir James Fitz Stephen said while enacting the Special Marriage Act in 1872 (without polluting the genuine Hindu Law of marriage)—

"Be a Hindu or not as you please; but be one thing or the other. Don't ask me to undertake the impossible task of constructing a compromise between Hinduism and non-Hinduism which will enable you to evade the necessity of knowing your own minds."

We are strongly of opinion that Hindu succession, marriage being essentially religious matters the laws relating to them cannot be interfered with by the State.

Uniformity of law may be a palatable expression, but it is doubtful whether it is possible or is a necessity or even a desideratum. The Hindu sages enjoin that customs and usages of each place, if they do not go against shastras, should be kept intact.—See Yajñavalkya I, 343; Gautama Chapter XI.

"Yasmin desa yaschare vyavaharah Kulasthith
Tathaiva pratpalyosau yada vasam upagatah."
Also, "Desa-jati-kuladharmascha amnyairaniruddha
pramanam."

However, that much advertised uniformity even has not been achieved, as some of the systems have been explicitly excluded from the operation of this Bill. Barring the two provinces of Bengal and Assam, Mitakshara is already in vogue almost everywhere in India. We do not see that special benefit is going to be achieved by this attempt for the so-called uniformity.

In the light of the above observations, we proceed to discuss some of the sections of the Code.

PART I.—PRELIMINARY.

Clause 2 (2).—Definition of "Hindu" is too wide. Buddhists, Jains, etc., who are not followers of the Vedas and preach against yajnas enjoined by the Vedas, can't be called "Hindus." If persons mentioned under the "Illustrations" are intended to be regarded as Hindus, some qualifying epithet should be added. Thus, they may be called Political Hindus or "Secondary Hindus." And it should be distinctly mentioned that their opinions, when going against orthodox views, should be totally ignored while concerning religious questions of the pure (conservative) Hindus.

Sub-castes should not be ignored. Children of Partiloma marriage do not, strictly speaking, belong to any varna. They have been clearly excluded in the definition in the Code.

Definition of stridhana is too wide. It is a technical term and should include only such properties as have been mentioned in the shastras.

PART II.—INTESTATE SUCCESSION.

Inheritance in Hindu Law is not a secular but a solely religious affair and as such must follow the directions of shastras. It is directly concerned with pinda. "Dayat pindam, haret dhanam"—Manu IX, 136. Yajñavalkya also says "Pindadomsahaschaisham"—II, 135. One who confers spiritual benefit on the departed soul is entitled to inherit the property of the latter. "Pinda gotra rishi sambhandha riktham bhajeran"—Goutama, Ch. 29. This spiritual side of the question has been entirely ignored by the Committee.

According to the Hindu conception, law is not different from religion. In conformity with the above view, it was held by the Judicial Committee (in *Tagore v. Tagore*) that the Hindu Law of Inheritance is based upon the Hindu religion. The quotation given by Mr. Atul Ch. Gupta, viz.: "Parayena Asmin Prakarane Loka Vyavaharani Vachanani" is bogus. The actual passage in Dayabhaga sounding like the above, runs thus: "Loka-siddhasya eva anubadakani eva prayena asmin prakarene vachanani" meaning that in the chapter on Dayabhaga (partition of property) the texts are mostly reiterations of what the people follow as customs. This does not speak in any way against the religious character of inheritance and its inseparable connexion with the offering of pindas. The laws have been enunciated by ancient sages like Manu, Yajñavalkya, Narada, Baudhayana, etc., who based their views (with no fundamental difference amongst themselves) on various vedic texts, whether those vedic texts have been understood and interpreted by them correctly or not does never occur to the mind of a Hindu. Indeed, to accept the interpretations of persons who are almost innocent of Sanskrit language in preference to those given by the ancient sages would be nothing short of sacrilege and should be rejected as sheer nonsense.

Clause 1.—This clause strikes at the root of the proposed uniformity of law for all Hindus for which the reformers are so anxious. Agricultural land being excepted from the operation of this Code, one and the same family will be governed by two different laws. There is no certainty however that the Provincial Legislatures to whom the power of legislation for agricultural lands are left will follow the same enactments as proposed by this Code.

Clause 5.—Females cannot have absolute right to property except "Stridhana." Daughters and widows can inherit only when there is no son. The scheme proposed will lead to fragmentation of property, disintegration of family, litigations and various other complications.

As to the absolute right of women, the Sabha submits that a woman can have no absolute right to a property unless it is stridhan. Jimutavahana, the author of the Dayabhaga, says "The wife should simply enjoy the property and is not entitled to dispose of or mortgage or sell it." In support of this, he quotes from Katyayana as follows:—

Aputra Sayanam Bharuth palayanti gauras thita
Bhunjitamaranat kshanta dayada urdhvamapnyuh.
A childless widow remaining faithful to her deceased husband, should live self controlled in his house till death. After her death, the natural heir or heirs of the original owner should inherit the property—Dayabhaga 133. Jimutavahana quotes also the following from Mahabharata (Dandharma):—

Strinam swapatidayastu upabhogapalaha smritah
Napharam striyah kuryah patidayat kathanachana.
—the property inherited from the husband confers on the

widow the right of enjoyment (i.e., life interest) only. She must not dispose of it in a squandering manner.

In all cases a revolution and the properties inherited by a widow would invariably go to her paternal relatives or other persons if she is given absolute power of disposition.

Baudhayana also says: Nirindriya hyadayascha striyo mata iti sruti. The sruti referred to runs thus:

Striya nirindriya hyadayadih—Taittiriya Samhita, VI, 5, 8, 27. As to the interpretation of the above texts, the Committee is evidently prejudiced by a view to which Dr. Dwarakanath Mitter committed himself in his research work of his youthful days, viz., that the sruti refers to a share of Soma juice only and not the shares in general. That this is an erroneous view is confirmed by another sruti which has no reference to Soma juice which pointedly denies women's absolute right to property. "Ta natmanaschana ista na dayasyachana isate"—Satapatha Brahmana IV, 4, 2, 13.

In fact that word "daya" means "heritable property."

It may be added in this connexion that Manu also characterizes women as Nirindriya (IX, 16) and therefore ineligible for inheritance as stated by him in IX, 201; It is simply ridiculous to accept the interpretation of Dr. Mitter (who is utterly innocent of the Vedas and the vedic mannerisms) in preference to that given by ancient sages like Manu, Vasistha, Baudhayana, etc., to whom the vedic texts were directly revealed.

Regarding inheritance by daughter.—According to Hindu shastras, daughters do not get a share if there is a son. Rigveda III, 31, 2 says—Na jamaye tanvo riktham araik, i.e., a son does not transfer property to a girl. The Hindu idea is that girls are to be engrafted on the family of their father-in-law. They become part and parcel of that family and for the welfare of that family they devote their entire attention. If they are given a share in their father's family, they, while proceeding to the new family, will naturally look backwards wistfully, which will vitiate the Hindu ideal. The Hindu culture is the most ancient in the world. We think it extremely derogatory to give up our own and imitate the law of other communities who have been passing through experimental stages and who to do away with the evils of their own defective system, often have recourse to wakf and other devices, viz., marrying the brother's wife, uncle's daughter too, which are regarded by Hindus as instances of incest.

Regarding devolution of property extreme and undue consideration has been made in favour of women, as a result of which the property will slip away to outsiders in the course of a few decades.

If widows and daughters are allowed absolute ownership, the system of adoption of a Dattaka son for the performance of religious observances of the family will have very little scope. As a result, the religious characteristics of the family will be gone.

To do away with the manifold evils not desired by him, the owner of the property will have to execute a will—a course which is not much in vogue in Hindu society. The new system will be highly expensive and will encourage endless litigation and will bring in undesired results owing to laches which are quite natural with men. We would rather propose to rely on the contrary course, viz., one who wishes that some of his additional relations should inherit his property, is free to execute a will to that effect. We can assure the framers of the Code that this course will cover much fewer cases and should therefore be preferred to the other one.

The right of partition cannot be avoided if there is no ready money in the hands of the male heirs.

The qualifying clause "who has passed by marriage into a family other than that of the intestate" is ominous, as it pre-supposes the possibility of a different case also which is impossible according to Hindu shastras.

Clause 14.—The list of heirs to stridhans does not follow any prescribed school of Hindu Law.

Clause 17.—Marriage contracted outside caste is not valid.

Clause 19.—The conditions required to be satisfied are preposterous. The husband is supposed to be the last person to know of the infidelity of the wife and to expose the same before a court of law.

Clause 21.—The section does not provide for the contingency if the descendants embrace another religion after

inheritance. And such provision is not possible in respect of inheritance to cash.

Clause 23.—Persons suffering from the diseases and defects mentioned in the shastras (e.g., Manu IX, 201) should be held disqualified. We should not pretend to be more kind hearted than our ancient sages.

PART IV.—MARRIAGE AND DIVORCE.

Clause 2 speaks of two forms of Hindu marriage—
(i) sacramental marriage, and
(ii) civil marriage.

As a matter of fact, there cannot be anything like Hindu civil marriage. The expression involves a contradiction in terms. The provision for such a non-sacramental marriage can have no place in Hindu Law. Those who want to violate the provisions of sacramental marriage are free to have recourse to the ordinary Special Marriage Act which gives them the fullest facilities in the matter. If they want to be called Hindus let them behave and marry like Hindus. If not, they should break away from the Hindu fold and must not be allowed to make a naked dance on the chest of the Hindu society. According to Hindu shastras they are Mlechhas. "Sarvacharavihnascha Meche ityabhidhiyate."

Marriage is the most important of all the samskaras (sacraments) prescribed for Hindus in general—Dwijas and Sudras, high and low. This is the only sacrament to which even a Sudra is entitled. It acts as the foundation of all religious functions which extend over the entire life of a Hindu; the Hon'ble the Law Member in 1872 clearly put it down that the Hindu Law and religion on the subject of marriage are one and the same thing; that they must be adopted as a whole, or renounced as a whole; that if a man objects to the Hindu Law of marriage he objects to an essential part of the Hindu religion, ceases to be a Hindu, and must be dealt with according to the laws, which relate to a person in such a position, and it is therefore regarded as a vital event in his life. It is a pity that the reforms seem to be specially bent upon breaking up the sacred laws of Hindu marriage.

Clause 3.—Sub-clause (a) embodies an apparently magnanimous principle and is likely to receive the applause of the public who generally take a very superficial view of things. The clause is not so innocuous or magnanimous as it appears to be. Firstly, the restriction is redundant. Neither the shastras nor the society approve, tolerate or recommend bigamy in normal circumstances. As a matter of fact, among the Hindus to have more than one living wife is a rare exception. It was prevalent for some days among a very small section in Bengal and even there it is now extinct.

Secondly, there may be some cases where the taking of a second wife becomes a necessity. The Committee in the previous Code were good enough to mention some such cases but the necessity in those cases cannot be brushed aside so summarily as they have done.

We discuss some cases of necessity below:—

In the case of adultery the woman continues to be the wife of the husband but becomes unfit for religious acts which are enjoined to be performed in company with the consort who must be a chaste woman. In such a case the husband is to take another wife. Again, when the wife is a permanent invalid or barren by nature or diseased or is suffering from a loathsome disease the husband has to remarry in order to have a son which is the primary object of marriage. "Putrartho Kriyate Bharya putrah-pinda prayojanat." Sometimes there occur some cases where the invalid or barren wife asks her husband to remarry. There is no question of "suppression" in the strict sense of the term in such a case. Monogamy is good, but compulsory monogamy often leads to undesirable social and moral results which may not be shocking to many of modern taste but galling to the real Hindus.

From political considerations also, this restriction is most inopportune as it will have a very adverse effect on the numerical strength of the Hindu population. It is not quite intelligible why the Government should be over-zealous in its attempt to restrict even bigamy while polygamy is so largely in vogue among the Muhammadan community.

The marriage of a lunatic or an idiot is not invalid if he is not hopelessly beyond the senses. Manu speaks of their Marriage in IX, 202.

The utterance of Mantras should be mentioned as a requisite condition.

"Alternatives."—The additional points mentioned under this head, e.g., 3 (b) and 4 (a) should be included also in the other alternative list of requisities.

Clause 6.—Which seems to validate (on the principle of factum valet) (i) inter-caste marriage and Sagotra, as well as Samanapravara marriage, even in a sacramental marriage, is a revolutionary innovation which has been introduced here in an unobtrusive and apparently innocent manner so as to avoid detection—

(i) Inter-caste marriage: Anuloma marriage was allowed in other Yugas, but even then the Anuloma was to be in due order. Marriage between two different castes is wide enough to include Pratiloma marriage also which is highly condemned in all Yugas. Pratiloma marriage is a misnomer; it is no marriage but only a lustful combination.

(ii) Sagotra and Samana pravara marriages: Sagotra and Samana pravara marriages (or rather combinations) specially among the twice-born castes, are invalid. Issues born of such marriages are regarded as channels and are ineligible for inheritance:

Manu says—

Asapinda cha ya matuh asagotra cha ya pituh sa prasasta dwijatnam darakaramani maithune.

Where "prasasta" means "fit" to be married (Mitakshara); or it may mean simply "is stated"; compare the meaning of the word "Prasama" in the expression "aprasuta-prasama" in Sanskrit Rhetoric.

The reformers translate the word "Prosasta" as "is recommended", the normal implication being that a different course is not wholly forbidden. But if that is so, marriage with aunt or sister even cannot be held to be entirely forbidden; so the negation in a sagotra is to be taken as obligatory (Paryudasa) as has been clearly stated in the Mitakshara on Yajnavalkya. The absolute characteristic of the negation is clear also from the following text of Manu himself where he prescribes a heavy prayaschitta for inter-course with a sagotra girl—

"Guru-talpa vratam kuryat retah siktwa sayonishu."

Manu XI, 170. Sayoni means sagotra and the latter is exactly the word used in the corresponding text of Yajnavalkya. For the meaning of Sayoni, compare also Medhatithi and Govindaraj of Manu II, 134. In the verse "asapinda cha", etc., Medhatithi, the oldest commentator of Manu, reads the fourth foot differently. With that reading "prasasta" may be taken literally. The absolute negation of sagotra marriage is quite in consonance with various other clear texts of various other sages on the subject of marriage. We quote only some of them below:—

(a) Sagotram ched amatya upayachchet matrivad enam vibhriyat—Baudhayana.

If one marries a sagotra girl without his knowledge he should maintain her like his mother.

(b) Kumari—Sambhastwekah sagotrayam dwitiyakah Brahmanyam sundra-janitah chandals trividah smritah—Vyasa.

Chandalas are of three classes:

- (i) begotten on an unmarried girl,
- (ii) begotten on a sagotra woman,
- (iii) begotten by a Sudra on a Brahmin woman.

(c) Lakshanyam striyam udavahet Ananya—purvikam kantam aspindam yaviyasim.

Aroginim bhratrimatima samanarsha-gotram;

So also, Vasishtha, Vishnu, Apastamba, Gobhila, Agnata, Satatapa, Narada, Paithinasi, Kathaka-Grihya, etc., etc.

A new device is being resorted to for the purpose of nullifying the prohibition of sagotra marriage by making capital out of the fact that, of the 4 varnas, the Brahmins only have Gotra (Brahmin progenitor) of their own, and the other three varnas have their gotra through their Brahmin Ritiwiks (priests). So the sagotra-twa of the lower three varnas, is something unreal, their gotra being practically of a spiritual character. Hence, the reformers say, the prohibition of sagotra marriage need not be insisted upon. Our answer to this is that sagotra-twa in respect of Brahmins being real the prohibition in respect to them can by no means be denied. As to the other three varnas, well, whatever may have been the case with the original progenitor of such family, the descendants of

each family, belonging as they do to the same stock, must be regarded as sagotra in the real sense. Hence, the prohibition must apply to them also. Thus, the device, like the previous ones, is of no value.

It is permissible to point out to the modern minded social legislators that the principles involved in all these injunctions are based on theories which even the modern scientific world of to-day has found necessary to emphasise. The result of the system is a delicately balanced combination of exogamy and endogamy probably too subtle for the intellect and culture of legislators in haste. It is worthwhile quoting a passage of Charka, the well known authority of Hindu Medical Science, which clearly states that the gotra of the wife should be different from that of the husband—

Atulyagotrasya rajahkshayante
Rahovisrishtsm mithunikritasya.

— Sarirasthana, Chapter 2.

Modern scientific researches have explained the results of consanguinous marriage in numbers, reports of some of which are quoted below: Dr. S. M. Borwis (Washington) says:—

My researches give me authority to say that over ten per cent of the deaf and dumb, and over five per cent of the idiotic in our state institutions are the offspring of kindred parents. The frequency of imperfection of the children of such marriages has been noticed from the time of Moses or earlier and is proved by the fact that all the great moral Codes Hindu Mosaic and Roman—have all forbidden such union

Dr. Frederic Price, M.D., F.R.S., in his Medicine quotes the view of Dr. Eric D. Nannamara:—

"Consanguinity of parents has been supposed to be a cause of mental defects in children such as idiocy, eccentricity, feeble-mindedness, moral imbecility, degeneracy and oligophrenia, etc. This is also the view of Dr. Fletcher Bench, Shuttleworth, Osler Savill and many others.

As to the ineligibility of the issue born of intercaste and sagotra marriage for inheritance, Katyayana says:—

Akramodha Sutaschaiva Sagotra Yastujayate
Pravarajyavasitaschaiva na riktham teshu charhati.

One born of irregular Anuloma marriage (not to speak of Pratiloma) one born of a sagotra wife and one who has reverted to the life of a grihi from the life of a recluse are not eligible for inheritance.

Sagotra or Samana Pravara Marriages even if completed should be regarded as invalid but there should be no dissolution of marriage, nor should the wife be free to marry again. In such cases the wife is to be maintained like mother—"Matrivat Enam Bhibhiyat".

6 (really 7). There should be no proposal for registration in cases of a sacramental marriage. We have reason to apprehend that the optionality now proposed will be taken away before long.

Civil marriage.—Hindus have nothing to do with civil marriage. Civil marriage cannot be regarded as an aspect of Hindu marriage. It should be treated as a distinct form of marriage.

Clause 23.—It should be clearly mentioned that the guardianship contemplated is in respect of arranging the marriage and not in respect of Sampradan.

(a) The age limit should not be fixed at 16 years. Manu says that the daughter shall depend upon her guardian for her marriage till the expiry of three years from after her first menstruation. After that she may select her own husband according to shastras. There being no fixed age at which a girl first menstruates, the age limit for guardianship cannot be specifically fixed. If however for the sake of convenience, a particular age is to be prescribed, we would suggest 18 years as the age when one attains majority.

There is no provision for divorce under any circumstances in Hindu law. Marriages within prohibited degrees, Sagotras, Samana Pravaras, Sapindas, etc., even if solemnized without former knowledge of facts are considered invalid but there can be no divorce and remarriage in any case. Only in the case of a marriage inadvertently solemnized during the period of "Asaucha" (period of "uncleanliness") of any of the spouse there is provision for re-solemnization of the marriage between the same parties after the expiry of Asaucha.

PART XIV.—ADOPTION.

Clause 5 (2).—The age limit should be lowered as a woman is fit to conceive at about 12; according to the shastras a woman is competent to adopt after her first menstruation.

Registration of and authority to adopt should not be made compulsory, as in many cases, there may not be sufficient time for registration before death. The consent may be given in writing.

14. This provision is clearly against shastras and should be omitted.

14. (ii) The latter portion of this clause, viz., and in particular.....sisters' sons" should be deleted. The son of a woman whom the adoptive father could not have legally married is eligible for being adopted. In the case of Sudras only, the daughter's son and sister's son are however eligible for being adopted according to the shastras.

15. Dattahoma is essential for adoption according to the shastras and should not therefore be dispensed with in the case of pure conservative Hindus.

16. Property vested in the adopted son before adoption by way of succession shall not continue to vest in him after the adoption. His personal properties however should continue to vest in him after the adoption.

"Gotra rikthe janaituhna haret datrimahsutah".

Clause 19.—This section should be omitted. According to the shastras an adopted son is entitled irrespective of the time of his adoption to all the rights to which a son born of the adoptive father would have been entitled in such father's estate as it stood at the time of his death. So the restrictions on the time of adoption as proposed by this section are contrary to the shastras and as such unacceptable.

In conclusion we would say that it has not been possible for us to place herein all our objections regarding the code for want of time and other reasons. We have discussed the more important points only. Those which have not been discussed should not be taken to be free from our objection. Fuller expression of our opinion will be made at the time of giving evidence before the committee.

95. Bangiya Varnashram Swarajya Sangh [Satyendra-nath Sen, Esq., M.A., Ex-M.L.A. (Central)—Secretary].

We have given our opinions in detail on such Codes as well as on Bills based on them several times during the last few years. We are really tired of doing the same thing over and over again during the present times when life has become a veritable burden to many. We confess we feel it really difficult to keep pace with such rapidly changing views of the Committee. The consideration of such momentous questions might well be postponed till the return of normal times. It is our misfortune that while the other communities are suffering from divine dispensation only we, orthodox Hindus, are suffering from human oppressions as well.

The initial objection to such a legislation, as has been repeated by us many times, is that a legislature composed of heterogeneous elements—Hindus (most of whom are un-Hindus) and non-Hindus, is not competent to legislate on religious matters which are inherent in our social customs and rites, much less on Hindu religious laws which were evolved by the wise and far-sighted Rishis of old from the Vedic texts and the points of which cannot be precisely appreciated by the uncultured and undeveloped capacities of the degenerate people of modern times.

Inheritance in Hindu Law is not a secular but a religious affair. It is directly concerned with Pinda. "Dadyat pindam haret dhanam." Manu IX, 136. Yajnavalkya also says "Pindadomsaharaschalsham II 135. One who confers spiritual benefit on the departed soul is entitled to inherit the property of latter. Gautama also says the same thing—"Pinda-gotra-Rishi-Sambandhab-riktham bhajeran." CL. 23. This spiritual side of the question has been entirely ignored by the Committee.

N.R.—According to the Hindu conception, law is not different from religion. In conformity with the above view, it has been held by the Judicial Committee (in *Togors v. Togors*), that "The Hindu Law of Inheritance is based upon the Hindu religion." The quotation given by Mr. Atul Ch. Gupta, viz.: "Prayena amin Prakarans Loka-Vyavaharani Vachanani" is bogus. The actual passage in the Dayabhaga commentary sounding like the above, runs thus—"Loka-Siddhasya ova anubadakeni eva prayena amin Prakarans Vachanani" meaning—that in the chapter on Dayabhaga (Partition of property) the texts are mostly reiterations of what the people follow as customs. This does not speak

in any way against the religious character of Inheritance. The laws have been enunciated by ancient sages like Manu, Yajnavalkya, Narada, Baudhayana, etc., who based their views (with no fundamental difference among them) on various Vedic texts, whether those Vedic texts have been understood and interpreted by them correctly or not does never occur in the mind of a Hindu. Indeed, to accept the interpretations of persons who are almost innocent to Sanskrit language in preference to those given by the ancient sages would be nothing short of sacrilege and they should be rejected as sheer nonsense.

Marriage is the most important of all the Samskaras (sacraments prescribed for Hindus in general—Dwijas and Sudras, high and low. This is the only sacrament to which even a Sudra is entitled. It acts as the foundation of all religious functions which extend over the entire life of a Hindu. The Hon'ble the Law Member in 1872 clearly put it down 'that the Hindu Law and religion on the subject of marriage are one and the same thing; that they must be adopted as a whole, or renounced as whole; that if a man objects to the Hindu Law of marriage he objects to an essential part of the Hindu religion ceases to be a Hindu, and must be dealt with according to the laws which relate to a person in such a position, and it is therefore regarded as a vital event in his life. The reformers, it appears, are therefore specially bent upon deforming the sacred laws of Hindu marriage.' Adoption also is a religious affair as it requires the performance of a Homa. The religion of the Hindus stands on Revelation and therefore cannot be interfered with. In England even where the religion is not based on Revelation the religious laws cannot be interfered with by laymen. Dr. Hermann Finer, the well-known authority on Politics, says:—

"It is impossible for the ordinary institutions of Governments to penetrate into the depths and master the complexities of any modern branch of society and law without the special aid of those to whom the matter is one of life-long and intimate acquaintance and to whom all things are revealed owing to the vital quality of their interest in the result."—The theory of Modern Government, Vol. II, page 753.

The above view is also endorsed by Sir Arnold Wilson, who in an article entitled 'The Church and State', which appeared in the English Review (January 1939) quotes the view of Lord Hugh Cecil and says:—

"He would exclude the laity from the discussion of the mystery of sacraments, which belongs to Bishops and subordinately to the clergy. He would permit no intrusion by the laity on the stewardship of the mysteries of the Gospel."

It was from the same principle as enunciated above that even in England, materialistic as she is, a separate body of experts was formed under the 'Church of Assembly Act' even as late as in 1919 to deal with matters of religion, which were left outside the ordinary scope of Parliament. This was also the policy of the British Government with regard to India, and for long religion was regarded as a sacrosanct subject beyond the scope of legislation.

We beg to submit that Succession, Marriage, etc., being religious matters the laws relating to them cannot be interfered with by any body, not even by the State. We will discuss this point more fully later on at the end of our observations.

As to absolute right of women, the Shastric view is that a woman can have no absolute right to a property unless it is "Stridhan." Jimutavahana, the author of the Dayabhaga, says: "the wife should simply enjoy the property and is not entitled to dispose of or mortgage or sell it." In support of this he quotes from Katyayana as follows:—

Aputra Sayanam Bhartuh palayanti gurau sthita. Bhunjitamaranat kshanta dayada urdhama pnyuh.

—A childless widow remaining faithful to her deceased husband, should live self-controlled in his house till death. After her death the natural heir or heirs of the original owner should inherit the property.—Dayabhaga 133. Jimutavahana quotes also the following from Mahabharata (Danadharmas):—

Srinam Swapatidayastu upabhogaphalaha smritah Napaharam Striyah kuryuh patidayat kathanchana.

The property inherited from the husband confers on the widow the right of enjoyment (i.e., life-interest) only. She must not dispose of it in a squandering manner.

In all cases the absolute interest of a widow would introduce a revolution and the properties inherited by

widows would invariably go to her paternal relatives or other persons if she is given absolute power of disposition.

Baudhayana also says: "Nirindriya hyadayascha striyo mata iti sruti." The Sruti referred to runs thus:—

"Striyo nirindriya hyadayadih"—Taittiriya Samhita, VI, 5, 8, 27. As to the interpretation of the above texts the Committee is evidently prejudiced by a view to which Dr. Dwarkanath Mitter committed himself in his research work of his youthful days, viz., that the Sruti refers to a share of Soma juice only and not to shares in general. That this is an erroneous view is confirmed by another Sruti which has no reference to Soma juice and which pointedly denies women's absolute right to property—"Ta natmanshana isate na dayasachana isate"—Satapatha Brahmana, IV, 4, 2, 13.

In fact, the word 'days' means 'heritable property.' In Rig Veda III, 31-2. ("Na Jamaye, etc.") quoted below the word is neither Soma nor daya but "riktha," (property).

It may be added in this connexion that Manu also characterizes women as Nirindriya (IX, 18) and therefore ineligible for (absolute) inheritance as stated by him in IX, 201. It is simply ridiculous to accept the interpretation of Dr. Mitter (who is utterly innocent of the Vedas and the Vedic mannerisms) in preference to that given by ancient sages like Manu, Vasishtha, Baudhayana, etc., to whom the Vedic texts were directly revealed.

Absolute ownership of wealth by weak minded persons like women is a fruitful source of various evils. As stated in the Gita (I. 40-41) the whole family is destroyed if a woman belonging to that family becomes unchaste. Hence it is that the sages wanted that women should live a controlled life.

Regarding inheritance by daughter: According to Hindu shastras, daughters do not get a share if there is a son. Rig Veda III, 31, 2 says—"Na Jamaye tanvo riktham araik", i.e., a son does not transfer property to a girl. The Hindu idea is that girls are to be engrafted on the family of their father-in-law. They become part and parcel of that family and to the welfare of that family they devote their entire attention. If they are given a share in their father's family, they, while proceeding to the new family, will naturally look backwards wistfully, which will vitiate the Hindu ideal. The Hindu culture is the most ancient in the world. We think it extremely derogatory to give up our own and imitate the law of other communities who have been passing through experimental stages and who, to do away with the evils of their own defective system, often have recourse to Wakf and other devices, viz., marrying the brother's wife, uncle's daughter, etc., which are regarded by Hindus as instances of incest.

Regarding devolution of property extreme and undue consideration has been made in favour of women, so much so, that the property will slip away to outsiders in course of a few decades.

If widows and daughters are allowed absolute ownership the system of adoption of a Dattaka son for the performance of religious observances of the family have very little scope. As a result, the religious characteristics of the family will be gone.

To do away with the manifold evils not desired by him, the owner of the property will have to execute a will, a course which is not much in vogue in Hindu Society. The new system will be highly expensive and will encourage endless litigation and will bring in undesired results owing to laches which are quite natural with men. We would rather propose to rely on the contrary course, viz.: One who wishes that some additional relations should inherit his property, is free to execute a will to that effect. We can assure the framers of the Code that the contrary course just mentioned will cover much fewer cases and should therefore be preferred to the other one.

Unification of law is certainly a palatable expression, but it is doubtful whether it is possible or is a necessity or even a desideratum. The Hindu sages enjoin that customs and usages of each place, if they do not go against shastras, should be kept intact.

"Yasmin dese ya achare vyanatarah kula thithih. Tathaiya pratipaloyasu yata vasam, upagatah"—Yajurvediya. I-343. Also, "Desa-jati-Kuladharmascha ammayairviruddhohi pramanam"—Gautama CL. XI.

However, that much advertised unification even has not been achieved, as some of the systems have been explicitly

excluded from the operation of this Code. Barring the two provinces of Bengal and Assam, Mitakshara is already in vogue almost everywhere in India. What is the special benefit that has been achieved by that unification? None.

The Code speaks of two forms of Hindu marriages—

- (i) Sacramental marriage, and
- (ii) Civil marriage.

But as a matter of fact, there cannot be anything as Hindu Civil marriage. In fact, the expression involves a contradiction in terms. Besides, the provision of such non-sacramental marriage is redundant. Those who want to violate the provisions of sacramental marriage do that generally by being actuated by some sordid motive such as lust or earthly gain. To satisfy the propensities of such people the ordinary special Marriage Act is there. The reformers have already given them the fullest facilities in the matter. Why then this corrupting complication of Hindu marriage? If they want to be called Hindus let them behave and marry like Hindus. If not, they should break away from the Hindu fold and must not be allowed to make a naked dance on the chest of the Hindu society. According to Hindu Shastras they are Mlechhas. 'Sarvacharavihinasha Mlechha ityabhidhiyate.'

Part IV, clause 3, sub-clause (a) which embodies an apparently magnanimous principle is likely to receive the applause of the public who generally take a very superficial view of things. The clause is not so innocuous or magnanimous as it appears to be. Firstly, the restriction is redundant. Neither the Shastras nor the society approve, tolerate or recommend bigamy in normal circumstances. As a matter of fact, among the Hindus to have more than one living wife is a rare exception. It was prevalent for some days among a very small section in Bengal and even there it is now extinct.

Secondly, there may be some cases where the taking of a second wife becomes a necessity. The Committee in the previous Code were good enough to mention some such cases, but the necessity in those cases cannot be brushed aside so summarily as they have done. No name that of a Hindu or of a non-Hindu is so great or weighty as to be able to supersede the revealed laws laid down by the Rishis of old. The catchy hackneyed expressions, viz., 'the time has arrived,' 'the general trend of opinion,' and the like are to be discarded not only with contempt but also with distrust.

We discuss some cases of necessity below:—

In the case of adultery the woman continues to be the wife of the husband but becomes unfit for religious acts which are enjoined to be performed in company with the consort who must be a chaste woman. In such a case the husband is to take another wife. Again, when the wife is a permanent invalid or barren the husband has to remarry in order to have a son which is the primary object of marriage. 'Putrartho Kriyate Bharyya putrah-pinda-prayojana.' Sometimes there occur some cases where the invalid or barren wife asks her husband to remarry. There is no question of 'supersession' in the strict sense of the term in such a case. Monogamy is good, but compulsory monogamy often leads to undesirable social and moral results which may not be shocking to many of modern taste but galling to the real Hindus. Our apprehension expressed on the previous occasion that as there cannot be and ought not to be any nullity of Hindu marriage the proposed compulsory monogamy is designed to bring in a proposal for divorce in Hindu law as the next step has come true. We shall deal with the subject later on in detail.

From political considerations also, this restriction is most inopportune as it will have a very adverse effect on the numerical strength of the Hindu population. It is not quite intelligible why the Committee should be overzealous in its attempt to restrict even bigamy while polygamy is so largely in vogue among the Muhammadan community.

Part IV, clause 6 which seeks to validate (on the principle of *factum valet*) (i) Inter-caste marriage and Sagotra as well as Samana pravara marriage, even in a sacramental marriage, is a revolutionary innovation which has been introduced here in an unobtrusive and apparently innocent manner so as to avoid detection.

(i) Inter-caste marriage: (Anuloma was allowed in other Yugas, but even then the Anuloma was to be in due order. Again, marriage between two different castes is wide enough to include Pratiloma also which is highly

condemned in all Yugas. Pratiloma marriage is a misnomer, it is nothing but a lustful combination).

(ii) Sagotra and Samana-pravara marriage: Sagotra and Samana-pravara marriages (or rather combination)—and Samana-pravara marriages are regarded as chandalas and are ineligible for inheritance.

Manu says:—

A sapinda chaya matuh a—sagotra cha ya pituh.

Sa prasanta dwijatinam darakaramani maithuna.

Where prasanta means 'fit' to be married (Mitakshara); or it may mean simply 'is stated'; compare the meaning of the word 'prasamsa' in the expression 'a—prastuta-prasamsa' in Sanskrit Rhetoric.

The reformers translate the word Prasasta as 'is recommended,' the normal implication being that a different course is not wholly forbidden. But if that is so, marriage with aunt or sister even cannot be held to be entirely forbidden; so the negation in a sagotra is to be taken as obligatory (Paryudasa) as has been clearly stated in the Mitakshara on Yajnavalkya. The absolute characteristic of the negation is clear also from the following text of Manu himself where he prescribes a heavy prayaschitta for intercourse with a Sagotra girl.

"Guru-talpa vratam kuryat retah siktwa sayonishu."

Manu XI, 170. Sayoni means Sagotra and the latter is exactly the word used in the corresponding text of Yajnavalkya. For the meaning of Sayoni, compare also Medhatithi and Govindaraj on Manu II, 134. In the verse 'a—sapinda cha,' etc., Medhatithi, the oldest commentator of Manu, reads the fourth foot differently. With that reading 'prasasta' may be taken literally. The absolute negation of Sagotra marriage is quite in consonance with various other clear texts of various other sages on the subject of marriage. We quote only some of them below:—

(a) Sagotram chod a—matya upayachchhet matrivad enam vibhriyat—Baudhayana.

—If one marries a Sagotra girl without his knowledge he should maintain her like his mother.

(b) Kumari—Sambhastwekah sa-gotrayam dwitriyah Brahmanyam sudra-janithah chandalah trividhah smritah—Vyasa.

—Chandalas are of three classes:—(i) begotten on an unmarried girl, (ii) begotten on a sagotra woman and (iii) begotten by a sudra on a Brahmin woman.

(c) Lakshanyam striyam udvahet.

Ananyya-purvikam kantam a—Sapindam yaviyasim.

Aroginim bhratrimatham a—samanarsha-gotrajam.

So also, Vasishtha-Vishnu, Apastamba, Gobhila, Gautama, Satatapa, Narada, Paithinasi, Kathaka-Grihya, etc., etc.

A new device is being resorted to for the purpose of nullifying the prohibition of Sagotra marriage by making capital out of the fact that, of the four Varnas, the Brahmins only have Gotra (Brahmin progenitor) of their own, and the other three Varnas have their Gotra through their Brahmin Ritwika (priests). So, the Sagotra-twa of the lower three varnas is something unreal, their gotra being practically of a spiritual character. Hence, the reformers say, the prohibition of Sagotra marriage need not be insisted upon. Our answer to this is that Sagotra-twa in respect of Brahmins being real the prohibition in respect to them can by no means be denied. As to the other three varnas, well, whatever may have been the case with the original progenitor of each family, the descendants of each family, belonging as they do to the same stock, must be regarded as sagotra in the real sense. Hence, the prohibition must apply to them also. Thus, the new device, like the previous ones, is of no value.

It is permissible to point out to the modern-minded social legislators that the principles involved in all these injunctions are based on theories which even the modern scientific world of today has found necessary to emphasize. The result of the system is a delicately balanced combination of exogamy and endogamy probably too subtle for the intellect and culture of legislators in haste. It is worthwhile quoting a passage of Charaka, the well-known authority on Hindu Medical Science, which clearly states that the Gotra of the wife should be different from that of the husband.

Atulya-gotrasya rajah-kahayante.

Rahovirishitam mithunikritasya.

—Sarirasthana, Chapter 2.

Modern scientific researches have explained the results of consanguineous marriage in numbers, reports of some of which are quoted below:—Dr. S. M. Berwis (Washington) says:—

"My researches give me authority to say that over ten per cent of the deaf and dumb, and over five per cent of the idiotic in our state institutions are the offspring of kindred parents. The frequency of imperfection of the children of such marriages has been noticed from the time of Moses or earlier and is proved by the fact that all the great moral codes—Hindus, Mosaic and Roman—have all forbidden such union.

Dr. Frederic Price, M.D., F.R.S., in his "Medicine" quotes the view of Dr. Eric D. Macnamara:—

"Consanguinity of parents has been supposed to be a cause of mental defects in children such as idiocy, eccentricity feeble-mindedness, moral imbecility, degeneracy and oligophrenia, etc." This is also the view of Dr. Fletcher Beach, Shuttleworth, Osler Savill and many others.

As to the ineligibility of the issue born of inter-caste and Sagotra marriage for inheritance, Katyayana says:—

Akramodha—Sutasahaiva sagotrad yastu jayate.

Pravrajyavasitaschaiva na riktham teshu charhati.

—One born of irregular Anuloma marriage (not to speak of pratiloma) one born of a grihi from the life of a recluse are not eligible for inheritance.

Divorce.—Divorce of a spouse by dissolution of marriage among Hindus is a revolutionary idea. Manu says:—

"Na nishkraya-Visargabhyam bhartur bharya vimuchyati. Evam dhasmam vijanimat prak Ajabati-nirmitam." [Neither by sale nor by repudiation can a Hindu wife be separated from the husband. This rule has been prescribed by Prajapati (the creator).]

There is a verse in Parasara Samhita (IV, 30) as well as in Narada Samhita (XII, 97) which apparently sanctions re-marriage of a woman under certain circumstances and thus pre-supposes dissolution of the first marriage. The verse runs as follows:—

Nashte mrite pravrajita khive cha patite patau

Panchaswapata viarjiam patirango vidhiyate

—when the husband disappears, is dead, becomes a recluse, is impotent or is fallen—in these extreme circumstances a second husband is prescribed for a woman.

The application of the verse has been variously interpreted. According to some it refers to Vagdana (betrothal) and according to others it refers to a second marriage (if it can be called a marriage at all) although such practice has been condemned by the law-givers in the same breath.

In case a woman takes a second husband she is called a Punarbhū (Vasishtha Ch. 17). None should eat from her hand (Angira 68). Her husband is called Punarbhūpati and her issue is called Punarbhava. Their position is very low in society and they have been described as Apantkeya and are therefore to be avoided in feasts, sacred study and matrimonial alliance (Manu III, 155, 166).

Moreover, such re-marriage has been discontinued in the Kaliyuga. In support of this view, Madhavacharya, the commentator on Parasara, quotes the following from Aditya Purana:—

Adhayaḥ punar udvāham Jyeshthāmsam go-vadhām tatha.

Kalan pancha na kurvita bhratri-Jayam Kanandalum. (Re-marriage of a woman, preferential share for the eldest brother, etc., those should not be done in Kali yuga.)

It should be remembered that the prescription "Kalau Parasarah Smritah" relates to the rules of Prayaschitta only. However, far from prescribing dissolution of marriage all the sages say directly or indirectly that marriage is indissoluble. Parasara clearly says that the wife should not insult a husband even though he be poor, diseased, etc. Disease of course includes impotency. Narada also is very clear on the point. He says as follows:—Marriage consists of two parts (1) betrothal and (2) sacrament. Betrothal may be broken on sufficient grounds but the sacrament is indissoluble.

Tayor aniyatam proktam varanam dosha-darsanat

Pani-grahana-Samskaro niyatam dira-lakhanam"

—Narada Chapter xii. 3.

Those who have properly understood the principle of Hindu marriage can easily see that the Shastras cannot ordain otherwise. The Mantras solemnly uttered and repeated during the ceremony signify spiritual unification of the two beings. The reformers make capital out of the verse "Nashte Mrite, etc.," but they forget that if their interpretation is accepted, those who go to foreign countries beyond the seas, being fallen according to Shastras, are liable to be divorced by their wives.

Lastly, the Legislature is not competent to legislate on religious matters from various considerations:

(1) The British conquered the country nominally from the Muhammadans and really from the Mahrattas neither of whom has any power to interfere with our religion. The British therefore cannot claim that they have derived the right of such interference from the conquered rulers. They have never claimed that right; on the contrary, they have repeatedly proclaimed that they will never interfere with our religion. In conformity with the above principle they enacted some parliamentary statutes which clearly assured us religious non-interference by the State. True, the said statutes have been deleted one by one, but that does not confer any positive power to interfere. Before the introduction of the Act of 1935 Bills on religions and religious rites could be introduced only with the previous sanction of the Governor-General. In the Act of 1935 religions and religious rites do not occur in the lists of subjects for legislation and consequently the question of previous sanction has been omitted altogether; Marriage and succession do occur in the lists no doubt, but as religions and religious rites have been omitted, marriage and succession occurring in the lists should be interpreted to refer to the non-religious parts of those subjects.

(2) Queen Victoria's Proclamation (of non-interference in religion) is a living document with many crores of the Indian people as was exclaimed by a number of M. Ps. while discussing the Government of India Bill in 1935.

(3) Even if the Legislature is legally competent to legislate on religious matters, are the legislators qualified enough for the purpose as set forth by competent authorities like Hermann Finer even in these degenerate days.

(4) Even if they are deemed to be qualified according to the above test where is the demand for such reforms as have been contemplated by the Rau Committee? How many Hindus and what part of the entire Hindu population have demanded such revolutionary changes in the Hindu society? Is not their number and proportion infinitely small? Are they Hindus properly so called? We should remind the Government and the legislators of what Sir James Fitz Stephen said while enacting the Special Marriage Act in 1872 (without polluting the genuine Hindu Law of marriage).

"Be a Hindu or not as you please; but be one thing or the other. Don't ask me to undertake the impossible task of constructing a compromise between Hinduism and non-Hinduism which will enable you to evade the necessity of knowing your own minds."

In the light of the above observations we proceed to discuss the clauses of the Code.

PART I.—PRELIMINARY.

Clause 2.—Definition of "Hindu" is too wide. Buddhists, Jains, etc., who preach against sacrifice (Yajnas) enjoined by the Vedas, cannot be called "Hindus." If persons mentioned under the "Illustrations" are intended to be regarded as Hindus some qualifying epithet should be added. Thus, they may be called "Political Hindus" or "Secondary Hindus." And it should be distinctly mentioned that their opinions when going against orthodox views, should be totally ignored while concerning Hindu religious questions.

(b) Sub-castes should not be ignored. Children of Pratiloma marriage do not, strictly speaking, belong to any varna. They have been clearly excluded in the definition in the Code.

(j) Definition of Stridhan is too wide. It is a technical term and should include only such properties as have been mentioned in the shastras.

PART II.—INTESTATE SUCCESSION.

Clause 1 (i).—This clause strikes at the root of the proposed uniformity of law for all Hindus. Agricultural land being excepted one and the same family will be

governed by two different laws. Uniformity indeed! There is no certainty that the provincial legislatures will follow the enactment proposed by this Code.

Clause 5—class 1 (ii).—Females cannot have absolute right to property except "Stridhan." Daughter and widowed wife can inherit only when there is no son. The scheme proposed will lead to fragmentation of property, disintegration of family, litigations and various other complications.

Clause 8 (4).—The principle enunciated is not clear and seems to be vicious; woman remains a sagotra of her father till her marriage.

Clause 12.—The right of pre-emption cannot be availed of if there is no ready money in the hands of the brothers.

The qualifying clause "who has passed by marriage into a family other than that of the intestate" is ominous, as it presupposes the possibility of a different case also which is impossible according to Hindu Shastras.

Clause 14.—The list of heirs to Stridhana does not follow any prescribed school.

Clause 17.—Marriage contracted outside caste is not valid.

Clause 19.—The conditions required to be satisfied are preposterous. The husband is the last person to know of the infidelity of the wife and to expose the same before a Court of law.

Clause 21.—The clause does not provide for the contingency if the descendants embrace another religion after inheritance. And such provision is not possible in respect of inheritance to cash.

Clause 23.—Persons suffering from the diseases and defects mentioned in the Shastras (e.g. Manu IX. 201) should be held disqualified. We do not pretend to be more kindhearted than our ancient sages.

PART IV.—MARRIAGE AND DIVORCE.

Clause 3 (a).—But a husband should be allowed to take a second wife if the first wife is barren by nature or by disease or is suffering from a loathsome disease, such as leprosy, etc.

(b) The marriage of a lunatic or an idiot is not invalid if he is not hopelessly beyond his senses. Manu speaks of their marriage in IX 202.

Clause 4 (2).—The utterance of Mantras should be mentioned as a requisite condition.

"Alternatives."—The additional points mentioned under this head, e.g., 3 (b) and 4 (a) should be included also in the other alternative list of requisites.

Clause 6 (a), (b).—Contain revolutionary views which can by no means be encouraged. Sagotras and Samanapravara marriages are not valid. Inter-caste marriage in Kaliyuga is not valid.

Pratiloma inter-caste alliance is no marriage at all. It has been severely condemned for all yugas.

Clause 6 (really 7).—There should be no proposal of registration in cases of sacramental marriage. We clearly see that the optionality now proposed will be taken away before long.

Civil marriage.

Clause 7. Hindus have nothing to do with civil marriage. Civil marriage cannot be regarded as an aspect of Hindu marriage. It should be treated as a distinct form of marriage.

Clause 23. It should be clearly mentioned that the guardianship contemplated is in respect of arranging the marriage and not in respect of Sampradan. When the mother (mentioned in the list) makes the Sampradan Vriddhi Sradha cannot be performed.

CHAPTER III.—Nullity and dissolution of marriage.

Clauses 29, 30.—No dissolution of marriage is possible according to Hindu Shastras. The relationship between husband and wife is permanent.

PART VI.—ADOPTION.

Clause 5 (2).—The age-limit should be lowered as a woman is fit to conceive at about 12.

Clause 7. Registration should not be made compulsory, as in many cases, there may not be sufficient time for registration before death. The consent may be given in writing.

Clause 14. (ii).—Are clearly against shastras and should be omitted, except in the case of sudras who are permitted to adopt a daughter's son or a sister's son.

Clause 15. Dattahoma should be made compulsory for those Hindus among whom the practice of Homa is in vogue.

Clause 18 (a).—The clause is against the following text as well as custom and should be omitted :—

“Gotra-riktha Janayitur nahared datrimah sutah.”

Clause 19. Time limits here should be omitted as they are against shastras. It should not be supposed that the clauses that have not been touched here are all entirely free from objection. Only the serious points have been discussed.

96. Ba-giya Bidwant Samme'ana, Shilgora P.O., Rupapat Faridpur, Bengal.

Regarding codification.—Divine and impersonal origin of Hindu Law—true for all time—to be found in Srutis—Manu not Law-giver—Smritis did not enact but collect, expand and adapt the law to the circumstances from time to time.

Substantive and procedural law—application of law to the particular circumstances of the case—origin of Naya or equitable principles—function of legislatures and Judges—departure from original Hindu Law—how and when to be mended.

Hindu Law inseparable from Varnashram or economic structure society (caste, etc.)—Hindu Law based upon Pinda theory—social economic and religious foundation of pinda—pinda as continuity of living by business, agriculture or profession—collectivity of pinda—relation between a pinda and a caste * relation between a varna and a pinda—caste and pinda inconceivable without peculiar talents and aptitudes—Bengal theory of Varnashram—Inclusion and exclusion of other people in and from Hindu Varnashram—Relation between Varnasramis and non-Varnasramis. Hindu, if to be adopted, to non-Varnashramis and people professing Muhammadan, Christian, Judaic and other faiths—if so, when, how and where adaptation possible.

Integrity of Hindu society how to be preserved now—law of marriage and inheritance, if dependent upon the form of Varnashram or economic structure of society—law of person and property how far dependent thereon. When society is in a flux, in an unsettled state due to far reaching economic revolution—schemes of post-war construction and industrial development in preparation codification of law of marriage and inheritance if expedient.

If the British Parliament or for the matter of that, legislatures constituted under the Statutes of Westminster can undertake such legislation? Form of legislature laid down in the Mahabharata and other Shastras—representation of four varnas if necessary, the first and fourth varna, if fully represented in the legislatures conformably to their numerical rates—legislature consisting of Moslems and Europeans, if entitled to re-enact Hindu Law (if not applicable to them as well). Queen Victoria's declaration its effect on the power of legislature.

Present code if communal legislation—piecemeal communal legislations of different communities likely to cause confusion and disturbance—will fail to adjust and re-adjust social and economic advantages and serve inequality in the economic growth of different communities—will exercise far-reaching sinister influences in matters political—may open a wound never to be healed.

A solid compact homogeneous nation is in the making—such communal legislations likely to retard its growth—and make her lame and halting—revival of some obsolete form of Hindu marriage if can serve the present needs without codification. Extension of the doctrine of *factum valet* by interpretation of circumstances at present, if can dispense with codification.

Regarding Nomenclature.—The words 'Hindu' and 'Hindusthan' should not be made to denote any particular community or religion. The words are of comparatively recent origin and not to be found in ancient Sanskrit literature. The words denote India and an inhabitant thereof to the outside world. Their meaning should not be restricted by legislation. That will give an impetus to Pakistan movement.

Regarding innovations.—(i) Monogamy, (ii) Absolute right of disposal of property, (iii) sharing of inheritance by sons and daughters together and (iv) Removal of disqualification.

(1) Polygamy and bigamy very rare now—enforceable not by legislation but by precept and education. If undertaken at all, be made applicable to all communities alike. Undue advantage—half a dozen young maids in every house in Bengal. Communism in marriage.

* Varna—Relation between a varna and a caste.

Equitable distribution of domestic happiness to all youthful women alike—richmen if to take plurality of wives in aid of such distribution—and to marry their girls to poor and educated youths.

Agriculture and cottage industry, if require plurality of wives and number of children—

(2) Absolute right of disposal to women, weak-minded and immoral young men, to the blind, idiots, deaf and dumb, etc., and inheritance to married daughters.

Law of inheritance without a law of joint family and partition inconceivable. Old Hindu theory—inheritance without pinda or occupation inconceivable. The first three verses of Isha upanishad give the principles in brief—elaborated in the Mahabharata, Srimad Bhagabat and other Puranas, Sanhitis only adopted to circumstances—national prosperity—individual rights subordinated to national weal.

Capital and labour in Hindu Shastras,—intendment of inheritance to serve as capital to earned competence by the occupation until separation—Mitakshara and Dayabagha exclusive—Capital and labour inseparable in Hindu Law. No right of disposal of inheritance except in case of dire necessity.

Reaffirmation of law of joint family and partition and provision of a regular system of account, management, audit, if it can dispense with the necessity of innovations and re-enactment.

Inter-caste marriage and divorce, if and when to be allowed, protection and maintenance of women in the joint family and by relations, adultery, if and how prevented,—conjugal relations how made pure and happy,—women of the town,—census report—how to be purged, their position, status and conditions past and present, provision for their marriage and domestic life—purity of their life—how made useful to society—provisions of childless men and women in old age.

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The object to make a uniform code for a vast Hindu country like India especially in matters of personal law like marriage, inheritance, etc., is totally unreasonable. In any event the alleged principle of uniformity is broken in the case of the Aliyasantana, Marumakkattayam and Nambudri law of inheritance. As a result of the proposed codification all the several schools of law and all the several sources of law would cease to exist. This position is unthinkable.

In several cases the principles common to all the schools are brushed aside and imaginary rules of law are brought in and as such all the sources and principles of Hindu Law now in existence and binding on the Hindus would have no foundation for the future.

Hindu Law has its basis in Hindu Dharma. The present legislative council has no jurisdiction to over-ride the Dharma of the Hindus. The Dharma of the Hindus could be decided by the Hindus alone and that by its accredited scholars. A composite legislature consisting of Hindus and non-Hindus has no jurisdiction to decide the Hindu Law questions which are religious as well.

Hindus have their own Dharma-acharyas and they alone are best fitted to decide what the Dharma is, or should be for the Hindus.

The only sources of Hindu Law recognised in Hindu jurisprudence, viz., the *Mfamsa* Sastra are the *Sruti Smriti* and *Sadachara*. Legislation is not a source of Hindu Law. Even the King under Hindu Law is bound by Dharma and is not a maker of Dharma. The Legislature cannot claim any higher rights than the King. The judges have only interpreted the law.

For all these above reasons the Hindu Code should not be proceeded with.

Acts already passed.—When the country came under the occupation of the British Government, the Hindu Law was ordered to be made applicable in all matters covering personal law like marriage, adoption, inheritance, etc., for all Hindus. The Hindu Law as laid down in the sources of Hindu Law, viz., *Smriti* and *Sadachara* was intended and nothing else. Such Law was being applied and continues to be applied in the law courts. The Legislature has passed certain acts interfering for example with the Hindu Law of inheritance, etc. We demand that those acts should be repealed. Whether the acts already passed are valid or are going to be repealed or not, surely that is

no justification for further inroads in Hindu law by the Legislature. The Queen's proclamation that Hindu religion and religious laws and beliefs would not be affected includes religious law also like the Hindu Law.

The Hindu Code as a whole.—The explanatory statement attached to the draft Hindu Code states that the Committee desire that the Code should be regarded as an integral whole (Italics is ours) and that no part should be judged as if it stood by itself. Considering the Hindu Code in this respect the following may be considered to represent the main changes. The word Hindu is sought to include a Hindu by profession alone while the fundamental Hindu Law applies to a Hindu Law of inheritance are set aside and a sort of confused innovation is substituted. The Joint family system as among brothers and as among father and sons which has stood the test of time is set aside. Instead of the law of survivorship, the law of tenancy-in-common is introduced even in places governed by the Mitakshara law on a supposed principle of uniformity to enable death-duties being imposed. The family ideal of the Hindus is seriously jeopardised. The principle of civil marriage is covertly introduced even in the sacramental marriage. Sagotra and Samana-Pravara marriages are allowed. Second marriages for men are cut down. Inter-caste marriages which are totally opposed to Smriti and which have ceased to be Sadachara for centuries are introduced. Divorce totally unknown to Hindu Dharma will develop into a normal feature of Hindu society.

In short a new law is introduced under the guise of codification and it has nothing to do with the existing sources of Hindu Law. The new code is imposed on the Hindus and is not a code based on the Hindu sources of law. For these reasons that code should be totally rejected as wholly foreign to the Hindus.

PART I.—PRELIMINARY.

Clause 2, sub-clause (2)—Definition of the word 'Hindu'.—The correct definition should be as follows: 'Hindu' means a person who has been following the recognized sources of Hindu Law for the purposes of inheritance, marriage, adoption and who has been governed by Hindu Law at the commencement of this code and their Hindu descendants following the said sources of Hindu Law. The sources of Hindu Law above referred to shall mean (1) The Sruthi, (2) The Smriti, (3) Nibandhas, commentaries and digests of Hindu Law, and (4) Sadachara or custom.

In the definition as it stands in the draft Hindu Code there is every chance for apprehension that the sources of Hindu Law would be seriously interfered with. Each sect of the Hindus would claim its own sources and there will be confusion. Those who are not Hindus are now sought to be made Hindus by the definition in the draft Hindu Code.

Clause 3—Operation of code in relation to previous customs and usages.—There must be a section defining the sources of Hindu Law and that all questions arising shall be determined by reference to them. Customs so far established as being law by judicial decisions and considered *Sishtachara* and followed by the Hindus for centuries should not be abrogated by this code.

Clause 4—Custom and usages defined—Second proviso.—In the case of family customs the mere discontinuance of the family custom for a short period should not be allowed. The family custom should have been discontinued for at least three generations and hence "for at least three generations" should be added at the end of the second proviso.

Clause 5—Sub-clause (b)—Definition of 'caste'.—The definition should be 'caste' means a caste recognized by the sources of Hindu Law prior to the commencement of this code.

Clause 5—Sub-clause (j)—Definition of Stridhanam.—According to the Mitakshara and Viramitrodaya there appears to be no difference between Stridhana property and property inherited from the husband. The word 'Stridhana' is used in the Dayabhaga in a restricted sense whereas in the other two works the word is used in a literal and wider sense. *Yajnavalkya-Vyavahara Adhyaya*, Chapter II, verse 143—describes Stridhana as gifts on supercession, etc. Commenting on the word *Vijnaneswara* and *Viramitrodaya* states that it includes property inherited from the husband (page 491).

According to the reading of this very text of *Yajnavalkya-Vyavahara Adhyaya*, Chapter II, verse 143, by *Jimutavahana*, he omits the word *Adhyam* and reads *अविद्विषति च*. Thus restricting *Stridhana* only to gifts or presents at the time of marriage and excluding the properties inherited from the husband or obtained on a partition. *Balambhatti*, a commentary on *Mitakshara*, does not accept the reading of *Jimutavahana* on the basis of *Narada* and *Katyayana* and accepts the reading of the *Mitakshara*. According to *Mitakshara* as obtained by *Viramitrodaya*, the right of a woman in respect of all kinds of *stridhana* is limited and necessarily her powers of alienation are fettered by legal necessity. According to *Dayabhaga* inherited property or property obtained on a partition is not *Stridhanam* and hence the question of a woman's power of disposal over it does not arise for consideration.

Clause 6—Amendment of the Special Marriage Act.—The Special Marriage Act should be allowed, if at all, to remain as it is and should not be put as a part of the Hindu Code; and the restrictions contained therein in sections 22 to 26 should continue to remain in force.

Clause 7—Repeal of the Acts relating to Hindu inheritance and repeal of the Deshmukh Act.—These acts are sought to be repealed by the framers of the draft code as the substance of these Acts are incorporated in suitable places in the draft code. We require that all these Acts should be entirely repealed in the interests of the Hindu community and should not be revived in any form whatsoever.

PART II.—INTESTATE SUCCESSION.

Clause 1—Part not to apply in certain cases.—This clause states that the part shall not apply to the cases specified therein. Admittedly the supposed rule of uniformity is broken. It stands to reason that the principles of inheritance enunciated by *Mitakshara* and *Jimutavahana* and settled by the decisions of the courts of the respective provinces should not be disturbed at all. Thus the whole of this chapter relating to intestate succession should be omitted.

Clause 2 (1)–(6), Heritable property, defined.—Stop with right and omit all further words. The result of the draft code is to do away with survivorship and make all property heritable with a view to death duties being imposed ultimately upon every kind of property.

Clause 5—Enumerated heirs—Class 1—Heirs in the compact series.—There is no reason as to why the son, the grandson and the great-grandson alone should not take the property as is now settled by law. There is no basis in Hindu Law for the theory of simultaneous heirs. Such an innovation is opposed to the specific rules of Hindu Law. The peculiarity of the Hindu Law of adoption based on the theory and value of spiritual benefit necessarily excluded the heritable right of a widow or daughter where a son existed. When the son or grandson or great-grandson is alive the widow does not inherit at all. If there is no son, grandson or great-grandson the widow gets the preference to inherit as against the daughter. The daughter only succeeds after the widow, or in the absence of the widow. This compact series of heirs as mentioned in verse 136 is so well settled and has become a part of Hindu tradition that it would be revolutionary to attempt to disturb the compact series of heirs and introduce any persons as an heir before the compact series of heirs.

Clause 5—Classes II, III, IV, V and VI.—The changes sought to be introduced are against the line of devolution indicated in the sources of Hindu Law and now settled by decisions. There is no principle in the order. The order of inheritance as now settled by judicial decisions for the *Mitakshara* and *Dayabhaga* should be left as it is; and the arrangement of the order of inheritance for the two schools should be made separately.

Clause 7—Manner of distribution among simultaneous heirs.—In the case of the widow and daughter if anything should be given to them at all it should be a share of the income only by way of maintenance and no fractional share of the estate should be given. There is ample authority to interpret *Amsa* as income and not as a share—vide *Apararka*, page 733, *Vyavahara Adhyaya*, commenting on sloka 124, *Vyavahara Adhyaya* of *Yajnavalkya*. The widow and daughter cannot demand partition though they may participate beneficially—vide *Yaj.*, Chap. II, verse 123, *Mitakshara* allows only one-fourth of son's share and that from income only (*Yaj.*, Chap. II, sl. 124) and not a half share (vide *Apararka*, 733).

Clause 9—Rules of preference.—Even the Mysore Code does not enable a woman to demand a partition. These rules are not acceptable being purely imaginary and not based on a fixed source of Hindu Law.

Clauses 13 and 14—Stridhana and order and mode of succession to Stridhana.—The question of Stridhana has already been dealt with while dealing with the definition of Stridhana in Part I. The law of Stridhana regarding the modes of acquisition, the powers of women over Stridhana and the order of inheritance to Stridhana should be only on the basis of Mitakshara and Dayabhaga as settled by decisions of the respective courts. The recognition of simultaneous succession of daughter and son in all kinds of Stridhana is opposed to Hindu Law and should be avoided.

Inter-caste marriages are, under Hindu Law, strictly prohibited and this clause should be deleted. There could be only one marriage and that a sacramental marriage and that within one's own caste. All other provisions are illegal and cannot confer any rights of inheritance to their issue. Marriage being the most important samskara, the provisions of the *Srutis* and *Smritis* and *Sadachara* should not be abrogated.

When once it is admitted she is unchaste it should be open to the next heirs to prove the same in the ordinary way but on grounds of public policy a period might be fixed say three years as the period within which the matter should be agitated even after the death of the husband.

Clause 21—Convert.—The proviso beginning with "unless . . ." should be omitted.

Clause 23—Disqualified heirs.—The Hindu Law as mentioned in *Yajnavalkya* should be restored.

PART III-A.—PROVISIONS COMMON TO TESTAMENTARY AND INTESATE SUCCESSION.

I. Scope and operation of Parts II and III.

Clause 1—Devolution of interest in joint family property.—This clause refers to interest in joint family property. Interest is no property. Interest cannot devolve upon anyone as per the *Mitakshara* school. *Deshmukh* Law overlooked this and enacted that the widow will get what the husband would have got if divided. Even that must refer only to separate property and not her husband's joint family property. This is opposed to *Mitakshara* on sloka 136.

Principle of family necessity is done away with. The family is likely to be ruined. Even *Dayabhaga* recognizes this limitation but merely says that an alienation when made shall be recognised thus clashing with *Mitakshara* (Chapter 1, paragraphs 28, 29 and 30 of *Dayabhaga*). So *Dayabhaga* theory of *factum velut* shall not be followed on grounds of public policy. Right by birth is to be retained. The abolition of the right by birth is a revolutionary measure. Abolition of the right of birth and right of survivorship would result in the imposition of death duties.

If this principle should be recognized at all, then in all cases where the principle of simultaneous heirs is introduced in the Code they are intended to be tenants-in-common but the principle of survivorship be applied.

Clause 3 (ii).—Omit including value of gifts and presents to her or to the bridegroom on the occasion. Illegitimate children and concubine have no place in the Code where illegitimacy are discouraged and illegitimate children's rights of inheritance is taken away. An old father and mother, a virtuous wife and an infant child are the only persons entitled to maintenance.

PART IV.—MARRIAGE AND DIVORCE.

Chapter I.—Celebration of marriage.

Clause 2—Two forms of Hindu marriage.—The civil marriage is mentioned as (b) as a form of Hindu marriage. The civil marriage should be omitted from the Hindu Code. Hindu Dharma Sastra recognizes only sacramental marriages. The introduction of a civil marriage is totally opposed to Hindu Law and also to Hindu sentiment. The civil marriage, if at all, as now mentioned in the Special Marriage Act should be left separately and should not be mixed with Hindu Law.

Clause 3—Requisites of sacramental marriage.—Clause 3 (a) prohibits a second marriage for a Hindu male. The section should omit the words "neither party" and insert in its place "No bride must have a husband living or dead at the time of marriage. The bridegroom in the case of second marriage must get the consent of the first wife living at the time."

Clause 3 (e) relates to consent obtained by guardians and limits the age of consent to 16. Consent of guardian or other person under whose care the bride is living at the time of marriage must always be obtained whatever the age of the bride must be, and the age-limit should be deleted.

Alternative clause 3 (b).—Add after this clause "belonging to the same caste following the same family traditions and tenets or following traditions or tenets not opposed to or condemned by either."

Alternative clause (4)—Ceremonies for sacramental marriage.—The defining of the customary ceremonies as *Pari-grahana* and *Saptapadi* should be omitted. If at all, it is sufficient to state that the sacramental marriage is complete on the observance of the necessary ceremonies of marriage as per sources of Hindu Law.

Alternative clause 5.—The clause should be omitted and in its place the following shall be substituted: "In the absence of any provision contained in clauses 3 and 4 the marriage shall be deemed to be an invalid sacramental marriage and the woman shall not acquire the status of a Hindu wife."

Alternative clause 6.—If the parties belonged to the same gotra or pravara the marriage is invalid. If the parties do not belong to the same caste the marriage is invalid. No provision should be made for validating those infringements and no rights of succession or inheritance can accrue in respect of such marriages.

Clause 6—Optional registration.—In the sacramental marriage the optional registration should not be introduced for the following reasons: The result of optional registration would be to combine the sacramental and civil marriage as one. The special sanctity given to the sacramental marriage would be completely ignored. To introduce registration in sacramental marriages makes the same lose its religious significances and also prepare the way for converting all marriages as civil marriages alone.

Though the registration is optional this is strongly opposed as this is the thin end of the wedge to convert the sacramental marriage into a civil marriage.

Clauses 7, 8, 9 up to 22 dealing with civil marriage.—These have no place in the Hindu Code dealing with sacramental marriages. The Special Marriage Act deals with civil marriages. The Hindu Law of Succession should not be applied to the Special Marriage Act. The reasons are obvious. No religious ceremonies could be performed by the parties to this marriage in case he inherits to estates of relations like the paternal grandfather, etc.

Clause 23, guardianship in marriage.—The civil marriage should be omitted from the Code and hence all references to guardians in civil marriages has to be deleted.

Clause 24.—This clause ought not to apply to a Hindu male as he is entitled to marry again.

Clause 27.—Succession to properties in case of civil marriages.—The succession is to be governed not by the Hindu Law but solely by the Indian Succession Act. Hence this clause should be deleted.

Clause 28.—Dowry evil.—For checking the dowry evil a special law applicable to the whole of India for all communities might be enacted instead of making it as a part of Hindu Law.

Chapter III.—Nullity and dissolution of marriages.

Clauses 29 and 32—Nullity and dissolution of marriages.—This entire chapter should be omitted and the whole of this chapter shall not apply to sacramental marriages. Divorces are not known in Hindu Law and hence no attempt should be made in any manner whatsoever to make divorce as a part of the sacramental marriages.

PART VI.—ADOPTION.

Add that only a Hindu who has contracted a sacramental marriage could adopt. A Hindu who has contracted a civil marriage has no power to adopt. The abrogation of the *Dwayamushyayana*, a form of adoption, is unreasonably against our law.

Clause 4—Conditions of a valid adoption.—In cases where *datta homam* is prescribed as necessary according to the sources of Hindu Law the adoption shall not be valid without the performance of the *datta homam*.

Clause 5—Capacity to take in adoption.—The reference to implied prohibition to adopt should be omitted. Only express prohibition should be recognized to make the adoption by a widow invalid.

Clause 6—Authority or prohibition in regard to adoptions.—Where there are more wives than one the authority may be given to or the prohibition imposed on the senior-most wife.

Where the Hindu has authorized the seniormost wife to adopt and where she dies without adopting, the wife next in rank may be permitted to adopt in the same authority as the senior wife and shall in all cases be entitled to adopt if the senior widow does not adopt within a reasonable time.

Clause 7—Manner of giving authority to adopt.—This clause should be omitted. Adoption is a religious matter and the power to adopt would have to be given in unforeseen emergencies, and should not be made to depend on a registered instrument. Hence the rules giving authority and revoking shall stand as at present.

Clause 8—Right to adopt as between two or more widows.—Omit. According to clause 6 (2) the seniormost wife alone would be entitled to adopt.

Clause (c) does not arise in view of section 5, sub-clause (2).

Clause (d) should be as follows: A power to the seniormost wife alone if not exercised within a reasonable time should be deemed to vest in the other wives in the order of their marriage.

Clause 14—Adoption of only son.—Omit this sub-clause (1) allowing the only son to be given in adoption. The Privy Council has been misled. An only son can never be adopted.

Sub-clause (2)—Sūdras.—The sub-clause will be applicable only in the case of Sudras other than the क्षत्रियस since the adoption of the daughter's son is prohibited in the case of क्षत्रियस.

Clause 15 (2)—Datta homam.—The datta homam is essential as already pointed out. The performance of the datta homam would be the clearest proof of adoption in every case of the क्षत्रियस; and there is then no necessity for registration.

Clause 16 (2)—Directions regarding adoption.—The adoption could be made even without following such directions. The authority to adopt alone is essential and the particular direction ought to be ignored.

Clause 21—Right of adoptive parents to dispose of properties.—This clause is revolutionary. This clause introduces the revolutionary doctrine by which joint family and survivorship between the adopted boy and his adoptive father are set aside. Unless the right by birth is given to the adoptive boy, no adoption would ordinarily be made.

Clause 22—Adoptive mother.—The person adopting should associate himself in adoption with the seniormost wife and in other cases where the adoption is made by one other than the seniormost. The seniormost wife and the other wife so adopting shall be deemed to be the adoptive mothers. This is the correct Hindu Law.

Clause 23 (1).—A Bachelor cannot adopt. Adoption by a bachelor is invalid. The rulings in this respect are wrong. The seniormost wife alone shall be entitled to adopt and in that case all the other wives also shall be adoptive mothers.

Clause 25—Applicability of law.—In cases of adoptions made after the commencement of this code to a male-married Hindu who dies before the commencement of this code, the law in force prior to the commencement of the code alone shall apply.

Omit sub-clause (2), provisos (1) and (2).

Chapter II—Registration of adoption.

Omit this chapter. The necessary proof of adoption will be always available.

FIRST SCHEDULE.

1. Omit.
2. Omit.
3. Retain sections 22 to 26 of the Special Marriage Act.

SECOND SCHEDULE.

All these three articles may be retained.

THIRD SCHEDULE.

These notices of marriages, etc., should find a place in the Special Marriage Act and not as a part of the Hindu Code.

FOURTH, FIFTH AND SIXTH SCHEDULES.

The declarations, etc., should be made applicable only in cases of civil marriage and not at all in the case of a sacramental marriage. These cannot find a place in the Hindu Code but could if at all, find a place in the Special Marriage Act.

I.

The property acquired by inheritance (विरस), partition, etc., should be regarded as stridhana. Manu's mention

of six kinds of stridhana is only to denote the minimum kinds of stridhana and not to exclude more kinds. The word stridhana in the smṛiti used in the yongika sense, i.e., the wider sense, but not in a restricted sense (परिमितिक).

In cases of properties acquired by women in industry, they have been specifically excluded from the category of 'stridhana' in order to indicate that a different method of partition and inheritance and different rights of ownership are prescribed for the same. It is for this reason that in the case of property acquired by women by industry the husband is mentioned as the owner of such kinds of properties. This is the view of the Mitakshara and of the Viramitrodaya and other followers of the Mitakshara school. But the Dayabhaga does not recognize the properties acquired by inheritance, etc., as stridhana. The Dayabhaga recognized as stridhana those kinds only which are specifically mentioned in the Smṛiti texts. According to the school, the word stridhana is in a Paribhāshika, i.e., restricted sense.

According to Mitakshara the reading of the 3rd pada, of sloka 143 of the Vyavahara Adhyaya which summarises the kinds of stridhana is अधिकवेदिककाम. Here the word काम means the property acquired by the woman in any other way including विरस, etc. But the reading of the 3rd pada of the above sloka according to Dayabhaga (page 75) is अधिकवेदिककाम. According to this reading, the word काम is absent.

Balambhatti (page 252) says that the reading adopted by Jimutavahana is wrong, because the word काम in the text would become meaningless, and because further there would be incompleteness in the description of the types of stridhana and because such reading contradicts other texts. Balambhatti states that the word काम as per the reading of Mitakshara is for indicating that the types of stridhana acquired by inheritance, partition, etc., are covered hereby, and further says that the sloka 136 of the Vyavahara Adhyaya of Yajñavalkya, the texts of Narada and of Katyayana are authorities in this respect. The text of Yajñavalkya that is authority to prove the property acquired by partition is also stridhana.

The Viramitrodaya also (page 452) after summarising the view of Mitakshara and after raising the question that if the view of Mitakshara is accepted, the statement of Katyayana that the property acquired by industry is not stridhana observes that Katyayana does not say that the property acquired by industry, etc., is not stridhana. But what Katyayana really meant was that the special rules of devolution of stridhana are not applicable to those cases. From this we cannot conclude that Viramitrodaya and Mitakshara had in view that regarding properties acquired by inheritance also, the special rules of devolution of stridhana and the special rules of ownership of stridhana do not apply. The fact that Mitakshara includes in the word "काम" the property acquired by inheritance, etc., as stridhana is, according to him, supported by the text of the Narada and Katyayana where the word "सद्दत्त" occurs. Dayabhaga (page 73) construed the word सद्दत्त as सद्दान. But Balambhatti does not agree with this view of Dayabhaga. Hence, it is the view of Mitakshara, Viramitrodaya and Balambhatti that all kinds of stridhana referred to by Manu, Yajñavalkya, Narada, Katyayana, etc., should be regarded as stridhana having in view the dictum of गुणसंग्रह-श्रुति. (collecting in one place all parts scattered in different places) Madhva and Mayutha (page 66) prefer the reading of the text अधिकवेदिककाम in verse 143 of Vyavahara Adhyaya of Yajñavalkya, and support the view of Mitakshara.

Sloka No. 117 of Vyavahara Adhyaya of Yajñavalkya Smṛiti, after dealing with the division between father and sons and mother in slokas 114-16, states, "After the death of the parents, the sons should divide the property and the debt equally, but the daughters shall divide what remains of the mother's property after the payment of her debts; in the absence of daughters, the son." Mitakshara, commenting on this, states, "If the property left by the mother is less than the amount of her debts—or just enough to pay it off—then, in that case, the property shall be taken by her sons; the sense of all this is that it is the duty of the sons, not the daughters to pay off the mother's debt; but what remains of the mother's property after the payment of the mother's debts, that shall

be taken by the daughters." By this it is clear as in the case of properties obtained from the father and mother and even in the case of property acquired by partition the mother has an absolute right over the same since her right to contract debts over those properties is admitted. So the theory of the property acquired by partition is supported by Yajnavalkya himself. Hence we may conclude that in the *भाविनेदिकादय* with the word *सप्त* denoting properties acquired by partition, etc., cannot be challenged in any manner whatsoever. The commentary by Viramitra Misra of Yajnavalkya Sloka No. 143 clearly says that the word *सप्त* denotes property obtained by devolution after the death of her husband. According to him, sloka No. 117 deals with the property obtained by partition between father and sons, and son and mother; sloka No. 143, refers to the property obtained by women by way of inheritance referred to in sloka 136 (*पतिविरतस्य*). In any case Viramitra is not against the view of the Mitakshara that all kinds of properties obtained by partition or inheritance, etc., are stridhana. Sloka No. 117 refers to *सप्त*; stridhana—the property acquired by the mother at a partition along with her sons; and sloka No. 136 refers to property acquired by the mother by inheritance in the absence of her sons; anyhow, the properties of the mother referred to in sloka No. 117 and the property of the mother referred to in sloka No. 143 should be considered as stridhana.

Beginning his commentary on sloka No. 143 of Mitakshara says that beginning with sloka 117 the division of the property of men was dealt with, and that with a view to deal exhaustively with the property already briefly referred to in sloka 117 of pada 3 he now defines 'Stridhana.' Hence it is clear that the Stridhana referred to in sloka 117 *Matrudhuh'araha* and the stridhana referred in sloka 143 stand in the same category. Hence it is correct to contend that property acquired at a partition or by inheritance is not stridhana.

Even Aparaka (page 751) while adopting the reading *भाविनेदिकादय* states that the word *द्वेष* means *सप्त* and includes all types of stridhana in the word *सप्त*. To support this contention he quotes see sloka No. 116 and verse 123. So it is clear that according to Aparaka property acquired at a partition, etc., is 'stridhana.' Saraswati Vilasa (page 379) and Madana Parijata (page 670) also support the above view.

These are the authorities in support of the definition of stridhana in the draft Hindu Code as comprising properties acquired at a partition of inheritance. To state that stridhana includes property acquired by a woman by her skill or industry is opposed to all Smritis and Nibandhas though it might have the support of modern case law (vide I.L.R. 38, Madras,

Having now established that property acquired by inheritance and partition is stridhana, we shall now deal with the powers of disposal over such property acquired by inheritance and partition and by other sources.

The Mitakshara commenting on verses 135-136 (Colebrooke, Chapter II, Scheme I, Placitum 31) states "For even when made in the owner's lifetime or after his decease, the wife shall take a share equal to the sons. If he makes the allotments equal, his wives must be made to partake of equal portions" (Yaj. II) and again dividing after the death of the father, let the mother also take an equal share (Yaj. II, 123). Such being the case it is a mere error to say that the wife takes nothing but a subsistence from the wealth of her husband who died leaving no male issue. Viramitrodaya (p. 491) summarises the view of Jimutavahana that the wife could only enjoy the property of her husband and that she could not alienate as stridhana, quoting Narada, and concludes the discussion by agreeing with the view of Mitakshara that the wife has absolute right over inherited properties including powers of alienation for legal necessity, after criticising Dayabhaga's position on the basis of the Dayabhaga itself Sabodin commenting on the text of Mitakshara (Cob., Chap. II, sec. I, p. 31) and Balambhatti commenting on the same clearly establish the absolute right of women over inherited properties.

Aparaka (page 741) on the basis of Brihaspati supports the absolute right of women and says that the authority applies in the case of women without male issue and that the text applies only in the case of unchaste women, etc.

Anyhow it is the view of many Nibandhas that the inherited property of women should also be considered as stridhana with full powers of alienation as in the case of other kinds of stridhana.

It should be borne in mind that in any case Viramitrodaya (page 493) is of opinion that alienations for immoral purposes or alienations without necessity are void as in the case of alienations by fathers of sons' estates.

The view of Dayabhaga is that alienations even by male members for immoral or illegal purposes are valid and that the person so alienating in contravention of the texts incurs only sin. While dealing with this subject it should be borne in mind that according to Dayabhaga only Yantaka is stridhana and that in respect of all *भौतिक* other kinds of stridhana the sons have an equal right.

Kulluka (page 373, N.S. Edition) commenting on Mann (Chapter IX, Sloka 187) supports the Mitakshara view and criticises the view of Medhathithi on the basis of Brihaspati. According to him and Viramitrodaya, etc., even custom is in support of their view. Such a custom has been recognized by Brihaspati Smritikara himself.

Under these circumstances I fully support, on the basis of Mitakshara, Viramitrodaya, etc. the view of the Committee that the properties acquired by inheritance, partition, etc., should be considered as Stridhana and that the right of disposal by women over such properties should be recognized for legal necessity alone. The principle of absolute right recognized by the Dayabhaga in the case of men applying the doctrine of *factum valet* would cover alienations for illegal and immoral purposes. But on the other hand the absolute right recognized by Mitakshara is governed by the condition that alienations could be made only for legal necessity. This being the case, in order to avoid alienations for illegal and immoral purposes, I emphasise that the Committee should adopt only the Mitakshara view in this respect if it wants to include that the properties acquired by partition and inheritance, etc., be considered as Stridhana on the basis of Mitakshara. It has already been pointed out that according to Dayabhaga inherited properties, etc., are not Stridhana at all. Therefore on the basis of Dayabhaga the Committee would note that such properties would never constitute as Stridhana.

If unrestricted powers of alienations were to be given to women it should be noted that the exercise of such powers would be opposed to public policy also.

In this connexion I may also invite the attention of the Committee to another fact, viz., the passage in page 727 of Mayne's Hindu Law that exclusion on the ground of unchastity applies only to a widow under the Mitakshara law, and that unchastity is no ground for exclusion in respect of succession to Stridhana property (26, Mad. 509; 30 Cal., 501; 1 All., 46; Bomb. 104). If the Committee should emphasise the inclusion of inherited properties as Stridhana on the basis of Mitakshara, unchastity would be a clear bar to succession of any kind of Stridhana as in the case of property acquired by inheritance and partition. Hindu Law goes to the extent of depriving a woman of property acquired by her in case she should turn out unchaste even subsequently as per Viramitrodaya and Aparaka, etc. The cases decided already in the Madras and other courts referred to above deal with Stridhana uncovered by cases of Viramitrodaya and Aparaka and all other Nibandhas clearly state that unchastity is a bar for all kinds of Stridhana also and that even maintenance should not be awarded. Hence I emphasise that the Stridhana portion should be considered with this proviso in mind.

In this connexion clause 19 of chapter III of the draft Hindu Code should be altered in the following manner. When once it is admitted that she is unchaste during the lifetime of her husband, it should be open to the next heirs to prove the same in the ordinary way but on grounds of public policy a period might be fixed, say three years as the period within which the matter should be agitated, even after the death of the husband.

Mayne at page 767 (edition by S. Srinivasa Ayyangar) states that unchastity as a ground of exclusion applies only to the widow under the Mitakshara law and not to the other female heirs. This position is clearly contradicted by Mitakshara itself. The passage in the Mitakshara states in speaking of an outcaste and the rest, the masculine gender is nowhere used restrictively. And hence it

must be understood that the wife, the daughter, the mother or any other female, being disqualified for any of the defects which have been specified are likewise excluded from participation (Colebrooks Chapter II, Section X, placitum 8, Ghartar's Translation, p. 1121).

II

Whether subsequent unchastity or पतित्व by any source disqualifies the right of holding the properties is the subject for consideration.

The Mitakshara in this respect in Sloka 144, Vyavahara Adhyaya, Colebrooke, Chapter II, Section X, placitum 6 to 8, Charpure's Translation, page 1120 states: They are debarred of their shares only if their disqualification arose before the division of the property but not those who had already been separated. And if the defect be remedied by medicaments or other means even though at a period subsequent to partition, the right of partition takes effect by parity of reasoning with rules in the text and when the sons have been separated, a son who is afterwards born of a woman equal in class shares in the distribution. In speaking of an outcaste and the rest the masculine gender is not here used restrictively. And hence it must be understood that the wife, the daughter, the mother or any other female being disqualified for any of the defects which have been specified are likewise excluded from participation.

Viramitrodaya, page 559, states following the Mitakshara, that they are debarred of their shares only if their disqualification arose before the division of the property but not those who had already been separated, and gives the reason that there is no authority for divesting an estate already vested. The same theory has been mentioned in Madana Parijata also.

From this it is clear that a disqualification which arises subsequent to the vesting of the estate will not divest the person holding the estate. The concluding statement of the Mitakshara, sloka No. 114, Vyavahara Adhyaya Yajnavalkya, is that even while the mother is capable of bearing more issues, though the father be unwilling, if he be addicted to vice or be afflicted with a lasting disease, a partition is admissible by the choice of the sons. (Code I, S. II, pl. 7.) The statement of Viramitrodaya in page 575 is to the above effect—that though the father is unwilling, if he is addicted to vice or afflicted with a lasting disease, partition is admissible by the choice of the son, but Viramitrodaya is of opinion that when the father has absolute right over the property, his choice alone should be the guiding factor for division. On account of the पतित्व degradation and sanyasa (renunciation of the world) the father is not fit to be a party in the partition, and the partition is effected at the choice of the sons. These two statements deal with the debarring of their share only before the partition is effected but not with the divesting of the estate after it once ceased, by reason of the above disqualifications. In sloka No. 142 of Yajnavalkya Vyavahara Adhyaya the finding of the Mitakshara is that "The wives of the पतित outcaste, etc. must be supported provided they are not unchaste." Even here the reference is to the पतित्व or degradation prior to the vesting of the estate. While commenting on this sloka Viswarupa states that in the case of unchastity even Stridhana held by a woman should be divested. The same view is adopted by Viramitrodaya which states that in the case of this defect even Stridhana could not be held by an unchaste woman, and that even if she was enjoying the same, she ought to be deprived of the property obtained already. These two statements apply to Stridhana and that too immovable property given by the husband as Stridhana where she has no absolute rights of ownership including alienation. Manu (Ch. II, V. 211. and 212) quoted by Mitakshara in Yajnavalkyasloka 139 (Coll. II, Sec. IX, Placi 12) states—If in the case brothers once divided and living again together as coparceners make a second partition, that should the eldest or youngest of several brothers be deprived of his allotment at the distribution or should anyone of them die, his share shall not lapse. But uterine brothers and such brothers as were reunited and also his uterine sisters shall assemble together and divide his share equally. This passage also refers to the disqualification arising at the time of partition and does not refer to divesting of estate in case of subsequent disqualification arising after partition.

Balakrida in the commentary on sloka 140 quotes the sloka वेपथ्येऽपि कनिष्ठेन, etc., the purport of which is that if among the brothers the eldest or the youngest should be deprived of his share by being found to be barred on account of having become an outcaste or some such disability and if he dies, his share does not become lost. By this it is meant that even the right of share obtained by birth is denied on account of incapability of dealing with the property. Viswarupa is therefore of opinion that this sloka deals with the incapability of enjoyments only but not the divesting of the estate once vested. This share is divided among the other brothers, etc.

Anyhow, the divesting of the vested property is not acceptable to Viswarupa.

See the sloka of Laghu Harita :

Though this is not quoted by any Nibandakara, this deals only with the share of the woman in the lifetime of her husband or son in case of the partition effected with the son or the husband, but not with the property inherited as per sloka No. 136 of Yajnavalkya. The previous sloka runs as पत्न्युहितराचेन as in Yajnavalkya II, 138. It deals with पति; this deals with मातृ.

In Dayabhaga (page 168) it is stated that in the case of women other than the wife, the property given for maintenance should be resumed. Saraswati Vilas (page 411) says that the unchaste woman should be deprived of her allotted portion on the basis of Narada.

This sloka also will support only the unfitness for getting the share at the time of partition, but not of divesting of property already vested. In any event of Mitakshara Viramitrodaya and Madana Parijata is that they are debarred of their shares only if their disqualification arose before the division of the property, but not one who had already been separated (Mita. Cole II, Placitum 6).

Dayabhaga's view of course is distinct from the view of Mitakshara in this respect. According to Dayabhaga the sloka deals with the occasion for partition at the wish of the sons, i.e., when the father becomes an outcaste or ceases to be a householder or the mother having passed the child bearing age. Here the word पतित्व means becoming an outcaste. Thus becoming an outcaste is the reason for the divesting of the estate according to Dayabhaga which adopts the reading in the 3rd pada.

Thus it is clear that Dayabhaga favours the principle of divesting of the estate on account of unchastity, etc.

The Viramitrodaya on the other hand adopts the reading only on the basis of Mitakshara, Aparasha, Madana Parijata, etc., and retakes the reading according to which the principles of divesting of vested property is out of place.

In these circumstances the conception that Mitakshara and Viramitrodaya, etc., have favoured the principle of divesting of vested property is without basis.

As already pointed out, in cases of unchastity Viramitrodaya favours the principle of divesting only immovable property given by the husband for her own enjoyment as Stridhana and is against the same principle as regards inheritance in case of subsequent unchastity, etc.

Re: *Simultaneous Heirs*.—Under clause 5—Clause I: Widows and daughters are also included as simultaneous heirs. Mitakshara, Mayukha and Dayabhaga (vide pages 569-590) support the gift of an equal share to mother and only one-fourth of the son's share to the daughter. The same view has been held even by Brihaspathi.

On page 69 of Dayabhaga, it is enunciated that in regard to the shares to the mother and daughter, the son would be committing a sin if he failed to do his duty in conferring the share on them, though neither the mother nor the daughter had any right to claim it from the son. But Mitakshara is of the contrary opinion, and holds to the view that both the mother and the daughter have mother nor the daughter have any valid claim to any portion of the estate and as such they cannot by any means be parties to the claim though Mitakshara holds a contrary opinion and states that both of them are entitled to the claim.

Sloka 123 of Vibajalam.—According to Dayabhaga, the above sloka refers only to the sons. But according to Mitakshara, the very same sloka is held to interpret the view that both the sons and the mother, etc., are

entitled to the claim. Viramirodaya, on page 453, supports the above theory clearly. According to Viramirodaya, the term, "Mata" means not only a mother with a son but also a mother without a son, and as such she can claim a right.

In Parasara Madhaviyam (pages 341 and 344) by Madhavacharya it is observed that both mother and daughter have a claim to the share as stated by Mitakshara.

Smritichandrika (page 623) states that the mother and daughter have only a right to a portion of income from the estate, equal to that of the son by the mother, and at most one-fourth share, and never as equal share to the daughter.

Vivadharanava (page 78) supports the view of Dayabhaga in this respect.

Vivaharatnakara and Vivahachintamani support the view of an equal share to the mother along with that of the son, supporting the Dayabhaga view. But in the case of the daughter, it is clearly stated that only marriage expenses should be borne by the son and nothing over and above that, nor a share from the estate or the income from the estate.

Smritichandrika follows the view held in the above two authorities in respect of daughter's share, while Viramirodaya (pages 452-455) severely criticises the view supported by Smritichandrika.

Daughter.—The term daughter has been interpreted by all commentators of Hindu Law to mean *only unmarried* daughters, severely excluding the daughters who have been married. But *Viramirodaya*, on page 583, states that even married daughters should be given something from the estate by virtue of their birth right as daughters of the family.

Summarising the above, it is to be stated, that the son, who failed to give away the due shares to mother and daughter, was considered to have usurped their share of the property since it was held that the son occupied the position of a *Trustee to their estate*.

Again *Jamiluvahana* is of the view that the son was never held to occupy the position of a Trustee at all, though he was held to commit an act of sin, if he failed to give the mother and daughter their due shares.

Viramirodaya, on page 523, states that since a son is enjoined to give away an equal share to the mother, and one-fourth share to the daughter to free himself from the sin, and as it was the duty of the Dharmasika Samaja to see that the son followed the path of Dharma without deviating either side, it was necessary that the son should be made to give away the due shares to the mother and the daughter.

In practical life, at the present day, the daughters really derive more benefit than the prescribed one-fourth share of the son's estate, besides the usual marriage and other expenses incurred on her behalf on several future occasions after the marriage. All the above expenses are to be considered to be in lieu of the one-fourth share allotted by Mitakshara.

If we are to restrict the above strictly to one-fourth, as provided for in the Draft Hindu Code, such a step would certainly be considered to be retrograde, as it militates against the existing custom which confers on them more than the one-fourth share benefit. Such a proposal in fact goes against the very interests of the daughters which the present Draft Hindu Code professes to protect. While in the present draft Code it is proposed to give one half share to the daughters, such a proposal has neither the sanction of the Smritis nor has it any justification as it is likely to go against the interests of the family as a whole.

Some of the opponents to the present Draft Hindu Code who uphold the view of Smritichandrika, afford their consent only to the bare marriage expenses of the daughters, and nothing beyond that.

If we are to lend our support to such a theory enunciated by Smritichandrika it would ultimately mean in the long run, that the daughters would be deprived of even the periodical presents and gifts on occasions by their parents since such presents would definitely mean exceeding the limit of one-fourth share. In due course of time, even such presents given to the daughters would be taken as mere acts of charity devoid of any affection and love.

So, what we have to take into our consideration particularly at the present time, is whether the view propounded really by Mitakshara and his supporters are

beneficial to the daughters, as it would be incorrect on our part to proceed on the assumption that Mitakshara theory is not in vogue to-day while the daughters at the present day, as a matter of right are obtaining more than one-fourth share of the son's income as stated above.

Ma'anaparijata (page 648) states that the daughter has a right to an increased share besides marriage expenses equal to one-fourth share.

(Chapter 3, pada I) according to one school of thought is interpreted to mean that the daughter has a right to share like that of the son, while another school of thought is of the view that the daughter has no right to any share. As such, we cannot decidedly proceed on the assumption that Mitakshara only refuses to recognise the principle of a share to the daughter.

'Dayu' is classified into Sapraathibandha and Apraathibandha (Vide Mitakshara, page 559) in the course of explanation of the above term, it is noticed that *Putra* and *Putra* are entitled to Apraathiban Dayadham, and Pithrumyar brothers, etc., entitled to Sapraathibandha Da am. All those who are entitled to the proprietary right by birth, are known to be entitled to Apraathibandha Dava, and those who become possessed of the estate so distinct from the direct descendants, are known to be entitled to Sapraathibandha Daya. Mitakshara too proceeds on the same basis in explaining the above. It seems, therefore, according to Mitakshara, the widow and daughter also become entitled to Apraathibandha Daya.

Apararka (page 746) states that the wife of the deceased gets her right by virtue of the marriage and the daughter by birth.

So in regard to simultaneous heirs it will be clearly seen that Mitakshara, Apararka, and almost all the other commentators agree in the common view that the mother and daughter have their right to a share of the estate along with the son.

If the contention raised in clause 5—Simultaneous heirs—of the proposed Draft Hindu Code that the right to inheritance is to be proposed in the absence of the Putra, it is proposed to make mother and daughter become co-sharers. There is no authority in the Smritis to give any right to the daughter equal to that of the mother or a portion, in the absence of the son (Vide sloka 156). According to this sloka only in the absence of mother, the daughter will get a share and so on. If the proposed provision for simultaneous heirs is to be recognized, this gives rise to a serious confusion, as it goes decidedly against sloka 136. Therefore there is no authority in Smritis for simultaneous heirships of mother and daughter in the absence of son.

In clause 7 (d) it is provided a half share to daughter. This has no support either in Yajnavalkya Brihaspathi or Manu. It is not known from which source the committee got its right to declare a half share to the daughter alone as per clause 7-d. It is ignored by all Smritis since every authority recognises only one-fourth of the share of the son.

Commenting on Yagnavalkya sloka No. 14, Viramitra restricts clearly, only one-fourth and not more, to the daughter besides marriage expenses.

It is therefore to be highly deplored that the Committee should usurp to itself the exalted position of the Smritis, trampling the very Smritis which have acquired to themselves the position of reverence and respect by the entire Hindu Community. It is also to be deplored that the Committee should have taken up the position of smritis to themselves.

Taking into consideration the clauses of daughter in the absence of the widow, and the son, she should be provided only according to section 7 (d). This positively neglects even the full share granted by sloka No. 134.

In 14 (b) it is proposed to grant half share of stridhanam property to the son and in 5 (d) it is proposed to give only half of the son's share to the daughter. By this proposal what really material benefit the daughter derives is not easily understandable.

So the proposal of half the share to the son in all kinds of stridhana is opposed to all smritis and nibandhas.

The proposal of simultaneous heirs therefore need a thorough overhaul in the light of facts stated above.

Sagotra marriages.

Some say that the Committee's argument might be to support sagotra marriages. Because, Manu while discouraging on marriages, asagotra and asapinda, states such marriages are primary—*Prasatha*. Hence the Committee deduces from this that sapinda and sagotra marriages

can be considered as secondary. Sapinda, on the father's line, is prohibited within seven degrees, primary marriage, and five degrees passable or secondary. On the mother's line within five degrees primary and within three degrees secondary. This view is supported by the *Paitnesi Smriti*, quoted by Viramitra in his commentary of Yagnavalkya, page 112. The view that marriages of above five degrees in matrigotra are allowable only among people other than Satyashada is incorrect, as it is opposed to Manu.

While it is conceded that on the mother's line marriages of mother's sagotras and sapindas are allowable above five degrees, the committee seem to question as to why there should be any objection to marriages of sagotras and sapindas above seven degrees in the father's line.

Viswarupa, commenting on Yagnavalkya (sloka 52, Chapter I) says the word "Asamanarsha Gotraja" means "Asamanapravara" and not Asagotra. That is, if the pravaram or combination of Rishis is different though the gotra is the same, marriages between such parties are not prohibited. According to Viswarupa, the use of the term "Asagotra" in Manu Smriti, etc., means only "Asamana-Pravara", i.e., not having the identical pravaras. The above view is supported by Gantama who stated that marriages between parties, having pravaras not identical, could be celebrated.

The marriages of Samanapravara alone are prohibited, but not of sagotras. Sumathu Smriti quoted by Raghunandana on page 111 (Vidyasagara edition) and Vasishtha smriti quoted by Madanaparijata (page 139) also support the view that Samanapravara marriages alone are prohibited.

But the theory of Viswarupa is discarded by all nibandas, Viramitrodaya, Madanaparijata, Raghunandana, Madhaviya, etc., since many smritis condemn marriages among samanapravaras as well as sagotras. The term "Prasastha" according to Manu means "to be married" but not "primary." Laghu Sathathapa smriti has its text almost identical with that of Manu, but only varying in respect of one word "Prasastha" which is stated as "Vivaha" in the third pada. Thus in the place of Manu's "Sa prasastha dwijathinam" we have "sa vivaha dwijatheenam."

Apastamba, Laghu Sathathapa, Sathathapa and Narada Smritis quoted in Raghunandana (page 112) and Viramitrodaya (page 399) state that the girl who is married to a sagotra should be held in reverence as a mother, or a daughter, or the wife of a Guru. Thus such marriages if allowed, will militate against all accepted canons of Hindu Law and will be an act of sin equal to that of marrying a mother, a daughter or guru-patni.

Referring to the suggestion why marriages between sagotras above seven degrees on the father's line should not be celebrated just in the same manner as marriages above five degrees on mother's line are being celebrated in spite of strong objections expressed by Manu, Satyashada, Vyasa quoted by Viramitra commenting on sloka 52, Chapter I of Yagnavalkya, the answer of Viramitra and Raghunandana is that the term "Matrigotra" means only having the same name as that of mother and not the same gotra as that of mother (see page 112, commentary of Viramitra on Yagnavalkya) and page 116, udvaha tattva of Raghunandana (Vidyasagara edition).

According to Rajamarthanda, Raghunandana states that if in the case of a marriage, at the time or after betrothal, if the name of the girl and the name of the mother of the boy (bride and bridegroom's mother) were found to be the same, they should at once be changed. Even if the name is not changed it cannot make such a marriage invalid as in the case of the girl having the name of a river, tree, etc., nor go against the girl being taken to a wife. Hence there is no objection to such marriages. The only thing to be noted is whether there is sapindatva in matrigotra which invalidates such marriage and not the mere gotra itself. It is supported by Vyasa as quoted by Viramitra in the course of his comment of Yagnavalkya sloka 52, Chapter I, page 112.

Application of Factum Valet in the case of sagotra marriage is wrong. "It is an admitted fact that the doctrine of Factum Valet does never excuse the violation of a legal rule." (Sri Balusu vs. Sri Balusu 26-1 A. 113).

The marriages among asagotras alone are a legal rule. So such a principle should not be violated on any account. Sagotra marriages can therefore never be justified by the principle of Factum Valet, as fundamentally marriages

among the sagotras are void in law as among the sapindas within prohibited degrees. This gives rise to the issue as to why marriages among sapindas alone are prohibited and marriages among sagotras are valid while both types of marriages are condemned with equal force by Smrithikaras. It should therefore be held that both should be treated alike, and the principle of Factum Valet can as well be applied in the case of sapindas as in the case of sagotras. But the very Committee which advocates sagotra marriages by application of Factum Valet, equally condemns marriages among sapindas, refusing to apply the principle of Factum Valet. Even the elimination of dattaka homam being justified by the application of Factum Valet is condemnable. Likewise civil marriages are also void according to Hindu Law as they cannot be justified by the application of Factum Valet. Hence the proposal of the Committee to include the Special Marriage Act as a part and parcel of the Hindu Law is highly to be deplored.

In the same manner, the above objections hold good even in the case of asavarna or what is known as caste marriages. Madhavacharya and Nanda Panditha commenting on Parasara Smriti and Raghunandana in udvaha tattva, have stated that such marriages are prohibited particularly in the present Kali yuga. This system of taking other caste women as wives was permissible only when there was already a wife of one's own caste and that in the anuloma order, while polygamy was in vogue. Manu has condemned the marriage of a dwija with a sudra lady even during yugamtharas. The Rau Committee is keen on abolishing polygamy and establishing monogamy which in itself is against the Smritis. In the case of monogamy only dwija woman can be the wife of a dwija husband and not a low caste woman. Even in the cases of polygamy, only with the permission of the dwija wife the husband can take to his wife a woman of low caste. When facts are like this the Rau Committee's attempts to make such marriages valid even by the application of the principle of Factum Valet is futile.

The proposal of the Rau Committee raises another serious issue, in the matter of inheritance. At the time such marriages were allowed children born of low caste women, are given comparatively only less than that given to aurasa son. According to the castes, the difference in inheritance varies. The proposal to apportion the father's estate equally among the aurasa sons and sons born of low caste women really violates the smritis. The Rau Committee's attempt to usurp the exalted and pontifical position of Smrithikaras, condemning the smritis in the same breath is deeply to be deplored as was pointed out already with regard to the several changes proposed particularly in the case of marriages.

Principle of stare decisis.—Courts of law apply this principle and even a wrong decision is allowed to stand and is not corrected. For example it is admitted by all that the adoption of an only son is totally opposed to Hindu Law. Still that is not allowed to be changed. The legislature now wants to impose on the Hindus what it conceives might be beneficial to the Hindus. Instead of doing that, if the principle of stare decisis is abrogated by an act of the legislature, the Hindu might well be allowed to litigate in the law Courts as to what the real Hindu Law is and the same would be determined by the special few Hindu Judges of the Law Courts. That would be probably the only way to rectify the mistakes that are made in Hindu Law up to now during the course of the administration of justice.

Uniformity in Hindu Law is impossible and unjust.—Yagnavalkya Smriti, Chapter I, sloka 361, says down as the duty of the king to stabilise the dharmas (virtues) inherent in individuals as determined by state, family tradition, society, etc. In the same chapter, sloka emphasises that a foreign king should never try to impose upon the conquered country the laws and customs of his own country but should administer the law and customs of the conquered territory. That he should never attempt to interfere with them in any manner in their social and religious laws and customs, is clearly evident. It follows also that he should on no account try to levelise the existing varied traditional laws prevalent unto this day.

Coming to the point, the aim of the Rau's Committee's Draft Hindu Code is uniformity. In their attempt to level up the laws of the country, they have patched up together Mitakshara, Dhayabhaga, Mayuka, and their

own imagination. They have taken from Dhayabhaga the principles of (1) Tenancy in Common; (2) Inheritance of widowed daughter-in-law in an undivided family; (3) Peculiarities in succession; (4) Right of share to a son in his mother's property (Stridhanam) and from Mitakshara the principles of (1) Inheritance as stridhana of husband's property by wife in the absence of a son; (2) absolute right of woman over her property acquired by way of inheritance, partition, etc.; (3) vested rights of woman in her property cannot be tampered with, even if she be fallen; (4) simultaneous right of mother, daughter, and son to the property intestate.

From imagination the principles of (1) property acquired by women by their industry as stridhana; (2) four rules of succession; (3) sagotra and asvarna marriages; (4) civil marriage as Hindu marriage; (5) application of Factum Valet in the case of inter-caste marriage; (6) divorce; (7) special rules of adoption, etc., etc., and have tried to manufacture an apparent uniformity when there is no underlying principle of uniformity. Indeed, it is a patch-work.

In law relating to succession, the Committee has excluded Marumakkathayam, Nambudris and Aliyasantanam; in the law of Inheritance, they have excluded the agricultural lands. And as such, the Committee has violated their own principle of uniformity, at least in these two aspects.

The basis of Dhayabhaga is Dharma, and the fear of Hell or Damnation. Even when the father of an undivided family can dispose of the common property for immoral purpose and the Factum Valet is applicable, he will have to face only damnation in the next world. This, the dread of sin, is the basic principle of Dhayabhaga and Mitakshara. The Rau Committee has safely ignored this basic fundamental, and tried to make laws to please those who care a fig for Dharma.

Dharma, thus being the foundation of Hindu Law, it is the acknowledged Dharmacharyas of the Hindus of different communities or their representatives well versed in Sruti, Smriti, Acharya Nibhanda Granthas, it is these alone who can and have the right to decide points of Hindu Law. Yagnavalkya Smriti, Chapter II, sloka 2 confirm this statement.

It is open to doubt whether all of the committee members are imbued with the spirit of Dharma in any of their physical or mental activities.

So, it is extremely desirable in the interests of Dharma that the majority of the members of the Rau Committee or at least half of the members should be drawn from the representatives of the Dharmacharyas of the recognized groups of the Hindu religion, if at all it is felt that the principles of Dhayabhaga, Mitakshara, etc., should be maintained in the proposed codification of Hindu Laws.

Rules drawn entirely from individual imagination cannot help the growth of Hindu Law. Neither the legislatures composed mainly of members who draw freely from their imagination, though laying claim to Hindu ancestry, are incapable of laying down the principles of law. Much more so, the unauthoritative nature of the present assembly which consist of members embracing different religions. The assembly consists of communal and political groups, each seated in separate allotted blocks, and looking after its own individual group interests. Hindu Law is mainly religious and individualistic, and in a limited sense social. This is evident the extreme undesirability of allowing the legislature to enact for the Hindu society as a whole.

Neither Islamic doctrines, nor Christian tenets have ever formed the subject of debate in any assembly. While strict neutrality according to Queen's proclamation, is scrupulously observed as regards the religions of Christ, and Mohamed whatever the nature of the interpretation put upon it, it is desirable that the same kind of aloofness and detachment may be shown wherever the Hindu religion is concerned.

Since the advent of the British Raj in India, the Hindus have been settling their quarrels in the British Courts of Justice, and the Dhayabhaga and Mitakshara Laws, etc., have been administered to them according to local traditions, and requirements of individual cases. The same system may be continued and no further codification of Hindu Law may be attempted. Instead statutory laws, judgments of Courts on Hindu Law, etc., since found wrong, may be codified in accordance with traditional law.

The Bishops, and the Moulvis are respected as authorities in their respective religions, and justice demands that the Hindu Dharmacharyas or their representatives should be held in equal esteem if not more, and be consulted when the questions of Hindu Law arise.

When the country came under the occupation of the British Government, the Hindu Law was ordered to be made applicable in all matters covering personal law like marriage adoption, inheritance, etc., for all Hindus. The Hindu law as laid down in the sources of Hindu Law, viz., Smriti and Sadachara was intended and nothing else. Such law was being applied and continues to be applied in the law Courts. The Legislature has passed certain Acts interfering with the customs, for example of the Hindu Law Inheritance, etc. We demand that those Acts should be repealed.

98. Shibpur Chatuspathi.

The Chatuspathi is now the foremost of its kind in the Burdwan Division; not only in respect of success in different examinations but also in respect of imparting education in various branches of Oriental Learning.

The Code as it now stands is not drawn in the tenor of Hindu Ideals and specialities. From time immemorial whenever it became necessary to make any change in any department, social, religious, legal or political, that was used to be done by those who were versed in the fundamental principles guiding the whole Cosmic process, the Existence and Evolution of the Human Race. Through all changes of circumstances the ideals of Hinduism were always kept in view, the ideals are nothing but the guiding principles for accommodating the Cosmic process in its different stages. This principle having been adhered to in all cases, it helped the community to ride over the difficulties in various vicissitudes and succeeded in maintaining its existence all through the long long ages, although many nations succumbed during the course of a few centuries. But for want of proper support and organization the section of the community versed in the principles of truth are no longer in a position to give effect to their ideals and therefore may be considered to be not in existence. These people used to come forward whenever necessary and were competent to dictate the changes to be adopted as legislators and pass them through the kings as executives. *The Kumba Mela* was then a meeting place of the legislators and the executives to discuss about the state of the country and the changes to be adopted.

The Hindus have become ignorant of their high ideals for want of power and propaganda of truth by this section of the community referred to above and consequently they are being metamorphosed by the western Ideals of materialism with the result that the Hindu Bengalis, who are the most hard-pressed now are gradually degenerating from top to toe and are being obliged to take recourse to all sorts of unfair means and are making abuse of whatever power is vested in them and they are daily losing all traits of higher virtues. This Bengali Hindu community will very soon die out of the face of the world, the true death of their inner personality is already almost complete.

What is now awaiting for the Hindu Bengalis will gradually overcome the rest of the Hindus and if the present ideals of materialism of the world be not changed will ultimately overcome the rest of the World.

If the principles which guided the actions of the sages of old in respect of any change be now adopted it may save the community now in its most deplorable state and gradually the truth if accepted and adopted by others will lead not only to the evolution of the whole human race in the real sense of the word but will bring peace, prosperity, and happiness to all.

The most lamentable aspect of the present state of affairs is that the true ideals of the Hindus are not known to those who are now occupying the position of their *Bahya Bihata* as most of them have become westernised externally and internally and are apt to see and judge everything according to the ideals of materialism not knowing that such ideals cannot and will not be able to maintain the existence of the community in the long run as being against the fundamental natural laws.

Although it is high time to discuss and come to a conclusion to which every sensible and responsible man ought to join in healthy ways and methods and although it is natural for all to judge matters with the ways of thinking to which they are accustomed and as those who are directly in charge of all these affairs are not accustomed to consider about the grand truths underlying the principles of

changes in conformity with the ideals of Hindus and the essence of real human progress prosperity, and happiness. here is little hope of any real good from the innovations now going to be adopted rather it would serve to push back the community thousands of years and would leave them to gain experience out of their calamities.

Although some alteration in tune with the previous changes can be suggested to meet the present situation it would not be possible within such time and scope and without thoroughly discussing in all its bearings. All the assertions made herein can be supported by pure reasoning based upon scientific truth and therefore I hope that proper threshing out in all its aspects should be made before the introduction of any innovation whatsoever. Let the ideals of Hinduism be first studied in order to grasp the fundamental truth underlying them and then only the ways and means should be contemplated to frame laws for their true welfare. Mere voting should not be considered as the criterion to come to a legitimate conclusion.

99. Srijiva Nyayathirtha, Principal, Sanskrit College, Bhatpara.

The Draft Hindu Code, in its present form, consists not only of codification of Hindu Law, but also of several modifications of the same, which will vitally affect the Hindu Society in many respects. Moreover, vital changes of the fundamental principles of the time honoured Hindu Law have been made in the proposed Code, which in my opinion, are beyond the jurisdiction of the Hindu Law Committee and the Central Assembly, as they are not sanctioned by any school of the Hindu Law scriptures.

Any drastic change based on mere personal observation holds no good for the society, which has come down to the present age from time immemorial. As for example, the Hindu Women's Right to Property Act of Mr. Deshmukh was passed in 1937; this Act interfered with the established Hindu Law, regarding the right of women to property and the consequence was that within five years lots of bills were introduced in the Central Assembly for rectifying the said Act. Similarly, this Code was not demanded by the Hindu public, but it originated to remedy the evils arising from the Deshmukh Act, in preference to the piece-meal legislature, as it was thought by the Government of India. Now, the same blunder is repeated in the proposed Hindu Code by making anomalous fusion of Mitakshara, Dayabhaga, Vyavaharamayukha schools which if it is passed into law, will give rise to lots of Codes within a short period and will create confusions in the procedure of the Provincial Courts.

It is a fact, that the Centre has no power to legislate for the agricultural lands, and the expectation of the Hindu Law Committee might not be fulfilled. One Provincial Legislature may extend its relevant provisions, but another may not, rather it is beyond expectation, that all the Provincial Legislatures will follow the Code in one voice. In case of diversity of opinions in the different Provincial Legislative bodies, the purpose of the Draft Code of making All-India uniformity will be futile and a new ridiculous state would be created by the Code.

Besides, the Indian States have their own Legislative bodies; they are governed by the old Hindu Laws, and the Centre has no power over them. I am at a loss to find, how the Hindu Law Committee can hope for an All-India uniformity by leaving the Indian States aside. The number of Hindus in the States is more than six crores, and the proposed Code is going deliberately to separate them from the Hindus of the British India, in the matter of Hindu legislation.

The said Committee have ventured to violate custom of a province, which, according to Nārada and Katyayana is ultra vires :-

So, अक्षर does not mean स्वेच्छाचार of the present age, and anomaly of customs should not be supported by citing one passage of sastra, which is prevalent in a particular Province.

देशस्य जातेः सत्स्य धर्मो ग्रामस्य योऽनुः ।
अहितः स्यात् स तेनैव दायभागं प्रकल्पयेत् ॥

Yajñavalkya says :-

यस्मिन् देशे य आचारो व्यवहारः कूलस्थितिः ।
तथैव प्रतिपाद्योऽसौ यदा तस्मिन्पगतः ॥

So, in my humble opinion, the method of codification is also ultra vires, according to Hindu Shastric point. In the name of "Hindu Code," it is repugnant to think that non-Hindu elements would come into the Law book.

If this Code is accepted, various interpretations of the lines of the same will arise to meet the Provincial notions, which are deeply seated in the minds of people of a particular Province from very ancient ages. The Code will overrule the Hindu scriptures and drag the Hindu Society very far from the central thought of Hinduism, which is so long saved from various foreign invasions by the force of shastric wisdom. The Code proposes to ruin the Hindu Society economically, culturally and morally and is inviting a new defeat of India, not through weapon, but through idea and ideals, which are still preserved by millions of people in India. Hence it should be dropped immediately.

I request the members of the Hindu Law Committee to consider seriously the real state of thing—there are two opposite views, no doubt, in India, or more than two, but those, who do not want to be westernized, i.e., who are still dragging their cultural tradition with toils and tortures of the present age, should be considered as the old institutions are worthy of preservation and not of demolition.

Several points of disagreement amongst others are given below :-

- (1) Codification of Hindu Law (Explanatory statement).
- (2) The meaning of Hindu (Part I—Preliminary, clause 2).
- (3) Clause 3 (Part I—Preliminary, clause 2).
- (4) Clause 4 (Part I—Preliminary, clause 2).
- (5) The meaning of Stridhana (Part I—Preliminary, clause 4 (1)).
- (6) Inclusion of daughter (succession to the property of males), Class I.
- (7) Inclusion of daughter's daughter and so on. Abolition of Pinda theory in succession, Classes II and III.
- (8) The explanation of Stridhana.
- (9) Absolute right of women to property.
- (10) Inclusion of divorce with marriage (sacramental).
- (11) Optional registration of sacramental marriages.
- (12) Gotra of a wife in case of sacramental marriage.
- (13) Marriage between bride and bridegroom of same Gotra and between different castes.
- (14) Adoption without rituals.

In conclusion, I would submit my firm conviction that this Code, if passed into law, will strike at the very root of the Hindu Society and will lead it to never-ending confusion and disunion and ultimate destruction.

100. Sri H. M. Banerjee, President, United Mission.

PREAMBLE.

The course of nature is generally at all times, it moves from good to evil and from evil to good, and that is what is stated in the scripture, it is a movement obtained by passing through the 'Tree of Knowledge' (see Genesis, Chapter III). And now the 'Prince of the world' has been active in his course of rule, he controls the world, infusing into the minds of his devotees a spirit of independence, which is meant to be dependent upon no controlling authority exercising its influence over them, and so the views of the scripture having their origin from an unknown source, beyond the scope of the world must be cast aside being thought of as fancied productions unjustifiable through a verifying sight. The scripture is said to be the 'Word of God,' though the person from whom the word came out is not to be seen, not even the publisher who gave expression to that word who has kept himself in dark hiding himself from public view, and thus to substantiate the importance of the scriptural writing to be deeply felt by the readers. And the views of the writing are based upon religion, which is a term derived from 're'—back and 'ligo'—to bind, and by that is meant a course to be taken with an observation held in the backside, and common sense will tell, what will be the result thereof, and must be a sure fall to undergo unknown destiny, the sight at the front being not paid a heed to.

2. The idea of religion however guided men from long time past, but this is an age of refinement, refined it is through eye-sight gained in the front, leading to the way of peace attended with merriment accompanied.

3. That is the view taken by a disbeliever in his movement in the world, and with a forward movement he proceeds to make a stock of things of the world, in enjoyment of which he would live in peace. But alas! he cannot guess what backs him from behind to enable him for his conduct of life. And having no sight of life, he would say, life is a force emanating from the body through the apertures

of the senses, as with one he fails in intelligence necessary for the keeping of life. And out of these sensitive appetures come out the 'ripoo's' (रिपूः meaning the enemies of life as stated in the scripture, though practically we see, that they contribute to the living existence of a man. And they are :- काम, क्रोध, लोभ, मोह, मद and मत्सर्यम् । And 'Kama' meaning desire goes to fulfil the desire of men for the sake of living in peace; 'Krodha' goes to back out the attempt of religion to put down 'Kama'; 'Loba' goes to provoke men to the way of peace; 'Moha' goes to further the end of 'Kama' by an attachment held on the object of 'Kama'; 'Mada' goes to hold a spirit for furtherance in the way of 'Kama'; and 'Matsarya' goes to treat with resentment all those who stand as enemies to the acts of 'Kama'.

4. And as the scripture declares that it is 'Kaliyuga' now, that it is an age that marks the downfall of humanity, when man should come down to serve the will of the woman, when irreligion will be forward to put down the predominance of religion (See Gita:—अयम् चर्ममिति या मन्यते तमसवृत्ता स्वकीयान् विपरीतान् बुद्धि सा पापे तामसा ॥), when the rule of the country, will be based upon irreligion for the guidance of men, when there will be an uproaring of men for the securing of peace and independence, and peace they mean in the fulfilment of their desires and independence in the shape of allowing them to act up to their own will; and so we know it very well that all our efforts to give religion a prominence will be of no avail. But we, as we call ourselves believers will ever be in advocacy of religion to uphold its cause in strict obedience to the rule of the scripture; and we shall wait to see, how the perturbed opinions of subjects, will go to stand as guidance for the rule of the King in respect of religion, in contradiction to the enacted statutory law declaring that the King should be guided by the 'King of kings' retaining reverence for the scriptures, known as the 'Word of God.' And the scriptural rules are the same for all, whether they may call themselves Christians or Hindus. And the reasoning of anybody if he can apply it properly, will declare the truth, that the stated six 'ripoo's' or prevailing passions, will go to cause a failing in humanity, and that humanity can only be protected by a check exercised upon their rise.

5. And the Government of ours is not one of the republic form, it must have an administrative faculty of its own to guide the conduct of men, specially in its concern with religion. And for us, we would say, that in retaining proper regard for the King's Government we would suggest, that in the existing law, if there be anything in variance with the scriptural law, that should be mended, and the law should be given a remodelled shape strictly in adherence to the scriptural law and that would put a stop to the rise of piece-meal cases which are feared so much. And that will go to put the country in peace, doing away with the disturbances created by infringements to the law of the scripture being effected.

Chapter I—The Hindu Caste.

By Hindu caste is meant the keeping up of the creed known as Hinduism and Hinduism is observed by following the rules of the Hindu scripture. And here is another term used by the law-reformer and it is Hindu by name, and it refers to one as we can understand, a man calling himself a Hindu, though not observing its creed, being not a follower of the doctrines of the Hindu scripture. But to our estimation, the scripture stands as the life of Hinduism, which will bespeak the true character of Hinduism and without the life Hinduism will only go to show itself as like a statue presenting the sight of the figure of a man, but deprive life, it is but a misleading sight to be had, to think of the figure as representing the true character of a man.

And as you say, a Hindu by name only, will be thought of as belonging to the Hindu race, it may therefore also mean thereby, that anybody being a permanent resident of Hindusthan, should be treated of as a Hindu. But as you say, a Buddhist or a Jaina should be treated of as a Hindu, and as in the list of Hindu classification, no mention of a domiciled Muhammadan has been made, we are necessarily to believe thereby, that a Hindu by name, will only mean a person professing the Hindu religion, called Hinduism. But as Hinduism is based upon the principles of the Hindu scripture, Buddhists or Jainas or any others being no followers of the doctrines of the Hindu scripture, they cannot be thought of as Hindus. And as Hinduism

is based upon a consideration of Caste and Varna, the principles of these, we shall deal with in the next article, designated "Caste and Varna."

Chapter II—Caste and Varna.

So that all come under the caste system, and a 'Varna' distinction marks the character of the higher caste, in consideration of his being in possession of a higher order of merit. And in argument with the views of Manu, the Gita gives a detailed exposition of the qualities which the several 'Varnas' bear, and they are stated as will be noted below.

And herein the difference between a caste Hindu and a Varna Hindu lies; that the caste Hindu keeps himself in the observance of the external rites, whereas the Varna Hindu is engaged in maintaining the internal rites, meaning those relating to mental performances. And 'Varna' means colour, and that which gives colouring to one's character, enabling him to rise in humanity, is said to be the 'Dharma' of a 'Varnashramy.'

And so originally there were four 'Varnas' and they were Brahmans, Kshatriyas, Vaisyas and Sudras (see Gita, Canto IV—verse 13:—ऋतुर्जय मया सुष्टु पुण्ड्रकसंवितामर्गः ॥). But latterly at the time of Raja Bain, owing to inter-marriages conducted, among the three Varnas, the Kshatriyas, the Vaisyas, the Sudras and the 'Antyajas' who did not belong to the Varna caste system, subdivision of castes were made, and all were since then known as Sudras of the higher or lower orders according as they kept their connection with the Varna duties externally.

Chapter III—Gotra.

In a religious point of view, the consideration of Gotra is always taken, for the purpose of securing a girl in marriage, possessed of equal 'Varna,' or of a lower varna; but an equality of varna, is to be preferred the more, and when not available, a girl of the lower order is accepted for the match, so that she may be trained by the husband, for an equality of varna to be attained through his training. And so it is that with the object of begetting a son through her, the son may be able to keep up the line of ancestry intact, by possessing the qualities of the ancestor, and so the term 'Gotra' by derivation would imply. And a Gotraja son can only claim to be a 'Pindadhikary.' And as Manu says:—सुतायै क्रियते श्रार्या सुतपितरः प्रोक्तम् meaning that a man gets a girl in marriage, for the sake of generating a son who should be able to be a Pindadhikary.

And we may think, what is this sort of marriage intended for? And it is not for the purpose of satisfying the demands of lust, but after completing the practices of 'Brahmacharyya Dharma,' the man comes in connection with the 'Sansara Asram,' and by marriage conducted, with full control over lust exercised, he will then be able to produce a son, competent to be a Pindadhikary.

And when the son is to be had, the father then, leaving the charge of his 'Sansara' to his son, is on his way himself to retire to the bosom of his father, the 'Paramatma' as he is called. And the son now remains as the prototype of his father in the world, with a view maintained, that he should also follow the course of his father by reverting back from the world, to proceed in a journey to reach his father's place, and then to his grandfather, the Paramatma known to be his final goal to reach, and this is what is meant by keeping the ancestry line of a Brahmin.

And it is the Pinda that is served by a sacrifice of one's ownself to the origin from which he came. And so it is what is meant by "पितरं दत्ता हरेदन्तम्" meaning that by such a sacrifice, he inherits the property of his father, and this property is not a property of the world in the form of life in connection with the body, which is only retained for a while, and then missed for ever; but it is a property that is never to be lost, purporting to mean eternal life. And Manu's writing is also known as the 'Manava Dharma Shashtra', in view of its dealing with more important topics other than politics, and they convey the esoteric meaning of Pindadhikary, as we would mention here. And a Pindadhikary may also mean an adopted son in the shape of a disciple, and he or she as a disciple being still in touch of the world, and having gained a new birth by initiation the disciple is connected in marriage with the Lord of Dharmapati, as an effect of which, the disciple has the issue of a son, called the 'Gyanaputra' who would lead him to the place of Paramatma, known as his grandfather, where the son will get merged into the Paramatma's person,

and that is known as the offer of 'Pinda' (see Yogapanishad, where Shukdev as the son is stated to lead his father Vyasa to Brahma's place).

And we think you can now understand what is meant by a second-time marriage with the Lord, as the Hindu scripture says with the Dharmapati, as spoken of in the "Protestation Pamphlet" with the quotation of Parasara Samhita, mentioned therein—"नष्टे सृते प्रवर्जिते कृत्रि च पतिते पत्नी । पञ्चत्वारिंशु नारीणां पतिस्थो विधियते ॥" meaning that in absence of a proper husband to lead one to the way of religion, a man or a woman, should seek the help of a 'Dharmapati' to be otherwise married to him for the sake of salvation and liberation from the bondage of the world. And this is a marriage which does not involve the question of pollution, having any sort of concern with worldly enjoyment.

And now we shall deal with the observances, necessary for a caste Brahman ("जाति ब्राह्मण") to maintain. He knows his origin, meaning the source from which he has come, and the original source is known to be his ancestor, and the ancestor is regarded as the Dharmapati, meaning one bearing the character of Dharma, or a Man in spiritual existence, and it is the same as the Christian scripture speaks of him as the 'Man in the image of God.' And remaining at the top of the ancestry line, the ancestor is known as the Dharmapati; and all others coming after him by generation, are said to possess the 'Gotra' passing in the name of the ancestor. And anybody else, possessing the character of a Dharmapati, becomes the ancestor of another family; and so also the members of his family coming after him in following generations are also known to possess the gotra passing in the name of their ancestor. And so the two ancestors are allied personages for their bearing the same character as that of a Dharmapati, and so the scripture speaks of them as 'Bandhus' by relation.

And as it is thought of as not human that a matrimonial connection should be held between persons of the same family, a gotraja son of one family cannot be married with a gotraja daughter of the same family; therefore a matrimonial connection between a son and a daughter is always to be held by the possession by each of them, of different gotras. And this is the system that is to be observed by the caste Brahmans who only can trace their origin from their ancestor by generations held. And as a gotra consideration is only maintained in respect of the father's line, beginning from a father to the son, and then to his grandson, and so on. And in order to avoid an akin connection the same sort of consideration should also be maintained in respect of the mother's line so that a son cannot marry his sister, not also his mother's sister, and so on; and the consideration of this should be carried on up to five generations upwards, and downwards too; when a reckoning from the upward side, so that a grandmother's sister cannot get married to her daughter's son, not also the mother's sister can get married to the daughter's son, and so on.

This rule of a marriage connection, should only be observed by a caste Brahmin, and for the other castes, the rule should be, that as they cannot trace the position of the ancestor, in the ancestry line, by generations retained, they are only to adopt their Brahmin Guru's gotra as their own gotra, and in a marriage concern, the question of gotra need not be taken into consideration, and for marriage purpose to deal with, they shall have to trace their ancestry line, beginning from the father to seven generations higher up, and in concern with the mother's line, they shall have to count from mother to five generations up so that there may be no akin relationship in the case of a marriage, between the son and the daughter.

And in the case of the other castes, the adoption of the same gotra as that of the Brahmin by any of the lower castes, would mean, that he has to follow the principles of his adopted gotrapati, so that he may rise to a position bearing the character of a Brahmin in the long run, though he may not have his position in the Brahmin society to be accepted as a Brahmin. And gotra is derived from 'go' meaning earth, and 'trayi' meaning relief, so that by derivation 'Gotra' will go to mean to be relieved of the bondage of the world by salvation gained through the rites of the gotra being maintained. And the rites all concern religious performances, and so the gotra question cannot be invalidated at one's will.

As no gotra consideration is to be taken in the cases of marriage of the three lower castes, other considerations in respect of inheritance by succession, property rights, adoption, etc., must be in accordance with the observances held by the Brahmans in such cases, as the Brahmans stand as their Guru and Purohit, and so they must follow the actions of the Brahmans for their guidance in such cases; so also the Hindu scripture says. See also quotation of Manu as to what he says about gotra consideration to be applicable in case of Brahmans only (see Manu, Canto.

III—verse 6 :—"गुरुमानुमतः चात्वात्मा वृत्ती यथाविधि । उद्देहते द्विजो भाग्यो सवर्णो लक्षणान्विताम् ॥ also Agnipuranam :—

"क्षत्रियवैश्यशूद्राणां गोत्रस्य प्रवरादिकम् ।

तथ्यान्यवर्णं सकंराणां येषां विप्रब्रह्मयजकाः ॥

And in the case of a Brahman marriage, the gotra consideration should always be taken into view, but to avoid akin connection, meaning a marriage with near relationship, the lines of both the father and the mother sides as stated before should also be taken into consideration. The same consideration of the father and the mother lines in the marriage of the lower caste should also be observed, not taking into view a consideration of gotra at all.

And so it is revolting to the idea of common sense, that the idea of a candid behaviour among the members of the same family, should be violated, by an introduction of the sense of lust in the family, through a lustful conduct of marriage, between a brother and a sister, between a nephew and a niece; between an aunt and her nephew, and the like. All such connections are wise decisions of the so-called learned man of the world, and so we think he will for the furtherance of his scheme, propose for a marriage of a son with his mother, as the best method of keeping the peace of the family intact. And the proposer of such a scheme will have its instance to quote as in the brutal creation, the scheme if justly followed, and he would thereby mean to place humanity in the basis of brutality.

Important.—There being no sufficient time for us to deal with exhaustively on the several points mentioned in the Amendment Bill of the Hindu Code, we give out in short, as far as possible, details of our protestations against the Bill in the following pages.

Chapter VIII—The Sacramental fire in a marriage ceremony.

The oaths taken before the fire, must be regarded as valid and unalterable, which means that a wife is never to give up the idea of her husband during her lifetime, in pursuance of the oath taken.

Chapter X—Widow marriage and divorce bill.

It is against the law of the scriptures both Hindus and Christians, as has been explained before—(see Manu, Ch. IX—verses 46, 47, 65, etc.)

The number of women in nature, far exceeds the number of men class, and if widows go on marrying men, the residue left will remain all through life as virgins, and this is an unnatural course to be taken if widows are allowed to remarry again and again, depriving the virgins to have the advantage of marriage, required by natural law.

Remarriage of the woman by divorce effected, is distinctly stated in Parasara Samhita, and it is this :—

"दूतेनैव्यहितं मूर्खं मत्तारं यान् मन्यते सृता सा जायते ज्याली वैषम्यस्य पुनः पुनः"

And in the same Samhita it is stated that if the husband be not a proper husband to lead her to the way of salvation, a remarriage of the sort (as stated also in Corin. I. Ch. VII—verse 39 and Corin. II, Ch. II—verse 2) of Dharmapati, meaning the Lord; and it is this :—"नष्टे सृते प्रवर्जिते etc." etc."

Marriage of the woman with a second person is not admitted in any of the Samhitas; and further the Smriti says that it is better for a woman to remain unmarried all through life, than to be married with a husband of spoiled character, that the woman should think of her husband as one in the personality of God; that she should avoid all close connections with a mad husband or addicted to lust; that the woman may choose her own husband possessing a divine character, irrespective of the opinion of her guardian. And we need make no mention of them, the reader may refer to particularly in Manu's 5th and 9th chapters.

This is all what we can say of Widow-marriage and Divorce, and we hope this will prove appreciating and appealing to the view of the lawyers as framers of the Hindu Code, if they have any veneration for the scripture.

So the scripture goes to speak of marriage between man and woman, and it is meant for the connection of the woman with the man, for in his connexion only she can expect to have a relief from the deprecatd womanlike character she holds; and so to come out again possessing the masculine form as "Man in the image of God." And the Bramha marriage that is meant not a marriage for the satisfaction of lust, but withholding the same it is to have a new birth as the scriptures say, and it is a marriage completed with the Lord or Dharmapati.

And this marriage is conducted by the bride being decorated with ornaments which go to serve as a cover to the lustful feature which her body holds. And it is said to be her Sridhan, over which absolute possession to apply, and which is meant to be parted with in favour of her daughter, who is to wear the same, imbibing the conduct of her mother, and it is held as a sign of chastity observed, which will go to show that she is not to appear before her husband with any show of lustful appearance, but with a show of decency and meekness to enable her to gain the characteristic of her husband, which is freed of lust.

Other presents also she may have from her husband, from her father and other relatives, and these are also regarded as her personal properties or stridhan. Yet these are not to be spent at the will of her rising passions.

It is difficult however to understand what is meant by womanlike character. And it is this—Man is possessed of an active character which is being attracted by the passive character of the woman, and all appearances present in nature are identities of the woman that attracts the attention of the man, and the man is thus attracted by the woman to be reduced to her own form—that of the womanlike character. And a man reduced to this perverted nature of the woman, becomes a woman, and she is now to be relieved again by a resignation of her ownself to her husband in the identity of the Lord or Jagatpati or Dharmapati.

And the gravity of this resignation of the woman on her husband is to be observed, that when a famine appears in the country or other disasters appear, the wife should make over all her stridhans to her husband for her own relief and for the relief of the family, if they are required by the husband (see Yajnavalkya, Ch. II—verse 150). So that we see, that a woman as a chaste woman, should not retain any claim upon earthly properties, thwarting the idea of her husband, whose idea she should always retain in personal connexion or bearing his image at heart.

And it may be so, that a husband proves a falling husband, addicted to lust, and is in cohabitation with other women, even in such a case, the husband should not be disregarded by his wife, but she should keep herself separate, and lie in the worship of the Lord or Dharmapati by a marriage conducted as explained before (see Manu, Ch. V—verse 154).

A wife, if polluted by prostitution, should be set apart and kept in the household separately in quiet vigilance stripped of all ornaments, so that she may not have the occasion to conduct further prostitution when let free to move in the outside (see Yajnavalkya, Ch. I—verse 70). See also what the Gospel says, that the woman who corrupts the earth, should be miserably dealt with by the Lord (see Rev., Ch. XIX—verse 2 and Ch. XVII—verses 4 and 5).

And you as advocates for the concubine would now come forward; probably we may think to relieve her circumstances from the unlawful conduct of the scriptures, by giving her the privilege of maintenance from her deceased paramour's property, not only for herself, but additionally for her daughters and sons, and the daughters should have maintenance till they get married, and the sons till they attain majority. And the daughters, you must know, seldom get married, and so they may continue to have maintenance all through life, though carrying their trade of prostitution which would be their additional income beyond maintenance. But in the case of the sons, you make no mention of as to what should be their case after they attain to majority, and we may assume that they are not to be sympathised, because they do not belong to the woman class.

And if lust desire be treated as a crime, you would charge the paramour for his connexion with the concubine, as an effect of which he shall have to maintain her and her family; and still to make the subject graver, you are to suggest that even after death of the paramour, his own family would be made liable to keep up the charge of maintenance for the concubine and her family. But may we be permitted to enquire of you the question for all solution, whether the concubine was not first of all guilty of the charge of lust which made her bolt away from her family household, to seek for a separate existence in the shape of a concubine? And if so, how are you justified then, to suggest for a remuneration of lust charge? And how it is then, that lust should have a prominence in the world, which as the scripture says, is an outcome of Kama who presents the "prince of the world," and who is the only greatest enemy of life, who means to eat up the life of the man, distributing the taste of attachment and aversion to him? (See Gita, Canto III—verses 37 to 40.)

And now we may cite here an instance illustrative of the inefficiency of the woman to absolute rights on a property, to be disposed of at her own will, or passed over to the inheritants of her husband's progeny; and it is this:—

"A man as a widower dies without a male issue, leaving his three daughters to inherit his property in absence of a son; the first daughter has one son, the second has two sons and the third has also two sons. The property is owned by the three daughters in equal shares, but owing to their natural inefficiency, the charge of management is left to the respective shares to their respective sons. But in the course of time, the son of the first daughter dies; and as she is unable to manage her share of property herself, the property goes to the charge of the other two daughters, which is to be managed by the four sons of these two daughters, and the first daughter only gets a maintenance for her living. Again when both the two daughters—the first and second—die, the whole property then comes to the charge of the third daughter who is now to retain it under the management of her two sons, and the living two sons of the second daughter have no right on the property then. But when the third daughter is dead, the property then passes off back to the father of the daughters, from whom they inherited. And after that the rights to the property comes back to the living four sons of second and third daughters as grandsons; among whom the property is to be equally divided, with absolute power of management and disposal. And if the man dies leaving a widow with her three issues of daughters, the inheritance of the property comes out first by the widow, then by the daughters and subsequently by the grandsons—so does it prove that the grandsons do not inherit the property through their mothers, but direct from the grandfather, the mothers and grandmothers having only a life interest on the property. And all these show that the woman has no right on a property with absolute right for disposal."

Now we may think that the father of the daughter having Brahma marriage made over his daughter to her husband, to be the mistress of his household, and in lieu thereof he gets nothing in exchange, nor even he is made to take charge of her husband's property, should be made liable to support her with maintenance. And not to speak of the change of Gotra made or oaths taken in the sacramental marriage ceremony, the father cannot in any account be thought to be subjected to the liability. And if however, the husband proves to be impotent of all parts, the scripture says that the daughter is to be maintained by the relatives of the husband, and the charge of maintenance is to be made obligatory on them; but if the daughter proves insubordinate and unmanageable, she should be kept separate from family concern, but still she is to be maintained by them with provisions supplied (see Yajnavalkya, Canto II—verse 145).

And it must be understood that the father or his relatives have more sympathy for the daughter, than the law-maker and he would know it better, how to deal with the daughter, if falling in distress. And sympathy comes from relationship held, it will be absurd to think how a concubine or her daughter is to be maintained by the relatives of the paramour, who bear no relationship with the concubine or her children.

And so by the Prajapatya marriage mentioned before, a man goes to produce a son in form of a Pindadhikari, to have the resemblance of the father himself, to keep up

the law of creation for the continuance of man as a rational being by the production of another man of the same character, though differing in outside form. And so the adopted son has to give up all his connections of his natural father's side, as by a change of Gotra, and by giving all claims to inheritance of the said father's property; and being trained under the guidance and guardianship of the newly adopted father, he would be competent to hold his position in the same form as his adopted father is, and thereafter he after the death of the adopting father, he will be entitled to inherit the father's property, converting himself to be his Pindadhikari, and adhering to the necessary law of Pinda offerings.

And so also a father makes over his daughter to his son-in-law, as a gift in good faith to be the mistress of his household, which he must require for the keeping up of his position as a man of the rational type, and the father in exchange thereof can maintain no claim of his own over his daughter or his son-in-law in return of such gift being made over to his son-in-law in good faith and in good trust. And in case of dire necessity even, the son-in-law, or his father, or any of his relatives, cannot demand any gift by legal compulsion from the father of the gifted daughter, any help from the father of the made over daughter, and the father or any of his near relatives would only render such a help to the daughter or the son-in-law, out of mercy, which they know best how to apply for the natural affection they retain.

And the father-in-law or the son-in-law or the other relatives of the joint family of the father-in-law's household, also know it well how to support any member of their own family when falling in distress, and if they fail in their conduct of support, there is the Hindu Law extent, which is to compel them for the support, and it is not that the burden of support should fall on the father's family for the purpose of support (see Yajñavalkya notes quoted before).

In reference to the query in our yesterday's debate, as to what should be the order of succession in respect of a man's having his widow in addition to an adopted son, I have been desired by the President of the United Mission to communicate to your goodself, that as the Hindu Law says, the widow should be in possession of the property after her husband's death, the management of the property being carried on by the adopted son. And when the widow would die, the property shall pass over to the adopted son, who would be in absolute possession of it as Pindadhikari by adoption. But if the widow has a son, the property should then be managed by the son, and on the death of his mother, he should be in absolute possession of the property as the Pindadhikari of his father, and the adopted son shall only have one-sixth portion of the property inherited by the son (see *Mānu*, Chapter IX—verse 141). And if the man dies leaving a widow, a daughter and an adopted son; the right of the daughter for maintenance through her father's property, only remains until she is married, and when married, the right for maintenance, then passes over to her husband by a change of Gotra, which she held.

Further I am to say that a man after his death having no other issue except a daughter, and in that case, the daughter can exercise though belonging exclusively to the husband's family a right to claim her father's property in consideration of the quotation "*Kshetra-pradhanyai*" mentioned in our Protestation pamphlet, not as an absolute inheritress to the property, because she is born of the seed of her father sown through the soil of her mother, and so much she can duly enjoy the benefit of such a receipt of property only for her time of existence as a living body in the estimation of the soil, which she maintains through her mother; and after her death the property should pass over to the nearest relative of her father amongst the legal heirs possessing the nearest relation of legal Gotra consideration, being the proper seedling to exercise absolute right. It is the same like the *Stridhan* possessed by the daughter in the manner of a gift presented to her by the father or received from him on legal consideration. She inherits the property not as the seedling and the inheritance must remain absolutely with the seedling which belongs to the Gotra class.

3. This is only to convince you on the subject of property right of a woman on her father's property as far as the Hindu scripture says.

4. It is a question of inheritance of a wordly right, which goes to fulfil the demand of the rule of progeny for

men to keep up lineage of their own downwards through generations coming in later on, as from father to son and from son to grandson, and so on. But in absence of a son, the daughter comes to inherit the property of her father as the issue from the soil of the mother, over which the seed of the father was sown. And therefrom comes out the issue of a grandson bearing only the characteristic of the grandfather, through the soil in which his seed was sown. It is apart from the rule of an observance through the ancestry line, which aims at a discardment of all worldly rights, to be in a journey to the other world in possession of the Lord of all worldly possessions, the Creator himself.

5. And in a grandson the progeny line suffers a break, and the question of the possession of the property of the man is then meant to be solved, through the lineage reckoned from the man's father, thereby the right to the property devolves upon the brother of the man's father as the nearest relative through Gotra consideration.

6. And it is a matter of the most unreasonable sympathy to be exercised in favour of the daughter to give her a superior right to be exercised, by depriving her brother of his absolute right on the property of his father, and this is surely against the rule of the scriptural law.

It is against public opinion.

(a) No demand was made by the general Hindu public.

(b) The general Hindu public does not consist of a few western-educated men and women, but of the vast mass of uneducated Hindus who live mostly in villages. The Code will apply to all alike.

(c) Even if it is considered as progressive, a law in advance of public opinion does no good. *Example*—The Widow Remarriage Act which was passed in 1856, never succeeded. The Hindu Code is worse, because it is compulsory, while the Widow Remarriage Act was only permissive.

(d) The Hindu Code will come before an Assembly elected ten years ago, when the reform of Hindu Law was not an election issue. The measure should be postponed till a new election is held.

2. The Intestate Succession in the Hindu Code will break up joint family—

(a) Hindu society has survived up to now because in it the joint family (and not the individual members) is still the unit of society. Joint property, joint mess and joint worship have saved Hindu society from destruction. Joint family may have disappeared from the top layer of "educated" Hindus. Let education spread and economic condition improve and wait till the masses realize the "blessings" of individual rights. It will then be time enough to reform the law. Premature reform will disrupt society and bring disaster to the uneducated masses.

(b) Economically, the disruption of joint family and the fragmentation of joint property mean ruin to all the members.

(c) Disruption of joint family will kill joint worship and the bond of common religious feeling will be loosened.

3. Equality of the sexes—

(a) This is alien to Hindu ideas. In Hindu society man and woman have separate functions, each supreme in his or her own sphere.

(b) Social obligations of a Hindu family fall on the sons. If daughters are given equal rights they will have the rights without the obligations. Daughters inevitably go out of their father's family by marriage. Yet, they will be given shares in the family property. Introduction of strangers will disrupt the family.

Marriage.—(1) Hindus believe in marriage being a sacrament and not a contract. Those who want marriage to be a contractual relation, which is liable to be dissolved, under Act III of 1872 contract such a marriage; why change the law?

(2) Have Hindu marriages been a failure? If not, why change?

(3) No demand from any appreciable section of the Hindus.

(4) Divorce is altogether alien to Hindu ideas. Where custom allows divorce there was a demand. Why not leave the matter to be regulated by custom? A few extreme cases of hardship ought not to be met by a general law.

101. Mr. Manmathanath Tarkathirtha, Principal, Mulajore Sanskrit College.

1. In the explanatory statement of the Draft Hindu Code it is laid down that one of the objects of the Committee is to evolve a uniform Code of Hindu Law, which will apply to all Hindus by blending the most progressive elements in the various schools of law which prevail in different parts of the country.

It is a fact that the central has no power to legislate for the agricultural lands and the object of the Hindu Law Committee to evolve a uniform Code of Hindu Law cannot be fulfilled. One Provincial Legislature may extend its relevant provisions but another may not, rather, it is beyond expectation, that all the provincial legislatures will follow the Code in one voice. In case of diversity of opinions in the different provinces, the purpose of the Committee will be futile and a new ridiculous state would be created by the Code.

Besides, the Indian States have their own Legislative bodies they are governed by the old Hindu Laws, and the Central has no power over them. Now, it is absurd to think that leaving more than six crores of Hindus residing in the Indian States aside, how the Hindu Law Committee can hope for an all-India uniformity of law.

The blending of the progressive elements in the various schools of law, which prevail in different parts of the country is also objectionable. The Hindu Law Committee have no power to confuse the various schools and to make one anomalous form. It means to violate time honoured व्यवहार or custom of different provinces.

According to Narada it is clearly stated that

व्यवहारो हि बलवान् धर्मस्तेनावहीयते ।

To clear the sense of the above text, the commentator quotes —

देने देने च आचारः पारम्पर्यक्रमागतः ।

स शास्त्रार्थकात्रैव लक्ष्मीयः कयाचन ॥

Katyaia says :—

देसस्य जातेः सदस्य धर्मो ग्रामस्य यो स्मृतः ।

इदितः स्यात् स तेनैव दायभागं प्रकल्पयेत् ।

Yajnavalkya I, 343 also observes :—

So, in our opinion, the method of codification, which has been adopted in this Draft Hindu Code, is *ultra vires*, according to Hindu sastra.

In the name of Hindu Code, it is repugnant to think that non-Hindu elements would come into the Hindu Law Book.

- (1) Inheritance of daughters simultaneous with sons have no basis in the Hindu sastra or Hindu custom.
- (2) Absolute right of women to property is prohibited in the Vedas, Upanishads, Smritis and Nibandhas.

Rg. III. 31-2.

Maitrayani Samhita IV. 6. 9.

(Shatapatha Brahmana IV. 4-2-13).

(Thaithiriya Samhita VI. 5-3-2).

(Mahabharata, Danadharmas quoted in Dayabagat).

(a) Mitakshara has given clear opinion neither for absolute right nor against the same, but it can be clearly interpreted that in Mitakshara limited right has been given to women. We may quote some lines from Mitakshara. "न जानेन वचनेन स्थादीनां नियन्त्रणमभिधीयत । पारस्वसमाजप्रतिपाद नपस्त्वात् ।" "यत् पारस्ववचनं 'नक्षो स्तान्त्वय महेति' इत्यादि तदनु पारस्ववचनं धनधीकारे तु को विरोधः" etc. व्य० अ० 139 Shloka.

Even these lines have been interpreted in the commentary named (विरामिनोदया) Viramitrodaya as giving the idea of limited rights to women. Before the British reign in India Peshwa Kings also ordered for limited rights to women and that opinion of the Peshwa Kings was the leading idea of the Privy Council Judgment regarding the limited rights of women.

The divorce, marriage between different castes, sagotra marriage these are also anti-Hindu religious method. Therefore we would submit that this Code, if passed into law, will strike at the very root of the Hindu society and will lead it to never ending confusion and ultimate destruction.

102. Mr. G. K. Ladha, Visharad, 65, Sir Hariram Goenka Street, Calcutta.

I am wholly opposed to the Hindu Code inasmuch as it cuts at the very root of Hindu social structure, civilization

and religion. In fact, Hindu Law was based on Hindu Sanatan Dharma which no one should try to tamper with specially as it was against the declaration by Queen Victoria. We Hindus do not want anything imposed on us by external law. We should be left to put our own house in order. Our Dharma is our own. Our Dharma Sastras were made by Rishis who were 'Trikalagnyas' and the wisdom of any one of them was greater than the wisdom of all the learned men of to-day put together. All true Hindus therefore always would like to follow Hindu Law based on the Vedas and Smritis. No fresh law was necessary, as any change, by external law would only bring chaos in our society. So, we don't want the Code which will destroy whatever right we have.

The Indian Succession Act, the Civil Marriage Act, the Divorce Act might be adapted to satisfy those who had gone out of the Hindu society.

We orthodox Hindus will always follow Hindu Law based on the Vedas and the Smritis.

103. Swami Yogananda Bharati, Birbhum district.

I strongly protest against Draft Hindu Code with the public views and opinions of the following lines as quoted that the sastric basis of the Hindu Law was of the root of integrity solidarity and longevity of Hindu culture and it should not be disturbed for the sake of a new ideology which was itself in the melting pot to-day. In spite of individual lapses the conservation of abiding ideals and values was all the more necessary in these days of disrupting tendencies; and the orthodox Hindus, therefore, were averse to any changes in the Hindu Law and its religious basis. "Conservative Hindus" strongly protest against the proposed secularized Hindu Code instigated by dissenters from Hinduism and sponsored by the Government of India in place of Hindu Law founded on Hindu sacred books. Political discontent and social and moral anarchy thus created extremely undesirable and ruinous to forces of peace, law and order. The economic forces initiated by the regime broke up the villages, the village society and the traditional social ideals. The people drifted to be urbanized areas without traditions, without standards, without even the children getting a chance of an experience of the social life of old. On these disintegrated human units operated the uncontrolled cinemas, the exhibitions of a moral on immoral lines. The teachings of hybridized teachers, and the examples of men and women with unbridled lust for power, for money and for sex life without social responsibility accentuated by "Shebebe ideals" and the inspiration of "Shebebe civilization", now Indians and de-Indianized Indians with a show of culture, of education, and of science kept on their attacks on Hindu ideology—some inspired by political motives, others through sheer desire to show off or to rationalize their immoralities. For those purposes the social rules laid down in the sastras are the ideal rules because they are based on the eternal varieties revealed through the Vedas. The laws of inheritance as laid down in the sastras are conducive to spiritual, moral and material progress of society. To some modern minds may appear that these laws are improper or unfair. They think so because they cannot perceive the truth. To the Rishis whose minds were free from attachment and prejudice truth was revealed. The society sleeps, the social sense is lost, it as lost its standards of values. The poison spreads and spreads apace of a gangrene as corroding as infectious. People say that religion has nothing to do with morals, moral law nothing to do with the social system. The social system has nothing to do with individual life. Social perversities reign as interpreters of law. Where they set up false concepts and false ideals to the youths the septic focus functions. The entire social organism gets saturated with poison. Please interfere and stop India Government proceeding with this flagrant religious interference against best British Indian pledges and traditions.

04. Mr. Rajendramudkhal, Pleader, Secretary, Dharma Sabha, Mymensingh.

The proposed Hindu Code is opposed to the fundamental conception of the Hindu society as envisaged in the Hindu Sastras.

Apart from this objection which goes to the root of the proposed Code there are other objections. This Code if carried into law will bring economic ruin to the Hindu society altogether.

In the proposed Hindu Code provision is made for simultaneous succession among the widow, sons and daughters of a Hindu who dies intestate, the daughter being given a share which will be half of that of a son.

It is alleged a great wrong was done to the daughters which was now being righted.

I think this provision if carried into effect will bring economic ruin to the Hindus. As soon as a father dies leaving some sons and daughter, the property will be divided into minute parts. The daughters who are married in distant places and their husbands will have no affection for the ancestral property and they may at once sell their portion to strangers. This will estrange the feeling between brothers and sisters, sisters' husbands and their sons. As a practising lawyer for more than 40 years in Mymensingh, the biggest district of Bengal, I have got some practical experience of the working of the law of inheritance among the other community. Among the Muslims the daughters inherit their fathers' property along with their brothers. But I know from practical experiences as every lawyer with some experience will admit that about one-fourth of the litigation in the law courts is between Muslim brothers and their sisters or sisters' husbands and sons as regards inheritance in one way or other. It is common human feeling among all the communities that fathers like to have the properties among the sons and it has foundation in good reason. The reason is obvious, the daughter being married into a different place, often in a different district, will have little regard for the paternal property and generally sell it to others. Even among Mussalman fathers we know by our experience that many of them before the death execute *hebas* and give the properties to their sons or they execute deeds of wakf taking advantage of the Wakf Act of 1913. In the case of Muhammadans, marriage between cousins being allowed, often this is resorted to, to keep the property in the hands of the family.

The daughter being married into a different family will get her husband's property, but her husband's sister will take away portion of the property, so her share and her sons' share of the husband's property will be minimized. So this will create confusion and the daughters will not in the long run be much gainer.

It was with a view to keep the family property intact that the Muslim community set up agitation to counteract the decision of the Privy Council in case of wakfs. Wakfs were often made with a view to keep the property in the family for the benefit of the descendants with an illusory gift to charity or gift to charity was too remote; such wakfs were held to be invalid by the Privy Council—vide the *Abdul Kadir Muhammad Rasamya*, I.L.R. 22 Cal., 619-221A 78. The Muhammadan community set up an agitation against this and the Muhammadans succeeded in changing the law by getting the Mussalman Wakf Validating Act VI of 1913 enacted, by which although the ultimate gift to charity may be small or too remote still the wakf will be valid if it was for the purpose of the maintenance and support wholly or partially of his children or descendants provided that the ultimate benefit is expressly or impliedly reserved for the poor however small or remote it may be. The Muhammadan community strove strenuously to get this Act passed by the Indian Legislature to protect the family property and prevent it being sold away by some of the heirs. Too much and small fragmentation of property is an evil and it should be tried to be avoided. The farsighted Rishis who were the Hindu Law-givers tried to undo this mischief by not giving the daughters a share in the father's property because they were married in altogether different families which are not even of the same gotra or pravar and were to be maintained by their husbands. Whatever hardship there was, was remedied by the Hindu Women's Rights to Property Act (Act XVIII of 1937), as amended by Act XI of 1938, which has given the widow a share in her husband's property equal to that of her son. The law proposed wants to give her now a double advantage by allowing her a share in her husband's property and also a share in her father's property. But this will bring about great confusion and will subdivide the property into very small fragments and ultimately property will pass into the hands of strangers and even of the enemies of the family. The Muslim community has got some legal means to remedy this evil by marriage between near relations and they have the newly enacted Wakf Validating Act. But the Hindus have none except by wills which mean ruinous cost. This

Act will bring in its tail endless litigation and ruin to the Hindu society. The Hindu Women's Rights to Property Act has remedied one glaring defect of Hindu Law. It has wisely given a share to the sonless widow of a predeceased son of a Hindu. The position of a sonless widow of a predeceased son was very sad in Hindu society. The provision for maintenance for the sonless widow of a predeceased son is not enough. This is a very great defect; of all persons the position of a sonless widow of a predeceased son is very pitiable and she should get the share which her deceased husband would have got if he was alive at the time of death of his father. Under the law as interpreted by the law courts she was not entitled even to get a decree for maintenance as against the father-in-law although she could sue her father-in-law's heirs for maintenance after his death.

The Act of 1938 remedied this defect and very justly gave a share to the widow of a predeceased son. But the present Act curiously enough does not give any share to the sonless widow of a predeceased son. This is a glaring defect.

I think whatever practical defect there was in the law of inheritance was remedied by the Act XVIII of 1937, as amended by Act XI of 1938. Then there are other glaring defects and anomalies in the Act. The provision is made in section 5 that if there is no widow, son or daughter, the property will go to the grandson by daughter instead of father and mother. This is most unjust. The grandson by daughter cannot and should not have preference over father and mother. Then mother ought not to be put before father. The proposed Act is full of anomalies and many of its provisions are unjust and against the social sense of the Hindu society.

The position of nephew (sister's son) has been placed even after daughter's daughter's son. This is not proper. The Hindu Law was based on the principle of spiritual benefit and this had been done away with a vengeance. The Hindu Law should be based on the principles of the Hindu sastras. The proposed changes are of fundamental character which will cut at the root of the Hindu society. As regards the law of marriage there was no need of introducing civil marriage. There is a separate law anybody could get himself married according to the provision of the Civil Marriage Act. Hindu marriage was essentially a sacramental marriage and it is a sacrilege against Hindu religion to introduce marriage by civil marriage. There is separate law; those who like may take recourse to that law.

Polygamy no longer exists in any appreciable extent in the Hindu society at least in Bengal no doubt it is not to be tolerated and the society should not encourage it. But it is not an evil of such magnitude for which any legislation is necessary. It has died of itself. But there may be circumstances where a second marriage may be considered to be necessary even during the life of the first wife. It often happens that the first wife is barren; in that case another wife may be considered necessary. Sometimes it happens that the first wife gets the husband married a second time for progeny.

In my humble opinion there is no need of any Code of Hindu law—By case law the Hindu law has now become certain and well known to all. One reason for the proposed Code is said to be the necessity for one Hindu law for whole of India. I do not think there is much necessity for it. There are different customs and usage and little difference in Hindu law does not cause any difficulty. In India there are two principal schools of law, viz., Mitakshara and Dayabhag. If a member of joint family governed by Mitakshara separates himself from the joint family, automatically the rule of survivorship will not apply and then there is not very great difference between the Hindu law of inheritance in Dayabhag and Mitakshara as regards separate property. The difference that exists may remain. In the name of unification of Hindu law axe should not be laid at the root of Hindu society at the instance of some agitators who although form a very small part of the Hindu society, many of whom in their every day life live a most un-Hindu life in every way but who have the privilege of being the most vocal section of the people.

Moreover the law cannot be uniform. The proposed legislation will not apply to agricultural lands (which include zamindari, etc., according to the recent decision) which form by law the major portion of immovable property in

India. There is no knowing that the Provincial Legislatures in all the provinces will pass the same law. If not the unification of one Hindu law for whole of India will not materialize.

If some changes are absolutely in interest of society that can be done as was done in Act of 1937, amended by Act XI of 1938.

Some other objections are mentioned below:—

(1) The country is passing through a very critical period both economic and social—the time selected for introducing such revolutionary changes in the Hindu social and economic structure is most abnoxious and undesirable.

(2) The Hindus, who are in the fighting forces, ought to have some say in the matter. This has been neglected.

(3) The changes, which are going to be introduced, are novel and opposed to the basic principles of the Hindu Sastras. Hurried manner in which they are being introduced is not at all justifiable.

(4) Laws ought not to be changed lightly. It has not yet been proved that the present law is detrimental to the society. Unless the evils of the present system are proved to be widespread and serious, no laws should be abrogated, changed or modified by the legislative enactment.

(5) Hindu Law is not a matter to be determined by votes of a legislature dominated by foreigners and non-Hindus. My Sabha is strongly opposed to such legislative enactment.

(6) The proposed Code seeks to mould the Hindu society on principles largely borrowed from Muhammadan and other foreign laws—specially with respect to intestate succession, marriage, divorce, etc., principles which are repugnant to Hindu ideas, Sastras and Hindu sociology and subversive of the Hindu society.

(7) Divorce laws are an innovation. Hindus never want it—though particular persons may like it. Hindus do not like to go through the sensational reports of a Divorce Court.

(8) The Code is confined to British India. The Hindus in the Native States are to be governed by the Hindu Sastras as it is. There will be a division of Hindu society and family between British India and Native India—which no Hindu would like and the anomaly relating to their laws will be stupendous.

I, therefore, am of opinion that the proposed Hindu Code should be dropped altogether for the present.

105. Mr. P. Neogi, Principal, Maharajah Mahindra College, Calcutta.

I hold opinions very much contrary to the provisions of the Code excepting those relating to monogamy. The provisions relating to intestate succession, divorce in case of certain illnesses and dissolution of marriages are preposterous and subversive to all conceptions of purity of life specially of women as recognized by the Hindu society from time immemorial. Many describe the Code as anti-Hindu Code and not Hindu Code. At the same time I can assure the Committee that I am not at all an orthodox Hindu and in habits, work and association. I live a life of modernism, but am convinced that the provisions of the Code are thoroughly reactionary in character. I will briefly note down here in very general terms my recommendations on the provisions of the Code.

Intestate succession.—(1) Married daughters must not be permitted on any account to a share of her paternal property. On marriage, which is compulsory in Hindu society, she goes to a new family and should inherit in her own right the property of her husband absolutely till her death or remarriage which is permitted by law. A married daughter is only a 'benamidar' for her husband and father-in-law, and if she is permitted to inherit her father's property, her father-in-law's people will come to her father's place and make a hell of the life of her mother and brothers when her father dies.

(2) Unmarried daughters might have a temporary right of inheritance until marriage after which her share will revert to her brothers.

(3) A widowed daughter-in-law should be permitted to inherit in her own right the property of her husband irrespective of the fact that she possesses a male child of her own or not.

Dissolution of marriage.—In this land of Sita and Savitri dissolution of marriages by women would be considered a sin to think of. In 95 per cent cases the parents marry their daughters to proper bridegrooms, but there are

unfortunately 5 per cent cases in which marriages have been arranged with old men and even husbands of a worse type, but with the spread of education these cases are getting rarer.

Divorce.—The Code has provided for divorces by women on grounds other than concubines being kept by their husbands. Keeping concubines is the only ground on which I can support divorce but on no other grounds, which the Code is in favour of divorces by women on the grounds of certain illness of their husbands such as (a) lunacy for over seven years, (b) venereal diseases and (c) leprosy. The authors, however, forget that modern medical science has proved that these diseases are curable or at least can be arrested. These diseases should never be considered as grounds of divorce. Proved adultery and desertion from protection should be the only grounds on which a man can divorce his wife.

Monogamy.—Monogamy is enforced on all women in all societies. Opinions, however, differ in the case of men. I am of opinion that this should be strictly enforced on men also.

Marriages should be permitted between all castes of Hindus excepting very near relatives. The procedure of civil marriage is to be confined to the case of a Hindu marrying a non-Hindu. All marriages are to be registered preferably by the two priests solemnizing the marriage on the two sides in presence of two persons present at the marriage.

106. Himangshu Bhusan Chakravarti, Jubilee Road, P.O., Malda.

I beg to observe that the Code itself, is highly prejudicial to the Hindu interest. From a close reading of the Code, I am of opinion that it has been drafted out with a sinister motive of Mahomedanizing the entire Hindu population of the country. The Bill if allowed to pass, will seriously affect the social as well as the economic structure of Hinduism in India. As it is detrimental to the Hindu culture, customs and usages followed from the time immemorial, to which the entire population of the country is accustomed—the Bill, as a whole, should altogether be thrown out.

Certain sections of the Code are directly against the religious injunctions given by our Sastras. They are not in agreement with the mandates given by our religious teachers like Manu, Parasara and Yajnavalkya, who gave such mandates considering the health, habits, customs and usages of the Hindus in India, specially in view of the climatic conditions in which they are accustomed to thrive. These religious teachers, the Hindus believe, could with their superhuman powers, know and see what has been happening and shall happen in future. The Hindus must, therefore, obey these divine personalities through all ages and at all times. The Hindus cannot deviate from the customs and usages hitherto held in esteem by their forefathers. Nor they can allow their children to deviate from them, for such a deviation may either mean complete extinction of Hinduism in India, or their degeneration, mental, moral, physical and cultural. Of every one hundred, 98 Hindus respectfully obey the mandates of their Sastras and they will never tolerate an undue and most coldblooded attack upon their Sastras and an encroachment of their rights and privileges determined by the great sages like Manu, Raghunanda, etc. With the change of time, as also a change in the outlook of many Hindus, an amendment of Hindu Law might be necessary. But such an amendment must not be in direct conflict with the mandates given by our Sastras.

Let me now discuss in detail, a few of the many defects of the Bill:—

(a) In the first place, no recognition as a Hindu should be given to an illegitimate child of a Hindu pair not united by marriage. In that case, marriage in the society becomes absolutely meaningless. If the illegitimate child of a father can equally claim a share of his father's property with his legitimate son, there remains no difference between the legitimate or illegitimateness of an issue.

(b) Secondly, in my opinion of course, the daughter must not have any right to claim a share in her father's property. According to Hindu principle of marriage, a daughter severs all her relations with her father as soon as she is wedded. Her gotra or racial designation changes. The daughter assumes the title and the racial designation of her husband from the very date of her marriage. To the

family of her father she is regarded no better than a dead child. So, to recognize her right to claim a share in her father's property will be quite contrary to the Hindu religion.

Moreover, every father as and when he gives her daughter in marriage, provides her with some dowry by way of ornaments and other presentations which is property exclusively her own. This she gets from her father during her marriage. Our religious teachers were no less equitable, nor were they less anxious to do justice to the female folks than the sponsors of this pernicious Bill drawn up from a great political motive dividing every Hindu family and thereby weakening their economic structure. Everyone will understand that the Bill has been drawn up in conformity with Islamic or Christian principles and the Hindu conception of heredity, marriage and inheritance have been altogether wiped out.

As soon as a daughter enters the family of her father-in-law, she becomes a sharer to his properties which she should inherit if her husband dies prior to her leaving no male issue. Her husband, of course, is bound to maintain her lifelong and any neglect on his part would entitle the wife to sue her husband for maintenance. Thus it is quite clear that full consideration was given to the daughters by our great sages and religious teachers like Parasara, Manu and Yajnavalkya.

This much can be done for a daughter now that if after marriage, she is forsaken by her husband for reasons other than her bad character (such as if she is guilty of adultery, etc., but not for sterility). She should have rights to return to her father or to the family of her father wherefrom she will have right to receive her maintenance until death. If and when after suing her husband for maintenance if any sum is realized, the same should go to the estate of her father wherefrom she was receiving her bread. I think this would suffice if a clause to the above effect is incorporated in the proposed Hindu Law instead of recognizing the women's right to their father's property as proposed.

(c) Thirdly in my opinion all the chapters or sections in the proposed Hindu Code which recommend the introduction of civil marriage should be expunged as none of our Sastras recognize a marriage performed under a legal contract and without a religious rite as prescribed therein, as valid. Although different forms of marriage are also prevalent amongst the Hindus in India, no marriage becomes valid unless there is a performance of religious ceremonies of some kind, as prescribed in our various Sastras. Unlike other marriages a Hindu marriage is a religious contract and the relation of a Hindu husband with his wife also exists even after the death or either of the couple. The Hindus regard the union between the husband and the wife not only as physical one, but it is also a spiritual union, i.e., the union of the wife's soul with the soul of her husband and vice versa. If anyone carefully goes on studying the incantations uttered both by Hindu husband and a Hindu wife during marriage, he can easily have a justification of my statement made above.

While the marriage as prevalent amongst the Muslims and the Christians are but a legal contract which can cease at any moment, the Hindu system of marriage differs fundamentally with all other forms of marriage and as such it could be a sheer "Jabardasti" on the part of our so-called legislators to introduce civil marriage amongst the Hindus in India. Nothing will be left to call prostitution, if the sections and the chapters dealing with marriage and divorce in the proposed Hindu Code are not altogether revised. There remains virtually no difference between prostitution ordinary or legalized.

(d) Fourthly as regards divorce, it is directly against the conception of Hindu marriage. As already stated, the relation of a Hindu wife with her husband and vice versa does not cease even after the death of either of the couple the question of divorce amongst the Hindus cannot therefore arise. If it is not legalized, a series of complications will crop up in the Hindu society which our so-called legislators will neither be able to prevent nor solve. Just to cite an example, the marriage of a son or a daughter of a divorced father or mother will become very difficult as none of the Hindus would agree to accept the girl of a divorced father or mother as daughter-in-law or their son as son-in-law as they regard such divorced mother or father as a social or a religious pervert. In spite of the passing of Sarda Act, our so-called legislators could not prevent child's marriage which is as frequent as ever.

Will there be an opportunity for the divorced man and woman to remarry? In case of a divorced lady, where and how she would get her maintenance if she is not properly educated to earn her own livelihood? These are the questions I put to the advocates of the proposed Hindu Code.

None in the Hindu Society would accept a divorced woman for his wife, in preference to a virgin lady for they consider it as a sin to hold a sexual intercourse with a woman who was once the wife of another. This is why, the widow remarriage could not be so popularized as was expected. When it would be very difficult for a divorced woman to have a husband for her—what would be her fate if she is not properly educated to earn her own bread since she can neither claim her maintenance from her former husband nor from her father. The sponsors of this Bill, I understand, have altogether forgotten to consider this practical side, this particular aspect out of a strong philogynistic bias.

Further out of a desire to do justice to the married women of the country—the advocates of the Bill did not care to consider what a colossal injustice they are going to do to the unmarried women of the society. Where and when the fathers of the hundreds of virgins cannot effect the marriage of their daughters due to poverty and destitution—will it be proper to encourage the re-marriage of a divorced woman at the cost of a number of unfortunate virgins whom their fathers could not marry on account of a pecuniary reason? The sections and the chapters concerning divorce should therefore be omitted in toto.

(e) Fifthly, about the law of inheritance I say with due respect to every one, that the rules regarding inheritance as given in the Bill are simply preposterous and demonstrate a lack of foresight on the part of their formulators. The existing Hindu law of inheritance which is in strict accordance with our Sastras must remain undisturbed as no law can be more perfect, more reasonable and more scientific than the law of inheritance dictated by the God incarnate Sree Krishna in Gita, Shiva in Tantra by prophets like Manu, Parasara or Yajnavalkya. I do not wish however to discuss in detail.

In conclusion, I wish to make it clear that every action of a Hindu is being guided by the Hindu Religion and not by the law of the land sponsored under instruction of a foreign ruler. So if any Hindu Code is needed to be prepared the same should be carefully drawn up having regard to all the social as well as religious customs and usages in vogue in the Hindu Society and in complete accordance with our various Sastras.

Myself and every Hindu must demand with all the emphasis at their command, a complete rejection of the present Hindu Code, which is ill-conceived, impractical and ill-founded.

107. The Commissioners of the Budge Budge Municipality (Raj Bahadur H. L. Haldar—Chairman).

The Hindu masses never asked for codification and it is not approved by the Hindu masses in Bengal.

In the vast continent like India, inhabited by people of different stocks with wide different culture, manner and customs, the Hindu Law as already provided for customs, usages overriding the written text of Hindu Law and that the present Code even will not bring uniformity and as such there is no need for codification because it will not extend to the whole of India, there are large territories which are not British India and in these areas the old genuine Hindu Law will still prevail, thus it will lead to conflict of laws in different areas in which different laws will govern the properties left by men dying intestate.

1. From the Hindu standpoint the Code is a most mischievous piece of legislation fraught with great danger to the Hindu community.

2. In the matter of succession, if the laws remain as in the Code—

(i) It will reduce average Hindus to the position of day labourers as the properties will be divided in small fragments and the holding will be destroyed and the result will lessen their power of resistance.

(ii) It will bring upon the Hindus that ruin which the Muhammadan legislators described in the object and reason in Wākf Validating Act.

(iii) As there is no safeguard in the Hindu laws for division of properties as in Muhammadan Laws, such as Wakf Act, provision of marriages of daughter with family

member into this law of reversion will bring ruin to Hindu families.

(iv) Lots of business will be closed owing to interference by the husbands of the daughters if daughters are given shares with the son.

(v) There will remain clauses which are repugnant and foreign to the spirit of Hindu law which regards spiritual benefit as the test of succession.

3. In matters of marriage and divorce, there should not be any hard and fast law by codification for the reasons noted below:—

(i) That it will leave more girls unmarried and reduce the Hindu population.

(ii) There is no inherent immorality in polygamy.

(iii) Some time there is need for polygamy, e.g., after the last War when there was dearth of husbands in Europe, there was periodical polygamy which was winked at by laws and the Church.

In conclusion it may be said that there should be minimum interference with social and religious life of Hindus and their laws regulating succession, marriage, etc.

108. Mr. Ajanta Kumar Jain, Student, A.C.I. (London), P.O., Gopalganj (Faridpur).

I think it my duty, being a Hindu, to congratulate you for the attempts which are being made to prepare the Hindu Code. Although there are many men who are protesting against it and they think it unnecessary, as the Widow Marriage Law was. I pray to God wholeheartedly for your entire success in this attempt. Be courageous and act accordingly, we shall be with you to face any kind of danger that comes forth. May God bless you. Let you be the real friend of the present dead-like Society and religion.

109. S. R. Das, Esq., 118, Kalighat Road, Calcutta.

I wholeheartedly support the new provisions of law regarding the positions of Hindu females in a Hindu house. I think it would be still better if you could do anything to suppress the system of the prevailing extortion of dowry either in direct or in an indirect way. This can never be rooted out like other evils by any kind of social binding.

I find the anti-parties are putting forward plea that the system of inheritance, etc., were based from Hindu law from the days of yore and must not be changed. It suggests that whatever wrong found in the society must not be remedied. Such fallacy is certainly ruinous.

Do the anti-parties still hold that the females should continue to observe "Satee" because it was once a religious custom but fortunately stopped by law and the merry husbands after the death of their wives should live and marry as many times as they like? Surely God did not ordain it so.

A daughter has as much right as a son before and after marriage. It is an act of God that differentiates a man from a woman to preserve the world and there is no reason why a female should be debarred from the privileges that are enjoyed by males.

I only hope that the anti-parties should come to reasons and help to get the law passed and not cling to the old and past custom and usages which I dare say, they know in their heart of hearts, cannot be rigidly followed in the present day as the minds of the average men now are quite different from the minds of the past men.

Let us join together and help the cause of the poor down-trodden suffering females for the sake of humanity as it is not their fault that they were born females.

It should also be understood that Hindu law was made by males and as such, it is presumed, that it was so made to the full advantage and benefit of themselves. This, at the time it was made, might have worked well but in the present day it has become a torture.

In fitness of things if by obstacles and anti-propaganda work the law is not passed in toto then there ought to be some provision whereby if a female unfortunately becomes poverty-stricken or widowed she should by right live in the same standard as that of her other (1) brothers-in-law in the first instance, but if they themselves are not in good circumstances then (2) her own brothers. One or both the parties should be made to support according to their own standard. Unmarried girls, it is understood, should after the demise of their fathers enjoy the same privileges and status as their own brothers. The standard of living, if disputed, should be settled by a court of law, as otherwise it may be thought a paltry sum is quite sufficient for the upkeep of the unfortunate woman.

I cannot find any substance in the evasive argument that the new provisions should not go through the Assembly. If it is the object that voting will be done by Non-Hindus then the Non-Hindus might be requested not to take part in the discussion and I am sure, it would be respected. Otherwise it is idle to say that we will settle our own house. There could be no social binding that would deter us to infringe any social custom unless it becomes a law, when people would think twice to go against it. This new provision may also minimise dowry system to a certain extent.

If the new code is passed it would be necessary to declare wills and last testaments invalid. It is not a sacrament to deprive one of his own flesh and blood and bestow same to the other.

I am shocked to find that certain ladies advocated polygamy amongst men. I suppose this is due to anti-propaganda work. With all due respects to the ladies, I would say, that they themselves would under no circumstances agree to live with several co-wives. Lust is found in both sexes then why penalize one and set free the other. There is absolutely no justification of making fish of one and flesh of the other.

To sum up what generally happens is that when a rich man dies leaving sons and widowed and unmarried daughters the widowed daughter has to cringe to her brothers and their wives and if not in agreement with them, she has to live under trying condition or if allowed to live separately a meagre allowance is given while the sons live a luxurious life. Regarding unmarried daughters, husbands are sought, bearing in mind the dowry and other expenses with the result that they are often married to unsuitable husbands and they have to live in penury.

Let us heal the sore of our society before it becomes septic.

I wish you all success in your noble mission.

110. Mr. T. S. Rau, Jenapur.

How many times shall your lofty deed be heard in ages unborn and sung in accents unknown! You are now sowing the seeds which in the fullness of time produce the mighty tree which bears the fruits of posterity through eternity. As you have undertaken this monumental task of the Prosperity of Present and Posterity I request you to note kindly the following points which you have not come across in the evidence you have taken so far.

If the daughter is given an equal share in the family property, it will help to solve the "dowry problem" to a large extent. Instead of the money called "dowry" being squandered by the husband's party at the time of marriage, the daughter can take her lawful share in her parent's property and utilise it in the best interests of her family. Further this will fix the social status of the female members of the family as well, and thus enable the girl or her parents or others interested in her to go in for a suitable groom of the same status. Also there will not be the need for the girl's party to raise huge loans at very high rates of interest which were seldom paid back without utmost difficulty.

The next point is with regard to *stridhana* property. When once the sex bar is removed in the matter of inheritance, this problem becomes obsolete, and hence automatically solved.

Another point of major importance is the age of marriage. Though the Child Marriage Restraint Act has done something it has just touched the fringe. Much has to be done with regard to difference between the ages of the bride and groom (say fixing at some eight or ten years maximum) and also the maximum age for marriage at some 35 or 40 years. Further widowers must marry widows only if they want to marry at all.

The last thing of importance, but not the least is that the Law should come into force with retrospective effect. All the members of an undivided Hindu family must be governed by the new Law though they might have lost their parents or others from whom the property was got several years back. Unless this rule is observed the Reform intended to be brought about will not be complete.

This is the contribution of my mite towards this Mighty Problem as that of the Proverbial squirrel of the Hindu Mythology in connection with the construction of the Mighty Bridge by Rama.

111. Ashutosh Roy, Esq., Kavira], Kishoreganj, District Mymensingh, Bengal.

A person having some landed property died leaving only three daughters as his successors. One daughter

died during the lifetime of the other two, leaving behind her a male child. The existing law is that the two living daughters will inherit the entire property of the father (life interest only) and the sons left behind by those two sisters will inherit the property after the demise of those two daughters. This is, of course, a bad law. Why not the son of the daughter who died during the period when two others were surviving will lose his share from the property? There can no argument be put forward to justify this.

The law should be changed in such a way that the son of the deceased daughter may inherit his grandfather's (mother's side) property at once without any difficulty and obstruction from the living daughters. The law should be so changed that this may be effected from some time past.

112. Mr. A. C. Samadder, Kalighat, Calcutta.

During the short stay of the Rau Committee in Calcutta, it was observed that evidences that were generally taken from the people who are well placed in Society and naturally they were all rich people. They were so placed not because of their qualities but because of their money. In every day's newspaper names of those fortunate people were typed in block letters as if their evidences would be sufficient to prove what is right and what is wrong. This is a social weakness and the Rau Committee could not get rid of that. This is not justifiable. India is the land of the poor and middle class people but unfortunately they were not given sufficient opportunity to place their opinions before the Committee. It is a matter of great regret. From the evidences that were generally taken it appears that the fate of the poor and middle class people should depend upon the choice of the rich. Social customs and prejudices have got little to do with the rich people while this major class of people, i.e., the poor and middle class of people are always conducted by those customs and prejudices. Let me explain more explicitly how much difference lies between the rich and other class of people so far as the social customs are there. Suppose a son of a rich man goes to England and marries a Christian Lady and comes back to India with his wife. What will be his position in society? He will call himself a true Hindu and the Hindu Society will gladly agree to that. But suppose a son of a poor father marries a girl of another religion. How will he be treated? Society will not miss the slightest opportunity to play a rough hand against him and surely he will be outcast. As a result this poor chap has to suffer all along and his future generation too. I write all these things to let you know that whenever any law is going to be in force it should be seen that the maximum interest of the poor are there. So evidences from the poor are worth more than those of the rich. It is the poor or middle class people who will suffer more or be benefited more by the present Hindu Code. Rich may decry the present Code but the class of people will be relieved much. So, I say on behalf of the poor and middle class people of Bengal that the present Hindu Code should be codified at an early date, of course with certain modifications in case of certain clauses which are shown below.

Now let me come to the concrete case.

Q.—Is it justifiable that a Hindu girl can inherit her father's property?

A.—Yes she can but under the following circumstances:—

(a) If a Hindu girl remains unmarried for the reason whatsoever and maintains her chastity all along, she is certainly entitled to a share of her father's property.

(b) If a Hindu girl after marriage be badly treated by her husband or by any member of her husband's family and finds no place with her husband, certainly she should get a share.

(c) If a Hindu widow does not find any support in the family of her husband's family or the circumstances, there be not sufficient to provide her, she should get a shelter in her father's house.

But in cases where after marriage a girl finds no difficulty with her husband and becomes the joint owner of her father-in-law's property, I find no reason why she should again be given a share of her father's property.

The main idea is, therefore, that whenever a girl finds her support in her husband's house or does anything which goes against the goodwill and interest of her father, her claim to her father's property ceases to exist.

Q.—Whether divorce is good?

A.—Divorce is a matter of necessity and not a matter of course. Divorce takes place only when the husband and wife are not in good terms and the extreme point of bitterness is reached. It is a serious thing. We are rational beings after all. So it cannot be expected that a husband will divorce his wife for nothing or a wife will divorce her husband for nothing.

A Ghost is not so black as it is taken. So I find no reason why divorce system should not be a legal one. Whereas by this system a good many oppressed wives will get relief of their cruel husbands or mother-in-laws who are sometimes mainly responsible for the very sad end of the lives of good wives.

But a bitter outcome will be this that husband and wife will always look after the interest of each other and as a result, a question of divorce will not arise.

But if there be any such case it should be seen that it is made legal.

Q.—Whether inter-caste marriage or marriage between the relations or Sagotra marriage is justifiable?

A.—Marriage between the relations is already in vogue in Madras and the outcome of this is not bad but more peaceful and less expensive. Some argue that inter-caste marriage is harmful. Harmful because future generations will not be up to the mark. But this is absolutely imaginary. Madras is not lagging behind the other provinces in any way. So I find nothing wrong in introducing this system. The case is similar in Sagotra marriage.

While speaking in favour of caste system or rather inter-caste marriage, I should say that caste system should be uprooted. This is a great social evil. In religion there is no caste, caste is simply a social institution, so there is no hard and fast rule that it should be maintained at all costs. The sooner it is removed the better. Caste system is social hypocrisy.

In my opinion, therefore, the present Hindu Code should find its approval and should be brought to light as early as possible.

I am a young man of 23, so the views that are expressed by me should be taken as the views of the youths of India who are the future hope of India.

113. Mr. Sarada Kutir, Kurmitha, P.O., Batikar, District Birbhum.

The draft Hindu Code is generally supported by us.

1. It is not proper that a woman should succeed to the estate of her father and also to that of her husband. A daughter remaining unmarried all her life should take an equal share of her father's property along with her brothers. Provisions should be made enabling a daughter to get all the expenses of her marriage from her father's property. A married woman should be entitled to an equal share of her husband's property along with her sons or other successors. When the property thus obtained by her is disposed of by sale the family of her father or of her father-in-law, as the case may be, should have the right of pre-emption over it.

2. Marriage between parties belonging to the same gotra or having a common *prasaava* should not be regarded as invalid. What common bond of relationship can there be between the Sandilyas of Ranchi and those of Karachi?

3. Marriages outside one's own caste deserve full support. But the social status of children, born as a result of such marriages, should be the subject-matter of special consideration. In Birbhum there have been more than one case where the issue of such marriages, have by dint of sheer wealth gained an influential position in society. But the poor, who have no such financial backing, are sure to meet with a hard lot. Hybrids like these may have the way to hell!

4. Provisions for the dissolution of marriage are very badly necessary. But it should be obligatory on the parties in such cases of divorce to obey certain strict rules. Re-marriage with a step-mother, daughter-in-law, daughter, sister, etc., must be prohibited. There should be clear provisions regarding the right of inheritance accruing to the issue of the previous marriage. Polygamy on the part of males must be prohibited.

In our opinion more time should be allowed for eliciting opinion on this Code. Rashness, obstinacy, or the bid for applause in any shape or form should be avoided by all means while reforming long-standing rules and customs.

114. Staff of the Taki Government High School.

From a study of the Smritis, both ancient and modern, it appears that social reforms are necessary. Such reforms were actually introduced in the past and with the progress of time there is again a need for them. Although the changes proposed in the Hindu Code are generally supported on principle, we have something to say on some of the points.

1. The provisions made in sub-clauses (b) and (d) of clause 7, Part II, for the daughter's succession to the estate of her father dying intestate appears to be reasonable inasmuch as she gets a share in the property left by her husband as well. The daughter will thus be the recipient of the same property as the son. But it is found in clause 14 (c) (i) that in the case of *stridhan* devolving on sons and daughters, a son shall take half the share of a daughter. This is not just and reasonable. What has been provided for in regard to the father's property should also be provided for in respect of the mother's property.

2. & 3. If a widow remarries, she should be divested of her share in her former husband's property. And as the widow, sons, daughters, sons of the predeceased son have all been given a share in the property of the deceased, all of them should bear a proportional burden of the liability incurred by the deceased. It is not reasonable to make the sons alone liable for the discharge of such liability.

4. In sub-clauses (VIII) and (IX) of clause 5, Part III, provisions have been made for the maintenance of a minor illegitimate son and an unmarried illegitimate daughter. By the word 'illegitimate' here adultery on the part of the wife is being indicated, so in this case also, clause 19 of Part II, the unchaste wife must be disqualified for the purpose of inheriting the property. But the case should be otherwise, if the word 'illegitimate' means any issue by one's concubine. The word 'illegitimate' therefore should be clearly defined and provisions made accordingly.

5. As regards the provisions for marriages outside one's own caste in Part III, it should be taken into account that if the Hindu caste system which is of at least five thousand years' standing is not totally abolished, such marriages will not come to be in vogue. Although *anulom* and *pratilom* marriages were in vogue in ancient times, the results of a *pratilom* marriage were found to be not good at all. In this connexion, it may be pointed out that although widow remarriage is even now legally valid it has not gained a wide currency in the country. The same fate awaits the *asavarna* marriage. The Civil Marriage Act which is already in force will best serve the purpose of those who are willing to marry outside their own castes.

6. The daughter has been made an heir to her father's estate along with her brother. Where the father leaves behind any property to be divided among his sons and daughters, a brother need not bother about his sister's marriage after the death of his father. But when the father dies a pauper, the brother will be put to difficulty in giving away the unmarried sister in marriage owing to the prevalence of the dowry system. So with a view to giving relief to such a brother the dowry system should be prohibited by law along with the above provision.

115. Mr. Sudhindra Nath Deva Ray of Naldanga, P.O., Naldanga Rajbati, Jessore district.

1. In sub-clause (c) (i) of clause 14 in part II the expression "a son shall take half the share of a daughter" should be replaced by "a son shall take an equal share with a daughter."

2. The clause 3 (c) of chapter I, part IV should be deleted.

3. In clause 29 of chapter III, part IV, for the words "celebrated after the commencement of this Code," the words "celebrated before and after the commencement of this Code" should be substituted.

4. Sub-clause (3) of clause 29 and sub-clause (2) of clause 30 of chapter III, part IV, should be deleted.

116. Mr. T. C. Dutta, B.A., B.T., Headmaster, Janjira School, Faridpur district, M.A.H.E.

You will not be surprised when you are facing opposition to the draft Code from many prominent persons and even from the women, mainly for whose interest these reforms have been suggested. Why did the Hindus lose their independence? Have they progressed forty hairs through

their struggle for Swaraj for forty years? No. Because the defects in their character for which they lost their independence have not been removed. They must improve their individual and social character.

It is most interesting that a witness of high rank and position, while opposing the inter-caste marriage (and other provisions of the draft Code) in Calcutta, recommends a Hindu marriage with a non-Hindu with retention of Hindu religion but on political grounds only. Does it not imply that he regards a Hindu inferior to a non-Hindu?

Do you ever think of introducing 'Anulom' marriage, if you fail to get support for inter-caste marriage in toto? Partial inter-caste marriages will be more harmful and vehemently protested. When anulom marriage was in vogue, cases of *pratilom* marriage among the high classes recognized by the society were not rare. Again the varnas 'Brahman,' 'Kshatriya,' 'Vaisya' of the old were not degraded into the present day castes losing all their charms and qualifications and virtues and any one in ancient times could rise to a higher varna by dint of his high education and culture. But now-a-days Sudras born in the family of the Brahman are recognized as Brahmins and Brahmins born in the family of the Sudras are recognized as Sudras. Recognition of varna or caste by merit is obsolete now. Fourthly those ancient varnas, degraded into castes, follow any and every line of occupation not sanctioned for the respective varnas. Fifthly you will not find the pure varnas or castes now. Here in Bengal Brahmins, Vaidyas (Brahmins) and Kayasthas are the high caste people. The Vaidyas of Bengal are the most enlightened and cultured people of the land from time immemorial and they regard themselves superior to all castes. They do not like to give their daughters in marriage to even a highly educated Brahmin youth. The Oriya Kayasthas observe ten days' impurity period and do not eat rice from the hands of a Brahman while the Brahman eats rice from the hands of a Kayastha and observes thirty days' impurity period, as I learn. The Marwari Vaisyas consider themselves superior to the Kshatriyas and even to Brahmins. The U.P. Kayasthas consider themselves superior to the Kshatriyas. But while introducing the 'anulom' marriage some castes must be considered as higher and some lower in rank, which is impossible at the present time. So, if inter-caste marriage in toto is introduced, well and good; otherwise partial inter-caste marriages will be detrimental to the society and must not and never be introduced.

Regarding daughter's share in the paternal property, I am of opinion that the daughter married or unmarried must have a share to improve their position—half a share of the son. I cannot think how the people advocate the abolition of the dowry system by legislation and oppose daughter's succession to paternal property in the same breath.

We support monogamy but it should not be enforced by legislation as polygamy is out of date among the Hindus now.

We support divorce on the line advocated by Parasara and in cases of deserted wives and other inexorable cases where provisions for divorce would be socially healthy.

There must be one Hindu law of marriages leaving out civil marriage. Restrictions based on Gotra and Pravara must be abolished. As regards 'Sapinda' restriction should limit to seven degrees of the father's side and three degrees of the mother's side.

We do not generally encourage inter-caste marriages. But if such marriages are inevitable, those should be sanctioned by Hindu law, otherwise the children of such marriages and the wives themselves become helpless when the fathers and the husbands refuse to maintain them, why should a Hindu take shelter under the Civil Marriage Act, when there are provisions for such marriages in his own Shastras and when it is a natural consequence.

I cannot think how the Akhand-Hindusthan will ever think of unifying the Hindus of India unless a uniform code of Hindu law governing marriages, property, religion, etc., is evolved for the whole of India. It is why most of the Hindus and Scheduled castes have no faith in the Hindu Mahasabha—the former are Congressites, and the latter are won over by the Muslim League—most tragic and wonderful thing.

In fine, I beg to submit that unless a uniform code of Hindu Law is evolved out for the whole of India without delay, Hindus will be wiped out of the land of the Hindus.

The Sanatanists, specially the Brahmins, have ever approved of any change because they have achieved a signal success in social matters by making laws themselves for their superiority to the degeneration of the Hindus and their loss of independence—they would not forego their privileged rights because slavery is ingrained in them, they themselves are degraded and are envious of other castes' property.

117. Mr. Debabrata Mukherjee, Kalighat, Calcutta.

I am a student of second year class of B.M. college of Aswinikumar. I do not know whether you are interested to receive the opinions of students. But I consider that it is our duty to make you familiar with our view. And I hope it would be of great value to the application of the proposed Bill. So I insist on writing to you whatever view we may hold in our mind.

I have a quite little knowledge of law but in spite of the fact, I find it rational to reform the Hindu laws. The Rau Bill is necessary to remove the evils from society and to establish a good system.

A rigid law deserves to be broken like an oak tree when a storm arises. Only a flexible law can adjust itself to the new changing conditions of the society. In fact "the old order chageth yielding place to new." And Tennyson has uttered an eternal truth. Time is rolling on towards progress. The old order wither away and in its ash grow the new order. The Hindu society is not still as a lake but it is a river with its flowy nature.

There are Lilabathi, Nagaryum, Gargeyi Jahawrial, Rabindranath. The progress of Hindu society is decidedly decided. The provisions embodied in the Rau Bill will enlighten the position of the Hindus. I must congratulate the Bill wholeheartedly.

Divorce is certainly necessary for the prevention of venereal diseases. Monogamy in the case of a man will prove useful for a well-regulated system society.

"Let sleeping dogs lie." To oppose is an easy thing but to shape a good system is a little difficult. What does opposition mean? It is for a day or two. The conservatives are habituated in criticising. Was not Vidyasagar vehemently criticised in introducing "Widow-marriage?" We should make a law in reliance of public opinion. But we should also remember that numerical majority is not public opinion.

At the end I must show my gratitude to the Committee and to Sir B. N. Rau for the proposed Bill with a view to organize our society. The Rau Bill is not a menace but an important factor of a good social system. Let it be crowned with laurels.

118. Mr. Sudhamany Banerji, Pleader, Midnapore.

1. The draft Hindu Code has indicated some solutions of a number of burning questions in the matter of a necessary re-adjustment of the Hindu social structure, particularly about marriage, its incidents and dissolution thereof.

2. Monogamy on either side must be strictly enforced.

3. Provision for divorce in suitable cases is equally necessary with safe funds.

4. A daughter should certainly get a share in her father's property.

5. The widow of a predeceased son should also have a share—the same as her husband's.

Generally speaking, the provisions of the draft Code offend against deep-rooted sentiments, but they may possibly answer and answer satisfactorily long-felt wants.

119. Mr. Hom Chandra Shatak, Honorary Magistrate and Municipal Commissioner, Bogra, Bengal.

1. Regarding daughter's succession of property I beg to say that the proposed Bill is detrimental to the Hindu nation. Properties in no way be divided among daughters—excepting two cases:—

(a) When the daughter is a widow;

(b) when the daughter remains unmarried.

2. I have scrutinisingly examined the causes of divorce laid down in this Bill and find it quite helpful to both the sides. In my opinion husbands may be given a chance to contract a second marriage when the wife is barren. Previous consent of the wife must be taken in this case.

I wholeheartedly support other proposals proposed by the Rau Committee.

120. Kumarish Chandra Sarkar, Esq., B.L., Leader, Subdivisional N.W.F., Directorate Katwa (Burdwan).

I have changed my views regarding the draft Hindu Code. I am in favour of the Code and I approve of the

general provisions of the Code but I do not favour the proposal for dissolution of the marriage. I am also of opinion that the childless widowed daughters should also get a share.

121. Rao Bahadur P. Majumdar, Malda district.

I have gone through the provisions of the Hindu Code with a good deal of interest. It is a progressive piece of legislation and I give my support to it; the following are some of the criticisms that I offer for consideration:—

Part II (1) Daughter should not be placed in the same category as wife and son, but she should come under head (2) with daughter's son.

(2) Father (4) should come before mother (3).

Part III.—(1) Maintenance should ordinarily include expenses of education.

Part IV (1).—Impotency of the husband should be ground for dissolution of marriage.

Part VI.—(1) Clause (v) of section 4 of the part should be explained by reference to section 13 of the part and that section should be amended by making the age-limit 12 years instead of 15 years. The language of the Code is very obscure and should be made lucid, if possible.

122. Mr. Kshirdnath Chowdhury and others, Dutehanchla, Bogra.

1. A daughter should get $\frac{1}{3}$ of her brother instead of $\frac{1}{4}$. Whenever his question of separation would arise, she would have to sell her portion to her brothers. The value of his property if not settled by themselves, would be ascertained by the civil Court.

2. During the lifetime of the House Father if the death of his son occurs, the widow and her daughter, if any, would derive the right of her deceased husband and father.

3. If a daughter dies childless, her right to her paternal and maternal property must not be inherited by her husband.

123. Mr. P. Panchanan Ray, Pingma P.O., Mymensingh.

In my opinion it is an injustice to the daughters to deprive them of their legitimate claim by birth upon the share left by their fathers; because they come to the world from the same origin as their brothers, etc. This Bill, if passed, shall do immense good to the females as well as to the country as the abolition of the "Sati" and other malpractice is doing, which we now call superstitions. Moreover this will solve the present problem of "Paza-praitha." I suggest that this Bill should be passed with a retrospective effect of at least 25 years. As for other items of the Bill, especially the Hindu marriage and widow marriage, these are absolutely necessary for the upkeep of the Hindu Society from its rapid degeneration.

Further, I opine that there should be a separate provision in the Act to provide with the right of selling, etc., of share of property to the widow wife (if unwilling to marry) whose husband died before the death of his father. This is very necessary in the rural area, especially among the uneducated. The sufferings of the widows of this class knows no bounds.

124. Dr. S. Datta, D.S. (London), F.W.I., Principal, Rajshahi College.

It is apparent that the main object of the revision of the Code is to introduce as much of democratic principles as is permissible without an innumerable division of the property which has been recognized as unhealthy by some members of the Joint Select Committee (footnote on page 6). In my opinion equity is no doubt desirable but only as far as it is consistent (1) with the preservation of the property, (2) with the maintenance of a harmonious relation between the participants, the absence of which is sure to give rise to unnecessary complications and litigations resulting in endless miseries. How this principle of equity is leading to complications in the Moslem society, and is practically responsible for the deterioration of the Moslem Estates, these should act as eye-openers in an attempt to extend the principle of equity in the Hindu Law of inheritance. At the same time in this democratic age in which we are living, it would be dangerous not to move with the times and allow the democratic principles to govern our fundamental laws. Being thus placed between the horns of a dilemma an attempt should be made to combine the basic idea of the English law of inheritance—which to my mind has worked with splendid success in the maintenance and development of Estates—with the basic idea of the Muslim law of inheritance which is broadbased on the

principle of equity. Hence if the time-honoured law of the Hindu society is at all to be changed, the change should be introduced in such a way that it leads to real improvements of the present condition by synthesising all that is best in the principles embodied by the English, Muslim and Hindu laws. The modification suggested in the draft Code is merely a patchwork so far as the law of inheritance goes and the principles of equity recognized in the draft Code is also of a questionable nature when we think of the actual cases of sufferings. For instance, we notice that in the first category no share has been allotted to the *widowed daughter-in-law having no male issue* or to the widow of predeceased grandson whose father is also predeceased or to the *dependent widow-mother*. If we come to think of the actual cases of hardship who will deny that these are the very helpless creatures who are most oppressed? Equity demands that they should have an equal claim with the daughters and placed in the first category. The case of the dependent father is different for various reasons and need not be placed in the first category.

Now the essential idea underlying the three laws, to my mind, is this:—

(1) The English law of inheritance has been framed mainly with the idea of preserving the integrity of the Estate as division of the property will inevitably lead to its deterioration.

(2) The Muslim law of inheritance has decided the question mainly on considerations of equity without caring at all for the estate or the evil consequences resulting from its subdivision.

(3) Hindu law—particularly the Dayabhag system is somewhat of a compromise and the order of succession is based on spiritual considerations.

If an attempt is to be made to synthesise all that is good in the three systems, we should consider measures necessary for the preservation of the estate consistent with the fine principles of democracy introduced by the Mahomedan law and adjust the order of succession according to the Hindu law. I would accordingly suggest that in order to prevent the deterioration of the property or give rise to various complications consequent upon its fragmentation, we ought to adopt the English law of *primo-geniture* to govern the question of succession but in recognition of the principles of equity some compensation in cash should be paid to other successors as detailed in section 5, page 6 of the draft Code subject to the modifications suggested above. The subsequent order of succession should be retained as in the present Hindu law. It may be argued that the evaluation of the compensation and its realisation by the different parties may lead to various difficulties and litigations and consequently the proposal is an impractical one. But since we are soon going to have another socialistic law, I mean the levy of the death duty in the matter of inheritance, the same paraphernalia which would be brought into operation in the realisation of the death duty may be easily utilised for the purpose of the settlement of the question in the case of bigger estates where death duty will be in operation. An adjunct to the same department may also be set up for dealing with the large majority of cases which may not come under death duty. The cost of the department may be met by the imposition of an *assessment fee*. If the principle be accepted various ways and means may be suggested for giving a practical shape to the scheme.

The *modus operandi* of giving effect to my suggestion would be somewhat as follows:—

When a person dies intestate, his estate should be assessed and after realisation of the death duty or assessment fee, as the case may be, the eldest living son should inherit the whole of the immovable property but should be made responsible for distributing half of the assessed value to other successors, i.e., in accordance with the scheme proposed in the draft Code subject to modification proposed above, i.e. the first category comprising the following: widow, other sons, daughter's sons of deceased sons, grandsons of deceased sons if their fathers are deceased, dependent mother, widow of deceased sons who are deceased, widow of deceased grandsons of deceased sons if their sons, fathers are deceased. The division of amount may be made in accordance with rule 7, page 8, the share of the widow daughter-in-law or granddaughter-in-law (proposed above) being equal to that of the daughter, i.e. half of a son's share.

As the cash payment at a time may cause hardship to the eldest surviving son who inherits the immovable property he may be permitted to pay the amount in suitable instalments not exceeding ten according to the decisions of the assessing body.

Whether in the interest of the preservation of the Estate the effective share of the eldest living son would be half or a little more than half, this is a question which requires more careful analysis than is possible in the limited time given to me. But I have absolutely no doubt that much of the problems in our country will be solved, much of the sufferings of the tenants caused by neglect in the maintenance and development of the property will be mitigated and scores of litigations due to joint rights will be avoided by the adoption of some such measure as indicated above.

For movable property there is no objection in accepting the rules as suggested in the draft Code subject to the modification proposed above in deciding the list of persons having primary rights.

A lengthy discussion in support of the above suggestion is unnecessary. For, synthesis of all that is best in the three laws is possible only in a manner somewhat like the one that is suggested here. But one thing may be mentioned that apart from the idea of preservation of the Estate, another beneficial effect of the English law is that it provides the necessary stimulus to the other sons of the family to improve their lot by their own exertions, that is why we find that the sons of the English nobility practically dominate in trade, commerce and politics. They make full use of the opportunities of their social status and of the liberal education which they receive enthused by the urge for improving their own lot. The sad contract of the Indian landlords fully confirms the view indicated here. If the suggestion made above be accepted, it is reasonable to presume that after recovery from the first shock, the sons of the family will settle down to reap all the advantages of the English law without being altogether deprived of a share in the property which they would now receive in cash. The advantages derived from this fundamental change would more than outweigh the disadvantages which may be there.

The clause on maintenance—Clause 2, Part III, A-II—is a decided improvement owing to the inclusion of illegitimate children till the age of maturity in the list.

As regards Hindu women's Estate there is no objection to the acceptance of the proposed amendment.

On the subject of marriage and divorce which form the bulwark of opposition, I am of opinion that the controversy may be easily ended if the forms of Hindu marriage be divided into three classes instead of two:—

(1) Orthodox Hindu marriage, (2) Liberal Hindu marriage, (3) Civil marriage.

Truly speaking, the time has come when we should recognize the existence in the Hindu society of this additional class—I mean the liberals who for various reasons like to call themselves as Hindus but do not cling to the orthodox views.

The Brahmos, Sikhs and Buddhists may all come under this general name liberal Hindus. The Jains are not very liberal in their ideas and option may be given to them either to join the orthodox set or the liberal set as they may choose. Let the Shastras rigidly control and guide the orthodox set and let the proposed reforms operate among the liberal class.

The main contention of the orthodox set is that they do not admit that any legislature has the right to reform the Shastras made by the Rishis who are parts of Divinity. Let us not enter into unnecessary quarrels with the orthodox set. The reforms have originated from the liberal set, let it be confined to the liberal class. After all, the laws are mere sanctions and not obligatory. The orthodox people will always adhere to their orthodox views until they become liberal. One day, perhaps, the whole orthodox set will merge into the liberal class, until that day arrives there is no necessity in giving rise to meaningless bickerings. The orthodox people cannot object to the formation of a new class of Hindus. I therefore suggest that a new class of marriage be introduced and the proposed reforms such as laid down in rule 6, page 21, and the granting of divorce as per Rule 30, page 27, be confined to the liberal, Hindu marriage only. According to the orthodox Hindu ideals, the marriage is sacramental and hence there is no room for divorce in it.

Even in case of the liberal Hindu marriage, the conditions of divorce should be extremely stringent. Those proposed in the draft Code are fairly strict but direction should be given to the court to exercise great caution in sanctioning divorce. Some time-limit (say 3 years) should be prescribed for rule 30 (page 28) so that it may not be made a pretext for dissolution of marriage.

125. P. C. Chatterji, Esq., M.A., B.L., Manager, Tarakeswar Estate.

We wish to protest against the following main points amongst others, viz. (1) succession of the daughters and widows simultaneously with the sons, (2) maintenance of concubines and illegitimate sons and daughters, (3) civil marriage of the Hindus, (4) marriage amongst the Sapindas, the Sagotras and amongst all castes, (5) divorce, etc., which are not enjoined by the Sastras. The Hindu regards his laws as commands not of any temporal sovereign but of the supreme being. So no legislators of the country are competent to alter the said laws. We are also of opinion if the Bill be passed it will strike at the root of the Hindu cult and as such Hindus will be ruined and it will be a source of litigation. It is also untimely and unnecessary.

126. Mr. Hari Krishna Jhajharia, Calcutta.

At the outset I extremely regret to observe that in these troublous times when cool and dispassionate judgment on social and economic issues is practically impossible, the Government of India should have chosen to take up a reform which is not merely social in its intent, but is preponderantly religious in character. Hindu Law deeply enters and influences every part of the social structure of the Hindu society and has the most far-reaching effect upon the well-being and future progress of the Hindu community. Laws relating to marriage, adoption and inheritance are important branches of our personal law and affect every individual member of the community.

Hindus are greatly alarmed and perturbed at the various proposals proposed in the draft Code which, it may be stated, constitute a very reprehensible change in our deeply cherished personal laws. It is apprehended that such proposals, if given effect to, are bound to lead to the destruction of the social structure and will have a disrupting influence on Hindu society. Hindu laws and customs are interwoven in the very texture and fabric of our social organization and any drastic change in the laws relating to marriage, succession and inheritance will destroy the foundation on which the Hindu society rests.

The genius of Hindu Law has been sympathetic to custom. The ancient law-givers pointed out that besides the Sruti and Smriti, approved usage (Sadachara) was one of the foundations of Dharma or law. The Indo-Aryan race, after they conquered India, gave recognition to diverse local customs and traditions and tried to bring about a synthesis or federation of the constituent units, based on the recognition of the cultural and social autonomy of each of the local groups. Thus Hindu Law has essentially been the product of that unique process which led to the unification of India under the banner of one faith. The true basis of Hindu Law has been the developing common consciousness of the people. The bold reforms introduced by leading commentators were not meant to be direct challenges to settled rules of ancient jurisprudence. They professed allegiance to the old law; in fact to a large extent they depicted the broad facts of the current Hindu life and they illustrated and stimulated the customs and usages prevailing in the respective spheres. Their sanctions was not the coercive power of the State but conformity to social consciousness and the capacity to reflect and mould the feelings and sentiments, the hopes and aspirations of the people for whom they wished to legislate.

I shall not discuss at this stage the question of competency of the Indian Legislature to take up and introduce religious reform through legislation, but I should like to point out that even the Hindu Law Committee was not wholly oblivious of the grave nature of their proposals when they themselves suggest that any thoughtful reformer "would not wish to lay violent hands on the ancient structure of the Hindu Law except for proved necessity." From their own standpoint therefore two essential criteria are to be satisfied before any change is decided upon. Firstly, reform should be undertaken only in cases of

proved necessity, and secondly, the reformers themselves should be thoughtful, qualified and competent enough to inspire confidence.

Let me take up first the case of the reformers and the appropriate machinery to give legislative shape to the same. Who are competent to judge the necessity of reform and the extent to which such reform should be effected? One essential requisite of such reformers is that they must command a thorough knowledge of the Shastras and should, moreover, have an intimate knowledge of the Hindu masses, their habits of life, their sentiments and social ideas, their attitude towards their females and their hopes and aspirations in this world as well as in the next. How many of our modern reformers can reasonably claim to possess this essential prerequisite? Do they know or care to know that the Hindu view of life is based on the profound doctrine of the Upanishads and other sacred books, and that the system of Hindu Laws has been so framed as to regulate and adjust our worldly interest to the philosophy of life inherent in the fundamental tenets of Hinduism? It is simply a truism to say that our laws have their source revealed in the Vedas and that no devout Hindu will ever admit or tolerate any other source to be his Dharma. True, there had been modifications or changes from time to time, but if we carefully trace down its evolution through the ages we should be able to find that such changes or modifications have come through the Smriti-writers and the commentators. The authors of these changes had been master-minds like Manu or Yagnavalkya who acquired a thorough mastery of the Shastras and introduced changes under the cloak of interpretation. Their sole objective had been to bring customs existing from time to time within the pale of written law, and when they did introduce the change they had it done with the utmost delicacy and without disturbing in the least the main philosophy of life running through the whole system of laws. Thus in Hindu society as in elsewhere law has followed custom and the people who judged those "cases of proved necessity" were not merely versed in the Shastras but also possessed the necessary vision to relate those changes to the general view of life based on Hindu philosophy. It is only an attitude of mind like this which can inspire confidence and I doubt very much whether even the members of the Hindu Law Committee would claim a competence of this character to effect reform into that highly complicated system called the Hindu Law. Evidently they do not put forward any such claim, as at every stage they have fought shy of all religious implications and have painfully tried to achieve the impossible task of separating the spiritual character of the law of the Smritis from its secular implications.

If this be the type of our reformers, we have legitimate grounds of apprehension about the suitability of the machinery which is expected to give legislative shape to the proposed changes. About Parliaments in general experts agree that they "only partially reflect the occupational and spiritual composition of the nation." As Dr. Finer points out, "it is impossible for the ordinary institutions of Government to penetrate the depths, and master the complexities of any modern branch of society and law without the special aid of those to whom the matter is one of life-long and intimate acquaintance, and to whom all things are revealed owing to the vital quality of their interest in the result."

If this be the case about Parliaments in full-fledged democracies, I think I need not labour the point that a quasi-democratic and quasi-representative Assembly like the Indian Legislature is hardly competent to pass fundamental laws "touching the deep-rooted custom and habits of thought having their sanction in religion."

The Hindu society resisted all attempts to impose from without all changes revolutionary or otherwise. Any modification of the Hindu law if, in advance of opinion, has proved a dead letter. The law removing doubts as to the legality of widow remarriage is a noticeable example of this kind and in more recent times the failure of the Sarda Act furnished yet another instance of the futility of legislating in advance of social opinion. Hindu society cannot be improved by legislation. The morals that draw from past history is that if the present proposals are not acceptable to Hindu society as a whole they will definitely not only do any good but prove harmful.

It is really distressing that in the name of reforming the Hindu Code our modern protagonists of reform have brought forward an altogether different view of life based on the doctrine of so-called individual rights and the theory of class consciousness. The whole outlook is foreign to the genius of the Hindu race, as we cannot conceive of rights apart from corresponding obligations to the family and the society. To the average Hindu, the Hindu Law of Intestacy has no horror. He would desire his properties to be inherited by his male descendants subject to the solemn duty of maintaining his widow, indigent daughter, widowed daughter-in-law and other dependents, marrying his maiden daughters, performing the worship of his family deities and the obsequies of his ancestors. There is a fine balance and harmony in the joint family system, and without raising any questions about rights of women it affords a sense of security to them which is hardly attainable in any other scheme of affairs. There might be isolated cases of injustice and hardship to women, and if Hindu public opinion does not operate as a sufficient safeguard against the same, we can look for limited changes in the law, not certainly of the drastic nature as proposed, which in the name of reform strike at the very fundamentals of Hindu society. On the other hand under the draft Hindu Code, we find that this balance has been destroyed, the distinction between males and females and agnates and cognates abolished, the daughter-in-law is given as much as a son and in the name of women's rights seed is sown for the disintegration of Hindu properties.

The Hindu Code proposes to provide intercaste marriages, Sagotra marriages, and divorces under certain circumstances, abolition of polygamy. The forms of civil marriage and the sacramental marriage is proposed to be brought on parity.

The Hindu marriage, as most of the right-thinking Hindus understand it, is something very solemn and sublime coming through the Shastras and from time immemorial has been beneficial to the society.

As far as the questions of intercaste marriages, Sagotra marriages and divorces are concerned provisions already exist in law as it stands now. Civil Marriage Act and Special Marriage Act are there for these Hindus who do not like to stick to the sacramental marriages.

I do not agree that the civil marriage and the sacramental marriage should be brought on parity, as at the present moment every true Hindu marriage at all; it is Christian marriage. I support the abolition of polygamy and insist on monogamous marriages. But under the Special Marriage Act persons are allowed to marry the issues from the sacramental marriage. This is a very fundamental objection which I have got. If these two forms of marriages are put on the same parity, then these marriages stand on the same footing and therefore the issues of one marriage can marry the issues of the other marriage. That would only mean the contamination and pollution of the Hindu society.

In my opinion, if it is to be a Hindu marriage, there should be only one form of marriage. The Special Marriage Act is already there for those Hindus who want to flout the Hindu Shastras. They can marry under that Act and keep themselves separate as they are doing at present. According to the early Hindu Law monogamy was the approved rule and polygamy was an exceptional provision. It was only when the wife was barren, diseased or vicious when she consented, that she could be superseded and a second marriage could be validly contracted. Polygamy is now a dying institution. Polygamy is very rare amongst the Hindus.

As regards Sagotra marriages such marriages also are totally forbidden and it is very repugnant to the Hindu society. I have spoken to many people including many women and the idea was nauseating to them. Our Shastras say that the issue of a Sagotra marriage is a Chandala, i.e., a man of the lowest caste who helps in funerals. I shall refer to one verse from Manu to prove that a Sagotra marriage is absolutely forbidden:

"A yapindacha ya matuhu asagotrashcha ya pituhu. Sa prashasta dwijateenam dar karmani maithune." which means that for the twice-borne, i.e., Brahmas, Kshatriyas and Vaishyas, the wife should not be of the same gotra from the father's side. There seems to me to be no reason for validating such marriages as is sought to be done in clause 7. For people who want

to perform Sagotra marriages or intercaste marriages or any other sort of marriages, there already exists the Special Marriage Act and there is no need to bring them within sacramental marriages. As regards this question of error much capital has been made in the explanatory notes by quoting Sir Gurudas Banerjee. So far as errors are concerned, the Shastras explicitly mention that in case of such error the husband must give up that wife but must maintain her like a mother. If it is a difficult thing, if and she does not want to be treated as mother but should be treated as a wife, I am even prepared to give them the liberty of marrying under the Civil Marriage Act. In that case there will be no hardship. But none can have a sacramental marriage without the sanctity which is due to it. If there is an error first of all those who have committed that error must be punished. Instead of that they go scot-free and the marriage is made valid. There is no sense in it. If the couple want that they should live as man and wife they may be given the liberty of marrying under the Civil Marriage Act and that will be a legal marriage though not a sacramental marriage.

The whole question seems to me that it is not that the reformers in India do not realize these things, but by their training, habit and conduct, they take special pleasure in polluting the sacred laws and wounding the feelings of the Shastras-abiding Hindus like myself. It is rather unfortunate that the Government are now supporting them. The Government seem to have thrown to the winds Queen Victoria's Proclamation of 1858.

In conclusion, I have to observe that the Hindu Code, if enacted, will be detrimental to the Hindu community. In place of furthering the cause of "United India" it will provide ample scope for local and domestic feuds and litigation in the numerous courts of India. The provisions suggested in the Hindu Code, would, far from being beneficial to Hindu women, would seriously affect their economic position in common with that of the society at large by breaking up the social and economic structure of the community ultimately leading to the poverty and ruination of Hindus.

I therefore suggest that it is desirable in the national interest that the Government of India should not proceed at all with the draft Hindu Code in the interests of Hindu Society.

II

There is neither any demand nor any necessity for the codification of the Hindu law. Codification will further increase litigation and invite frequent and hasty legislation.

2. Codification during the present troublous times is inopportune as cool and dispassionate judgment on social and economic issues is practically impossible.

3. The present legislature which does not represent the real representatives of the people and as such is incompetent to legislate reforms of such a great importance to the Hindu community.

4. The changes proposed by the Hindu Law Committee will affect the foundation of Hindu Society, Hindu Culture and Hindu traditions. Attempt to introduce particular law of other communities who are differently conditioned and circumstanced, without a proper evolution of the social structure and necessity of the Hindu Society, is most objectionable and is highly prejudicial to the society.

5. The draft Hindu Code instead of bringing in uniformity as professed will cause greater diversity than at present.

6. Removal of the sex disqualification as formulated in the draft Code is not only unnecessary, but absolutely foreign to Hindu social ideas and convictions.

7. The provision in the draft Code for giving an absolute estate for all the female heirs is neither warranted by the Shastras nor by social constitution and will be of no benefit to the Hindu Society.

8. The marriage rules as proposed are entirely unacceptable to the Hindu Society. Hindus cannot recognize the civil marriage as a Hindu marriage at all. In sacramental marriages, interclass and sagotra marriages should not be allowed at any cost.

Under the circumstances, the codification of Hindu law as proposed is unacceptable.

127. Rao Bahadur S. K. Sahana, Vidyabenode, ex-M.L.C., Bankura.

I have gone carefully through the draft Hindu Code and I am of opinion that the attempt should not be hazarded at present for various reasons, some of which I mention below :—

(1) That after five years of the destructive global war when everything human, political, economical, social and religious—is on the melting pot, when some of the best minds of the world have been planning for the reconstruction of the world after the war, this indecent haste for nibbling destruction of the Hindu law should be checked.

(2) That as the Muhammadan law is based on the Kurān and the Hdishes the Hindu law is based on the Vedās and elaborated by the Smritis. All actions of the Hindus both mundane and spiritual are considered by them to be religious rituals. The Hindu Society has been practising them for many thousands of years. As without codification of the Muhammadan law the Muhammadan Community is going on and is expected to go on for many years to come the Hindu Nation will go on at least till the human affairs of the world come down to normality. A few years delay will not bring down the heaven nor put the Ganges on fire.

(3) That it is evident that the members of the Hindu Law Committee are imbued with a zeal for social reform and they want to pull down the fabric of Hindu Society and build it after the western model. I think that will not be possible, such an attempt will bring in a chaotic condition and create immense trouble in the country for the people and the administrators.

(4) That the play of feeling in Hindu Society is well-known. Any woman—daughter, daughter-in-law or grandson's wife—who has no legal share in the property is taken care of and provided for by their relatives. It cannot be denied that in few cases they are neglected. Some provision may be made in law for their maintenance.

(5) That the inheritance by the daughters with the sons of the paternal property will not improve the lot of the daughters but will create innumerable litigations in the country. This will moreover greatly damage the affectionate tenderness existing between brothers and sisters.

(6) That Hindu marriages are religious obligations—rather sacraments based on long traditions. Hindu holds fast to Janmantarbad and Karnabad. Euro-Americans do not hold to them. So the view-point of life is poles asunder in the East and the West. Hinduisim, like nature, is based on unity in diversity. There are some thirty varieties of marriage in Hindusthan; with polygamy, polyandry can also be found. There is immense scope of reform in this field, but the present time is not convenient for it. Divorce is prevalent in some sections of the Hindus, but any general law of divorce will be greatly harmful to the people.

(7) That the Hindus are about thirty crores of the people of India. For various reasons their mild nature has received a rude shaking and most of them are not content with the present administration. If the draft Hindu Code be passed into law in face of tremendous protest by almost every section of the Hindus, I think discontent will spread like wild fire in the country which will not be at all desirable to the rulers or the ruled.

(8) That the present Legislatures of the Central Assembly who were elected more than a decade ago do not represent the people whose thoughts are getting widened with the process of the suns. The codification of the Hindu law or any changes in it should wait for the reconstruction of the legislature after election.

(9) That the codification of the Hindu law or any changes in it should not be entrusted with persons who though vastly learned in the literature, philosophy or science of the West are not deeply read in the ancient culture of India or to a legislature in which the members belonging to different religious sects. It should be entrusted to learned Pandits of Benaras, Nabadwip, Mithila and Dravid and when so prepared and approved by the people should be adopted by His Excellency the Viceroy.

(10) That when unfortunately the spectre of bitter communalism has been raised in the country any attempt at the codification of the Hindu law without a similar attempt at the codification of the Muhammadan law will be considered by every Hindu as an injustice and insult to Hindutwa. Amongst the Muhammadans, the Shias,

the Sunnies, the Hanafis, the Hanbalis, the Khojas, the Dandis and other sects do not follow the same rules and rituals in respect of property and marriage. If the codification of Hindu law is necessary, the codification of Muhammadan law is not less necessary.

II

(1) Regarding Intestate succession dealt with in part II we are definitely of opinion that the provisions contained in this part far from being beneficial to Hindu Society as such it will only help its disruptive and disintegration and the order of succession as contained in the Sastras has all along worked successfully and there is at present no general resentment against it. There is no need for any change as suggested.

(2) Regarding Stridhan, the Hindu Law is well settled and no change is necessary.

(3) As regards marriage, the provisions made in the draft Code are not necessary. The provision for divorce is really opposed to Hindu Sastras. Marriage is regarded as a religious tie and it is a sacrament. The whole law of succession is based on blood relation and the capacity to offer Pindas. If divorce is permitted, then those provisions of the Hindu Law will be abrogated and there will be no such thing as chastity and fidelity. Hindu sentiments will revolt against the new provisions. Names of Sati, Sabitri, Gouri, Sita still inspire Hindu women and they stand by their examples. The new provisions of marriage and divorce are not in favour of the progress of Hindu Society.

(4) Monogamy is almost universal and it is not necessary to pass any law. Legal interference is not necessary for that purpose.

(5) We are not in favour of the proposed Hindu Code.

128. Mr. Abinash Gh. Sarkar, Advocate, Jessore (Bengal) and six others.

Being invited to record opinion we set forth the following lines briefly surveying the Draft Bill of the Hindu Code.

Before formulating any opinion we have carefully gathered honest views of several men and women of various walks of life. So our views are, to some extent, shaped by them.

We do sincerely think that there had been no necessity in codifying Hindu Law. Many people really believe that the Code is seriously prejudicial to the interest of Indians, men and women—Hindu, Shikh, Jain, Buddhist, Brahm and a host of others, for an undue zeal of some thinkers imbibed in western ideas far ahead of ordinary millions.

The proposed provisions of the Code are detrimental to the interest of the whole population of Hindus on the following amongst many other respects :—

Inheritance of daughters.—There is no objection if daughter inherits a share but her place might be after son, son's son, etc. That is, she will be No. 2 in the first class.

If at all the daughter be allowed to get a share, the property will be divided and subdivided to a harrasing extent. She may be married somewhere in a different district, sometimes in a different province. Thus landlords and tenants of the property, only for her, will require very often an additional attention beyond comprehension.

Regular payment of rent and revenue, etc., may not be made as well as realization of rents, etc., shall be greatly hampered. Thus litigation will immensely increase; thus the property will finally be in jeopardy, and it is not unlikely that sharers will thereby be rendered paupers simply because of the introduction of daughters.

Generally a daughter will carry with her a share of her father's property to a different family. She shall get another share along with her husband in the new family as wife as well as widow (when her husband dies). Again in Part IV, paragraph 28 of the Code, the daughter as bride will get an additional property (movable or immovable or both) as *Pan*.

As the daughter will carry a share of her father's property, she will not be in good grace with her paternal relations who are sharers. It is natural that they will try to marry her off to such a person who may not successfully fight out to enjoy the share whereas the groom's party to seek exclusively for girls who may inherit properties. So daughters of poorer people will be excluded from the final selection even if they be otherwise more desirable.

We find that among the Muslims when a daughter gets a share there is a tendency to have her wedded in the family (to cousins) so that the property may not be

disintegrated. There is also a safety valve in the shape of *Wakfnama*. It is needless to add that such devices are absent in case of Hindus.

A daughter will carry some share with her to her husband's family whereas her husband's sister will equally carry a share to another family. Hence income and outgo will multiply so much that integrity of property will be nowhere causing disruption in every family very frequently as such litigation will be invited considerably.

It strikes us again that by introducing the daughter as a sharer along with sons the legislature will not only create disintegration of property but unthinkable revolution of ideas. The existing Hindu Law tried its level best to keep intact, as far as possible, the property without, however, depriving near blood relations.

Law regarding maintenance.—This has been framed giving rise to much intricacies, so it should be further simplified. Section 4 is not very clear as is read out from the Bengali edition Code. It seems that freedom is not given to a man bequeathing any property. The list of *Posyas* should also be curtailed, the sharers also be excluded.

When a man makes a will he will be at liberty to make any provision or not for the persons to be maintained; if he does not, it seems to our mind—that he does so purposely and law cannot be indulged to step in. He should not be forced by any law to do otherwise. Existing law also does not force him. Persons maintained should get maintenance in the shape of monthly or yearly sums of money from persons inheriting and that should be according to the income of the property in question. In the list, in our opinion, only father, mother, unmarried daughter and granddaughter, widowed daughter and widowed daughters-in-law (without son) in the case of the latter two only when they live in the family of father or father-in-law respectively.

Marriage.—In Section 3, Part IV of the Draft Code, it has been definitely laid down that no male person shall be allowed to marry during the lifetime of his wife. Hindu marriage is based on the "Putrarthe kriyate bharja, putra pinda proyojanat" i.e., a wife is required for begetting a son. So if a man whose wife does not bear any male child, say within seven years, in our opinion the man may be given a chance to marry again.

Furthermore among the cultivating classes it is noticeable that more than one wife is sought for household and husbandry works but amity and peace are not wanting. In the Muslim community a male person can marry four wives at a time. According to shastras a Hindu husband is allowed to marry a number of wives and it is not desirable that he should be deprived of the right all on a sudden. He shall, in our opinion, be allowed to take two wives in exceptional circumstances. It is an undenyng fact that the tendency of modern societies is towards monogamy, so no law is necessary on the point. If the law be introduced at all there ought to be some provision for exceptional cases as for instance—if the wife after marriage becomes incurably insane or a leper or a victim to venereal disease not through the husband, the husband, in our opinion, ought to be allowed to marry again.

We are sure that all men shall not exercise this right of bigamy owing to the growth of civilization. Examination of census of marriageable girls will show preponderance over marriageable boys and when marriageable widows are added to maidens the number will undoubtedly far outgrow that of grooms.

Consent of guardians in marriage.—Part IV deals with general rules of guardianship in paragraph 23 (1). According to shastras the consent of the guardian is an unavoidable factor. So clause (E), paragraph 3, should be forthwith deleted.

As regards Contractual Marriage the consent of the guardian of the widow should also be obtained for remarriage of widows below 21 years and necessary correction of the draft may be made.

In our opinion there should be some clear provision in the code of widow remarriage according to Hindu Shastras. All rites and ceremonies along with the consent of guardians should find a place in the code just like the marriage of a maiden.

The percentage of illiterate and uneducated women in India is so appallingly high that it is not at all judicious to empower them with an important consideration of marriage when there is every possibility of being misguided in case of selection of grooms. The youngsters may be more or less carried by sentiment, if not by urge

of sex than mature reason. So in our opinion the consent of guardian should be a predominant factor.

Will making.—Heretofore we have discussed, in connection with maintenance, about the freedom of a person in executing a will. In our opinion that freedom should never be curtailed and every man must have free will to bequeath even if he deprives thereby any rightful heir or *Povshya*. We do not find in any society, except in some cases of wills executed by Muslims that the power of freedom in making will has been restricted. It is not the look out of the law of the land how and why a particular person exercises his discretion when he or she executes a will. So we are of opinion that Hindus must have an absolute right to bequeath properties unhampered by any obligation whatsoever.

Again in closing our opinion we are in duty bound to mention that the authorities should coolly think over the matter of codification of Hindu Law with far-reaching effect comprising social and economic aspect of a very large section of population in India almost a continent. If they are bent on not discarding the code altogether they may wait for the cessation of hostilities the world over. Thereafter adequate time might be given to people to consider and reconsider the matter before any codification.

129. Mr. Anritalal Mukherjee, Headmaster, Sammilani Institution, Jessore.

My angle of vision is altogether different from the angle in which the Code has been conceived and drawn up. It is my firm conviction that Hindu Law is inseparable from Hindu Religion and Hindu Philosophy. To try to codify this Law from the materialistic standpoint alone is to take away the very spirit of Hinduism.

Hindus and Hinduism in recent times, have come in for a good deal of castigation at the hands of the westernized minds and a mention of the seers or Rishis of by-gone days in this connection will find no favour with a section of the public; for, the Rishis are in their bad books. But a comparative study of the social customs and material laws of other communities (after which the Bill has been formulated) will convince the man in the street how far the innovations will bring peace and happiness to our hearth and home.

So far as I have understood, to a Hindu, marriage is not a contract based on mutual advantages and disadvantages; it is a sacrament, an ideal of inner purification and self-unfolding, where, oftener than not, self-sacrifice is called for.

No human institution is perfect and the dynamic forces working unnoticed within, are making and unmaking and re-shaping many a thing which cannot stand the test of time. So, the way in which the Hindu Law has been revised, lock, stock and barrel, is unnecessary and hasty, barren and mischievous, disastrous and disintegrating.

I touch upon some of the salient points below :—

- (1) If both son and daughter inherit, it will be injurious to both.
- (2) The Hindu Law-givers have very judiciously made express provision for woman, but not for man, at every state of her life.
- (3) A crop of evils will be the result if the daughter be given a share along with her brother in her father's property.
- (4) The rights of mother grandmother, and predeceased son's widow have been curtailed.
- (5) Divorce is looked down upon even in those countries where divorce has a legal sanction. Divorce is not beneficial, particularly to women.
- (6) Only Hindu Women's Right to Property Act should be amended in which the position of the daughter should be protected and provisions for a predeceased son's widow or the widow of a grandson should be made.

As regards women's position in society I feel tempted to quote a few lines from what an American Ma says :—

"No, it ain't," Ma smiled, "It ain't, Pa. Man, he lives in jerks—baby born an' a man dies, an' that's a jerk—gets a farm an' loses his farm, an' that's a jerk. Woman, it's all one flow, like a stream, little eddies, little waterfalls, but the river, it goes right on."

John Steinbeck's 'The Grapes of Wrath.'

I have tried to be as brief as possible to make my opinion clear.

130. Prof. Ramasai Karmakar, M.A., Bankura College, Bankura.

I, however, in pursuance of your request, do humbly suggest that I have objections to the following sections :—

Second Part, clause 5, clause 7 ;

Third Part, clause 4 (second paragraph), clause 5, section 7.

Fourth Part, clause 1, clause 3, clause 6 and 6 (3), clause 23 (v), clause 26 and 26, clause 29.

Part 2—Clause 5.—For the presence of sons and grandsons, have the daughters any religious duty to a deceased father? If not, why should they be given a share of the father's property to create only complication, in the affectionate relation of brothers and sisters.

Clause 7.—Old law should stand. If a widowed childless daughter inherits her father's property, will her adopted son be eligible to offer shradh to her father?

Part 3—Clause 4.—It should be deleted, as it will create unnecessary litigation for maintenance.

Clause 5.—It should include 'any daughter' (when and if daughter do not inherit).

Clause 5.—All the sub-sections must needs be deleted. Bastard children and concubines cannot be given a status in society.

If any humanitarian outlook prevails, a separate law for these illegitimate connections, may be framed for all communities in general. These sub-sections should not remain to disgrace Hindu community.

Clause 7.—It sounds meaningless in view of her inheriting a share in her husband's property.

If the conduct of her husband's Kinsmen is not satisfactory to her, will she not reside at her father's house, enjoying unhindered the produce of her husband's property?

Part IV—Clause 1.—The word 'Bastard' should be deleted. The second group of proposed sections 3—6 are preferable.

Clause 6.—The very idea of registration in the time of Hindu marriage is repugnant. Particularly the third sub-section is dangerous, as it will cause serious dislocation in family life, being used by wily litigious men.

Clause 23 (5).—'Uncle in joint life.' An uncle separated should be placed after maternal grandfather.

Clause 26.—This section will perhaps destroy the least peace the Hindu family may claim to have in conjugal attachment, unlike western families.

If a husband (or a wife) is attacked with a serious disease like Diarrhoea, and if the wife (or the husband) does not care to attend him (or her), I cannot conceive what domestic life in a civilized world means. I cannot say what other communities think. But Hindus acknowledge devoted attendance on an ailing husband or wife a duty—a bounden duty. Therefore I should like that this section be removed root and branch—this nasty section.

Clause 29.—It is at direct variance with section 6 of this part. While the section 6 breathes the idea of indissolubility of marriage tie, this section 29 means to slacken it. Therefore this section should be deleted, as its purpose will be served by the existing divorce law applicable to all communities. Here in Hindu Code Section 31 will do.

131. Mr. Amarendra Bose, B.A., Lincoln's Inn, Calcutta.

I am not in favour of giving a half of what a son will get to the daughter. It means fragmentation of the family property and the inevitable result is poverty to the brothers and advent of the outside elements as brothers-in-law. Men require more money than women. Men have got to maintain a family, the women need not maintain a family. Our society rather the society of every nation expects a man to earn in order to maintain his family, it does not expect a woman to earn in order to maintain herself and her husband. "It is a disgrace for a man to live upon the earning of a woman but it is not a disgrace for a woman to live upon the earning of a man." A great majority of the people in the west say "Men for the field and women for the hearth" Which I think is absolutely right. The greatest fact of the present era late Dr. Tagore said in his, "Reminiscence" even in England women are controlled by the men.

In an imaginary state if all the women of the world go to one side and all the men of the world go to another side and a fight takes place between them I am quite sure, strong, masculine, physical force will prevail over soft, tender, feminine affection. Men will always excel the women in every sphere of life except beauty, competition and the stage to some extent.

Another result is that sisters are going to be sisters no more but they are going to be co-sharers. Soon they will appear in the memorable field of the Hon'ble High Court

being charioted by their husbands in order to defend their interest against their brothers and after the downfall of the brothers they will celebrate their victory with deafening cheers. An increase of litigation and disruption and discord in the family. What a nice result. As regards Hindu marriage I think before the introduction of divorce system the dowry system should be abolished by legislation. Who is going to marry a divorced woman with a couple of children when he can marry and get some money. Dowry system is very much alluring to the average young man and no young man will marry for nothing unless he is compelled by legislation. One thing should be done that the men should not be allowed to marry again during the lifetime of their wives like the law of bigamy in English system. Introduction of divorce system before the abolition of dowry system is just like building a house on the foundation of quicksand. Moreover the modern parents should take great care in order to teach their daughters not to touch the feet of their husbands as their mothers did and are doing but shake hands with their husbands, otherwise divorce system is meaningless. The conception of marriage in Hindu Law and in English divorce system are quite different.

132. Mr. Jatindranath Kavyatirtha, Vidyabhushan Adyapak, Gaibandha, Srikall Chatspathi, and Head Pandit, Gaibandha Islamiya High School, Gaibandha Rangpur.

Reference clause 17, part II, page 14 and Chapter I, part IV, 6 (6) page 21.—Any person marrying any other person outside his or her own caste defies his or her family and society and commits an act of indiscipline thereby. Hence, it is not beneficial for his or her descendants to be successors to ancestral property. Besides, attempts to support such marriages will create divisions among the Hindus and lead to the gradual weakening of the solidarity of the Hindu society as a whole.

Reference sub-clauses VIII and IX of clause 5 of part III, page 17.—If illegitimate children are admitted to maintenance out of their father's estate it will lead to an increase in the number of such children in the society. Hence, the clause in question should be so changed as to render the father personally liable for the maintenance of an illegitimate child and not his estate.

As regards the maintenance of a concubine, the same grounds as above hold good and consequently the same rule should apply.

Reference clause 7, Chapter I, part IV, page 23.—As for marriage only the sacramental and customary form of it which is prevalent among the Hindus of this country should continue to be in vogue. In case civil marriage is introduced both the husband and the wife contracting such a marriage will be separated from their former society. If such fragmentation of the Hindu society takes place to any very great extent its solidarity will gradually dwindle and ultimately vanish altogether.

Reference clause 26 (a), Chapter II, part IV, page 29.—Any and every disease may be regarded as loathsome. In this view of the matter, if the husband or the wife falls a victim to an attack of any of the infectious diseases like cholera, pox, etc., either of them may forsake the other under the said clause. There will then be no way left for the medical treatment or nursing of either of the husband or of the wife. For, there are only a small number of hospitals in this country. So, this sub-clause should be deleted entirely.

Reference sub-clause 8 (c) (1) of clause 14, part I, page 12.—In *stridhan* which under entry (1) of sub-clause (b) devolves on both the son and the daughter, the son should take an equal share with the daughter; instead of half that of the daughter.

Reference clause 26 (c) of Chapter II, part VI, page 29.—The cruelty of a husband towards his wife should be so defined as to exclude from the purview of the said clause steps which should be taken against the wife's disorderly conduct or her indulgence in luxury beyond one's means or to prevent her from going astray and so on.

Reference clause 16 (ii), Chapter I, part VI, page 40.—The person who may be in the mother's womb at the time of adoption and is subsequently born alive should be regarded as one alive at the time of adoption and should succeed to at least one-half of the ancestral property.

133. Mr. Sasthipada Mukhopadhyaya, Jyotirbhusan of Karishya Bibhuti Bhushan Chatuspathi, Birbhum.

Marriage and divorce.—Of the two forms of marriage, namely, the sacramental and the civil, current in our country, the former is adopted by the Brahmmins, Kshatriyas

the Vaisyas and the Sudras and the latter by the low castes of the Hindu community, such as, Hindis, Doms, Methars (sweepers), Charnakars (cobblers) and the like. Divorce is prevalent among these low castes alone. Of the eight kinds of sacramental marriage the one known as *Brahma* is a sacred and suitable form of marriage and it is adopted by all the four upper castes among the Hindus. There is no justification whatsoever for its replacement by civil marriage, so far as the four upper castes are concerned. Many defects may creep into the Hindu society through the civil marriage. It may so happen that both the husband and the wife will on the spur of the moment grow indignant at each other's conduct, and seek for divorce. This will in the long run undoubtedly encourage adultery and moral laxity in the civilized Hindu society. The sole aim of the Hindu religion is that the chastity of women must be preserved at all costs. According to the scriptures of the Hindus a woman must have but one husband. Under the sacramental form of marriage neither the husband nor the wife is allowed to divorce each other at his or her own sweet will. According to the *Smritis* it is only the children, born of the sacramental marriage, who are entitled to offer *pindas* to the deceased forefathers and consequently have the right to inherit the ancestral property. No illegitimate son or a *varnasankara* (born as a result of inter-caste marriage) is entitled to offer *pindas* and inherit property. The *Smritis*, the *Smritis*, the *Puranas* and the *Dharmasastras* have all in one voice condemned all marriages other than the sacramental marriage and so the civil marriage is in no way acceptable to the Hindus. The system of divorce also, if introduced, will totally ruin the Hindu society and hence no Hindu can support it. Option in this matter may however be allowed to the lower castes as mentioned above.

Widow remarriage.—Widow remarriage may be recommended in certain cases according to the directions of sage Yajnavalkya. If a girl is married at a very early age and if her husband dies or becomes corrupted or impotent or is fallen from virtue for committing sins, she may remarry with a view to giving birth to a son. But a widow who is unwilling to remarry should not be compelled to do so. Widow remarriage may be introduced if it is intended to check cases of abortion.

Adoption.—It is essentially necessary that adoptions should be registered. In every case adoption should first be registered according to law and then the ceremony prescribed by the *sastras* in this respect should be gone through. This will save the adoptee from many difficulties that may arise in future.

134. Mr. T. N. Chandhni, Midnapore.

The inclusion of the daughters as heirs is objected to as it is not likely that they would actually enjoy the property. In majority of cases, they are likely to leave their father's homestead and live with their husbands after alienating the property inherited from their fathers. If it is decided to make their heiress there must be a safeguard against alienation to strangers. They should be restricted to the sale of such properties to the other heirs of the father.

The rule regarding marriage, as suggested in the Legislative Assembly (Central) is better than that mentioned in the draft Code.

135. Mr. B. N. Sircar, Calcutta.

1. Once the husband's estate, has vested in a widow, it cannot be divested by her subsequent unchastity.

2. The right of widow to maintenance is conditional upon leading a life of chastity. If she becomes unchaste the right is forfeited.

NOTE.—Why the penalty in case of maintenance (2) and not in case of inheritance (1) stated above. The penalty is extremely repugnant and is an aid to immoral traffic, because when a widow is being declared immoral, unable to find food and shelter in society, as her maintenance is forfeited, she is bound to lead the life of shame publicly. It is the duty of society, not to abandon the said widow.

136. Dr. Sisir Kumar Dutt, L.M.F., Late House Surgeon, Campbell Hospital, Honorary Magistrate, Municipal Commissioner, Bogra.

1. With regard to inheritance of the daughters to father's properties, we are strongly opposed to it.

2. With regard to divorce, we are also against it.

3. With regard to sagotra marriage and inter-caste marriage we support it in the manner and with the restriction, as laid down in the proposed Bill.

In this connection, we beg to mention here that the general Hindu opinion of this district, is strongly opposed to this code.

137. The Editor, "The Korotoa," Bogra.

With regard to inheritance of the daughters to father's properties, we are strongly opposed to it. With regard to divorce, we are also against it. With regard to sagotra marriage and inter-caste marriage, we support in the manner and with the restrictions as laid down in the proposed bill.

138. The Chairman, Baidapatty Municipality, Sarampore.

1. **Marriage.**—Inter-caste marriage is not approved.

2. **Monogamy.**—Not approved as it will lead to various complications and spread of immorality.

3. **Divorce.**—Should be allowed only under very special circumstances and not for the purpose of facilitating remarriage. There is complication about children.

4. **Inheritance—By daughters.**—Of half share of brother approved provided that there will be no right to reside in the same house.

139. Arun K. Sen, Esq., M.A., Vice-Principal, Vidyasagar College, Birbhum.

The draft Hindu Code was needed. Territorial Hinduism has gathered too much moss and in the interests of justice, it is high time that the defections should be remedied.

Regarding heirship some provision should be made for such forlorn ladies as unmarried daughters or son's widows but it should not be at the expense of the productivity of soil. In an age when collective farming is the scientists' cry, further fragmentation will be a crime against the nation. Rather than allowing a geometrical cross-section of property, adequate provision for unmarried girls' marriage and helpless dependents maintenance would suffice.

Inter-caste and sagotra marriages have become a historic necessity but the Hindu rites of "bajanjali" and "Saptapadiyamana" should be preserved not as decaying superstitious but as essentially and arthetically symbolic acts. The system of divorce possibly lays an exaggerated emphasis on domestic differences. If a palinode is needed at all to atone for the concrete-like build of Hindu marriage, which may crack but may not break, the provision may be a little bit less elastic. Say after giving notice for divorce and establishing a prima facie case in favour of that, the party should wait for a year before the bond of union is finally snapped. The precious interval may clear off the squalid horizon. In no case should the fickleness of a man be allowed to change wives more than three times and vice versa. In the Russian manner, a heavy divorce fee, proportionate to contracting party's income and increasing in successive steps may be tried as a penal corrective.

140. Sjt. Ananda Charan Mukerjee, President, Patuakhali Subdivisional Hindu Mahasabha.

I have read with some care the draft Hindu Code now circulated for public opinion. Before I touch upon the merits of its provisions the question that is uppermost in my mind is whether a codification in its present form is at all called for. The sponsors of the code will of course claim that the Hindu Law as we now have—Dayabaga and Mitaksara are not sufficiently wide to meet the crying demands of the present day progressive Hindu society. But we doubt it and to us it appears that the present cry is a cry for licence and not for liberty and the proposed draft if made into an enactment will bring in its trail more evil with complications than good to the society.

From a reading of the draft it is easy to see that Hindu Law is sought to be brought into line with Muhammadan Law and reflects Moslem line of thought. We hold that if Hindu culture and Hindu line of thought is to be respected the personnel of the committee should be entirely Hindu and of representative character.

Now as to provisions of the draft I have complete disagreement with the following:—

Inheritance—Intestate.—Provision is made for the daughters to inherit along with sons in the same degree. This reads very well on paper but a little thought will reveal its weakness and its attendant evils. Hitherto no such provision was found derogatory to the interest of the daughters because they were bound by the family tie and bond of affection which is the real moral strength of the Hindu society. Now if daughters are made heirs along with sons a feeling of co-sharers and spirit of competition will grow up which will thrive at the cost of common property. Daughters after marriage will live in their

husband's family and there will hardly be any opportunity to look to her inheritance in their parental line which will likewise be neglected by brothers because they no longer have any interest in its proper management. This state of things will lead to slackening of family tie and bond of affection and foster litigations with all its evil results.

Marriage—Divorce—Dissolution.—Divorce and dissolution as remedies of disagreement in marital life or inequalities are entirely foreign to Hindu line of thought and will not be taken advantage of, even if provisions are codified. The provisions of the existing law are wide enough to allow of separation or meet claims of maintenance and custody of minor children. The present provisions if made into law will encourage indulgence and lead to disruption of society.

141. Rao Sahib Rajendra Ch. Bankerji, M.Sc., Senior Professor of Physics, Bankura Christian College, Bengal.

I have read the proposed code and discussed on the provisions with my Hindu friends. In my opinion the proposed code is so reactionary that the only thing its introduction will do, is to dismember the whole Hindu society, which could not be done by the on slaught on it by the Muslim civilisation and western civilisation during the past 1,500 years. Hindus are not a political organisation but they are a religious organisation. The organisers of the proposed Hindu Code want to convert the Hindu into a political organisation by introducing drastic change with customs and mode of living of Hindus. The rishis of old, who could see the past and future alike, built the frame of Hindu religion and custom in such a strong frame that the influence of Muslim rules and western rules could not shake it, although the foreign domination over such a long period, changed the customs to some extent. The introduction of the proposed code will in my opinion degrade the Hindu much more within the course of a century. The object of Hindu life is the uplift of their soul. The material advancement is not the summum bonum of their life. The organisers of the proposed Hindu Code simply dazzled by the glare of western civilization, are trying to formulate the Hindu Code according to the ideals of western culture. The introduction of western culture will simply dismember the Hindu Society and destroy the very culture on which the Hindus stand. The percentage of educated people in India is barely 10, of these not more than 1 per cent have been given a chance to express their opinion on it even of this 1 per cent, I am sure, not more than .005 per cent may support the proposed Bill and on this meagre support the proposed Bill should not be forced on the vast mass of Hindus. It is quite possible that a number of reactionary Hindus, may have their majority in the council, to pass the Bill. I am sure the Bill will have no support from the vast majority of the Hindus. It has been drawn up to suit the convenience of a few, who is bent on destroying Hindu culture. It is formed on close reading of the proposed code, that a large number of Madras customs, have been introduced in it. But as it will affect the whole of India, the greatest common measures of the customs all over India should be respected. I like to discuss a few provisions on (1) marriage, (2) registration of marriage, (3) divorce, (4) succession. A detailed discuss of the provisions of the bill is impossible in such a short time and in such a short letter.

(1) The Hindu system of marriage tends to preserve the purity of blood and culture. In the Hindu custom, a man of a higher class can, under special circumstances, can marry one of the lower class. Sir S. Radhakrishnan said in his Hindu view of life. The Hindus have been able to preserve their culture over such a long period due to preservation of purity of blood by marriage. He has given illustration in point. We should not ride rough shod over the opinion and observations of this genius philosopher. I strongly object to the marriage between the people of the same *gotra* as the evidence of Science shows that it will produce a degradation of culture in future generations. A bridegroom of a higher class can marry one of a lower class but not the reverse. The object of marriage is not to produce issues only but the arrangement should be not degrading as regards culture.

(2) Registration of marriage is repugnant to Hindu ideas. It can be done only in cases of civil marriage. In ordinary Hindu marriage even when there are no religious formalities observed, as in the case of Santals and other aboriginal tribes, the custom has greater force than registration.

(3) The true Hindu will not tolerate the idea of divorce. A Hindu will marry in presence of God Narayana either symbolised in a 'Salgram' 'Sila' or realised as one permeating the whole universe. And after sanction the marriage will be broken. This will make the Hindu disrespect their God ever. From thence there will be no binding force. It has been stated by eminent jurists that law has no binding force. A weak state or a state alien to the interest of the Hindus cannot encourage cohesive forces of a community but will stress on the individualistic and centrifugal force of the society by deciding cases in favour of individual rights. The result will be the formulation of several Hindu Codes and thousands of amendments and divorce case laws. The society will be weakened. The integrity of society will vanish in course of time.

(4) Inheritance of a girl to her father or husband's property is a little troubling question. The moral obligations of father or brother to maintain a widowed daughter a sister is already there. There may be introduced some legal obligation to post of a father, brother and husband relations to maintain her of some amendments Great Hindu Law. But give her a share in the property will be a step to receive the Hindu more economically. As already due to the existing customs the Hindu property has been so much divided that scientific methods of cultivation have been found impossible psychologically as soon as a sister will demand a share of property, the brothers will not look after his sister. A widowed sister falls a prey to the designs of her neighbour and her property is literally wrested from her by these cheats. The lot of widows will be all the more gloomy. It will not advance their interest.

Lastly, I like to point out that legislation should be timely. It is not the time as such. The Hindus are going to be economically crushed by the action of the state. At this moment for the legislation to parcel out properties and loosen their marriage ties and make their God-refuting will, enthral the Hindus and throw them in the back ground not to rise within 1,000 years.

This legislation is hasty and not backed by social statistics or any long shady surety. So there is much to be said against the code. But the ill-effects that may accrue have not been duly considered. The *Jogis* could but it is a pity that the modern legislation can't. Hence I humbly request you to drop the Bill at the present moment.

142. Ghee Merchants' Association, Calcutta (Charu Chandra Paul—Hony. Secretary).

The members are of opinion that the code contemplates a drastic and revolutionary change in the existing Hindu Law which is based on their sacred shastras and the proposed change is uncalled for and unwanted.

The daughter should not be a simultaneous heir with the son in her father's estate as this would lead to fragmentation thereof. Divorce is absolutely a foreign and revolting idea to the Hindus. Introduction of monogamy amongst the Hindus will create various complications and are likely to produce undesirable results. The proposed Hindu Code as a whole is opposed by the members of this Association which may kindly be noted.

143. The Commissioners of the Jhanganj-Azimganj Municipality.

We are of opinion that all illegitimate children cannot be accepted as Hindus even if their fathers and mothers are or were Hindus.

Smriti and religious ritual and custom of the Jain community is different from those of Hindus, thus it is better that the Jains may not come into the category of Hindus. They should be considered as separate Sects, such as Buddhists, Sikhs, etc.

The definition of Hindus is not acceptable.

The Commissioners of this Municipality do not like to accept the principle of arrangement of property, if one *karta* is dead without a will.

An adopted son is necessary when own son is wanting and adopted son according to the sastras will be considered as a valid son as at present.

This Board is opposed to the system of inheritance written in the draft Hindu Code, which is against our sastras, custom and privilege, specially about the succession in property by daughters.

Enforcement of will in each and every case will be a hardship and expensive, and difficult litigation will increase.

The Commissioners have no sympathy with the proposal of divorce and marriage with near relation or in same blood; even the Sudras observe some rules. The Commissioners can accept widow marriage on special circumstances, but discourage civil or contract marriages.

If a wife or a female after inheriting property of a Hindu family, embraces other religion or faith or be a public woman, then she will be deprived of the share of the property.

The idea of restricting the marriage more wives is not bad but restriction of more than one wife by a legislature even in exceptional cases is unacceptable.

Further remarks.—The Commissioners of the Jaganj-Azinganj Municipality look with alarm at the changes sought to be introduced in the law of inheritance and marriage by Hindu Code. They are of opinion that the proposed law of inheritance will result in fragmentation of property and disruption of family units. They further think that the proposed law regarding marriage and divorce is repugnant to Hindu sentiments and religion and will remove the sanctity of Hindu marriage and will disturb the peace and harmony of Hindu family life.

The religious ideas and consequent practices should be left as they are inasmuch as religion is inherent in a Hindu character—may, it is his mainstay—and the general Hindu public are satisfied with the customs prevalent among them and any idea of change, therefore, is repugnant to their minds.

The matters, which are proposed to be dealt with by the draft Hindu Code are such as are looked upon by the Hindus to be subject of religion. Unlike the Westerners, the Hindus regard religion as inclusive of and co-extensive with morality; thus questions concerning the moral well-being of the Hindus come to be those concerning religion which only directs and forms the basis of the entire Hindu Society.

Let us come to the question of marriage. Marriage is also treated, by the Hindu Shastras, as a most serious subject affecting the moral well-being of the marrying couple and their future generation. The idea of unmarriedability among brothers and sisters and cousins of both the sexes has nowhere been more carried out than in the Hindu society. The shastras have laid down, that of primitive men there were a few in every caste from whom the gotra-affairs have sprung up. Persons belonging to the same gotra are of the same blood and thus incapable of mating each other on account of consanguinity. These injunctions must be carried out if the Hindus trust the shastras. Modern thinkers have also lent their support to this system of fastidious choice as this goes a great way towards cooling of the animal passion in human blood. The same system of salutary check on the natural human instinct of sexual self-determination has been carried in the Hindu marriage customs. The couples are not trusted to with regard to choice and the selection solely depends on the cool discerning intellect of the elders.

Divorce is another rankling wound proposed to be inflicted on the peaceful, harmonious body of the Hindu polity. Marriage fidelity is the primordial tenet to be honoured in the first place by a married human being. It is, in fact, to be enjoined uniformly on the man as well as on the woman. But to seek divorce on this account is unimaginable by a Hindu. The enormities cast on the womenfolk by the intemperate menfolk have elicited strains of sympathy from every corner of the human heart; but that does not warrant the high-handed unwomanlike measure of dissolving the marriage ties altogether; the misfortune should not be attempted to be amended in this manner disregarding religious protection and messages of hope and solace and public awe and admiration; this utter self-denial and superb chastity are the able foundations of the ideal of unique Hindu womanhood. The toleration of one-sided tyranny has given the Hindu woman the rightful place they enjoy in every heart of every right-thinking human being.

Truly speaking, the Hindus are a religious nation strictly separate from any other, namely, the Christian, the Moslem, the Parsee, etc. Their sole concern is for the upliftment of the religious self realizable through every walk of life. And it is for this reason that the ancient law-makers have laid down the ways of living to be followed rigidly by the believers.

It is not pretended that the rules have not changed and have been inflexible from the origin. But even like the language in which these shastras have been written, viz., Sanskrit, a time was when rules were changed for the last time and since then they have been rigidly inflexible. The

little changes which the society needs at all, are not needed in the shastric injunction themselves as the same are pre-conceived and implied in the Puranas and Itihasas (legends and histories); these are being reflected in the advanced minds of the thinking souls and adopted and incorporated in the inner consciousness of the collective mind of the Hindu society. As instances of these one may enumerate the popular disapprobation of bigamy and polygamy; the prevention of early marriage properly so-called; the Suttee rights; the offering of children as oblations to the confluence of the Ganges and the Ocean (Gangasagar), etc. These practices are now extinct throughout this land of ours.

In fine, we exhort the authorities to abstain from the attempts of such infringements of right on the Hindu religious usages and customs, laws, and practices as such actions are beyond their jurisdiction, unjustifiable from the very nature of the proposed legislation and unnecessary as not required by the present condition of the country.

There are many other things objectionable if we go into the details of the draft Hindu Code. The whole structure required changes as the same is based on Hindu ideals in conformity with their shastras and against the growth of Hindu culture and Hindu family.

Under the circumstances, the commissioners consider that there is no necessity at present for codifying the Hindu law for the whole of India.

144. Mr. Babu L. K. Sen Gupta, M.A., B.L., Secretary, Barisal District Hindu Mahasabha.

While the Hindu Mahasabha does not maintain an attitude of status quo in the matter of social and legal reforms and while it recognizes that the Hindu law as it obtains now admits of certain changes, this meeting of the Hindus of Barisal is against codification of the personal law of the Hindus which is closely allied to the religious feelings, sentiments and usage of the Hindus particularly by the Legislature which is composed of people of various nationalities and religion and this Sabha is further of opinion that the law even if passed, would be ultravires of the Legislature and further this law should not be passed at the present unsettled condition prevailing in the country owing to war and famine condition.

As to the intestate succession the principle upon which succession takes place has been ignored.

The giving of absolute rights to those female heirs who after marriage belong to families other than that of the propositus is likely to affect seriously the economic life of the Hindus generally. Take for instance the case of a daughter who after marriage belongs to the family of her husband. She cannot ordinarily be expected to come and live with her brothers as she is maintained by her husband who is also responsible for the education of her children. In such cases it will be open to her to transfer her share to an outsider. There is no provision to prevent this by giving a right of pre-emption to the male heirs. The application of the Partition Act in case she sues for partition does not appear to be sufficient for avoiding this contingency. It appears that the framers of the Bill apprehend trouble for enjoyment of the property from the male heirs only. Trouble may very often be created by the female heirs who will be guided by the advice of their husband's people. Then again we should realize what would happen after two or three generations, and on how many different families the property would devolve. The result will be a total disintegration of the family property. It is most likely that in order to avoid such a contingency people will take recourse to create Debutters or make testamentary disposition of their properties which will lead to litigation and ultimate ruin. In order to safeguard interests of the females proper arrangements may be made by Legislation for the education, maintenance and marriage and widowhood having no one else to maintain them. In view of these and other difficult questions that may arise the proposed legislation does not appear to be beneficial to the Hindu society.

Marriage law as adumbrated is not necessary. The main principle of monogamy is practically followed all over the country and legislation at the moment is not called for.

If the marriage law is had the law of dissolution of marriage is worse and certainly repugnant to all Hindu ideas.

As to dissolution of marriage in the proposed Bill it will be open to the husband to obtain divorce on the ground of impotency or unsoundness of the mind of the

wife. There is no provision in the Bill for the maintenance of the divorced wife. They will not be able to find a second husband to maintain them. If we consider the case of a wife who becomes insane after giving birth to two or three children and then continues to remain in such condition for 7 years it will be open to the husband to obtain a divorce and turn her out of the house separating her from her children simply for the purpose of enabling him to marry again. The idea seems to be revolting to the Hindus.

145. The Headmaster, Municipal High School, Burdwan.

1. The object of the Hindu Law Committee is in its own words to "evolve a uniform code of Hindu Law which will apply to all Hindus by blending the most progressive elements in the various schools of law." It is difficult to understand how this object can be achieved in view of the following facts:—

(a) The proposed Code will be applicable to British India only so that a third part of the total Hindu population which is resident in Indian states will be guided by the existing law.

(b) The proposed legislation will not affect the agricultural land which is still the most important item of property in India but which under the present constitution can only be dealt with by the Provincial Legislatures. The eleven provinces owing to differences in their social, economic, and ethnological conditions, cannot and should not adopt the provisions of the Code and apply them to agricultural land situated in each.

2. The Bill permits a man to solemnize a civil marriage with his first cousin, such as his father's sister's daughter, mother's sister's daughter or mother's brother's daughter, which is revolting to all Hindu ideas of marriage.

Hindu marriage being essentially a sacramental affair, I am not in favour of introducing Sagotra and intercaste marriage into sacramental marriage. Besides, Sagotra marriage is known to be biologically harmful when both the contracting parties have the same marked defects. Such marriages should be solemnized only under the existing law of civil marriage.

4. Regarding the provision for monogamy, I have only to observe that polygamy having practically disappeared from Hindu society, no such legislation is called for.

The proposed law of divorce is likely to be abused by males and will be of doubtful benefit to females. Although giving some relief to a few oppressed wives, it will not help to raise the status of females in Hindu society, for under the existing social conditions, remarriage of a divorced woman would be almost an impossibility. A divorced female in Hindu society, who may be perfectly blameless, will, in all likelihood, have to remain unmarried or a widow for the remainder of her life without securing the advantages of either state.

5. I am not in favour of giving females right of inheritance in the presence of near male heirs and also of giving woman absolute power of alienation of estate. If shares in the family property are allowed to pass to other families through females, it will create bad blood and confusion leading to feuds and litigation with ultimate prejudice to economic backbone of the society by constant fragmentation of property. The proposed measure will not in the long run benefit women whose economic position it is intended to uplift and at the same time property would be in a perpetually fleeting state without settling anywhere. Considering again the average mental calibre, the experience and inclination, of Hindu females it will not be in the best interest of the society to give them an absolute estate. The average Hindu woman today is as much dependent on males as in olden times and the reasons which induced the Hindu Legislators to give woman a limited interest in property still hold good.

The abovementioned provisions of the proposed Code will, in my opinion, affect Hindu religious rites and ideas and promote discontent. They will foster ill feeling and litigation adding to division and discord in Hindu families. They will also seriously impair the economic strength of the Hindu society.

146. Mr. Sailendra Kumar Rai Chaudhuri, Chairman, Balrampur Municipality.

The draft Code is quite uncalled for and wholly repugnant to the best and dearest notions and ideals of Hindus, specially Bengalees, and contrary to their Shastric and religious tenets.

Inheritance to property under the Bengal School of Hindu Law is and has all along been based mainly on the efficacy of offerings (*gindas*) as the line of succession was laid down accordingly by Raghunandan and this has been working smoothly and held in veneration for centuries past. The well-known doctrine of Jimutabahan should not and cannot in any way be ignored. The classification and succession as indicated in the draft Code is wholly wrong and unacceptable in every way and should never be forced upon the Hindus. It would have a very baneful effect on them and would, amongst others, disintegrate the family tie and property and cause and enlarge enormously the scope of fragmentation of holdings and a great many of such heirs would be non-members of the family and residing far away. Such classification should never be codified by means of an obligatory and uncalled for legislation.

This sort of fragmentation would be a great impediment in the matter of realisation of municipal rates and taxes as all owners of the holding shall have to be impleaded in a suit for arrears of taxes. It would inevitably cause social and financial chaos amongst Hindus as a class and render title to property defective and create difficulty, etc., in the administration of municipalities in diverse ways.

The provisions for divorce, as proposed, are subversive of the sacraments of Hindu marriage and would tear away and upset all quietness and smoothness of social life. The provisions about adoption make matters complicated and should not be accepted.

We venture to state that a feeling of security had so long been entertained by all people for their religion, so dear to and cherished by them, and against it being interfered with or assailed since the days of the time-honoured Proclamation of Queen Victoria the Good. This Draft Code, however tends to cast away the said solemn Proclamation to the winds and treat the same as a scrap of paper and create a situation that should undoubtedly be avoided by all means and without delay and without further embittering the feelings of the vast population.

In brief, we submit our emphatic protest against the Draft Hindu Code in its entirety on grounds of substance and not merely on sentiment. The Draft Code cannot be accepted in any respect and should be dropped altogether at once.

147. Mr. Nirad Kumar Muni, Sripipara, Rajshahi.

Firstly it is not clear from the definition of "Hindu", as given in this Code, whether the Santals, Dhangers, Bunoos and such other tribes will be regarded as Hindus. It will be good if this definition is extended a little further. Be that as it may, there is not the least doubt that the provisions which the Code proposes to make for the division of property and the marriage of a Hindu will destroy the distinction and the social life of the Hindus as a whole. The manner in which women have been sought to be made owners of property will smash to pieces the joint-family system of the Hindus and nobody knows in what sad plight it will land society ultimately.

As regards succession to the property of males, the daughters of the deceased have been taken as "simultaneous heirs" along with his sons in class I, clause 5. But as the dowry system is prevalent among the higher castes of the Hindus, such as, the Brahmins, the Kshatriyas and others, many Hindus have been and are still being partially or completely impoverished by the marriages of their daughters. In these circumstances, there appears to be no necessity for allowing the daughter any share in the property when the deceased is survived by his widow and son. It will, moreover, ruin the domestic life of the Hindus. In the past marriage used to be regarded by the Hindus as a holy sacrament and many Hindus still maintain the same attitude towards it. There is no reason whatsoever why such a deep-rooted institution of the Hindus should be tampered with and brought within the purview of legislation or registration of marriages and other rules introduced in its place. It is likely to put an end to the distinctive features of the Hindu society and the feeling of respect, devotion, loyalty, sympathy and affection which has its root in religion, morality and natural instincts and which sons and daughters and wives cherish towards their parents and husbands. It is also likely that a woman may even lose the very virtues that make her fit to be a chaste and devoted wife. It is in no way proper that any such attempt should be made

in imitation of other countries to help our Hindu women to gain liberty or equality of status with men. It is due to certain special and natural causes that females have to be distinguished from males. The Ayurvedic system of the Hindus also refers to many such causes of distinction. As a result, man is in many respects superior to and fitter than woman and vice versa. It is thus by the joint efforts of males and females that the social and domestic life of the Hindus has become developed. Those women who have received a western education and are therefore apt to find nothing but the dependent and subordinate status of Hindu women, perhaps, fail to realise the power of motherhood wielded by them and they also miss the point that the Hindu Sastras have assigned to women a higher place than men in many spheres, not to speak of equality of status. This is why the Hindu Sastras have called the wife a fellow-worker of her husband in the discharge of duties. But distinctions are made between males and females from the point of view of customs and practices and herein lies the peculiarity of the Hindus. This has been sanctioned by other Sastras with a view to maintaining social discipline.

Changes in the social rules may be necessary but time is not yet ripe for these. Since the womenfolk of our country have not yet received any education worth the name, they will not be able to look after their property even if they become owners of it. The agitation which has been set up by a handful of educated women in imitation of other societies is not suitable for the general run of our womenfolk. A large section of our women are illiterate and consequently they will have to depend on others for the preservation and protection of their property as a result, their property will be spoilt. So, it will be like "Putting the cart before the horse" if this law is put into operation without first making proper provisions for their education. This will lead to the same results as in the case of bringing voters into being even before the spread of literacy among people and introducing self-governing institutions like Union Boards, etc., which have produced baneful effects and given a fillip to factious tendency only. The Draft Bill which has been proposed to be introduced in connection with other forms of marriages will also, it is apprehended, deal a hard blow at the society and will, we think, further stimulate the decay of the Hindu society which is already in a decadent condition.

It will perhaps not be out of place to mention here that those who are pioneers in the matter of introducing this Code have been educated under the Western system and are therefore wholly ignorant of our society and the village people's mode of life. They are totally cut off from the Hindu society in the rural area and hence their opinion cannot be deemed to be the opinion of the Hindus in general. Even granting that there is a need for such a reform, the time for it has not yet come. For, there has not yet been a proper dissemination of education in the country which has been overtaken by a series of never-ending calamities. In view of the reasons stated above I am against this Draft Code being placed on the Statute Book.

148. Adhyapak Pt. Radhasyam Shastri, Vyakarantirtha, Purantirtha of Krishnapur, Ramechandra Chatuspathi.

1. The provision made in Part II of the Draft Code for granting a daughter the right of succession to her father's property seems to have been more than what is actually called for. For, under the existing system what the daughters drain away at the time of their marriages from the resources of their fathers or brothers far exceeds the share of the paternal property received by sons. Even instances are not wanting where the father of four or five daughters is, in spite of the number of sons he may have, being almost denuded of all his resources in marrying off his daughters. In our opinion so long as this nightmare of dowry system is not abolished, the Draft Code should not be passed into law.

2. If the provisions made in Part III, sub-clauses (VIII), (IX) and (X) of Clause 5 are approved, moral laxity will prevail in the society and it will also be like encouraging the society to indulge in such laxity.

3. From the provisions made in Clauses 7-32, Chapter I, Part IV, regarding civil marriage it appears that the clamour for dissolution of marriages will increase to such an extent every day that the Hindu Society will be entirely

ruined. It is therefore not at all advisable to sow this seed of ruin menacing the society.

4. Provisions in the sub-clauses of Part IV occasionally refer to widow re-marriage. Although in certain parts of the country re-marriage of widows has been celebrated it has not yet received the sanction of the society as a whole. If, to-day, through these provisions widow re-marriage indirectly finds a general acceptance, it is quite likely that the number of husbands done to death will also gradually increase.

5. Sagotra marriage for which there has been a strong agitation in the press is absolutely unjustifiable from the standpoint of the Sastras. The rules of the Smritis that a man should marry a girl who does not belong to the same *gotra* as his father and also does not stand in *Sapinda* relationship with him from his mother's side become meaningless in case *Sagotra* marriage is rendered legally valid.

The science of Eugenics, too, has repeatedly discouraged *Sagotra* marriages. For, the admixture of same blood over and over again renders the progeny an easy prey to various maladies leading to the ultimate dissolution of the whole race.

149. Mr. S. Chatterji, President, Union Board of Matlari, No. 2, P. S., Kaliganj, Matlari P.O., Nadia district.

1. In illustration (b) of Part I it is stated that if only one of the parents is a Hindu the child, legitimate or not, could be a Hindu, if brought up as such. The Hindus assembled at the meeting record their emphatic protest against this provision on the ground that adultery will be encouraged by it, the Hindu caste system will be destroyed and that it will bring hybrids into being.

2. In Class I of Clause 5, Part II it has been proposed to include the daughter among the heirs. This is objected to on the following ground: A daughter, after her marriage, becomes fully entitled to a share in her husband's property. If she is again made an heir to her father's property, it will lead to litigations among brothers and sisters and fragmentation of property with the result that the entire Hindu society will be thrown into a state of disorder. It may rather be provided that in case a daughter fails to secure her maintenance from her husband's estate, she will be entitled to maintenance, as long as she lives, out of her father's estate.

150. Mahamahopadesak Bhutnath Vedantashastri, Adhyapak of Saraswat Chatuspathi, Suri, Birchum.

Marriage and divorce.—The Code has mentioned two forms of marriage, namely, (1) the Sacramental marriage and (2) the Civil marriage. Of these, the last-named one is not approved by the Sastras. Although this form of marriage and divorce are current among the low-caste Hindus, the ancient civilised nations did not adopt this form nor do the people who claim descent from them follow it now. The scriptures prescribe eight forms of marriage. All these are Sacramental. Of these only the Brahma form of marriage is now generally prevalent among the Hindus. All these eight forms of Sacramental marriage require certain duties to be performed both by the husband and the wife. In all these marriages the wife's rights and privileges remain unaffected. In a Sacramental marriage neither the wife nor the husband is permitted to divorce the other at his or her own sweet-will.

Both hybrids born of inter-caste marriages as well as illegitimate children are condemned by the Hindu Sastras. These children are not entitled to offer *pindas* to the deceased ancestors and are consequently debarred from succeeding to their paternal estate. The main object of a Hindu marriage is that a wife must remain chaste to her husband all her life. In order that the purity of the race may be preserved intact through the purity of moral character of women, the Hindu law regarding marriage has been conceived. It is the chastity of women that has enabled the Hindus to continue to exist as a race from time immemorial. The race of hybrids can never last for long. The case of mules may be cited as an instance in point. Manu has also said that the country where there is intercaste marriage resulting in the production of hybrids is destroyed with its entire population within a short time.

Brahmins, Kshatriyas, Vaisyas and Sudras—all these four castes are called caste Hindus. There are also Hindus belonging to what are known as depressed classes. Hindus who from their very birth till death observe the rules

of the Vedas and the Smritis and perform in conformity thereto the prescribed rites after the death of their relatives and never break the existing canons of social discipline and follow the injunctions of the Sastras as far as possible are to be recognised as true Hindus. The only form of marriage that is acceptable to Hindus is the sacramental marriage. We are opposed to Civil marriage being introduced among the Hindus.

According to the Hindu Sastras a woman must have but one husband. The connexion between the husband and the wife is inseparable. It is the rules regarding marriage that have made the domestic life of the upper caste Hindus happy and peaceful. The only distinctive feature of the Hindu society is the chastity of Hindu women. Attempts are being made to rob the Hindu society of this precious quality of its womenfolk and to induce them to make light of chastity by breaking away from their husbands. With a view to maintaining the racial purity of the Hindus no Civil marriage can be supported.

Divorce.—No author of the Smriti Sastras approves of divorce which is a definite source of danger to the Hindu social system. It is an article of faith with the Hindus that if the purity of character of women can be maintained, the prestige and honour of the entire society will be saved. Divorce is not only opposed to our religion but at the same time hateful and brutal. On no account should it be ushered in among the higher section of the Hindu community. Divorce is in vogue among the Hindus belonging to the depressed classes. They may be given the option either to preserve it or to follow the examples of the upper caste Hindus.

Widow remarriage has not the universal sanction of the Hindu Sastras behind it. Only under certain circumstances as mentioned by Yajnavalkya widow re-marriage may be allowed in the cases of girls who were minors at the time of their first marriage. In all other cases a widow must observe the vow of Brahmacharya all her life.

151. Dr. Ashutosh Banerjee, L.M.F., Bhatpara P.O., 24 Parganas, Bengal District.

I have read with interest the evidences of several prominent men and women at Calcutta when the sittings of the Committee were held. The other day I came to know from the newspaper that the Committee is willing to know the views of individual person and his friends and relatives. I had been in the interior of Bengal for several long years and know the views of Hindus.

Now I have discussed with my many friends and relatives regarding the proposed change of Hindu Code. My humble self and friends and relatives are, I see, all against the changes of Hindu Code excepting that the widowed daughter-in-law should have a share in her late husband's property (not transferable) and that the provision should be made for marriage of an unmarried daughter from her father's properties. All other proposed changes should be postponed and in my humble opinion, these will ruin the Hindu Society and will bring disaster to us "Hindus".

152. Mr. Girdhar Sharma Chaturvedi.

I have read the Hindu Draft Code prepared by the Hindu Law Committee (alias Rau Committee) but I regret I cannot agree to it, i.e., in my opinion the draft Code must not be enacted. The reasons are set forth below:—

1. The laws pertaining to the wealth of a Hindu are also included in the Hindu religion. Our religion is so comprehensive that no means of worldly or heavenly progress can be conceived beyond the religion. Our religion is God-gifted—so is the eternal belief of a Hindu. Since a man has no right to change a godly thing, hence we believe that no King, Emperor, people, or peoples' representative has a right to make any change or substitute in our religion. All our laws are based on Shruti (Veda), Smriti (Dharmashastra) and so they will remain. The Government may be of different nationality and of different conceptions but no customary law of any country or the law pertaining to wealth should be changed under any circumstance, and so says the Dharmashastra clearly; "Whatever may be the customary law, practice or family precedence in any country, that should be so obeyed when the country is subjugated", Yajnavalkya, Rajadharma, 343.

2. The ancient religion, practices, customs and laws of the Hindus are all in Sanskrit. To grasp the Shruti and Smriti properly the science of Mimamsa is also in Sanskrit and none can make out the true meaning of the

Veda or Dharmashastra without reading the Mimamsa. Therefore none, who is not an eminent scholar of Sanskrit language or Sanskrit Shastras, can grasp the exact concepts of the Hindu religion. There is no eminent scholar of Sanskrit included in the Hindu Law Committee, and the draft has not been prepared in consultation with the scholars, hence no follower of Hindu Dharmashastra can take it to be in accordance with his religion. It is almost a joke that persons should criticize the Hindu religion or Hindu Law without being eminent Sanskrit scholars.

3. It can in no way be said to be reasonable that an Assembly, comprising of Muslims, Christians and other members of different religions and culture besides the Hindus, is entitled to make laws affecting the Hindus only. The members of that community alone can ponder over the law which affects the community. Others are in no way concerned with it and hence they can have no right to vote or discuss it.

4. If these laws are enforced the Hindu culture, thousands and lakhs of years old, would be uprooted. Historians admit that the Hindu religion is so old that it cannot be said definitely when it started. I hold that it is *anadi*, i.e., without beginning. If so, it can in no way be proper to uproot such a hoary culture to destroy the Hindu race. The race whose civilization is changed, cannot live in the world, its name alone goes in history as an accepted fact. Hence the Code is bound to prove disastrous for the Hindu community. So it should not be allowed to function.

5. Under the definition of the Code, the illegitimate sons, men and women converts, Muslims and Christians and persons even having faith in the Hindu religion are all Hindus (Part I, No. 2, a, b, c) and being called Hindus they are entitled to a share in the property of a Hindu. Under the protection of the Act they can marry amongst the Hindus. Such being the case, Hindu civilization cannot survive; for the varna (caste) and ashrama of none would be secure and the Varnashrama is the impregnable foundation of Hinduism. The Hindu culture survives to-day due to the Varnashrama system. That is shattered into pieces by this Code. It goes without saying that the above definition of a Hindu is opposed to the Hindu Shastras. Merutanta: "The low born are censured and are regarded separate from them and so they are called Hindus." Undoubtedly an illegitimate or one who forsakes his religion is certainly fallen and low.

6. The ancestors of the Hindus well realized the disadvantages of freeing the women altogether. So to give complete freedom to the ladies is diametrically opposed to Hinduism.

The Code permits a girl to marry without her parents' consent [Chapter I, Part IV, No. 3 (5)], the system of divorce even in religious marriage (Chapter III, No. 30), woman's share in her father's property, all the woman's property to be regarded as "Stridhan" which can be mortgaged, sold or given by the woman at her will—these are all conducive to make woman completely free. So if the code is enacted, Hindu civilization would be in great danger as all these are opposed to the Dharmashastra. It is incomprehensible how a marriage opposed to the Dharmashastra can be included in the Code as a 'religious marriage'. It is a white lie and a Code which embodies lies cannot claim to be law.

7. The joint family system is the life of Hinduism but this Code seeks to demolish the joint family system altogether as the right to will the ancestral property would be invested in all. The Smriti (persons living with the father and brothers, etc.) will have no special privilege. The property of the wife and the husband would be separate. So there can be no joint family system and the dissolution of the joint family system would cut deep at the root of Hinduism. Moreover, all these laws are being enacted against the Dharmashastras.

Such are many facts in the draft Code which are radically opposed to the Dharmashastras and detrimental to the Hindu civilization. While giving evidence before the Committee I am prepared to throw full light on these topics. I have already sent the information to give evidence and its reminder, within the time-limit.

So I do hold that this Code should in no way be enforced upon the Hindus to destroy their culture and the Hindu Law Committee (the Rau Committee) should be dissolved forthwith.

153. Mr. Prabha Ch. Santosh, Dover Lane, Ballygunge.

1. A law, custom or usage that has been in existence for thousands of years and accepted as good by millions should not be changed or tampered with, except for very cogent reasons as being dangerous or criminal and not for sentiment and when millions cherish it a small minority having selfish motives or faddists eager to go down to posterity as new Manus or Moses should not have their way.

2. To deal with one's properties his own wishes should be respected. If there is a will that must be given effect to, as an expression of his wishes. If there is no will it should be presumed, that he desired the existing law to govern his case and he wanted no change. When people want to make some provision for an old faithful servant of a favourite dependant or a benefactor, they do so by legacies under a will and not by making them his heirs by changing the law.

3. There are other considerations. If you give a share to an unmarried daughter as an heir as a matter of right you set her up as a rival to her brother, and the result would be apathy and indifference on their part in the matter of settlement of her marriage and providing a reasonable dowry for her and she may be saddled with an undesirable husband for which she may have to suffer all her life. If you give a share to a married daughter, it may create other complications. It may operate as the proverbial eight-anna coin belonging to a frog who did not hesitate to kick the king's state elephant. The position of a female with a fortune to back her in her husband's family is sure to be not that of an associate or companion, but of an overlord. She would soon try to bring her husband under complete control and convert him to the position of a domesticated son-in-law in his own house and she would try to domineer over all his relations and try to deal with them as her servants not even sparing her old mother-in-law. In many families there are several brothers and the several daughters-in-law should have the same status. But it cannot be expected that all will be equally fortunate in the matter of inheritance from paternal properties; so there will be invidious distinction in the family and the woman with the longer purse will not fail to make the others feel her superior position even in small matters like frequency in visiting cinemas than the others were able to afford. Giving a share to a daughter will not be desirable. What is necessary is to provide maintenance for the needy female dependants as widowed daughters and daughters-in-law and that is amply provided for in the existing law.

4. Some are for division and subdivision of properties gradually to bring down all to the same level to obliterate distinction between rich and poor but such ideal can never be realized. There will be some rich men who may divide their properties giving shares even to their poultry, you can never bring them to the level of their next door poor neighbour who can never make the two ends meet. Utopia is yet very far off. Then there is the rule of Primogeniture. There the eldest son gets every thing and the younger are turned adrift but this also has its advantage. History records many cases of brilliant and able men who were not the pampered eldest sons but the neglected younger sons who had to earn their bread by the sweat of their brows.

5. There are women who are ambitious to be independent with a share of their paternal estate and thus require freedom to behave as they like and defy their relations on both sides but whether that is desirable in a country, where the Shastras enjoin that females should never acquire freedom but be subject to the control of father when young, then of the husband in youth and following years, and ultimately of their sons in old age. It is a matter which requires very careful consideration.

6. In Bengal in the case of ordinary Muslims who are converts from Hinduism whether for one or more generations, natural instinct has its way and daughters never care to claim a share from their brothers, but only when the paternal properties are attached for the brothers' debts they interfere and cause the creditors discomfiture. In Bombay one Muslim sect I think the Khojas follow the Hindu Law of Inheritance.

7. If the proposed change is a brilliant idea and of extraordinary merit and pregnant of future possibilities of benefit to many. Why should the experiment be tried only on an unwilling people but it should be made universal

and of general application for the whole country like Napoleon's Code, governing Hindus, Muslims, Christians, Buddhist, Jains, Parsis, Sikhs, Atheists, Animists and all without any distinction or discrimination without fear or favour, in which case the objectors would have the consolation to think that it is for the sake of impartial uniformity and all will have to sail in the same boat.

154. The Manager, Jamboni Raj Estate, Chilkigarh, Midanapur (Bengal).

1. That Hindu Religion, Hindu Custom, Hindu Culture, Hindu usage and Hindu Law are inter-connected indissolubly and that they having been derived from Ancient Hindu scriptures and revelations of Ancient Hindu Sages and having been followed by the vast Hindu population of the land, from time immemorial they have as such become inseparable and integral parts of life of every Hindu, measures taken to alter, modify or in any way amend the existing provisions is highly objectionable and detrimental to the stability and well being of the community.

I beg further to add that the provisions of the Draft Code are nothing but definitely prejudicial to the rights and interests of every Hindu (male or female) propertied or not.

155. The Tippetah District Hindu Mahasabha.

It is the considered opinion of the Mahasabha that the present time is most inopportune for the introduction of such far-reaching changes. The proposals are calculated to disrupt the entire social structure of Hindu life and as such this Mahasabha places on record its emphatic protest against the provisions of the draft Code.

156. The Commissioners of the Berhampore Municipality.

We view with alarm the changes sought to be introduced in the law of inheritance and marriage by the Hindu Code. The Commissioners are of opinion that the proposed law of inheritance will result in fragmentation of property and disruption of family units. They are further of opinion that the proposed law of marriage and divorce is repugnant to Hindu sentiments and religion and will remove the sanctity of marriage which has all along been considered not a contract, but a religious sacrament by the Hindus and will disturb the peace and harmony of Hindu family life.

They are however of opinion that there is nothing objectionable in the provision sought to be made regarding law of adoption and guardianship.

157. Mr. Anuttam Fen, Vice-Chairman, Berhampore Municipality.

I dissent from the above on one point. I am of opinion that daughters should get shares in the properties of their father as proposed in this Hindu Code.

158. Mr. Manishinath Basu Saraswati, M.A., B.L., M.R.A.S.

Preliminary remarks.—The proposed legislation affects not only the Hindu Law but the Hindu society as well. I may at once say that I am opposed to a measure which seeks to revolutionize the Hindu Law and the Hindu society; and this specially at a time when we are passing through very hard times when our whole attention is engrossed in maintaining our existence; we do not know in what way the present day incidents may have repercussions in our society; it may be, our society may be affected in a reverse way to that effected by the present legislation. Then there may be chaos resulting in distinction of the old society but no new society will be formed out of its ashes. I do not understand what urgency there is in enacting a measure of this nature at the present times, unless there be some political motive behind it (though I hope not). The Hindus have never felt that a codification of law was essentially necessary, especially a codification which materially changes the law handed down from generation to generation. No such codification has been attempted of Muhammadan Law. If it has been thought necessary to ensure uniformity of law (though I think this is not possible in the present day), this must be done within the framework of the law as laid down by Hindu lawgivers of yore,—a body of law which has endured for more than two thousand years and stood the test of time and of repeated assaults made upon it from outside. Codification of law is not always desirable. If the Hindu Law is to be changed, there should be a plebiscite; and it should not be changed under the imprimatur of a few who are steeped in western culture and do not appreciate

the virtues of eastern culture. Again, this, I presume, is the beginning of a series of legislations which would do away with the old law altogether, though the old law stood the test of time and nobody knows what the effect of the new legislation would be. I regret further to state the translation made in Bengali has not always been intelligible.

PART I.

Section 2 (2).—All aboriginal tribes, whatever be their religion—animism or otherwise—should also be included; and their customs and customary laws should be preserved in fact.

PART II.

Section 5-A.—The provision of inheritance by daughters and sisters is in my opinion not only a drastic change of law but it is for the worse:—

(a) The Code does not assign any reason why they should be given inheritance to property or a share therein. It must be by way of maintenance i.e., a propositus is bound to provide maintenance for all whom he has brought to the world. This is the opinion of many western Jurists, e.g., J. S. Mill. But Mill says the duty of the father ends with maintaining a child till he or she is well educated and becomes fit for discharging the duties of life. The Hindu Jurists say that the sons should be provided with maintenance till their death; but the duty of maintenance of daughters by the father ends with her marriage; and thereafter the duty of her maintenance devolves on (the father-in-law and) the husband. If the share she is to get from her father is in lieu of maintenance, that should end with her marriage; for otherwise she gets a share from her father and another from her husband. Thus a daughter will altogether get more than a son does, because the son inherits only from his father and not from his wife. There is no justification for such a provision at all.

(b) A daughter, according to Hindu Law, after marriage renounces the *gotra* of her father and adopts the *gotra* of the husband. She becomes a member of her husband's family. It is they who must provide her with residence, food and raiments. She thus becomes almost a stranger to her father's family and is very much swayed and influenced by her husband and his relations whose insistence or distress is sure to move her to dispose of it. So to allot her a share would cause trouble and disruption in the family. As she will not come to possess her share in the family dwelling house or the property inherited by her, she will transfer it for value to others who are certain to disturb the harmony of her father's family. Even if she does not so transfer there is bound to be discord in the family. This is my experience so far as Muhammadan families are concerned.

(c) In the present state of society when a vast majority of the females still observe Purdah and are not educated, it would be greatly detrimental to society to confer more property on them than are obtained by males as has been pointed out above. They would not be able to manage the properties which will soon pass out of the family to other hands. As villages are torn by factions, the opposite faction is certainly to get hold of such properties, resulting in ruinous litigations. As maintenance of daughters is a charge on the family property, I do not see any special virtue in allotting her a share of the family property.

(d) The draft Code provides for monogamous marriages. In that case, the position of females would become safer than at present.

(e) The basic conception of Hindu Law is religion. A joint family consists of those who are united in food, property and worship. The worship of the family deity will be neglected if a share in the property passes out of the family. The family deity is very often not endowed with any property. Still the worship is carried on with regularity. Even in case of endowed property, my experience is, daughters now-a-days who became shebaites by inheritance do not perform their turn of worship. She would not also offer oblation to the ancestor.

(f) If daughters are allowed to inherit, there would be a greater fragmentation of property—a thing which has been deprecated strongly by all the Banking Enquiry Committees.—Much of the poverty of the Muhammadan masses is due to this.

(g) As the law has no retrospective effect and as the law would not affect agricultural lands, the same

family will be governed by laws often diametrically opposed to each other. This will create confusion; a person's legal position being vague and uncertain.

B. The said section also lays down an order of succession by inheritance. This is essentially different from what is laid down in the Hindu Law. Though in the preface it has been said that to secure uniformity, one system of law has been adopted to the exclusion of others, this order of succession as laid down in the draft Code does not follow any school of law. It is not known what is the principle of succession adopted.—Not offering of oblation certainly; neither has propinquity been adopted as a rule of succession. Daughter's daughter or daughter's grandson or granddaughter cannot be said to be near relations nearer than others mentioned in the fourth or fifth serial. Such succession is likely to disturb the unity or jointness of the family. The fundamental idea of succession as laid down in the Hindu Law is gone. The order of succession was laid down by the law giving regard to the structure of the Hindu Society which is of high antiquity. The Hindus believe it to be of divine origin. It is not proper to brush it aside for a new order not desired or coveted by anybody.

Clause 7.—I do not understand why the daughter is given a half share along with the sons, grandsons, etc. This is certainly in imitation of the Muhammadan Law; the forceful effects of which are visible in fragmentation of properties leading to the appalling poverty of the masses. If anything is responsible for this, it is the law of dividing inheritance into many shares to satisfy or appease all. Besides this if the inheritance is so greatly divided, the sons would not be able to maintain themselves in the same comfort to which they had been accustomed during their father's lives. A property greatly subdivided loses its capacity of doing good to others. The capacity of a family which is united or joint or may remain so, is far greater than a family which has been disrupted. The minute subdivision of property benefits nobody—neither those who inherit it nor any member of the public seeking benefaction.

Clause 13. Stridhan.—The definition of stridhan is vague. There is no justification in the present state of Society where 98 per cent of women are helpless and are led by others to make them absolute owners of properties inherited by them. If they are made absolute owners, the property would in no time pass to other hands. Besides this, if she gets an absolute estate, the property would pass to her heirs and not to the heirs of her husband or father or brother as the case may be; and the enumeration of a woman's heirs shows that the order of succession is different from that of the males. Where the inheritance is from father or brother the order of succession provided in the case of males would be wholly inapplicable. The draft Code provides a different course of succession in case of inheritance from husband and from father or brother. I do not understand why there should be this difference; nor why in cases of inheritance from husband the property would devolve as if the property belonged to the husband. Such provision indicates that the descent is to be traced from the husband as if the widow was non-existent or had only life-interest. If that is the principle, I do not see why that principle should not be followed in cases of inheritance by a daughter or sister. It is also strange why provision has been made that in case of succession to stridhan a daughter's share is to be double that of a son. This provision like many other provisions is extremely arbitrary. No underlying principle can be shown to such provision. If a man dies leaving a widow and a daughter and gives his widow power to adopt a son, the widow gets half and the daughter gets half of the estate absolutely. But suppose thereafter the widow adopts a son three years after the death of the man then according to Section 19 of Part VI the mother would be divested of property, i.e., an absolute estate to the extent of half of that obtained by her. Then (1) divestiture of absolute property is not known to Hindu Law, specially the Dayabhag School whose principles have been followed in the Code. (2) In the above case the adopted son would get only one-fourth of the property, his adoptive mother getting one-fourth and the daughter getting half of the property. This is placing the adopted son in a worse position than the natural born son.

Clause 17, Parts II and IV, clause 6.—These legalize intercaste marriages and lays down the effect of

such marriages. These provisions have a very far reaching effect, viz., to do away with the distinction of caste altogether. The Hindu Sastras allow *Anuloma* marriage to a limited extent only and severely condemn *Pratiloma* marriages. Even in cases of *Anuloma* marriages, the offsprings do form a class by themselves and get less share in the family property than the offspring of pure marriages. This goes to show that the Sastras do not really favour even *Anuloma* marriages. *Anuloma* marriages are eschewed in Kali Age. Hence the draft Code seeks to revolutionize Hindu Law in this respect. I do not go so far as to say that the offspring of intercaste union should be cast out of the pale of Hindu society; but as in the present day, there are many sects amongst the Hindus, they should form a class by themselves, governed by their own marriage laws and rules of inheritance. The Civil Marriage Act should be applied to them alone. Varna-Sankara has always been looked upon with disfavour as the offspring is not entitled to offer oblations to his ancestors. "It leads down to hell" as the Bhagavat-Gita says. Hinduism, as laid down in the sastras, is based on both spiritual and material considerations. This aspect has been lost sight of in the draft Code and the framers have proceeded on material considerations modified by their idea of what a society should be. Such a society can never stand the test of time.

Clause 19.—I do not see why unchaste women should get a share of her husband's property even if the husband is magnanimous or weak or justful enough to condone her offence. Unchastity must not be countenanced in society for its preservation. In suits where questions would crop up for consideration, it would always be very difficult to prove condonation.

PART IV.

Clause 2.—Civil Marriage Act should not be repealed and should be left out of the Hindu Code, as at present. It will lead to anomalous position.

Clause 3.—I have dealt with intercaste marriages. This section lays down a provision for monogamous marriages. That monogamy should be the ideal of every society, there can be no doubt. The question is whether polygamy should be wholly abolished. In a society where the number of males is limited, polygamy must prevail; otherwise there would be adultery prevailing to an alarming extent and this will lead to destruction of society. Now-a-days, Hindus are not enlisted in large numbers as soldiers. But a time may come and will come when many male Hindus would be enlisted as soldiers and die fighting in battles. Then polygamy must necessarily prevail to multiply the race, to give a chance to all women to get husbands, especially if widow marriage is allowed to exist. Similarly, polyandry exists in societies where the number of women is limited. The Hindus with their rules of exogamy and endogamy cannot afford to be monogamous. Economic rules, now-a-days, have made the Hindus monogamous. This state of things cannot go on indefinitely. Contractual marriage must necessarily be monogamous. But Hindu marriage is based on sacrament and therefore need not necessarily be monogamous. There may be circumstances when a man may be compelled to take another wife. Some of these have been enumerated above. Penalty for bigamous marriage is out of place and should not be provided for in the case of males.

Clause 29, Chapter III.—Sections 29 and 30—Divorce was unknown in Hindu Law but seems to have been temporarily provided for when Buddhism prevailed over Hinduism in India. Thousands became Bhikkus or mendicants and gradually the marital tie became loose. The dicta of Parasara and Kautilya meant to remedy such state of things were therefore supplanted and divorce abolished altogether. Even when Hiun-Sang visited India he found the marriage tie indissoluble; and divorce was unknown then. I do not think we should revert to a state of things which was found to be unsuitable or detrimental to society. Marriage is a sacrament; and the legitimate consequence should be indissolubility of marriage. If it be contractual, the contract may be rescinded and the marriage tie dissolved. But this being not so amongst Hindus, the dissolution of marriage tie can never take place. The marriage may be invalid if it infringes the rules of the sastras; but that is a different thing from divorce, as has been recognized in the Code. So far as impotence is concerned, that is not incurable except in

certain cases; nothing should be done if it is curable. If the wife is an idiot or a lunatic, it would be cruel to declare the marriage invalid and throw her to the mercies of relations. Lunacy or idiocy may also be curable. The grounds for dissolution of marriage are not very cogent. In my opinion, provision should be made that a Hindu male may validly marry a non-Hindu female under the Civil Marriage Act.

I may point out that the present domestic life of Hindus are peaceful and harmonious in most cases. If divorce is introduced, the domestic life can never be peaceful as has been amply proved by the gradually increasing number of divorce cases in western countries. The number of divorce are what seems to us, flimsy in some grounds of divorce are what seems to us, flimsy in some cases in America. Grounds for dissolution of marriage would go on increasing by amendment in imitation of western countries, if it is once introduced. Sacrifice and not enjoyment is the basis of Hindu Law and Scriptures. The Hindus believe in re-birth. If one birth is set with sacrifices, that ennobles his soul; and peace and enjoyment would come in the next. That is the Hindu idea.

The draft Code does not say what would be the status of a wife who has been divorced or whose marriage has been declared invalid.

PART V.

Clause 6(2).—The provision is very stringent and would work hardship in many cases. The law has been enacted in imitation of Muhammadan Law. But even Muhammadan guardians alienate property without taking permission of Courts. If the minor is in distress, it would not be possible for the guardian to obtain permission of the Court.

In conclusion, I desire to state that I got a copy of the Bengali translation of the draft Hindu Code in the evening of the 27th February last and I was asked to submit my opinion on 1st March 1945. I wanted extension of time but this has not been granted. I regret to state that within this short space of time it has not been possible to deal thoroughly with an important measure which has sought to revolutionize Hindu Law and society. I have picked up the salient points and my discussion of them has not been as thorough as I desired. There are many other arguments which I wanted to advance but could not within the time allowed. I only hope that the Bill will be freely circulated amongst those who would be affected by it and a plebiscite should be taken as to the feasibility of such law.

159. Rai Surendra Narayan Sinha Bahadur, Chairman, Murshibabad District Board.

I have gone through and offered serious thoughts on the Draft Hindu Code as proposed by the Rao-Committee appointed by the Government of India. My ideas are given below on the subject.

The Government of India have absolutely no business to, and authority for, "formulating a Code of Hindu Law as they have been prohibited, by the Queen's Proclamations of 1858, "pertaining to any action interfering with matters from taking religious practices and customs of the country. Nor have the existing laws and usages been proved to be not "acceptable to the General Hindu Public", which may justify the Draft to be taken in hand. The draft has neither been sufficiently widely published to extricate proper, well-weighted and unbiased exposition and criticism of the Draft from the orthodox class of erudite Sanskrit Scholars (the Pandits) who are, generally now-a-days but wrongly, accused to be the exclusive custodians of the Shastric knowledge. The framers of the draft, are, to the utter misfortune of the Hindu community, scarcely imbued with strict Hindu thoughts and ideas.

The religious ideas and consequent practices should be left as they are inasmuch as religion is inherent in a Hindu character—nay it is his mainstay—and the general Hindu public are satisfied with the customs prevalent among them and any idea of change, therefore, is repugnant to their minds.

The matters, which are proposed to be dealt with by the draft Hindu Code, are such as are looked upon by the Hindus to be subject of religion. Unlike the Westerners, the Hindus regard Religion as inclusive of and co-extensive with morality; thus questions concerning the moral well-being of the Hindus come to be those concerning religion which only directs and forms the basis of the entire Hindu society.

The Bill considers, among others, questions of succession and marriage. These two matters, in brief, have controlled the Hindu social unit which is responsible for building up the rare qualities discernible in Hindu household. The proposed changes in the legislation would mar the Hindu social ideal, which has, up till now, stood out in contrast as it were with any other ideal be it Muslim, Christian, Parsee or anything else.

Let us consider the first one, viz., succession. The spirit of Hindu society is to find an unbreakable social unit consisting of husband, a wife and children, the nucleus of which is always the woman. The household is governed by the lady as the governess alike of the children and the husband. The resources are consumed by the inmates of the family for distribution, by the wife, herself again being subject to the will of the husband. This is the idea of a Hindu social unit "par excellence." And it is, therefore, that the woman has been prevented from inheriting father's property. The idea of womanhood is that of wifehood (coupled with motherhood, of course) in accordance with which a Hindu mind abhors the picture of a woman standing by herself supplied with substances inheritable from the father. The proposed legislation will mar hopelessly and irrecoverably the notion of ideal womanhood as conceived by the Hindu culture. So the existing laws with regard to succession should be left to operate as usual as they have operated from immemorial time with results discernible in birth of flowers in Hindu society. It is needless to add, besides the main line of succession, that the laws governing "stridhan" should also favour the maiden daughter as usually prevalent among ourselves. The proposed legislation on succession will have its desired effect in the shape of fragmentation of Hindu property by effusion of disintegration in a peaceful and hitherto satisfied Hindu family.

Let us come to the question of marriage. Marriage is also treated, by the Hindu shastras, as a most serious subject affecting the moral well-being of the marrying couple and their future generation. The idea of unmarriedity among brothers and sisters and cousins of both the sexes has nowhere been more carried out than in the Hindu society. The shastras have laid down, that of primitive men there were a few in every caste from whom the gotra-affairs have sprung up. Persons belonging to the same gotra are of the same blood and thus incapable of mating each other on account of consanguinity. These injunctions must be carried out if the Hindu trust the shastras. Modern thinkers have also lent their support to this system of fastidious choice as this goes a great way towards cooling of the animal passion in human blood. The same system of salutary check on the natural human instincts of sexual self-determination has been carried in the Hindu marriage customs. The couples are not trusted to with regard to choice and the selection solely depends on the cool discerning intellect of the elders.

Various other ways have also been devised to take away the fervour of passion naturally attendant on the couples; to wit, the custom of living within the joint family system with the father; its seasonal give and take of bounties between the parties of the bride and bridegroom; the celebration of the marriage itself in the full-fledged religious festivals expressible in the study of the rituals. So, the proposed similarization between sacramental and civil marriages will go to destroy the above conceived spirit of the Hindu laws and Hindu society. Civil marriage will always be getting legal protection, but not approval of public opinion, far less religious sanction.

Divorce is another rankling wound proposed to be inflicted on the peaceful, harmonious body of the Hindu polity. Marriage fidelity is the primordial tenet to be honoured in the first place by a married human being. It is, in fact, to be enjoined uniformly on the man as well as on the woman. But to seek divorce on this account is unimaginable by a Hindu. The enormities cast on the womanfolk by the intemperate menfolk have elicited strains of sympathy from every corner of human heart: but that does not warrant the high-handed unwomanlike measure of dissolving the marriage ties altogether; the misfortune should not be attempted to be mended in this manner disregarding religious protection and messages of hope and solace and public awe and admiration; this utter self-denial and superb chastity are the sole foundations of the ideal of unique Hindu

womanhood. The toleration of one-sided tyranny has given the Hindu woman the rightful place they enjoy in every heart of every right-thinking human being.

Truly speaking, the Hindus are a religious nation strictly separate from any other, namely, the Christian, the Moslem, the Parsee, etc. Their sole concern is for the upliftment of the religious self-realizable through every walk of life. And it is for this reason that the ancient law-makers have laid down the ways of living to be followed rigidly by the believers.

It is not pretended that the rules have not changed and have been inflexible from the origin; but even like the language in which these shastras have been written, viz., Sanskrit, a time was when rules were changed for the last time and since then they have been rigidly inflexible. The little changes which the society needs at all, are not needed in the shastric injunction themselves as the same are preconceived and implied in the Purans and Itihasas (legends and histories); these are being reflected in the advanced minds of the thinking souls and adopted and incorporated in the inner consciousness of the collective mind of the Hindu society. As instances of them one may enumerate the popular disapprobation of bigamy and polygamy; the prevention of early marriage properly so-called; the Sutte rights; the offering of children as oblations in the confluence of the Ganges and the Ocean (Gangasagar), etc. These practices are now extinct throughout this land of ours.

In short, we exhort the authorities to abstain from attempts of such infringements of right on the Hindu religious usages and customs, laws and practices as such actions are beyond their jurisdiction, unjustifiable from the very nature of the proposed legislation and unnecessary as not required by the present condition of the country.

There are many other things objectionable if we go into the details of the draft Hindu Code. The whole structure requires changes as not based on Hindu ideals in conformity with their shastras and against the growth of Hindu culture and Hindu family.

160. Some Members of Teaching Staff of Krishna Chandra College, Hetampur, Birbhum District.

We protest against the codification of the Hindu Law as outlined in the draft Hindu Code. We are of opinion that daughters, married or unmarried, should not have any share in the father's property movable or immovable. We are however of opinion that some provisions should be made for the marriage of unmarried daughters, the expenses of which will be a charge on the father's property.

There should be no change in the law regarding Hindu marriage which is a sacrament and as such should not be interfered with by a mixed legislature.

161. Mr. D. N. Guha, M.A., B.L., Barabazar, Calcutta.

I think that the reason which led the great law givers to divest the daughter of a share in the father's property is the anxiety to keep the property to the family. The daughter goes to another family of which she becomes the mistress in time and her children become the masters of the property of that family. She need not therefore take with her any of her father's property when there is no return to the father's family of any property from her husband's family; and each family should keep their property to themselves. The reason is very wholesome and there should not be any diversion for the selfsame reason. To marry a daughter thus is to find her a property but lest she is neglected in the matter of bringing up, Manu has enjoined that the daughter should also be brought up and educated with the same degree of care as a son and then given in marriage to an educated bridegroom. So this is the reason which has stood the test of centuries and families must be left to possess their respective family properties. Disintegration and discord there must be which can never be eliminated even in the case of the family property when for example the family separates as it must in process of time.

So the daughter should not take any share in the family property, far from copying the Muhammadan rule.

There should however be some provision for a widowed daughter-in-law who is a member of the family and should be maintained with the family income and to safeguard this she may be given a share to possess for life.

The unmarried daughter should also have her maintenance and marriage expenses out of the family income.

There is no bar to intercaste marriages in Hindu Law, such marriages being merely placed in the unapproved list. Those who go to contract such marriages will merely have to bear the odium, which will continue to attach to such marriages even though expressly approved by an act of the Legislature. So marriages may not be legislated for.

Monogamy has already become the rule and need not be legalized.

Divorce is repugnant to Hindu ideas, and in extreme cases there may be legal separation with maintenance to the wife.

162. Mr. Sarul Kumar Gantam, Rajshahi.

Codification of Hindu Law in any Legislature will make the law lose its religious sanctity and the law will not be looked upon with the same regard as is done now and is not therefore desirable but certain amendments in some respects are desirable. As regards amendments I fully endorse the views of Mr. R. N. Sarker, Advocate, Calcutta High Court, as appears in the last column of page 2 of the *Amritabazar Patrika* of the 25th February 1945. It is needless to report the same here. I object to the provisions as made in the draft Hindu Code.

163. Hindu Community of Demra Town, Pabna District.

I have the honour to draw your kind attention to the public opinion of about 2,000 Hindus, both male and female of Demra Union, P.S. Faridpur, district Pabna (Bengal), regarding the proposed Hindu Code. They express their strong opposition to the enactment of the Bill and forrantly request the Central Government of India for dropping the Bill *in toto*.

They are of opinion that the solidarity of the Hindu community will be totally destroyed if the right of inheritance be awarded to daughters and widows. The peace and happiness of the Hindu family will be shattered and they will become gradually poorer on economic grounds and ultimately lose their paternal properties and be driven off even from their ancestral home-steads by the stronger purchasers of shares. Lifetime interest may be provided to the widows mainly for their subsistence.

If the Bill be passed none will be eager to marry daughters of poor fathers whose daughters will not inherit any big shares of paternal property and the brothers also will not be prompt and eager to give their sisters in marriage with suitable bridegroom from their own purse or by sacrificing their properties. A bad system of dowry is prevalent in the Province of Bengal, especially among the higher classes of the Hindu community.

The cancellation and dissolution of marriage by both sexes will not at all be good for the Hindu community and will certainly create disorders and troubles in the Hindu society and the time-honoured tie of love and affection will be a word of dream. Marriage in one and the same Gotra is also deprecated.

The provisions of civil marriage, of adoption of sons by widows without any clear consent of their husbands and of monogamy will put a stop to the propagation of the Hindu race which is absolutely necessary for the Hindu community.

After all if the Bill be passed the Hindu community will be involved in continued and hereditary litigation, which will surely bring about ruin to the community.

Under the circumstances the Hindus of the localities think this Bill to be harmful to the Hindu community and humbly pray to the Government of India for rejecting the Bill.

164. Mr. Dwijendra Nath Ray, Pleader, Kustia.

1. The law and line of inheritance as prevails in Hindu Law may be adopted subject to the changes as made in the Hindu Code, the rest may be discarded.

2. The law of maintenance as prevalent in Hindu Law may be amended in the light as adopted in the Hindu Code.

3. Clause 3 of Part IV should be adopted and alternative clause 3 may be discarded.

4. In Clause 29 of Part IV before the District Judge 'Munsif's Court' may be added.

In the same Clause after clause 2 in place of High Court 'Civil Court' may be substituted and Clause 3 should be omitted.

In Clause 30 at the same page, before the District Court 'Munsif's Court' may be substituted.

5. Sazotra marriage should be discouraged.

6. Acceptance of dowry in case of Hindu marriages should be made penal under the law.

165. Sasikumar Maltra (Naogon P.O., Rajshahi District).

1. The proposed Hindu Bill contains the definition of the term Hindu. It appears to me that the definition will include 30 crores of people. The proposed Bill has not been introduced by any institution of the Hindus but by the Government of India. This Bill proposes to deal with the personal law. The time given for inviting opinion is very short specially where most of the people are illiterate. The action of the Government and the passing of the proposed Bill will contravene the spirit and the letter of the Queen's proclamation.

2. The object of the proposed Bill is to enact one law for the Hindus. From time immemorial the different provinces and different sects of the Hindus have been enjoying their personal law. There was no agitation among the Hindus for compilation of such a drastic law. Till now I have not come across any opinion of any court of justice in India or abroad that the judges feel any inconvenience to administer the existing Hindu Law. The different sects of the Hindus have not taken any steps for promulgating a common law for all sects. By such an enactment the Government will not be gainer in the administration department. The Muhammadan personal law was changed at the instance of the said community and not by the Government. The Muhammadans have not changed the provisions of inheritance, marriage, etc., of their personal law. The object of the proposed Bill may be further extended and the existing Succession Act may be applied to every Indian subject.

3. I am a follower of Sanatan Hindu dharm. I sincerely believe in the sacred doctrines of Sruti and Smriti. There are men like me in India. In my humble opinion there are at least one crore of Hindus like me. I do not think that the remaining 29 crores of Hindus have any right to enforce their view upon one crore of Sanatanists. I shall cite one example and I think it has some bearing on the present condition. One Government recognized auditor by examining the accounts of an institution in a year reported that the company suffered a loss. The members of the institution in their general meeting by votes held that the company made a profit in that year and allowed a bonus to the directors and officers. If such cursed vote system determines our fate and faith I have nothing to say.

4. The effect of introducing such a wholesale and revolutionary change of law will totally determine the Hindu culture and wound the feelings of the millions. The law was introduced by the selfless Rishis; it is not desirable that such a sacred system of law should be changed for the satisfaction of the self-seeking and self-interested advanced Hindus. The denomination of the proposed Bill, in my opinion, should be non-Mussalman Act and not Hindu Code.

5. Marriage, inheritance, adoption and other subjects have their foundation on 'religious tenets'. There are some people who think that they belong to the advanced or progressive group. They do not want to follow the religious tenets but they want to change the law. The majority or minority have no right to dominate over the will of the other party. I have no objection to that. Their desire may be fulfilled to their satisfaction. A law may be enacted for marriage, divorce, etc., of the advanced party according to their choice. Marriage of such a party may be performed by registration and at the time of registration they must express that they adopt the Indian Succession Act or the Muhammadan Law of Inheritance or any other enactment but that will be binding on their successors.

6. I come of a respectable Brahman family of Bengal but not a wealthy family. My family is connected with a wealthy family by marriage. I learnt from my uncle that dower system was current but to the extent of Rs. 41 only; at present it soars up generally to 100 times and in a wealthy family to 500 times at least. This curse has been introduced by the advanced Hindus and now followed by the avaricious. At a time daughter draws a huge sum this is in no way less than half of which a son inherits. By marriage a daughter goes to a different family and she inherits there or she has claim of maintenance upon that family. Under the circumstances it is not desirable that she shall inherit from her father.

7. The Sradh ceremony is essential according to the Hindu Law. If the proposed Bill be enacted I fear the ceremony will be altogether abolished.

8. The estate of a Hindu will be so minutely divided that no one will be satisfied with own share. One co-sharer will try to dispossess other co-sharers. There will be litigation which will bring ruin to the family. The Muhamadans of this part of the country a few-years back did not generally follow their own law of inheritance but generally followed the Hindus in this respect. They now follow their own law. The result is litigation.

9. Divorce may be introduced for the advanced Hindus. My suggestion is this, that the process of divorce should be as simple as possible. The couple may go to the registration office and by payment of the fixed fee should get divorce then and there if the wife is not pregnant at the time of declaration.

10. The proposed Bill in Part II, item 10, contains the word Acharya. The Yajnavalkya Samhita (chapter I, sloks 34, 35) contains that there are Gurus, Acharyas, Upadhyas, Ritwiks. The order of succession should be clear. There is another word Sa-Brahmachari which is not clear.

11. The history shows that the modern civilization has exterminated the aboriginals. The proposed Bill will exterminate the oldest civilization of the world.

12. Once in India theft and falsehood were unknown. Now they are reigning. This is the effect of so-called progress or advancement.

13. In my opinion the proposed Bill is inopportune, premature, uncalled for and destructive.

166. Mr. Harendra Krishna Doss, President, Barsul Union Board, Burdwan District (Bengal).

1. By the enactment of this Bill, the Bengalese specially will suffer by the retardation of their economic progress and disunity in the family. There will be a disintegration in the family and the property with the homestead will be divided into pieces and again this divided property will be subdivided among members belonging to different families, thus bringing a social disaster and abject poverty in the Hindu families.

2. As regards the right of inheritance, if it goes to daughters, it would bring disaster in the families in the way enumerated above. It is prudent and just that the daughters should be maintained and properly educated up to their marriage.

3. The divorce system is bad, as it will spell a social and moral disaster and may easily encourage the inter-marriage system which will give rise to offsprings who are not entitled to perform the social rights of their fathers and forefathers, as it is against the injunction of Hindu Shastras—the offsprings born of this union being called *Barnasankars*.

4. Gotra in marriage should not be same as that of the father, as it is not at all conducive to the health of the children born of such a marriage.

As the majority of the Hindus of different denominations are against the enactment of this Bill, this attempt to codify the Hindu Law should be given up altogether.

167. Mutagacha Town Hindu Mahasabha.

Codification.—Hindu Law is being administered in the British Courts according to the Hindu 'Dharma sastras' for the last two hundred years. During these years the principles and the rules of Hindu Law have become well established and the enactment of a Hindu Code will now be of very little utility and practical use. On the other hand a codification by the legislature of the rules of Hindu Law will be against the sentiments of the Hindus, who believe their law to be of divine origin.

Hindu law has, within its rigid frame-work, allowed sufficient flexibility to suit the requirements of the different classes and communities living under different conditions and engaged in different occupations. A Hindu Code, rigidly codifying the detailed rules of Hindu law, cannot satisfy all these people and will produce much more dissatisfaction and expense than the law as at present administered. Codification cannot stop controversies regarding interpretation of the rules framed and from the point of view of certainty it will carry us little further than where we stand now.

If codification is at all to be undertaken it should only be of a declaratory nature of the existing rules of law and should not make any attempt at changing any of those rules.

Inestate succession.—The changes proposed under this head are mainly two—

(1) the introduction of certain female relations in the category of heirs, and the preference given to some female heirs.

(2) The bestowal of absolute interest on female heirs in the place of life estates enjoyed by them at present.

(1) The Hindu society is based on the basis of joint family. Though under the stress of modern conditions of life the joint family tends to disappear as such, yet the family as a unit of society still exists and family tie is still very strong. If the daughters, who are separated from the father's family and are fully incorporated in the husband's family by marriage are given a share in the properties left by the father along with her brothers it would be introducing a foreign element in the father's family, as it were, and will engender quarrels and disputes in the father's family which will be ruinous to the Hindu society. The rules of succession were framed in the 'Dharma Sastras' with a view to keep the family in tact and this age-long tradition has encouraged a very deep family tie. Nothing should now be done to affect this family solidarity, as it will lead to practical difficulties, besides going against the sentiments of the Hindus.

(2) The Hindu law-givers, specially in Bengal, have given only a 'life estate' to the females. This has worked very satisfactorily during ages. This rule has not created any difficulty regarding maintenance of the female holder, as the law gives her a right to sell the corpus of the property in case of 'legal necessity' and the British Courts have given a very wide interpretation to that expression. The existing rule has not given rise to any difficulty and there is no reason why the present rule would be changed.

Marriage and divorce.—Hindu marriage is a sacrament and not a contract. If the Hindu religion has anywhere mingled with Hindu Law it is in the laws of marriage. In the case of marriage the law to be administered by the courts should strictly conform to the social and religious rules, otherwise it will lead to confusion and social indiscipline.

Hindu society does not now recognize marriages between parties of different castes or of the same 'gotra'. The fold of the castes has been given a very wide meaning by the British Court, by not recognizing the different sub-castes within the same general caste for this purpose and further widening of the scope is unnecessary and unwanted by Hindu society. The same remarks apply to the case of marriage between the parties of the same 'gotra'. Imposition of these rules, in the name of social reform, is bound to fail, being unwanted by the Hindus, as a whole.

Hindu society has never recognized any rule of divorce, marriage, in Hindu law creating a life-long bond. It cannot be said that the Hindus are in any way unhappy by this. Many societies have got their rules of divorce but they have not solved their marital problems thereby. On the other hand their social problems have become more difficult and complicated. Besides, divorce will tend to break up families, the very basis of Hindu society.

Adoption.—I have already stated my reasons for not giving absolute right in property inherited by a female heir, including widow. If the widow has not an absolute right in the property inherited by her, I think for the very same reasons she should not be given a right to change the course of subsequent succession without an express authority from the husband.

Conclusion.—It is not correct to say that the rules of Hindu Law, which have served Hindu society for ages very well, have become unsuited to the present conditions of life. This will appear from the proposed code itself which does not propose to change any fundamental rules of law. Hindu law has always been treated by the Hindus as their sacred law and none should be allowed to change those rules for the sake of making social experiments, in the name of social reform.

168. Mr. Ahindranath De Chowdhury, Ranaghat, Nadia District.

As year and time are the combination of summer, rainy and other four seasons with day and night, so a society must contain different castes according to capacity of work of people. Usage, sentiment and blood of a pure Brahmin cannot be equal to that of a privy cleaner, blacksmith, or a hunter.

2. *System of Hindu marriage.*—According to Shastras, bride and bridegroom at a limited age (time just at middle of youth when nature makes them disturbed for enjoying

sexual pleasure) should be united together by mantras before Agni, Devata, Brahman and the Samaj in marriage for keeping peace among the society. Hindu mantras if uttered by a strict self-checking religious-minded Brahman hold vast power. When a poisonous cobra bites a man, mantras cure the patient. God of Hindus is worshipped through mantras. By the clauses laid down in the draft Hindu Code, civil marriage occasionally will be performed in secrecy.

3. A young daughter after attaining the age 16 will not require the permission of her guardian in marrying a man, who will be sometimes unknown to her as regarding character, pecuniary and health foundation. Only a glance or look will make her marry. Divorce will run strongly, causing serious distress.

4. In order to stop distress of widows and orphans a measure should be taken such as: In every old town of Bengal many temples and school or other big buildings exist. Cottage industry and an agriculture farm by the local grown up students under proper Government or public bank capital may be started for provision.

5. Succession of married daughter's right in her paternal property will highly affect Hindus' pecuniary position and ceremony.

6. Right and interest of widow son's wife with her children should be given in her (husband's father) father-in-law's property as if her husband were alive.

7. In order to check corruption, every male and female should be entrusted with such power to control rehabilitation as is adequate.

8. Realization of excess dowry in marriage should strongly be checked and for an ideal marriage, on application of either bride or bridegroom's side for marriage with desired party, to local magistrate, adequate measure should be provided; or consultation with some head man of the Samaj of inter-parties.

9. Defects such as madness, invalidity, youth's disease, impotency, etc., should be cured by proper treatment in order to save nation. Question of divorce due to above defects after marriage is quite baseless.

10. Above all no law can be passed against current religious sentiment only to satisfy a few numbers of selfish persons. Chastity holds always the topmost ideal position in human qualification. Idea of divorce should be strictly condemned.

11. Procedure of partition of Hindu property among heirs should be withdrawn and stopped. The property left by the deceased should be reckoned as a whole making provision for maintenance of distressed heirs (son, wife son's widow and parentless grandsons even helpless daughters) of the deceased living in the same mess (house) of the deceased. The oldest pious son should be posted to look after the property as guardian or common manager of the heirs.

Ancestral property of the Hindu should always be treated as savings property of the heirs in time of distress.

The above view is supported by the majority of the local Samaj.

169. Ral Sahib Syamapada Bhattacharya, Retired Deputy Collector, Jaganj, Murshidabad District.

I have gone through and offered serious thoughts on the draft Hindu Code as proposed by the Rao Committee, appointed by the Government of India. My ideas are given below on the subject.

The Government of India, have absolutely no business to and authority for "formulating a Code of Hindu Law" as they have been prohibited, by the Queen's Proclamation of 1858, to take any action interfering with matters with regard to religious practices and customs of the country. Nor the existing laws and usages have been proved to be "not acceptable to the general Hindu public", which may justify the draft to be taken in hand. The draft has neither been sufficiently widely published to extricate proper, well-weighed and unbiased exposition and criticism of the draft from the orthodox class of erudite Sanskrit scholars (the pandits) who are generally now-a-days but wrongly accused to be the exclusive custodians of the shastric knowledge. The framers of the draft, are, to the utter misfortune of the Hindu community, scarcely imbued with strict Hindu thoughts and ideas.

The religious ideas and practices should be left as they are inasmuch as religion is inherent in a Hindu character—may it be his mainstay—and, the general Hindu public is satisfied with the customs prevalent among them and

any idea of change, therefore, is repugnant to their minds.

The matters, which are proposed to be dealt with by the draft Hindu Code are such as are looked upon by the Hindus to be the subject of religion. Unlike the Westerners the Hindus regard religion as inclusive of and co-extensive with morality; thus questions concerning the moral well-being of the Hindus come to be those concerning religion which only directs and forms the basis of the entire Hindu society.

The Bill considers, among others, questions of succession and marriage. These two matters, in brief, have controlled the Hindu social unit which is responsible for building up the rare qualities discernible in Hindu households. The proposed changes in the legislation would mar the Hindu social ideal, which has, up till now, stood out in contrast as it were, with any other ideal, be it Muslim, Christian, Parsee or anything else.

Let us consider the first one, viz., succession. The spirit of Hindu society is to find an unbreakable social unit consisting of a husband, a wife and children, the nucleus of which is always the woman. The household is governed by the lady as the governess alike of the children and the husband. The resources are consumed by the inmates of the family as per distribution, by the wife, herself again being subject to the will of the husband. This is the idea of a Hindu social unit "par excellence". And it is, therefore, that the woman has been prevented from inheriting father's property. The idea of womanhood is that of wifehood (coupled with motherhood, of course) in accordance with which a Hindu mind abhors the picture of a woman, standing by herself supplied with substances inheritable from the father. The proposed legislation will mar hopelessly and irrecoverably the notion of ideal womanhood as conceived by the Hindu culture. So the existing laws with regard to succession should be left to operate as usual as they have operated from immemorial time with results discernible in birth of flowers in Hindu society. It is needless to add, besides the main line of succession, that the laws governing "Stridhan" should also favour the maiden daughter as usually prevalent among ourselves. The proposed legislation on succession will have its desired effect in the share of fragmentation of Hindu property by effusion of disintegration in a peaceful and hitherto satisfied Hindu family.

Let us come to the question of marriage. Marriage is also treated, by the Hindu shastras, as a most serious subject affecting the moral well-being of the marrying couple and their future generation. The idea of unmarriageability among brothers and sisters and cousins of both the sexes has nowhere been more carried out than in Hindu society. The shastras have laid down, that, of primitive men there were a few in every caste from whom the gotra-affairs have sprung up. Persons belonging to the same gotra are of the same blood and thus incapable of mating each other on account of consanguinity. These injunction, must be carried out if the Hindus trust the shastras. Modern thinkers have also lent their support to this system of fastidious choice as this goes a great way towards cooling of the animal passion in human blood. The same system of salutary check on the natural human instinct of sexual self-determination has been carried in the Hindu marriage customs. The couples are not trusted to with regard to choice and the selection solely depends on the cool discerning intellect of the elders.

Various other ways have also been devised to take away the fervour of passion naturally attendant on the couples; to wit, the custom of living within the joint family system with the father; the seasonal give and take of bounties between the parties of the bride and bridegroom; the celebration of the marriage itself in the full fledged religious fashion expressible in the study of the rituals. So, the proposed similarization between the sacramental and civil marriages will go to destroy the above conceived spirit of the Hindu laws and Hindu society. Civil marriages will, always, as have always proved to be, appear before us as mating under the escapable pressure of passion, getting legal protection, but not approval of public opinion, far less religious sanction.

Divorce is another ranking wound proposed to be inflicted on the peaceful, harmonious body of the Hindu polity. Marriage fidelity is the primordial tenet to be honoured in the first place by a married human being. It is, in fact, to be enjoined uniformly on the man as well as on the woman. But to seek divorce on this account is

unimaginable by a Hindu. The enormities cast on the women-folk by the intemperate men-folk have elicited strains of sympathy from every corner of human heart; but that does not warrant the high-handed unwomanlike measure of dissolving the marriage ties altogether; the misfortune should not be attempted to be mended in this manner disregarding religious protection and measures of hope and solace and public awe and admiration; this utter self-denial and superb chastity are the sole foundations of the ideal of unique Hindu womanhood. This toleration of one-sided tyranny has given the Hindu woman the rightful place they enjoy in every heart of every right-thinking human being.

Truly speaking, the Hindus are a religious nation strictly separate from any other, namely, the Christian, the Muslim, the Parsee, etc. Their sole concern is for the upliftment of the religious self realisable through every walk of life. And it is for this reason that the ancient law-makers have laid down the ways of living to be followed rigidly by the believers.

It is not pretended that the rules have not changed and have been inflexible from the origin; but even like the language in which these shastras have been written, viz., Sanskrit, a time was when rules were changed for the last time and since then they have been rigidly inflexible. The little changes which the society needs at all, are not needed in the shastric injunctions themselves as the same are pre-conceived and implied in the Puranas and Itihasas (legends and histories); these are being reflected in the advanced minds of the thinking souls and adopted and incorporated in the inner consciousness of the collective mind of the Hindu society. As instances of these one may enumerate the popular disapprobation of bigamy and polygamy; the prevention of early marriage properly so-called; the Sutte rights; the offering of children as oblations to the confluence of the Ganges and the ocean (Gangasagar), etc. These practices are now extinct throughout this land of ours.

In fine, we exhort the authorities to abstain from attempts of such infringements of right on the Hindu religious usages and customs, laws and practices as such actions are beyond their jurisdiction, unjustifiable from the very nature of the proposed legislation and unnecessary as not required by the present condition of the country.

[There are many other things objectionable if we go into the details of the draft Hindu Code. The whole structure required changes as the same is not based on Hindu ideals in conformity with their shastras and against the growth of Hindu culture and Hindu family.]

170. Mr. Sushil Ranjan Sen, Secretary, Hari Sava, Burdwan.

My opinion rests on the following points:—

(1) The Hindu Law should not be codified and should be left as it is, to be constituted according to the needs and the growth of the Hindu society deducible from the sastras being made and modernized and by the decisions of the Courts of Justice and should not be fettered by any codification passed by legislation.

(2) The main theory of inheritance in Hindu Law should on no account be overlooked on which the whole text rests, i.e., the Pinda theory, so the present position of law of inheritance should not be interfered with by any codification.

(3) About matters or subjects—A. Maintenance, B. Marriage, C. Divorce, D. Minority, E. Guardianship, F. Adoption—should not be interfered with by any codification.

In dealing with the points above mentioned I may be allowed to show in brief the following reasons which in my opinion are cogent and beneficial to the best interests of the Hindus in general:—

(1) The Hindu Law which mainly derives its origin or birth in the sastras of the Hindus which are so vast and magnificent like the ocean; in it there are so many gems and things of most excellent value that they can adorn any society of human beings so nicely that its members should for ever think themselves proud and fortunate for being born and also for breathing their last within its fold.

Codification of Hindu Law will be the codification of the Hindu sastras which is so absurd and preposterous an attempt that I cannot even think of and anyone who even attempts to do that—be he the Central Legislature or any body of men or any committee is no other than a confirmed enemy of human beings in general—not to

speak of the small Hindu community or society in particular.

A code relates only to a system of statute laws, that is, any law whether it proceeds from a subordinate or from a sovereign source which is made directly or in the way of proper legislation; a code as a systematic and complete body of statute law, should supersede all other laws whatever.

A code should be complete, self-sufficing and should not be developed, supplemented or modified though of course by legislative enactments. The wants of society are so varied that it is impossible for the Legislature to provide for every case or every emergency. It is known that never or scarcely ever in any case, can a text of law be enacted so fair and precise that good sense and equity can alone suffice to decide it.

Keeping all these views about codification in mind we may at once try to find if codification is at all feasible in the case of Hindu law—Hindu law is a body of rules intimately mixed up with religion and it was originally administered for the most part by private tribunals. The system was highly elastic and had been gradually growing by the assimilation of new usages and the modification of ancient texts law under the guise of interpretation when its spontaneous growth was suddenly arrested by the administration of the country passing to the hands of the English and a degree of rigidity was given to it which it never before possessed.—See Hindu Law of Marriage and Stridhan, third Edition, page 7.

The same view was expressed by late Justice Sir Asutosh Mukherjee in *Ramgopal vs. Narain* reported in 33 Calcutta (L.L.R.) pages 315, 319. The Hindu Law system is not and does not profess to be exhaustive, on the contrary it is a system upon which new customs and new propositions not repugnant to the old law, may be engrafted from time to time according to circumstances and the progress of society. The Hindu Law and society has the peculiar knack of assimilation of anything good coming into its fold, in a word it is the greatest progressive religion and law in the whole world.

The ever-developing laws of the Hindus need no codification for its progress and growth.

The original authorities on Hindu Law are the *Srutis* or the Vedas, the *Srutis* or the Codes of law and the commentaries. If we analyse its growth from the Vedic and *Smriti* days up to the present day we find in the development of Hindu Law—(i) *Sruti* period the first period, (ii) the period of *Rishi* institutes, (iii) the period of *Mitakshara* and other commentaries—when in this period the original position of *Manu* and the other *Rishi* expounders of law had been completely changed at the time when the commentaries such as the *Mitakshara* and others appeared and became books of authority though the *Rishi* authors of the institutes of Hindu Law were the ultimate referres on all points of law.

Such was the condition of law at the time of the foundation of the British Empire in India and with it a new era in the history of Hindu Law began. The old *Sruti* and *Rishi* commentaries were substituted by later-day commentators. And they were found in the select treatises, such as the *Mitakshara*, the *Dayabhag* and the *Vyabhahara-Mayukha*.

It is since the administration of justice was taken up by the British Courts that the said treatises have come to be regarded as infallible guides and latterly the Privy Council have expressly laid down that the duty of the Judge to see whether a particular doctrine is conformable to the treatise of the particular school of law which is to govern the case.

Collector of Madura v. Mutu Ramalinga,
1 B.L.R. P.C. 1; 12;
10 W.R. P.C. 17.

Thus at the present day what the lawyers and the judges are required to do, is not to enquire whether the text of *Manu* or of any other sage sanctions a particular proposition of law, but whether that proposition is sanctioned by the *Mitakshara* or the *Dayabhag*. These later-day commentaries were compiled in the periods varying from 11th century to the end of the 18th century and in these there are six prominent schools: (1) Benares School, (ii) Dravida School, (iii) Mithila School, (iv) Bengal School, (v) Maharashtra School and (vi) Gujarat School.

These compilations were made to bring Hindu Law in a line with the new order of things by incorporating new customs and discarding obsolete ones.

It is often argued that the development of Hindu Law was checked at the end of the 18th century as no Pandit has since that time set up a new school of law and has compiled commentaries with the result that the growth and development of Hindu Law has been checked—this may be found in two reasons—

(1) When the British administration took up the actual administration of justice the Brahman Pandits have been deprived of their "legislative" authority.

(2) The Indian Legislature have declined except in few exceptional cases to legislate on the subject of the personal laws of the Hindus. In answer to these—it can be said that though the legislatures have practically left the personal laws of the Hindus untouched—whatever legislation there has been, it has been by the judiciary, so, it cannot be said that the rules of Hindu Law have been left untouched by the Government because the judiciary is slowly and silently but certainly changing them. And this is the right process and not the codification that can bring about the healthy and well-meaning progressive change of law being well-suited to the requirements of so vast a society as the society of the Hindus.

It cannot be denied that only the silent influence of social and political forces can bring about the process of change—whereas the codification will only tend to the stereotyping of rules. The supporters of the codification urge further that non-codification at all events necessarily implies stagnation and confusion—though admittedly there is confusion about the effect of different rulings of different High Courts about some matters—which as the days go on are being settled at rest by the rulings of Privy Council and for this the necessity of codification need not be advocated.

It also should be taken into account that Hindu Law is not law in the ordinary sense of the word as is shown in the above—in Hindu Law rules of civil conduct are not distinguished from religious ordinances as in Hindu Law religion and laws are so mixed up that there can be no such codification without giving offence to the people of the Hindu community.

As to the second point—that the whole theory of inheritance in Hindu Law is based on the Pinda theory which is so well-known that nothing should be added here except this that if any attempt is made to circumvent it—the whole family law which is so sacred to the Hindus and which is also the basic principle of succession and inheritance that it should not be disturbed at all and no new line of successors should be inserted into the order of succession.

As to the third point—enumerated in A to F—I am of opinion nothing requires to make a new and change the old principles on which they have hitherto been observed; the present law should remain unaltered and there is no reason to alter any of them.

With these words I beg to be excused for expressing my opinion and I think that every Hindu has the right to demand that the Government should not indulge in any change in Hindu Law which is equal to the changing of Hindu religion—and should also take proper care and precaution not to give indulgence to any one to transgress their own sphere and interfere unnecessarily in the way of passing this into an Act.

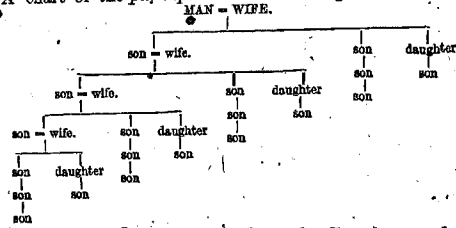
171. Mr. Srishechandra Dasgupta, Lecturer in Bengal, Rajshahi College, Rajshahi (Bengal).

I consider that the propounder of the proposed Hindu Code has been guided by some of the present-day tendencies which are essentially non-Hindu according to the social and religious conception of the Hindus. Thus the essential religious laws regarding marriage and children, and social laws regarding inheritance have been neglected. In dealing with marriage the propounder of the proposed Code has been apparently guided by the principle of monogamy which may be said to be Christian and is certainly non-Hindu; in dealing with inheritance he has been guided by the principle of division of property according to Muhammadan and Christian laws which also have nothing to do with Hindu Law. Because of the presence of the abovementioned facts and similar other things in the body of the Code, it has become a curious admixture of the Christian, Muhammadan and Hindu Codes, and as such the title Hindu Code is a misnomer.

General discussion.—The propounder seems to be guided by the principle of equality of rights between man and woman and as such he does not allow a man to have more than one wife at a time. But this principle has been violated by allowing a natural father to give away his son to another person as an adopted son even at the opposition of the natural mother of whom the child has been born. Again in discussing the order of the seniority of wives polygamy has been admitted, though he allows marriage only on condition that the mate has no other wife at the time. [These points have been further discussed later on.]

The explanation of *sapinda sambandha* seems to be absolutely incorrect, both in theory as well as in the chart given. *Sapinda* means the kinsmen connected by the offering of the funeral cake to the manes of certain relations. These are the direct descendants of four persons, or, according to others, seven persons in ascending and descending line. Again *Sapinda*s are of two orders, the *pitṛ sapinda*s and the *mātṛ sapinda*s. *sapinda sambandha* in marriage means that a person should not marry another person of such (*sapinda*) *sambandha* because even prior to the marriage both could offer *pinda*s to the same person.

It must be noted, however, that though according to one rule, marriage should not take place within *sapinda sambandha*, according to others marriage could take place even within *sapinda sambandha*, e.g., marriage with a *mātula kanyā*, *devara* etc. In these cases some prohibitions, such as those of time (e.g., *Kalkāla*), etc., were made, but not of the *sambandha*. Again there is a distinction between *sapinda sambandha* and *agamyā*. A chart of the *pitṛ sapinda sambandha* is given below:—



From this chart *mātṛ sapinda sambandha* also can be traced if desired.

Dvayamasyān and *illaoma* sons mentioned in the Code have not been properly explained.

Clause 9 of Part VI of the Code dealing with the order of seniority of wives is also not clear.

Certainly I appreciate the attempt of the propounder of the proposed Code to bring the laws of the Hindus in accordance with the present day state of facts. But I distinctly differ from him in his attempt to make it rigid as to encourage the existence of (1) concubines instead of legal wives, or (2) illegitimate children instead of legal ones, or (3) divorce on any pretext, such as the husband has another wife prior to this particular marriage. I also differ from him in his formulation of the Code of inheritance ordinarily outside the *gotra* and thereby help the further fragmentation and subdivision of the property to the enhancement of the already intricate problem of uneconomic holding.

I shall now discuss the different points raised in the proposed code.

Marriage.—In theory, the institution of Hindu marriage is based upon the principle of *gotravārdhī* and not upon personal pleasure merely. A wife is taken into the *gotra* (i.e., not to an individual merely, but to a *gotra*) through a particular member of it, Hindu theory of divorce is also based upon this ideal, i.e., the relation of a wife to the *gotra* of the husband ceases (i.e., the wifehood ceases) if the husband becomes *masta*, or *pravrajita*, etc. This idea of *gotravārdhī* allows, even enjoins a Hindu to marry more than one wife at a time if necessary. Nowadays in practice, however, a Hindu male person generally does not marry more than one wife at a time. So, if on account of love or otherwise the necessity of such a marriage (multiple marriage on the part of a male) arises, provision should be made to legalize it; otherwise number of illegitimate children would grow up, and number of divorce cases would multiply and disturb the peace of family life. This point is very serious and cannot be judged by itself alone. One should think over and again before introducing such a clause, particularly when our neighbours the Muhammadans allow such

marriages according to Muhammadan law. By introducing such a clause, I think, the propounder indirectly encourages the world to be polygamists to embrace Islam and evade the rigidity of the code proposed. This rigidity also is just the opposite of the Hindu law according to the religious point of view. Again, if the question of population be considered, it would be highly improper to restrict marriages in such a way. In this connexion I would refer "The Future Population of Europe and the Soviet Union" by Frank W. Notestein and others, published by the League of Nations for consultation regarding the population problem of the world. I consider that by restriction of marriages, the number of population would be restricted even if nothing else goes amiss; and I consider that the restriction of Hindu population would be criminal. And has not the present World War proved it beyond doubt already? By admitting some provision for *jaraja putra* and *jaraja kanya*, the proposed Code in a way encourages the system of keeping *upapatti* but does not attempt to legalize the natural relation between a man and a woman.

I, therefore, propose the provision of multiple marriage on the part of a man and re-marriage of a divorced wife or widow also. The proposed Code should accept facts which are natural and thus the amount of social offences would be reduced. Hindu *Samhitas* were also formed accordingly.

Divorce.—Divorce is not a new thing in Hindu law. Divorce is enjoined in Hindu Law, only when the purpose of marriage fails, but not on flimsy grounds. The proposed dissolution of marriage merely on the ground of *sapinda sambandha* or due to the existence of a previous wife does not, therefore, seem to be justified. The procedure of the dissolution of marriage should not be too rigid as to induce a person or couple to embrace another religion to effect the dissolution. Nor should such procedure be too flexible as to destroy the peace of the family by making the dissolution frequent. Causes of such dissolution should be those that have been expressed in the *Samhitas*. But dissolution should never be effected on the ground of the change of religion; and this should be expressly stated in the Code. By allowing dissolution on the ground of the change of religion, the proposed Code indirectly encourages a Hindu to change his religion.

Children.—All children are born in the perfectly natural way and the proposed Code should have accepted this fact as was done by the ancient Hindus. According to *Samhitas* children are of two kinds such as (1) a *bandhu* and also a *dayada* and (2) a mere *bandhu* and not a *dayada*. Both were entitled to give *pindas*, but the *dayada* class only would inherit. But this distinction was not very rigid, e.g., a child by a widow (*pauvarchava*) was permitted to inherit according to one sloka of *Manu* and was not permitted by another sloka of the same book. The principle behind this classification was that a child to be incorporated within the *gotra* only would inherit.

The two classes are mentioned below :—

Class I—(a) *Ourasa*—Child by a wife of the same caste,
(b) *Kestraja*—Offspring of the wife by a kinsman or person duly appointed to raise up the issue to the husband,
(c) *Dattaka*—A son given away by his natural parents (not by father alone) in persons engaging to adopt him,
(d) *Kyrima*—Adopted son (not *dattaka*),
(e) *Judhotpanna*—A son born secretly,
(f) *Apavidha*—a son rejected by his natural parents and adopted by a stranger.

Class II—(a) *Kanina*—son of an unmarried woman,
(b) *Sahodha*—Son of a woman pregnant at marriage,
(c) *Krita*—one purchased as a son,
(d) *Pauvarchava*—Son by a widow remarried or otherwise.

(e) *Swayamdatta*—One who has given himself up as a son.

(f) *Parasava*—Son by another's wife.

It may be noted that a son treated from the point of view of the father cannot be a *jaraja*, and so *jarajaputra* is not a mentioned in the list given above. The term *jaraja* was mentioned by the ancient Hindus only in connexion of the son from the point of view of the mother and not of the father, when the father failed to recognize the child as his own. The term *jaraja* has, therefore, been misapplied in the proposed Code.

Adopted Child.—No child should be given away to another person as an adopted child by the natural father without the express consent of the natural mother, because she is also a *pindadhikarini* of the son born of her. In the proposed Code the consent of the natural mother is not

at all necessary; the natural father may also give away the son in spite of the opposition of the natural mother. This seems to be rather queer.

Inheritance.—In order to guard the interests of the females, the propounder of the proposed Code has been overzealous and as such has absolutely disregarded the Hindu Law of inheritance according to the conception of *gotra*. Thus a female according to this Code would inherit both from the father's side as well as from the husband's side, but a male would not so inherit on his own account. This would lead to the division and fragmentation of the property to great inconvenience and to unproductivity of the soil. This form of succession is anything but Hindu. According to Hindu theory a person (male) may inherit from his father's side a person (female) may inherit from her mother's side, but not from both sides simultaneously to the disadvantage of the side from which inheritance is obtained. I would suggest inheritance according to *mitaksara* or other Hindu laws with such modifications as to safeguard the interests of the widows, unmarried daughters, children of the deceased sons, etc., so that normally the property may not go out of the *gotra* and uneconomic divisions and fragmentations may not take place.

[Further analysis of the proposed code and alternative and constructive suggestions were not possible due to shortness of time which has been allowed to me.]

172. Chuadanga Subdivisional Hindu Mahasabha (Secretary—Babu Pramatha Nath Wath, B.A.)

1. The proposal of the Bill as to inter-marriage to be introduced in the Hindu society cannot be supported in the present state of the Hindu society.

2. Marriage within the prohibited limit is against the basic principles of the Hindu Society.

3. The right of a Hindu girl both to her father's and her husband's property cannot be admitted.

4. The dissolution of marriage and the system of divorce should be postponed for the time being.

We are not for any drastic change. Change will come as a matter of course according to the demand of the society.

PART II.

Section 4.—(1) The female heirs should in all cases get limited interest in the property inherited by them.

(2) (a) Daughter should not be a co-heir along with the son (class 1).

The following reasons should be excluded :—

(b) All persons except son's daughter's son in class 2.

(c) Sister, brother's daughter and sister's daughter in class 3.

(d) Father's sister in class 4.

(e) Father's father's sister in class 5.

(f) Mother's sister and mother's sister's son in class 6.

If the abovementioned persons are included as heirs in direct opposition to the hitherto recognized principles of Hindu Law of Succession, the anomalous position created by the provisions of the proposed Code will lead to disintegration of the family property and will be a source of constant dissension and litigation amongst the divorced alien elements introduced as heirs by the Draft Code.

PART IV—MARRIAGE AND DIVORCE.

Chapter I—Section 3.—The Hindu Society for all practical purposes has adopted monogamy as a rule. There should therefore be no impediment to a Hindu husband marrying a second wife during the lifetime of the first wife whereby circumstances it becomes necessary for him to do so with the consent of the first wife.

There should be no restriction to inter-caste marriages amongst Hindu as otherwise it will be a retrograde step.

173. A Representative Committee of the Brahma Samaj.

We have carefully considered the draft Hindu Code, and welcome the provisions relating to intestate succession and marriage dealt with therein.

We note that it is proposed to apply the Code to Brahmans under the definition of the word "Hindu", as also to persons like Buddhists and others professing other religions. Without going into any controversial questions of religious or doctrinal differences, we feel that it is necessary for us, Brahmans, to make some submissions to the Hindu Law Committee, so far as they vitally affect us. We recognize that unless steps are taken now, it might be too late to get any amendments introduced later on, if the Draft Code once becomes a part of the law of the land.

The points on which we would like to make our submissions for the present are as follows: We reserve

the right to make further submissions should that be necessary :—

PART I.

Application of Code.

1. *Clause 2 (2).*—We would strongly urge that the following amendment should be made, namely, that in Clause 2 (2) after the word 'Jain', add the words 'or Brahmo'.

The reason for this amendment is this—

Although we are willing to be included in the term 'Hindu' for the purposes of this Code, we desire to stress the fact that Brahmos are not a sect or sub-caste of the Hindus, and should not be treated as such, as there are people of other races also among them. We believe in the harmony of all religions including the Hindu, the Muhammadan, the Christian and other religions. We cannot countenance communalism in any shape or form, or submit to anything which may lead colour to this. We, therefore, strongly urge that the above amendment should be made to meet our case.

If the above amendment is made, it would not be necessary to make any mention of Brahmos in Illustration (d) of the said clause.

If, however, the above amendment is not found possible, then we urge that the said Illustration (d) in Clause 2 (2) should be amended in the following way. The said illustration at present is as follows :—

"A person who joins the Brahmo or the Arya Samaj is a Hindu."

In our view, it should be as follows :—

"(d) A person professing the Brahmo religion or one who joins the Brahmo or the Arya Samaj is a Hindu."

The reason for this suggested amendment is that the expression "a person who joins the Brahmo Samaj" does not necessarily include all Brahmos; also that different interpretations may be given to the word "joining the Samaj." Is a Brahmo who was not a member of any particular Samaj, e.g., the Sadharan Brahmo Samaj, etc., to be regarded as a Brahmo? In the Draft emphasis has been laid on the word Samaj. We wish to base it on the broader ground of faith or persuasion.

2. *Clause 6.*—We note that the Special Marriage Act (III of 1872) is going to be amended by deleting the portions introduced in 1923 by Act XXX of 1923, popularly known as Gour Act.

We desire to point out that the Special Marriage Act was enacted at the instance of and for the benefit of Brahmos, and therefore it may be noted in this connexion that most of the present Brahmos have been married under the original provisions of Act III of 1872 (and not under the amended provision of the Gour Act). In such marriages, the parties have declared that they do not profess the Hindu or the other religions mentioned therein. Presumably, therefore after the proposed Code becomes law and Brahmo marriages have to be under the Code, the said Act III would not be available to any Brahmo, who by virtue of the definition of "a Hindu" in the Code would be included under the wider term "Hindu." We want to be certain as regards—

(a) the law of the succession which will govern those who have hitherto married under the original provision of the Act, declaring themselves as not professing the Hindu religion;

(b) whether in future a Brahmo desiring to marry under the original provisions of Act III would be allowed to do so after the Code becomes law, and if so, what law of succession would govern them.

As to succession—

Whichever law of succession is made applicable to Brahmos (i.e., whether the Indian Succession Act or the succession under the Code) it should be made quite certain and unambiguous.

A good deal of uncertainty and confusion has been created by some judicial interpretations (notably in 49 Cal., 1069, per *Greaves, J*) whereby it seems that an anomalous position has been created. Thus, a person who has married under the original provisions of Act III of 1872, after declaring that he did not profess the Hindu religion—has been held to be governed by *Hindu Law*; whereas a person who has married after declaring that he professes the Hindu religion after Gour's amendment, is governed under section 24 of the said Act by the *Indian Succession Act*!

All we now want is that the position as to succession, so far as Brahmos are concerned should be definitely and

clearly stated, so that there shall be no uncertainty in the matter.

Therefore, we ask for a clear statement in the Code itself as to what law of succession will apply :—

(a) Brahmos who have up to now married under the original provisions of the Act III of 1872, declaring that they do not profess the Hindu religion.

(b) To Brahmos marrying in future under the original provisions of the said Act-III, if the same is allowable (see above).

(c) After the suggested repeal of the provisions of Gour's Amendment to Act III (which makes Succession Act applicable to those who have declared themselves as professing Hindu religion)—What law of succession will apply to those who have already married under those provisions?

We desire that the Code should provide that—

(i) those Brahmos who have *hitherto* married under the original provisions of Act III, should be governed by the Code;

(ii) that in future, Brahmos marrying under the Code shall be governed by the Code;

(iii) that in future, persons including Brahmos who desire to marry under the original provisions of Act III should not be debarred from doing so and their succession should be governed by the Indian Succession Act.

PART II.

3. The Draft Code provides that the daughter takes half of a son's share [clause 7 (d)], and there are similar clauses making a distinction between a son and a daughter.

On principle, we Brahmos would like to make no distinction between the rights of a son and the rights of a daughter. We would therefore ask that wherever unequal distribution has been provided for under the Code, this should be suitably amended.

PART IV.

Degree of prohibited relationship.

4. *Clause 1 (b).*—It may be considered whether similar prohibition should not be introduced in the case of first cousins, being "children of a brother and sister, or children of two sisters." Such marriage between first cousins are repugnant to us. If this amendment is made then add as the end of clause 1 (b), "or the children of a brother and a sister, or the children of two sisters."

Sacramental Marriages.

5. The portion under the words "Alternative to Clauses 3, 4, 5," [being clauses as in the Bill (as introduced) and not in the Code]—contain provisions which are wholly inapplicable to Brahmos and we reject the same. We proceed to deal with the provisions for "Sacramental Marriage" as in the Draft Code.

Ceremonies required.

Clause 4.—The Draft Code provides in this clause 4 (1), that a Sacramental Marriage may be solemnized in accordance with "customary ceremonies," and "custom" is defined at page 1, clause 4, and must have the force of law.

To avoid any question as to whether the usual Brahmo ceremony satisfies the conditions necessary for its being considered a "Custom" having the force of law, we would strongly urge the following amendment to clause 4 (page 14).

At the end of clause 4 (page 14) add—

"(3) A sacramental marriage may also be solemnized in any religious form which shall be generally acceptable to the members of the community to which the parties belong, and which shall include the making of mutual promises as to one party taking the other as his or her spouse."

The reason for the above amendment is obvious. The provision as to "mutual promises," at the end of the above suggested sub-clause (3), has been inserted as we consider such provision essential, specially if there is no registration.

We may add that Brahmos do not perform any ceremonies before any *sacred fire*, and therefore sub-clause 4 (2) does not apply to them.

6. As regards Civil Marriage

We would prefer to have the word "solemnized" substituted for the word "contracted," wherever it occurs in this chapter.

The word "solemnized" is used throughout in Act III of 1872. The word perhaps lends more solemnity to a marriage ceremony.

Fourth schedule.

In item 2, containing the declaration to be signed by the parties—

Add, after the word "Jain" the words "or the Brahmo."

The reasons for this amendment have already been stated above.

174. Mr. S. C. Roy, Retired Government Officer.

The proposed legislation is of a far-reaching character affecting the Hindu community as a whole.

2. Permit me, Sir, to offer, at the outset, my hearty congratulations to your committee for the noble task undertaken by it for the amelioration of the social and moral conditions of the Hindu society divided as it is into diverse sects, communities and languages whose cultural outlook, traditions and customs greatly differ. The reform movement initiated by the Brahmos of halcyon memory in the middle of the Nineteenth Century awakened the consciousness of the Hindus to the evils that were rampant in their society. And a realization has now come that the salvation and redemption of the Hindu society must be the primary concern of our people, if it has to hold its own in a world which is striving for self-determination and self-realization.

The Draft Code is of special interest to the Brahmos as a community as it is for the first time that they are going to be recognized by law as Hindus; and as the Hindu Laws are to be made applicable to them. Although the Brahmo community forms a comparatively small section of the vast Hindu society, its views should command respect as representing the opinion of a section of the people whose advanced ideas about social matters are well-known. A committee of the Calcutta section of the Brahmo Samaj has already submitted a note to your committee, but for want of sufficient time at its disposal the committee's note was unfortunately sketchy and more or less in the form of a catechism. It did not submit the considered opinion of the Brahmos as a community on the various points deserving their consideration. I, therefore, take the liberty to submit for the consideration of your committee my personal views as a Brahmo which, I believe, will be shared by many of my co-religionists.

3. *Definition of 'Hindu'—Clause 2, Part I of Draft Code.*—As Brahmos we are much interested in the definition of the term 'Hindu' which calls for our special consideration. If one may be permitted to say so, it looks as if Brahmos have been roped in somewhat as an act of grace through the back door, they are not recognized as Hindu by birth nor is their religion considered to be a form of Hinduism. Apart from the technical objection that recourse has been taken to extend the scope of the definition to a Brahmo through the medium of "Illustration" by excluding him from the substantive provision in the Code, we Brahmos as a community cannot agree to being relegated to a position which is hardly consistent with our sense of self-respect. We claim that if we are to be treated as members of the Hindu society as equal partners with the other sections, this should be based on the broad principle of religion. The transcendental ideals and conceptions of Brahmoism, its living faith in one God and its spirit of harmony should be recognized as being an advanced form of Hindu religion without any affiliation to it. It is, therefore, strongly urged that persons professing the Brahmo religion should be placed in the same category as those professing Buddhist, Sikh and Jaina religions in sub-clause (2) of clause 2. Incidentally it may be pointed out that "A person who joins the Brahmo Samaj" is not *ipso facto* a 'Brahmo' for, there are many Hindu members of the Brahmo Samaj who have not embraced the Brahmo religion.

4. *Intestate Succession—Part II of Draft Code.*—The removal of sex disqualification, abolition of the principle of survivorship and also the right by birth in property by sons by succession from their fathers, and the recognition of the widow and daughters as 'simultaneous heirs,' in intestate succession as well as the abolition of limited estate for women and devolution of interest in joint family property being the main principles underlying the provisions in regard to intestate succession a very vehement opposition has been made by a section of the Hindu community. As a champion of the cause of women the Brahmo Samaj has all along advocated the principle of equality of rights of the female sex both in secular and religious matters; and it has always been its aim to give effect to it in actual

practice consistently with the principle of social justice. Apart from the ideal of justice and equity which should govern our actions it has to be remembered that as a social being man has certain responsibilities and duties binding upon him; and they are of different orders in relation to the state, the society and the family. The centre of gravity of human life is the family with which the right of private ownership is inter-related. Consequently it is not merely his sense of responsibility and duty, but his natural love and affection as also the inherent instinct of man that prompts him to do all that lies in his power to maintain the integrity of his family with its property in fact. It is true that in modern age the spirit of individualism has widely spread in the economic sphere and led to the loosening of family ties, whilst the cult of communism which is spreading in our country is more or less antagonistic to private ownership. But so long as the present structure of the society remains as it is, his family will remain the object of first and foremost concern of the head of the family. Justice demands that the father of family should deal with his children justly and equitably. But no one would want to claim that this means he must deal with all his children on a principle of strict mathematical equality. Rather does the father deal out to all his children according to their merits. This is true distributive justice which does not differentiate a daughter from a son. The principles discussed above should be made generally applicable in all cases of succession. And legislation should not override them. It is, therefore, a matter for serious consideration whether the proposed enactment would not be prejudicial to the interest of the Hindu society; and whether a more flexible and yet equitable provision could not be made for meting out true distributive justice to all the members of a family, irrespective of their sex. The expediency of limiting the share of the daughter in intestate succession to half of that of the son will be no answer to the objection raised above.

5. *Maintenance—Clause 3, Section II, Part III-A of Draft Code.*—The omission of provision for the education of dependants falling under the category of minor son, unmarried daughter, widowed daughter or widowed daughter-in-law out of the estate of the deceased is open to serious objection. If the existing law is silent on this, the omission should be made good for reasons which are too obvious to be mentioned. The society cannot afford its members being denied the light of education; and it would be a standing reproach to the Hindu society if it did not remedy this defect.

Clause 5—Dependants enumerated.—On the basis of mutual fidelity in marriage between man and woman the Draft Code has provided for monogamous marriage. As Brahmos we look upon marriage as a moral and spiritual institution: a man must be true and faithful to his wife as she must to her husband. The dictates of Brahmo moral principles reject any form of deviation from the high ideal of marriage. And we cannot be a party to the recognition, whether directly or indirectly, of faithlessness on the part of a married man. We would, therefore, strongly object to a minor illegitimate son, an unmarried illegitimate daughter and a concubine being treated as 'relatives of the deceased' who 'shall be deemed to be his dependants' and shall be entitled to maintenance. It is preposterous to think that while chastity is demanded of a woman, a premium should be given to immorality and inconstancy on the part of a man. Even if such evils have been practised in Hindu society and the existing law has connived at them, it would seem that the time has now come to purge it of them. The law should not countenance concubinage in any way. The state may take care of illegitimate children, but they should in no circumstances be treated as 'relatives' of the deceased and given a position of equality with the legitimate wife and children. It may, on the other hand, be urged that the illegitimate children should not be penalized for the sins of their father. As a compromise it is suggested that the practice should cease once the Code has come into operation. Such procedure has been adopted with respect to certain forms of adoption which have hitherto been in vogue but which it is proposed to abolish in future [of note to sub-clause (1) (c), clause 2, Part II and clause 1, Part VI, Chapter I of Draft Code].

6. *Sacramental marriage—Chapter I—Part IV of Draft Code.*—We would prefer clauses 3, 4 and 5 as drafted by your committee as the provisions thereof are not repugnant

to our principles and as the marriage solemnized according to the customary ceremonies of the Brahmo Samaj will be recognized as 'sacramental marriage'—vide clause 4 (1) as drafted by your committee. We claim that Brahmo marriage which is solemnized with religious rites and vows taken in the name of God is the highest form of sacramental marriage and should be recognized by law.

7. *Dissolution of marriage—Clause 30, Chapter III—Part IV of Draft Code.*—The principle that any provision for divorce that may be adopted in the Code should operate impartially as between the husband and the wife is commendable; and it is also agreed that divorce should not be allowed except in circumstances in which justification for it is of the plainest description and where it will raise the standard of morality. But if there is definite and undeniable proof of a husband or wife being 'incurably of unsound mind,' 'suffering from a virulent and incurable form of leprosy' or 'suffering from a venereal disease in a communicable form' is not such a case of the 'plainest description' to call for immediate dissolution of marriage? It is not, therefore, understood why a stay of seven long and painful years has been prescribed before the aggrieved party can present his petition to the competent Court. The period of seven years, it seems, has been fixed arbitrarily as medical opinion does not appear to recommend it. It is cruel to force one—a husband or a wife—to submit oneself to be tied in wedlock for such a long period and to live a life of perpetual mental anguish with one suffering from a loathsome disease or an incurably unsound mind. Is it not unlikely that such a harsh provision will be the fruitful cause of immorality thereby defeating the very object of the law? In all such cases the Court will necessarily have to rely on expert medical opinion and the time factor will have no relevance. Thence why not dispense with the proposed embargo? There is another aspect of the question involved which seems to have been overlooked. Social hygiene and social welfare demand that persons suffering from venereal disease and leprosy as well as those of incurably unsound mind should not, in the best interests of the society, be allowed to beget children suffering from the sins of their parents. There should be enacted a special legislation prescribing the marriage of such persons. Such a law is now overdue.

II

I venture to submit the following additional suggestions on the question of intestate succession dealt with in paragraph 4 of my previous opinion. In doing so I have been prompted by a sense of justice and equity, having due regard to the pressing need of the social and moral uplift of the Hindu community. It is a matter for deep regret that a hostile attitude has been taken by a section of the Hindu community in Bengal against the proposed codification of the Hindu Law which has been undertaken in its best interests, and that no constructive suggestions have yet been made.

In paragraph 4 of my previous letter I made an appeal for the application of the principle of distributive justice in intestate succession without sex distinction. At the same time it is recognized that it is difficult to enforce this principle in actual practice unless it could have been possible to set up an agency which might decide each case on its merits. Having regard to the backward social conditions still prevailing in Bengal and the litigious tendencies of our people one is forced to entertain grave doubts as to whether the proposed law of intestate succession, if passed, would automatically operate without the intervention of the state at least in the initial stage, for it is difficult to reform a society by legislative action.

It may be pointed out *inter alia* that the provision for the application of the Partition Act of 1893 in order to safeguard the interests of the members of the joint family may not be of real help to them or the daughter interested in the share of a property. For, the members of the joint family may not be in a position to purchase the daughter's share even if they wished to do so. If, on the other hand, the daughter's share were purchased by the other members, what guarantee would there be that the daughter should not be robbed of her money? Similarly the expedient provided in clause 28, Chapter II, Part IV, that the property given in marriage as dowry should be held in trust for the benefit of the wife, with the object of checking the dowry evil, is not likely to be of any avail unless she is in a position to enforce her right to the

property on attaining majority—a possibility which is very doubtful in the present condition of the Hindu society.

In the circumstances set forth above it is suggested for the consideration of the Hindu Law Committee whether a provision should not be made for the setting off of the property given as dowry against the daughter's share. The dowry system which is eating into the vitals of the Hindu society by pauperising the middle class families, is an evil which is so rampant in our country, has to be countered, if not eradicated root and branch. And the best way of checking it is to neutralize its baneful effect in the manner suggested above. In this way a long overdue and momentous measure of social reform could perhaps be achieved.

175. Convention of the Teachers of the Deaf in India.

Our attention has been drawn to the proposed draft Hindu Code. The association that we represent has a right to be heard in matters affecting the deaf-mutes of the soil. We desire to be orally heard by the Committee in Calcutta. We are, however, glad to be able to support the amendment sought to recognize the right of the deaf-mutes to inheritance, for the following among other reasons:

(1) Moral grounds—the crippled children of the deceased should have better right to inheritance. It is said in the Bible that 'Ye shall enter into another man's labour.' The matter of inheritance is one such thing. So it is only moral to let them enter into another man's labour who cannot labour themselves.

(2) The deaf-mutes were denied inheritance pre-eminently on the ground of inability to manage the inherited property. But the present-day education of the deaf-mutes has greatly altered the situation. They, when trained, are made useful citizens able to support them and their family. We have a long list of such qualified deaf-mutes who compare very favourably with their fortunate hearing brethren.

(3) A minor son is not denied inheritance. His estate is looked after till he is adult. A deaf-mute child likewise may come to possess all authority over his estate when he is properly educated to assume such responsibility. The Post-War Educational Plan (Sergeant Committee's Report) visualizes compulsory education of the deaf-mutes by conscription. Any legislation should, therefore, take into cognizance the march of events.

(4) If the recital of 'Pinda Mantras' is essential for inheritance of the paternal property, a present day trained deaf-mute is capable of such function.

(5) A deaf-mute is not synonymous with an idiot. A deaf-mute untrained to speech can have both impression and expression by natural signs. If a deaf-mute as such is accepted as Court witness it is difficult to see where is the bar in accepting him as a right person to inherit his paternal property.

(6) Deaf-mutes are entitled to all other important sacramental institutions such as, 'Sacred Thread Ceremony,' 'Marriage,' and 'Shraddh ceremony,' etc. Presumably then bar to inheritance is more eccratic than religious.

We submit the above in the hope that the well-resolved stand taken by the Hindu Law Code (Amendment) Committee will be maintained.

176. The President of the Convention of the Teachers of the Deaf in India.

I, as President of the Convention of the Teachers of the Deaf in India, must at the outset accord our strong appreciation of the amendment proposed by your Committee in clause 23 of Part II removing the bar to the right of inheritance which the deaf-mutes have been labouring under so long. It is a right move in the right direction. The principle on which the disqualification was based, namely, that 'These persons are incompetent to perform the religious rites which conduce to the spiritual welfare of the deceased' having lost much of its force by reason of adequate and up to date scientific education of the deaf and dumb boys it is only just and proper that the staggering disadvantages which were put in their way should also cease to exist. It may be useful to point out in this connexion that a very high percentage of these boys when properly trained become very useful members of society able to support themselves and their family. The Post-War Educational Plan (Sergeant Committee's Report) visualizing compulsory education of the deaf-mutes by

conscription will further facilitate acquisition of all the necessary equipments by the boys to render them fit and intelligent members of society as their normal brethren. We have a long list of such qualified deaf-mutes who as regards intelligence and ability to manage their own affairs, can compare very favourably with their fortunate hearing brethren. Moreover the proposed amendment is very salutary in another respect in that it has set at rest the doubts and anomalies as regards succession, created by different contradictory judicial interpretations given to the text of Manu and Yajnaalkya on which their exclusion from inheritance was based and thereby has removed the discontent prevailing in the society.

Finally as we constitute a body who can speak with some amount of authority on the question of education of the deaf-mute I would crave the indulgence of an opportunity to place our views in greater detail in support of the amendment before your Committee if and when you would consider it necessary. For this purpose Calcutta would suit us best.

177. Maharajadhirajah of Darbhanga, President, Bengal Landholders Association.

My Association is of deliberate opinion that this is not the appropriate time and opportunity for embarking on a legislative measure of such vital importance to the entire Hindu community. The matters sought to be altered, modified or otherwise amended go to the roots of the vast Hindu society and as such require cool, sober and dispassionate consideration in the light of the changes which are occurring in the thoughts of men and in the structure of the society and so my Association thinks that men's minds are now unsettled, by reason especially of the war situation, therefore the Code should be brought before public for consideration sometime after the war is over.

My Association thinks that the Code as it stands now is highly objectionable and detrimental to the stability and well being of the Hindu community. The draft Code is definitely prejudicial to the rights and interests of the Hindu propertied classes in general and to the Hindu women in particular.

My Association is of opinion that it is unfair and unjustifiable on the part of the Government to interfere through legislative measures with the religious rights of the Hindus on the plea of giving them a unified code of laws to the Hindus governed under all schools of Hindu Law.

Hindu religion, Hindu culture, Hindu customs and usages and Hindu law are indissolubly connected and therefore any attempt to seriously interfere with any of them as they stand now should be resisted, in view of the fact that they are integral and inseparable parts of the vast Hindu population and that they derive their origin from Hindu scriptures and revelations of Hindu sages in days when Greece and Rome were not even heard of.

So my Association begs to enter its emphatic protest against any attempt at legislative interference with Hindu law and customs as they are now, simply because a section of the Hindus declare themselves to be progressive and are anxious for the radical changes as envisaged in the Hindu Code.

178. Srimathi Anurupa Devi.

It has been said yesterday by some ladies that opposition comes from those who had done little social work among women and that they themselves had done a good deal and that they supported the Code.

Social work is never the monopoly of any one particular group. Elderly women are not born elderly. They had their younger days. And they too began their social work long ago, in fact much earlier than those younger generation was born. Some of the witnesses said yesterday that the younger generation was all in favour of the Code. I do not know how they can speak in the name of all the younger generation. At best they can speak either on behalf of their associations or for themselves personally.

Social work is never of one kind. In our large Hindu families, e.g., the Maharani of Natore, the Mulliks of the Marble Palace, etc. I am only giving two names, much provision is and has been made for social work. Relatives in indigent circumstances and destitutes are regularly supported and maintained. In big families there is regular provision made by Debutter Trust to feed large number of poor people daily. And who looks after them? Is not that social work?

During the last terrible famine in Bengal, large number of people were saved from cruel death by having their food at those Chatras (52) particularly those run by the Mulliks of the Marble Palace, the Maharaja of Natore, the Devs of Seva Bazaar, etc.

Is looking after the free kitchens run out of funds collected from wealthy Marwari gentlemen, the only kind of social work? And do these ladies who look after the kitchens created years ago by trust by their ancestors do nothing of social work?

I hope you will not call it pedantry were I to mention the names of a few of the social work with which I am connected and which connection in some cases runs over four decades back. As early as 1905 in association with the late Mrs. Madhuri Chakravarti, daughter of Poet Tagore, we founded a girls' school at Muzaffarpore in Behar. Previous to that there was no provision of female education there. I was the secretary of the school as also of the Muzaffarpore Mahila Samiti for a number of years.

2. Hindu Mahila Asram at Benares, started in 1918, for widows, orphans, and other helpless women. We attempt to help them to earn their own livelihood by learning little handicrafts.

3. A branch of the aforesaid institution is at Calcutta and I am the President of the Board of Management of both the bodies.

4. Matri Math at Benares (District Board).

5. Kshirade Basini Silka Asram.

6. Nari Siksha Parishad.

7. Bani Pith High School.

I am the President of all the above institutions.

8. Vidyasagar Bani Bhavanisilpa Asram of widows—A member.

9. Nari Kalyan Asram—A widow's home started over 15 years back by the late Acharya P. C. Roy for abducted, kidnapped and fallen or repentant women. I am the Secretary of the Ladies' Committee.

I also like some of the witnesses yesterday, request the committee to see for themselves any of these institutions and have the views regarding the proposed Hindu Code of their inmates to find out if any one of them would support the proposed changes.

While coming here I received by post a letter from some girl students of the Calcutta University. The letter speaks for itself. In that letter the writers have expressed against the changes in the law of inheritance. That is they do not want to share their paternal properties along with their brothers. This is sufficient reply to those who came to speak for all the girl students of the Calcutta University.

179. Mr. Benode Behari Das, Medical Practitioner, Secretary, Unregistered Medical Association, Baherhat, Khulna.

1. Reference—Entry (1) under class I, clause 5, page 6.—Only when the intestate is survived by no 'simultaneous heirs' other than a daughter, the daughter will be entitled to inherit her father's estate. If a daughter succeeds to her father's estate while he is survived by other simultaneous heir's it is likely to give rise to various trouble and disturbances in many cases.

Just as an adopted son, after the change of his former gotra, is divested of all rights over the property of his former father, similarly a married daughter also, after the change of her gotra due to marriage, should not be entitled to her father's property. Unmarried daughters should, prior to their marriage, be entitled to maintenance out of their father's estate and treated like married daughters after marriage. But if a married daughter has no mean of subsistence and if the income of her father's estate is such that the heir to that estate may after defraying the cost of the maintenance of his family render help to others it should be obligatory on such heir to help that destitute daughter, as far as practicable, in meeting the cost of her maintenance.

2. Reference—Clause 13, page 11—Rights of women over stridhana.—If there are no successors excepting the said woman, the latter shall have the same right over that property as a man has over the property acquired by him. But if there are other successors, the arrangements regarding the said property should be made as it used to be before the commencement of this Code.

3. Reference—Sub-clause 4 of clause 7, page 23.—Regarding the consent of the guardian shall not be required in the case of the marriage of a minor widow. In order that people may not through enticement, or under the spell of allurements, or by force carry away and marry a widow who is a minor and has not yet fully developed her power of judgment, it should be provided that the consent of her lawful guardian should be obtained before her marriage.

4. Reference—Clause 30, "Decree for dissolution of marriage".—If the wife is barren or diseased, the husband may divorce her and take another in her place. But if the divorced wife has no means of protection or maintenance, it should be obligatory on her former husband to look after her, to protect her against rape and oppression, to arrange for her medical treatment when she falls ill and to provide for her maintenance in general.

5. Reference—Clause 10, Part V—"De facto guardian not to deal with minor's property".—If the disposal of the said property becomes unavoidable and if thereby the chance of gain becomes greater than that of loss, the de facto guardian of the minor shall be entitled to dispose of the property on behalf of the minor

(a) As for example, when some portion of the minors' property or the whole of it is going to be lost on account of debts incurred or due to some other cause the guardian shall in that case be entitled to mortgage or sell a portion of such property in order to save the remaining portion.

(b) Or, if the said property is in such a condition that its disposal by the said guardian bring about improvement regarding it or cause an increase in the income of the property, he shall be entitled to dispose of, or otherwise deal with the property.

(c) Or, if the minor falls ill, he shall be entitled to dispose of or otherwise deal with the property to such an extent as is necessary to meet the cost of the medical treatment of the minor.

6. Reference—Sub-clause (3) of Clause 1, Chapter I, Part VI.—If it is desired by the person adopting as well as by the person giving in adoption there should not be any bar against the *Dvayamushyayana* form of adoption.

7. Reference—Clause 3 of Chapter I, Part VI.—If there be no bar against the adoption of a son, there should be no bar against a daughter to be taken or given in adoption.

8. Reference—Sub-clause (i) of Clause 16, Chapter I of Part VI.—A person who is not actually born at the time of adoption but is in the womb should not be regarded as dead. It should therefore be so provided that an adoption must not be made till such a person is actually born and it is ascertained whether such a person is still-born or alive.

9. Clause 19 of Chapter I, Part VI, page 41.—In cases where an heir who is a blood-relation of the adoptive person is born after the latter has adopted some one it should be provided that such an heir should also get some share in property in question.

180. Pt. Kaumudikanta Nyayatarkatirtha, Sastracharya, Tarkapanchanan, etc., Adhyaksha, Visweswari Chatuspathi, Gauripur Lodge P.O. and District Mymensingh.

1. Some of the provisions of the Code are entirely against the injunctions of the Hindu Sastras and extremely harmful to the Hindus in general. It cannot therefore be supported that this Code should be passed into law.

2. There cannot be any uniform Code of Hindu Law for the whole of India. India is a vast country peopled by many crores of Hindus who live in different provinces and whose customs, usages and conventions and tastes vary widely. It is fundamentally the rules laid down by the Aryan sages that regulate the social and religious life of the Hindus. Such being the case, no Hindu can ever violate these rules. Although some modifications may, as necessary, be allowed, yet no provisions which seek to tamper with the Sastric injunctions and are harmful to the society can be justified.

3. Emphatic protests are recorded against the provisions for the daughter's heirship, dissolution of marriage, *sagotra* marriage and certain cases of adoption that are opposed to Hindu religion and highly prejudicial to the interests of the society. If these provisions are passed into law, the solidarity of the Hindus will be endangered and lost. The "chastity of women" in which the Hindus always take pride is an

unimaginable thing having no parallel in the world. Possessed of a non-Hindu mentality a section of the so-called Hindus, mentally degenerated as they were and drawing their inspiration from a foreign system as they did, endeavoured to introduce the system of divorce and that of marriage irrespective of caste, creed and *gotra* and as a result the Civil Marriage Act was passed. This Draft Code goes a step further and suggests amendments regarding Hindu marriage which are of far-reaching consequences. From the nature of these amendments it appears that the ideal of chastity destroyed and the conjugal life of Hindus will become vitiated and troublesome.

4. Dayabhaga, *mitakshara* and other works of this kind have clearly discussed the question of succession. The direction of the sages given therein have no right of inheritance assigned to a daughter while the deceased is survived by a son. These also contain provisions for defraying marriage expenses of a daughter according to one's capacity, in order that she may be married to a suitable bridegroom. In spite of this if a daughter is given any title to her father's estate, the result will be that she will never leave her husband's house and come to live in that of her father's. Consequently it will become unavoidable for her to sell off her share in her father's estate and that to the highest bidder who may happen to be her brother's enemy. This will lead to complete estrangement between the brother and the sister. In most cases therefore the brother will find it difficult to live in his father's house. A law has been passed regarding the life-interest of a widow in her husband's property even if the deceased husband is survived by a son. There is no justification whatsoever for giving her a further right of transfer or gift in supercession of the said provision of law. It is on the authority of the *sastras* that the different parts of this country follow different practices and customs. There are many utterances of the *rishis* describing and sanctioning different customs and religious practices for different places. So there cannot be any uniform legislation for all the areas. It is necessary that provisions should be made for the maintenance of the widow of a predeceased son and her children, if any, and it should also be provided that in the event of the death of the widow's father-in-law the son of his predeceased son shall take an equal share along with other sons of the widow's father-in-law.

181. Mr. Pares Nath Bhattacharya of Gohat, Gohat P.O., Hooghly District.

The object of the Draft Code is noble. But what has been said in illustration (a) of Part I regarding the definition of 'Hindu' cannot be supported. It is not reasonable to include a renegade in the Hindu fold. So, the view that persons professing any religion may be converted to Hinduism cannot be accepted. Injustice has been done to a son by giving a daughter the right to succeed to both her father's and husband's estates. The son should alone be regarded as an heir to his father's property. Dissolution of marriage is against the injunction of the Hindu *sastras* and hence cannot be supported. Registration of marriage is also unjustifiable. As regards other matters, some provisions are good, while others deserve no support. If the principles laid down in the Hindu scriptures are kept intact and then a piece of legislation like the present one is taken in hand everybody will be benefited.

182. Mr. Rames Chandra Biswas of Paigram, Lechhraganj P.O., Dacca District.

Clause 18, Part IV of the Draft Code in which provisions have been made for the registration of sacramental marriage as civil marriage is fully supported by us. But these provisions should clearly state that children born in the interval between the celebration of a sacramental marriage and its registration are to be regarded as legitimate.

183. Mr. Bijayratna Sen Sarma, Sahityacharya Kavyatirtha, Vaidyasastri, Vidhyavachaspathi, etc., Annappurna Ayurvediya Oushadhalaya and Chatuspathi, Alambaraz P.O., Uttar Baranagar District, 24 Parganas.

As regards sub-clause (a) of clause 3 of page 21, it is not desirable that such provisions should be made, because there may be cases where the wife is of her own accord, eager to get her husband married for the second time. So, if the above provisions are at all necessary, it should be added that in case the wife is, while in a cheerful and

sound state of mind, quite willing to get her husband married for the second time there shall be no bar against the husband's remarriage in that case. As regards the provision made in sub-clause (b) of clause 3 at page 21, it is to be noted that there are many classes of Brahmans, such as Vaidiks, Rarhis, Varendras, and the like. Vaidyas (Saraswat and Saindhavs) are also to be regarded as Brahmans. Now, the provisions should clearly state that marriage between any two classes of these Brahmans shall be valid. In the case of caste like Kshatriyas, Vaisyas and Sudras marriage between any two classes of the same caste should also be regarded as valid.

As regards sub-clause (c) of the said clause, the provisions made therein are meaningless. *Sagotra* marriage is supported by us but the marriage with a sister or with the daughter of a paternal or maternal aunt cannot be supported.

As regards the provisions in sub-clause (b) of clause 4, undue prominence has been given to *saptapadi* which is but a part of the *kusandika* ceremony observed by no castes other than the Brahmans. Is the marriage in the case of the castes other than Brahmans not to be regarded as valid for non-observance of *saptapadi*? It will not be an act of prudence, if the social discipline of the Hindus is allowed to be broken up by the introduction of the divorce system among them. In place of dissolution of marriage provisions should be made for severely penalizing the husband (i.e., providing for punishment in lieu of dissolution of marriage). As regards "divorce" or consequences of marriage including duties of husband and wife, there should be a reference to the impotency of the husband.

184. Adhyapaka Gaurisankar Kavya-Vyakaran-Smrititirtha and Baidyanath Kavya-Smrititirtha.

1. Sub-clause (b) of clause 7 of the Draft Code cannot be supported on the ground that the Hindus will be gradually weakened if the daughters are allowed to inherit their father's estates.

2. Clause 13 of the Code dealing with *stridhana* also cannot be approved. If a childless widow acquires the right to dispose of her husband's property by sale or gift, she will naturally lose interest in the stability of the estate simply because she has got no issue.

3. Sub-clauses (a), (c) and (d) of Chapter II cannot be approved for the following reasons:—

(a) If a husband suffers from leprosy not contracted from his wife and if in that case the wife is entitled to live separate from the husband under this provision, there will be none to attend to the suffering husband.

(b) Even a mild admonition to the wife by the husband for her indulgence in some act prejudicial to the best interests of the family may, under this provision, be proved to be an act of cruelty on the part of the husband and thereby enable the wife to live separately from the husband.

(c) If, for financial reasons, the husband is not always able to live with the wife and is compelled, even against her wishes to stay away from her for earning his living, the wife will be entitled to live separately from the husband under this provision.

185. Mahamahopadhyaya Pt. Bireswar Tarkatirtha, Vijay Chatuspathi, Burdwan.

It is thought proper that the following changes should be made in the draft Hindu Code.

Reference—Succession to the Property of Males—Entry (1), Class I—"Heirs in the compact series".—It does not appear to be reasonable that a daughter should be made an heir to the heritable property of her father dying intestate and the ground for it is that widows have been included among simultaneous heirs along with sons. Things will look very odd in cases where the daughter dies immediately after her marriage and her husband marries again and also succeeds to his first wife's property. A man may thus go on taking one wife after another and succeeding to the paternal property of every such wife predeceasing him in a childless state. Secondly, what is given to the daughter by the father at the time of her marriage on account of her ornaments and dowry is equal to and at times more than the share of the son in his father's property. Such being the case it is proper to separately arm the daughter with the right to succeed to her father's estates.

Of course, where a person dies leaving any unmarried daughter behind him, provisions should be made making it obligatory on the sons of the deceased to defray all the expenses of the marriage of such a daughter out of the estate of the deceased in proportion to the value thereof. But if a widowed daughter has no property of her husband out of which the cost of her maintenance can be met, it seems reasonable that she should in that case be admitted to maintenance out of her father's estate.

Reference—Sacramental marriage.—To the condition that (a) neither party must have a spouse living at the time of the marriage the following addition should be made:—

Although the wife is living the husband may marry again in case the former is incapable of bearing a child or is barren or has been suffering from any incurable disease. It is necessary to add this, because, in cases like these, the wife stands in the way of the remarriage of her husband for the purpose of begetting children with a view to preserving his own line. The husband, therefore, may, in the absence of such a condition, seek to divorce his first wife by making false accusations against her and thereby absolve himself from the obligation of maintaining her.

What has been decided in sub-clause (b) of Clause 6 at page 22 about the validity of a sacramental marriage between parties belonging to the same *gotra* or having a common *pravara* is not reasonable. A marriage between *Vatsya* and *Savarna gotras* who have a common *pravara* will be regarded as invalid from the *sastric* point of view. Children born of such marriage are not entitled to offer *pindas* to the manes of their deceased ancestors and the wife in this case should be maintained by the husband like his own mother. This is the course approved by the *sastras* in the case of a marriage between the *Vatsya* and the *Savarna*. If, in accordance with the provisions of the present Code the wife in such cases remarries it seems reasonable that her former husband should not be held responsible for her maintenance.

Reference—Chapter II—Consequences of marriage including duties of husband and wife.—The restrictions to which the husband has been subjected under sub-clauses (a), (b), (c), (d), (e) and (f) of clause 26 should be made applicable to the wife as well.

Reference—Chapter III—Nullity and dissolution of marriages.—(1) If either the husband or the wife is attacked with an incurable disease or affected by insanity or an infectious venereal disease long after the celebration of marriage or after some children have been born to them or after they have passed the stage favourable for procreation, it is not reasonable that their marriage should be dissolved. It is necessary that there should be clear provisions in this respect.

(2) If a wife remarries after the dissolution of marriage her remarriage cannot be regarded as a sacramental form of marriage. Such a remarriage should be regarded as civil marriage and clear provisions should be made regarding the right of inheritance of children born as a result of such marriage.

Succession, Marriage and Divorce.—These are the fundamental issues affecting the well-being of the entire society. It is therefore proper that provisions regarding these should be made after eliciting the opinion of the people living in towns and villages all over India. It is not proper to make such provisions depending only on the opinion of a handful of opportunist townspeople.

186. Mr. Suchindra Nath Chakrabarti, 42, Harrison Road, Calcutta.

For several months the draft Hindu Code has been seriously engaging the attention of the public through the press and the platform as well. It has got both antagonists and protagonists, each with their own arguments. The former oppose the bill partly on the ground that it will destroy the solidarity of the property of the Hindus like the Muslims, and partly on the ground of Hindu religion; and the latter support it on the grounds of raising the economic status of our women and eradicating the dowry evil from the Hindu society.

In point of fact there is a firm belief among the protagonists, specially among the educated women-folk that the proposed bill, if passed into an Act, will abolish dowry system and the marriage problem will therefore be solved. The line of argument of the above people is twofold; first the inheritance of property of the father-in-law by the wife will induce a young man to marry without demanding

dowry, and second, this property inheritance by the girls will provide maintenance and hence enable them to remain spinsters, thereby bringing about a decrease in the supply of prospective brides in the marriage market; and this of decreased supply of brides coupled with increased supply of grooms consequent upon the hope of gaining wife's property, will place our young men in a difficult position in exacting dowry.

On a first view the theories seem to be correct; but if we deeply think over the matter, we can easily discover their fallacies. The assertion that a share of the property of the father-in-law will be an impetus to marry without dowry is applicable only in case of a very limited number of young men who have got no sisters to take away a similar share from their father's property. But such families with sons and without daughters are few and far between. As a matter of fact both sons and daughters are there in vast majority of the houses and consequently, what a son will gain from his father-in-law will have to be given to a daughter from, the father's property. It is simply a troublesome transaction of taking from one family something and then its corresponding giving to the other. The value of the assertion is further diminished if we take into account the distance of time and uncertainty in the matter. Dowry is the gift presented at the time of the marriage whereas property inheritance is a question of future which is uncertain. A father-in-law may squander his property after the marriage of his daughters or in case of his sudden death his sons may conceal property with a view to deceiving the married daughters. Hence we may rightly hold that no incentive it will pay to a person to marry without dowry with an uncertain hope of getting in future a portion of the father-in-law's property; generally after a quarrel with the wife's brothers as is evident among the Muslims.

Next, the most significant fact that we lose sight of, is that the modern dowry system is due, not only to the non-inheritance of father's property by the daughters, but to several other prominent causes, such as (1) the restriction of the marriage field due to Kulinism and the difference of social status between the bride's party and the groom's party, (2) the difference as regards beauty and other accomplishments among the brides, (3) difference as regards service, income, etc., among the grooms. If, in a marriage proposal the bride belongs, for example, to Chakrabarti family and the groom to a Banerji family, the groom's father demands a bit more cash or dowry from the bride's father on account of the lower social status of the latter or Kulinism of the former. This cause of dowry will never be removed by the property inheritance of the girls as proposed in the bill. As to the second and the third causes it may be mentioned that taking cash or dowry due to these is now noticeable even in the Muslim community where the daughters share all kinds of properties, i.e., movable and immovable. The present writer knows some of his Muslim class-friends who are all Gazetted officers, to take several thousand rupees from their fathers-in-law at the time of their marriages, partly on account of the brides not being beautiful and partly on account of their high position in services. Therefore, among the Hindus also, these two causes of dowry (in the form of *penalty* and *high market price*, so to speak) will remain intact in spite of the property inheritance by the daughters. That is to say, the dowry is not a *system*, like the burning of Sati, that we can abolish by the proposed Code, or by an anti-dowry legislation or by agitation and speeches of great men. It is rather an inevitable effect of the above causes and unless the causes are removed, the effect of the causes cannot disappear.

Coming to the marriage problem as a whole, we should understand that dowry is not the *main* and *only* obstacle in the way of marriage. The chief obstacles present themselves from the side of the boys. These are their unemployment and increase in the cost of living even in normal times; and until and unless these two obstacles are done away with, marriage problem cannot be solved.

Thus from the above considerations, it can be boldly asserted that the property inheritance by our girls will not abolish the dowry system, and that the marriage problem will remain as before. In no way we can expect an increased supply of grooms in the marriage market; and the theory of a reduction in the supply of the brides as a result of the inheritance, is also untenable. Because the provision of maintenance which the inheritance will provide to

the girl, is not the only object of marriage. Should it be so, why then do the matrimonial columns of the newspapers contain now and then advertisements requiring grooms for M.A., B.T., B.A., B.T., mistress and other service-holder girls? The answer is obvious. A service in a school, or college, or in an office can never be a full-fledged and legitimate substitute of a husband.

The property is sure to do more harm than good to our society. No doubt it will strive to establish an equality of the sexes by raising the economic status of the girls. But it will go a step towards the destruction of the solidarity of the properties of the Hindus. Division of property among the sons, there being no law of primogeniture, has already been causing a fragmentation of property; and this process of fragmentation and subdivision will be further accentuated on bringing into the field of inheritance a second rival, i.e., a lot of daughters. Nor is this all: The cordial and sympathetic relationship between brothers and sisters in Hindu families will change itself into that of rivalry and mutual suspicion as is the case with the majority of the Muslim families. The quarrel between the two sisters-in-law (i.e., between Nanad and Baudi) on many occasions is a common place matter in almost every family and this is sure to be multiplied many times if the inheritance is given to the women.

From the 'external side' the economic strength of the Hindus has been impaired to an extent as a result of the various legislative measures adopted during the last twenty years; particularly, with the introduction of the present constitution in 1937. This inheritance, from the *internal side*, will be a great death blow to the economic structure and strength of the Hindu society.

Leaving aside the inheritance, when we consider the divorce question we can easily feel that it is bound to affect more adversely the females than the males in our society. After a divorce the husband will get good many proposals for marriage again but the wife will get hardly any, as it is in the case of the death of any one of a couple when the widower gets immediate proposals for a second marriage while the widow receives none. The female victims of the divorce in many cases are likely to embrace other religions or lead a shameful life.

Sagotra marriage is the only aspect of the Bill which, from the *utilitarian standpoint*, should be supported by all means. It is an attempt to broaden the marriage field of the high caste Hindus. It may sometimes so happen that a Mukherji gentleman, to take an illustration, discovers a suitable groom for his daughter in another Mukherji family. Under the present system the marriage cannot take place as both the parties belong to the same gotra. Such marriages will be easier if the sagotra marriages are legalised. Sagotra marriages (outside the Sapindas) are not biologically harmful. We may observe the prohibition up to the near kinsmen only. Besides, it may be pointed out that sagotra does not mean descent from the same blood in *all cases*. The different disciples of a Rishi held the gotra of that Rishi and in this way the persons of different blood were included in the same gotra.

Widening of the marriage field should be encouraged, not only by introducing the sagotra marriages, but also by allowing sub caste and inter-caste marriages gradually. The restriction of the marriage field, as mentioned before, is one of the various causes of demand for dowry and the consequent celibacy on the part of the high caste Hindu girls. Therefore sooner the restrictions are abolished, the better for our society. The expansion of the marriage field will help towards decreasing dowry demand at least to an extent, though not wholly. Hence the items of 'inheritance' and 'divorce' should be dropped from the draft Hindu Code and the 'Sagotra marriage' item should be retained and finally passed.

187. The Hon'ble R. C. Mitter, The Hon'ble B. K. Mukherjee, The Hon'ble C. C. Biswas and The Hon'ble A. N. Sen, Judges, High Court, Calcutta.

We should be loth to add to the controversy which the draft Hindu Code has already given rise to, but having regard to the importance of the subject, we as Hindus find it difficult to resist the request, which has been conveyed to us from several quarters, to express our views. We do not propose, however, to examine all the provisions of the Code, but shall touch upon some of the broader issues only, noticing, as regards details, just a few of the matters which appear to us to be of outstanding importance. A detailed

discussion would have been more useful and appropriate with the members of the Rau Committee, if they had thought it fit to invite us to meet them during their last visit to Calcutta.

At the outset, we must express our serious doubts as to the wisdom, necessity or feasibility of enacting a comprehensive Code of Hindu law. The draft Code does not profess to be exhaustive, but it definitely aims at being a stage in the preparation of a complete Code, and that makes it necessary to consider how far such codification is proper or desirable.

Most of the rules of Hindu law are now well settled and well understood, and a Code is not, therefore, called for at all. There is, in fact, no general demand for it, neither those who are affected by Hindu law, nor those who have to administer it have felt the necessity of a Code.

We are not aware that the whole of the personal law of any community in any country has been, or been sought to be, embodied in a Code, and it is our conviction that all communities in India, like the Muslims, for instance, will stoutly resist any attempt to foist a Code of personal law upon them. We see no reason why the Hindus should be treated differently.

As regards matters on which there may be divergences of opinion or conflicts of judicial decisions, legislative action may perhaps be called for or justified to remove doubts or obscurities, but it is quite a different proposition to try and effect fundamental changes in the structure of the law by means of legislation, when changes are not demanded by the community itself. For one thing, it is doubtful how far the legislature, particularly a legislature constituted as it is in this country, may be regarded as a fit instrument for carrying out such social reform.

We do not say that no changes are called for in Hindu law. Like every other system of law, Hindu law must be prepared to meet the challenge of the times. In fact it is the adaptability of Hindu law to changing conditions and circumstances that has helped to maintain it as a living force, and it is significant that the Smritis, which are the ultimate repository of the law, themselves recognize the principles of such growth and development.

Up to the advent of British rule, it was the Hindu jurists and commentators who helped forward the continuous evolution of the law, but this they did only by a judicious selection and exposition of the ancient texts without any attempt to undermine their basic authority. That process has since been arrested, and the only agencies which now exist for bringing about any changes are the courts of law and the legislature. So far as courts are concerned, their function in this respect is necessarily limited; all the same, as every student of Hindu law knows, the contribution which they have made to its development has indeed been very remarkable. The legislature, however, wields much wider powers, which extend not merely to the interpretation but to the making of the law, but it is precisely this circumstance which in our opinion casts upon it a special obligation to act with the utmost caution and circumspection.

The Rau Committee in their report have themselves indicated the conditions of legislative action in the field of Hindu law. "Nor can we believe," they state, "that the thoughtful reformer will wish to lay violent hands on the ancient structure of Hindu law except for proved necessity. It is a spacious structure, with many schools, and by a judicious selection and combination of the best elements in each, he should be able to evolve a system which, while retaining the distinctive character of Hindu Law, will satisfy the needs of any progressive society." But even in making such changes, as the Committee themselves recognize, "the aim should be, so far as possible, to arrive at agreed solutions and to avoid doing anything likely to arouse acrimonious controversy."

According to their own tests, therefore, the Rau Committee ought to drop the proposed Code. Some of their proposals are little short of an attempt "to lay violent hands on the structure of Hindu Law" without any clear proof of necessity, and, as should be obvious to them by this time the "aim" of arriving at "agreed solutions" is beyond any hope of fulfilment.

One of the objects of the Committee is stated to be that of evolving a uniform Code of Hindu law which will apply to all Hindus by "blending the most progressive elements in the various schools of law which prevail in different parts of the country." It seems to us, however, that apart

from anything else, as matters stand, uniformity is an impossible ideal. The Committee themselves recognized that all the topics of Hindu Law do not come within the sphere of central legislation, and, in particular, that of devolution of agricultural land, which, by the Constitution Act, is exclusively a provincial subject. And it may be noted in this connexion that agricultural land constitutes by far the bulk of immovable properties in Bengal, nay, in the whole of India; and, as has already been judicially held, the expression "agricultural land" embraces within its scope a large variety of interests, from that of the proprietor of the highest grade to that of the actual tiller of the soil. The Committee hope that the Provinces will move on the lines prescribed in the Code. We doubt, however, whether this hope will be realized. It is too much to expect that all the Provinces would adopt all the provisions of the Central Act. It is highly improbable that the Provinces, especially Behar and United Provinces, would adopt Part III-A of the Code, relating to the abolition of survivorship, or Bengal would adopt S. 5 of Part II *en bloc*. Assuming however, that this will happen will the operation of the Code be held up till the last of the Provinces has expressed its views? What would happen if the Provinces finally legislated on different lines? Religious and Charitable endowments, again, happens to be an exclusively provincial subject, and if shebaitship is deemed to be a part of this subject, complicated questions are bound to arise regarding the devolution of such interest also.

But, after all, is uniformity such a desideratum that it must be purchased at any price? Diversities of usage are inevitable among the very large number of Hindus who inhabit this vast sub-continent, and it was for nothing that the Hindu lawgivers recognized the paramount authority of local usages and customs. Why then, it may be asked, must the Hindus of any particular locality be necessarily called upon to forswear their own distinctive traits and traditions in the interests of a theoretical symmetry? And why, further, for the sake of attaining an ideal uniformity, must the law be cut off from its ancient moorings? Hindu law, divorced from the Smritis and Nibandhas, would be a contradiction in terms.

We are definitely of opinion that any attempt to break down the various schools of law and merge them all in one uniform system is a move in the wrong direction. But this is not saying that there may not be elements in any existing school of law that do not call for a change. Nor would it be right to decry any proposal to introduce such specific changes by legislative action as "piecemeal legislation," and to insist on comprehensive legislation as the only alternative. We think that there is a certain amount of unfounded prejudice against what is usually called "piecemeal legislation." Unlike other countries in Europe, legislation in England has always been piecemeal, and has led to no untoward results. It is piecemeal, compared with the totality of the laws, but may be quite exhaustive so far as that particular topic or branch of law is concerned. In such partial legislation, however, care must be taken to see that it is not a misfit with the rest of the law, as was undoubtedly the case with Act 18 of 1937 (Hindu Women's Rights to Property Act).

It is pertinent to ask in this connexion whether, apart from the legislative restrictions imposed by the classification of powers between the central and provincial legislatures under the Constitution Act, it is at all possible to draw up an exhaustive Code of the personal law of the Hindus, complete in all its branches, and providing for all possible contingencies. The Code as framed by the Rau Committee appears to us to be itself incomplete in regard to some of the matters which it professes to deal with as being within their sphere of competent legislation. Thus, for example, there are various important questions relating to joint-family and partition, which have not been touched upon at all. By merely abolishing the rule of survivorship or the right by birth, you cannot abolish the Hindu joint-family law. Matters relating to management of joint-family, to the Karta's rights and privileges, to the mode of partition and the taking of accounts would still require consideration. Rights and liabilities in connexion with joint-family business is another important topic of Hindu law, and so also the important subject of "self-acquisition," so fully dealt with by the commentaries and judicial decisions; but all these have been completely ignored in the draft Code as it stands. When

such questions come up before the courts, as they must, they would have to be dealt within under the existing rules of Hindu law, or rather, under the rules of the particular school of law which would be applicable. The Hindu Code would, therefore, neither be the sole repository of Hindu law, nor of a uniform body of law, as it is intended to be.

Holding, as we do, very definite views about the codification of Hindu law in general and the present draft Code in particular, it would not serve much useful purpose to go into details, but we would only refer to some of the provisions of the Code. In the rules regarding inheritance, we recognize with satisfaction that the Committee have brought in many blood relations who are now excluded from the list of heirs, either because they belong to the female sex, or because they do not come within the scope of the *pirāda* theory. We also find that the Committee have, in an admirable way, framed rules for precedence among non-enumerated heirs (Part II, Rules 8-9). These matters were not dealt with by the commentators, and might in our opinion fittingly form the subject of partial or auxiliary legislation like Act II of 1929, which set a useful precedent for such legislation by remedying certain defects in the Mitakshara law of inheritance.

There are, at least, two matters in the Chapter on inheritance in respect of which we find it difficult to support the Committee's proposals.

The first of these relates to the order of precedence among the enumerated heirs, by which the whole group of nine descendants specified in Class II is given priority over every one of the five heirs grouped under Class III. The first two of Class II, viz., son's daughter and daughter's daughter, might perhaps be allowed to come before the heirs described in Class III, and their rights so far as Mitakshara law is concerned have already been recognized by Act II of 1929; but, in our view, the same preference should not be given to the other seven relations mentioned in this group. All of them are, no doubt, descendants of the propositus; but it can be safely asserted that no Hindu regards such relations as son's daughter's daughter, daughter's daughter's son, or daughter's daughter's daughter as nearer than, say, brother's grandson, or sister's son—in fact they are regarded more or less as strangers who can have no place in the scheme of inheritance. It is obvious that between a man and his daughter's daughter's daughter, three families intervene. We cannot ignore the normal constitution of a Hindu family and give the descendants of a man precedence over ascendants or collaterals under all circumstances. It is to be noted that out of these nine relations, with the single exception of the son's daughter's son, the rest are not heirs at all under Dayabhaga law. The Benares school recognizes only, 3, 6 and 8 as *bandhus*; and it is only under the Bombay and Madras schools that all these relations are heirs, but then, again, they come after all the enumerated heirs are exhausted.

The other matter to which we should like to refer is the proposed inclusion of the daughter in the list of simultaneous heirs under Class I. This we consider to be a change of a revolutionary character, which, of all the proposals in the Code, has perhaps evoked the strongest and most widely expressed protest. The framers of the Code themselves do not appear to have been so very sure as to how far their proposal would react on the Hindu mind; and this perhaps dictated a cautious move on their part, in providing for the daughter only a half of the share of a son, as under the Muslim law.

One serious objection to this provision is that it would lead to further fragmentation of the property; and the other is the traditional dislike in the Hindu mind of allowing strangers to the family to come and share the inheritance. Each of these, in our opinion, is a valid and well-founded objection. The splitting up of estates due to plurality of heirs is an undoubted economic evil, and merely because the risk of such splitting up cannot be avoided, when there is a multiplicity of sons, it does not follow that the evil should be further aggravated by the introduction of a larger number of simultaneous heirs. It will not, perhaps, be out of place here to call attention to the significant fact that in connexion with the Wakf Act (VI of 1913), one of the reasons which the Muslim leaders put forward in support of that measure was that it would tend to check this evil of fragmentation in their community.

As regards the other objection, it cannot be denied that a Hindu primarily desires that his dwelling house and other immovable properties should remain exclusively in the hands of his male descendants, if there be any. That the framers of the Code were fully alive to this popular feeling is evident from the fact that they have allowed the provisions of the Partition Act of 1893 to be invoked by a male heir against a female co-heir, in case the latter sues for partition; and this relief has not been confined to dwelling houses merely, but has been extended to all other immovable properties jointly inherited. But whether the remedy provided is not worse than the disease is a matter for consideration.

Examining the question entirely on its own merits, we also find it difficult to support the proposal of making the daughter a co-heir with the son. No Smṛiti-writer, ancient or modern, no school of Hindu law, progressive or otherwise, has recognized the daughter as such heir. Neither, so far as we are aware, is such a right in the daughter sanctioned by usage in any part of India. The legislature, therefore, is introducing an innovation, pure and simple, and as such it could be supported, only if an exceptionally strong case could be said to exist on grounds of justice and equity. But could such a case be really made out?

We are certainly in favour of making adequate provisions for the indigent daughter, and should welcome any attempt to remedy whatever defects there may be in the present law on the subject. But we can find no justification for going to the opposite extreme, by placing the daughter in a better position than the son himself, as would undoubtedly be the result under the Code. As a wife or a widow, the daughter gets a share in her husband's property; and even as a widowed daughter-in-law, she has her rights of maintenance out of the estate of her father-in-law. In case the husband or husband's father leaves no property, she will be entitled as a widowed daughter to maintenance out of her father's estate. The unmarried daughter has also her rights under the existing law to maintenance and marriage expenses out of her father's property; if necessary we should have no objection to legislation in order to secure such rights by creating a charge on the paternal estate. A daughter, married, unmarried or widowed, is also entitled to inherit the *stridhan* property of her mother. Where the daughter happens to be married, but the husband is extremely poor, cases are not rare when her father, if he can, makes adequate provision for her by will or otherwise, and the mother also will not often be found providing for the daughter out of her own *stridhan* properties.

The chapter on maintenance, we must say, has been admirably worked out, and removes certain long-felt grievances.

The only other topic that in our opinion deserves serious comment relates to the question of marriage. We are constrained to observe that the Committee's approach to the subject has not been correct. The first thing that the legislature should do in dealing with marriage is to lay down the essential conditions of a valid marriage, viz., physical and mental capacity, age-restrictions, prohibited-relationship and so forth. The question of form, which is also essential, then comes in; and most systems of modern law prescribed a form of civil marriage as an alternative to religious marriage. In a civil marriage, however, the essentials remain the same, except that no religious ceremony need be gone through. It is against elementary rules of civilized jurisprudence to lay down that there should be one kind of prohibited degrees in the sacramental marriage, and a different kind in case of civil marriage. But that is what the draft Code seeks to do for Hindus. Civil marriage should in that case cease to be a part of Hindu law, and must remain a separate branch of the law altogether. We notice with some surprise that the framers of the Code have gone much beyond the rules of the Special Marriage Act, and have permitted marriages even between first cousins, which is entirely obnoxious to Hindu sentiments. Whether civil marriage is made a part of Hindu law or is left to be regulated by the Special Marriage Act, we are definitely of opinion that the essentials of a Hindu marriage, except in the matter of ceremonies, should be the same in either form. In our opinion the best thing would be to keep the civil marriage out of Hindu law altogether, and leave it to be regulated by the Special Marriage Act, with a repeal of those provisions thereof which provide that even when Hindus marry

thereunder, they would be governed by the Indian Succession Act.

While on this subject we might perhaps offer a few suggestions with regard to prohibited degrees. We are of opinion that the *sapinda* relationship should be reduced to five degrees on the father's side and three degrees on the mother's. This is quite in accordance with the *Paitinashi* rule which is followed in Bengal, subject at the same time to the *trigotra* rule. As regards inter-caste marriages, we think that such marriages, if they have taken place in fact, should not be regarded as invalid. As regards monogamy, we share the general view that as polygamy has practically disappeared from Hindu society, it is not necessary to enforce monogamy by legislation. We are entirely opposed to introducing divorce into Hindu law. We do not think that the right of divorce has conduced to greater social well-being or harmony in the systems where this right exists. At any rate the Hindu conception of marriage as a sacrament is diametrically opposed to the idea of divorce, and we feel this idea is abhorrent to the average Hindu. We may add that if divorce is at all allowed, the grounds of divorce should be such as are recognized in other systems where it exists, and not what the Committees have thought fit to provide.

As we have said already, our comments on the Code do not profess to be exhaustive, but we believe we have said enough to justify our disapproval of it as a whole. Hard cases do and may arise under the existing law, but can human ingenuity devise any system of law which will be a guarantee against hardships in individual cases? Lastly we would add that the present time is singularly inopportune for introducing such controversial legislation.

188. Messrs. Satindranath Guha, Bimalchandra Chatterjee, Kshirodeswar Banerjee, Satyaprasanna Majumdar, Surendranath Mitra, Aditya Chandra Dutta, Khagendranath Dutta, Hem Chandra Mitter, Saratechandra De, Bakul Biswas, Ramlal Banerji, Bankubehari Bhaduri, Narayan Mukherjee, Nirod Ranjan Guha, Rohini Kanta Mitra, Shailish Chandra Banerjee, Binod Bihary Roy, Frankumar Basu, Ramdulal Deb, Nalinath Das Gupta, Kunjabehari Ghosh, Makhania Mukherji, Niradeswar Banerjee, Bamacharan Chakravarti, Hemchandra Sanyal, Lalitmoan Basu, Sarat Chandra Roy Choudhury, S. Mukharji, Nripendra Nath Guha, A. C. Ganguly, B. B. Chatterjee (Retired District Judges and Subordinate Judges of BenGal).

We the above Hindu ex-members of the Judicial Service of Bengal, deem it necessary to express our views on the draft Hindu Code. In our view the Code is unnecessary, and even harmful; it is opposed to the ideas and sentiments of the Hindu society; and some of its provisions, such as those in marriage and inheritance, are calculated to cause serious disturbances in the society and family, which will surely lead to the weakening of the economic, political and family life of the community.

At the outset it may be observed that the need of the codification of Hindu law has not been made out. As persons connected with judicial work in the province, we have never felt any difficulty in administering the Hindu law for want of a Code. The Hindu law, as at Present administered, is as definite, precise, and well organized as any Code-law. And further, we have never felt that the present Hindu law is disliked by the litigant public which have come before us. Of course we admit that in those matters—and they are few—where the Hindu law has been wrongly interpreted by the highest courts, or where the law has become archaic, partial legislation may be beneficial, and even necessary. As instances of such limited legislation, we may refer to the Hindu Inheritance Removal of Disabilities Act (XII of 1928), Hindu Inheritance Amendment Act (II of 1929) and Hindu Gains of Learning Act (XXX of 1930). These statutes have been well incorporated in Hindu law, not being opposed to its basic principles. We are however convinced that a codification of the whole of the Hindu law will give it a rigidity which will interfere with its normal growth and its easy adaptation to altered circumstances, which has so long been its most remarkable characteristic.

We are also of opinion that the attempt to have a uniform personal law for the whole of India is misconceived. If codification is at all thought advisable or even necessary, there should be as many Codes as there are schools of law. The difference between these schools is, in many cases, fundamental, and is due, as every student of Hindu law is aware, to the difference in local conditions. The attempt to impose on a group of people a law which is

inconsistent with their social, economic and domestic conditions, and contrary to their ideas, is opposed to all sound rules of legislation.

We are convinced that the new marriage rules will break up the society, as much as the new inheritance rules will break up the family. We are not satisfied that either course is necessary.

Lastly, we could point out that to push on a measure of this character, which involves no State policy or public necessity, without securing a substantial measure of support from the community itself, is ill-advised. The bulk of the Hindu society has not as yet been acquainted with the main features of the Bill. The all-India enquiry which the Committee recently undertook was at the most superficial. As it is, the thinking section of the community has, with some exceptions, expressed their views adversely to the Bill. For instance, the lawyers of Bengal have, as a class, spoken decidedly against it, and we readily join them in opposing it. We would earnestly impress on the authorities to consider whether at a time when people are anxiously engaged in a struggle for existence owing to abnormal conditions, a drastic alteration in the social and family law of the Hindus has become an urgent necessity.

189. The Women Security Prisoners, Presidency Jail, Calcutta (Mrs. Uma Guha—Representative).

The Women Security Prisoners of Bengal, who have life-long fought for women's rights and privileges, and who being social workers and coming in touch with the various social strata, represent the opinion of quite a good section of the province. As this concerns women's rights of vital importance we cannot but take a keen interest in the matter.

The Bill is fighting for some social rights and privileges of the Hindu women, the main two of which are (1) Women's right of inheritance to father's property and (2) the Divorce system.

(1) Father's property is distributed only among his sons and justice demands that daughters too should receive an equal share of the property being the children of the same father. We are of the opinion that the social law which deprives daughters from receiving a due share of their father's property can not claim themselves to be based on justice and the country which does not frame her laws with a view to impart equal justice to each individual cannot make a place in the march of progress of humanity. There is no denying the fact that women of Bengal have practically no position in society and they are made subject to despicable and inhuman tortures of the society and as a result, the society is deprived of the contribution of these individuals whose faculties and finer qualities remain undeveloped due to the fact of their not receiving proper attention from the society for their development. So the society is crippled and remains backward as it is deprived of the individual contributions of a great section of the community and ultimately it comes to this that society's inhumanity and injustice to women are visited upon itself. We are of strong opinion that lack of economic independence of women is one of the main causes of all these sufferings of women thus bringing a great loss to the whole country. So if they receive a share of their father's property—which is only a half of what others are entitled to receive, this will do—though not much as inheritance of agricultural properties is not included in this Bill—in the way of raising the status of women in society and removing the social evils.

We like to mention here that we strongly disapprove of the Committee's discriminating treatment in dividing the property between sons and daughters. We advocate that daughters should receive an equal share along with other members of the family among which the property is to be distributed; otherwise this division of property will not be based on justice.

(2) The second clause of the Bill intends to introduce the Divorce system into the country. This is also a right of such nature that if it is included in the Hindu Law it will do a great deal in the way of making the Society strong and healthy. The present Hindu Law leaves no scope for a married woman to liberate herself from this social bond even when it becomes positively harmful to her. On the other hand the law allows the husband to take as many wives as he chooses and thus goes on creating a large number of unhappy individuals in the society. The repercussion of this sort of law is very bad for healthy progress of the society. Some are of opinion that if divorce is once allowed, it will be misused and ultimately it

will help to break down the family life. There may be a few instances of misuse of the privilege from the point of view of society, but if the Bill is passed into law it will do more good than harm to society. Because there is no sense in tying up two individuals by force of law when that unwanted unity can bring no good either to the individuals or to the society.

Many objections have been raised against the above two clauses of the Bill. But these arguments cannot stand in the face of the counterarguments advanced by the supporters of the Bill, which fact you are quite aware of, so we do not like to enter into details.

On the basis of what we have said above, we strongly support the Bill.

VII. ASSAM.

1. P. L. Shome, Esq., Advocate-General, Assam.

I submitted a note on the Hindu Intestate Succession Bill as reported by the Joint Select Committee of the Central Legislatures in May last. The Intestate Succession Bill has now been incorporated as Part I and Part II of the Draft Hindu Code, with certain changes made on the Bill as reported by the Joint Select Committee and I am glad to find that many of the amendments suggested by me in my previous note have been incorporated in the present draft. My comments on the main principles of the Bill need not be repeated here, and in spite of the changes made in the new draft, I adhere to my former views. The main noticeable fact with regard to the provisions for intestate succession is that the widows of sons, grandsons and great grandsons have been excluded from inheritance and they have been given the right of maintenance. The reasons given for the change is that the addition of these females as heirs will lead to excessive fragmentation and that the addition may not be necessary if adequate provisions are made for their maintenance. For the same reasons, the widow and the daughter might also have been excluded from the list of "enumerated" and "simultaneous" heirs and included amongst the persons entitled to maintenance. If they are provided with adequate maintenance, there is no case for their getting a share in the inheritance. Fragmentation of property is a factor, which has not, I am afraid, been properly considered. It is well known that in Bengal and certain parts of Assam, excessive fragmentation of properties after one or two successions have made the agricultural holdings entirely uneconomic, and that is one of the principal causes of ruin of the peasantry in Bengal and some parts of Assam and there is a strong body of opinion, which holds that if the condition of the peasantry is to be improved, then the agricultural holdings must be made economic and the introduction of the law of primogeniture in respect of the holding has been suggested as one of the methods by which fragmentation can be avoided. It is stated that this law, if enacted, by the Central Legislature, will be implemented by the Provincial Legislatures, so that it can apply to agricultural lands also. I should, therefore, think that the introduction of a number of persons, as simultaneous heirs, on a succession being opened, will ultimately prove to be a retrograde, and not a progressive, measure.

Regarding maintenance, I should think that in clause 3 of Part III the word "maintenance" should be so defined as to include also the cost of education of the maintenance wherever necessary, and in the list of the dependants entitled to maintenance, widow and daughter of the deceased, if they are excluded from the list of heirs, and the unprovided and unmarried daughters of predeceased sons, grandsons and great grandsons, if any, should be included.

Regarding marriage, the provisions regarding sacramental marriage (clauses 3 to 6 of Part IV and other consequential provisions in the subsequent clauses) should not be proceeded with. These will raise serious objections from the Hindu community and will militate against the religious beliefs and observances of the Hindus. The enforcement of monogamy, by legislation, is neither necessary nor expedient and the registration of a sacramental marriage is also unnecessary. The provisions regarding nullity and dissolution of marriages should not be applied to sacramental marriages.

Apart from the above matters, my attitude on the draft Code is one of general support.

2. Mr. B. Sen, Additional District Judge, Sylhet.

I agree with the proposed legislation and I have only a few objections stated below:—

The proposed codification appears to me to be good as it will bring uniformity in the matter of laws guiding the whole community. Of course, the legislature should be very cautious in introducing radical changes.

Objections.—As regards the proposed law of inheritance I am of opinion that a daughter should not be given a share

in the properties of her parents. According to Hindu ideals and sentiments the married state is the most desirable state for a woman. Of course, her position in the husband's family should be made as strong and safe as possible. The so-called economic helplessness of a woman will be sufficiently provided for by giving her absolute right in a share in the husband's property as one of the simultaneous heirs. Fragmentation of property which will follow the giving of a share to the daughter as a simultaneous heir will endanger peace and social concord and will lead to troubles and litigations. So the word "daughter" should be deleted from the category of simultaneous heirs in class I and necessary amendments should be made in other parts accordingly.

As regards the legislation in respect of the marriage and divorce, I am of opinion that it is a move in the right direction. I think, however, alternative clauses 3, 4 and 5 should be adopted, but the age in clause 3 (c) should be eighteenth year and clause 6 (c) should be deleted. A girl under 18 cannot be expected to have clear idea of her future well-being and to exercise discretion properly herself or under the guidance of anybody other than her guardian.

3. Sub-Judge, Sylhet.

A radical change of the existing law has been sought to be introduced by inclusion of daughters in class I of clause 5 and by which the daughter takes half share [read with clauses 6 and 7 (d)] along with sons, son's sons, etc. I object to the change for the following reasons:—

(a) It would lead to excessive fragmentation of property. The daughters would be more or less under the influence of their husbands, who would be very little interested in the welfare of the intestate's family members and who would in many cases induce the daughters to sell their properties to undesirable strangers. It would lead to unnecessary litigation resulting in the destruction of the nucleus of the property—as is now happening in case of Muhammadan families.

(b) This adoption of the principles of Muhammadan Law is inconsistent with the principles of inheritance as laid down in Dayabhaga and Mitakshara, which lay down that the efficacy of the pindas offered to the deceased would regulate the inheritance.

(c) It is quite true that by the new Code the daughter would get some share in her father's properties but at the same time she will lose a part of her husband's properties by having to give a share thereof to her daughter, who would belong to another family after marriage. So what is given to the daughter by the right hand is taken away by the left hand. This will not improve her position substantially.

So, in my opinion, the daughter should be classed as class I (2) and the subsequent numbers renumbered as (3) to (7). Clause 7 (d) should also be amended accordingly. In any case, the daughter should take as "Woman's estate" and not as "Stridhan" property.

4. G. S. Guha, Esq., M.A., B.L., Barrister-at-Law, Deputy Commissioner, Darrang.

I have not had much time to examine the matter in detail but think that the most advanced systems regarding succession, etc., prevailing in any part of India should be adopted. I personally think that all Hindu marriages should be registered (as I do not agree that this takes away anything from the sacramental nature of the Hindu marriage). I strongly support the codification of Hindu Law, which should be liable to changes with the change of times. Men do not exist for the law but law exists for the good of the community.

5. Mr. Dharmadar Dutt, Government Pleader, Sylhet.

The codification of Hindu Law will be generally welcomed but there will be controversy over some of the provisions. An influential class of opinion in the country is opposed to the inclusion of daughters in class I (i) of clause 5 of Part II, mainly, as it appears on the ground that over

fragmentation of estates will result from such inclusion. Other objections not so strongly urged are that the family worship and the charities connected herewith will suffer, that the daughter, under the influence of her husband a stranger, is likely to prove an obstacle to family progress and so on. These objections have been to some extent met by providing in clause 7 (d) that a daughter will take only half a share, as well as by clause 12 which makes the Partition Act of 1893 applicable in certain cases. The first-mentioned provision is a concession to clamour, for there is really no legal obligation to carry on the family worship.

Man is by instinct conservative, and naturally a change in the law of inheritance is being opposed by a very strong body of conservative opinion in the country. There is very little of sound judgment behind an opinion which refuses to recognize that a daughter has the same natural right as a son in respect of properties left by the father. This discrimination against daughters as regards the right of succession to her father's properties has prevailed over centuries, and the reformer wishing to concede to woman their birth right is up against powerful vested interests.

In primitive society, law was merged with religion, and was indeed a part of it, and the original reason for the agnatic principle of succession through the male line in Hindu Law as in other systems of law appears to have been to assimilate the law regulating the devolution of property with the religious rule for the transmission of the family worship. A woman, after marriage, worshipped the gods of her husband's household. There was, therefore, a religious necessity for excluding the daughter from participation in the family property. This legal principle was, by no means dictated by the necessity of preserving the integrity of the property. It is extremely doubtful if the merely material consideration of preserving the integrity of the property would have been sufficient for overcoming man's natural desire that his properties should be shared equally among his children irrespective of their sex.

With the passage of centuries, religious beliefs have changed. The family god, as an institution, still, to some extent survives, but it would be mere affection to suggest that our present-day economy is in any sense based on the worship of the family god. As a matter of fact, the joint family system is disappearing from the country, and will soon pass into the domain of history. Society as it will be tomorrow will have very little need for the joint family system. The law has therefore got to assimilate itself with the social system, which it has to serve. "The law will fail to retain support if it lags too far behind actual practice, and equally so if it pushes too far ahead." There is thus a most natural demand for a change in the law, to suit the requirements of the present-day social system which is individualistic. If the demand is able to gather sufficient strength, it will succeed. If it fails to-day, vested interests would nevertheless, do well to note that sooner or later the demand will have to be conceded. Our womenfolk are just beginning to awake. In the days to come, they will take an increasingly large part in the life of the country, and they will spare no effort to attain economic independence which they naturally regard as essential to their progress. In my opinion, the daughter should be retained in class 1 (i) of clause 5.

Among the other provisions in the draft Code regarded as more or less controversial are the following:—

(1) The definition of Stridhana in clause 4 (j) of Part I read with clause 13 of Part II, in so far as it is proposed to give to women full rights over her property howsoever acquired.

(2) Clause 3 (a) of Part IV by which polygamy is abolished.

(3) The provisions for dissolution of marriage in clause 30 of Chapter III, Part IV.

I think the law cannot be tied down indefinitely to the pages of ancient text-books, but must be allowed to grow to the height of its environments. In this view I welcome the changes sought to be introduced by the provisions above mentioned.

I support the draft code in its principles.

6. Mr. K. R. Barman, Government Pleader, Gauhati.

The Draft Code has disturbed the theory of Pinda which is the basis of intestate succession. Number of heirs has increased under the Code. So further disintegration of properties is bound to occur. But the Code has been framed to meet the growing inclinations of modern Hindu society. To evolve an uniform law embracing a community consisting of so many castes, creeds and customs is not an easy matter. The Committee have, as far as practicable, based their principles on various old schools of Hindu Law and have laid down the provisions in the light thrown by case laws of the Indian High Courts. The Code, therefore, will not be an unmixed blessing to Hindu society.

The Code has dealt with only Central subjects, namely, Intestate and testamentary succession, Maintenance, Marriage and Divorce, Minority and Guardianship, and Adoption, leaving agricultural land alone which is a provincial subject. Provincial legislature may lay down provisions to avoid disintegration of agricultural land as far as practicable.

In the matter of intestate succession a widowed mother should come within the category of simultaneous heirs. It is often found in experience that the young widow of an intestate deceased alienates the properties and leaves her husband's home. The widowed mother becomes a destitute.

A son, divided from his father during his lifetime, should not get equally with his undivided son. Generally an earning and disobedient son divides with his father. So he should not get more than half of the share fallen to an undivided son.

In the matter of marriage a second wife should be allowed in cases where the first wife proves barren or contracts loathsome and incurable disease after marriage. A Hindu must have a son to offer Pinda to his soul and to his forefathers. So law should give him possible facilities in this respect.

I have no comment to make on other clauses.

7. Rai Bahadur S. Dowerah, Government Pleader, Dibrugarh.

The great disadvantage of codifying Hindu law is in that it transforms the personal law of the Hindus into Lex loci. Time may come when Hindu Law applicable to the Hindus living in Indian States may not be the same Law which is applicable to the Hindus living in British India.

On the other hand, advantage of its codification are many. Public opinion has supported codification.

After making women simultaneous heirs—the framers of the code instead of grafting the principles of Muhammadan Law into the Hindu Law, might have adopted the principles of Indian Succession Act, and given to a daughter same share which is given to a son.

In the Select Committee there has been one marked improvement. Fathers and mothers are no longer simultaneous heirs with sons and daughters.

According to Part IV, clause 5, customary marriages are to be deemed sacramental marriages. It would be better, to avoid doubt and dispute to provide that registration of such marriages should be obligatory. A simple form of rural registration of marriages can be provided by rules. This will be helpful in Assam with its diverse tribes and races with different customs. Compulsory registration of customary marriages will be a blessing in tea gardens and in rural areas where there are no fixed and well defined and invariable customs.

Draft Hindu Law is a great achievement and is to be supported.

8. The Government Pleader, Dhubri.

The provision most open to objection is section 5. The inclusion of daughter as simultaneous heir with son and widow is opposed to the Pinda theory and the general principles on which the Hindu society is based.

According to the Hindu Law a woman cannot inherit absolutely and I consider it to be a salutary provision.

The order of succession is open to objection. In many cases cognates have been given preference to agnates and persons not Sapindas at all. The arrangement is unhappy.

The inclusion of daughter as a simultaneous heir will lead to excessive fragmentation and for matter of that destruction of the property and the Hindu social structure. The provisions in the chapter of maintenance take care of the daughters in distress. So this measure will do more harm than good to Hindu society. Provisions of section 19 should be extended to all females.

As for marriage, the right to marry more than one wife should not be taken away. Although as a matter of fact polygamy is at present discouraged. There may be a provision that in the case of taking another wife a written permission from the present and prospective wife must be obtained.

9. Mr. C. Sarma, Government Pleader, Tezpur.

I appreciate the idea of formulating a Code of Hindu Law instead of piecemeal legislation from time to time. The two forms of succession under the Dayabhaga and Mitakshara should not be moulded into one form. Registration of Hindu marriages will also be not looked with favour by the majority of the Hindus specially the orthodox section and in my opinion it should be left as such.

10. Rai Bahadur Kallecharan Sen, Gauhati.

This is a dangerous law which is sought to be introduced as Hindu Code. All the Hindu Text as regards successions and the decision of the highest court of law have been ignored and the framers seek to devise a law according to their own choice and liking. They have taken the place of our sacred law givers and of our judicial courts.

The Hindu Law regarding succession, inheritance, marriage or caste is based on our religious belief which has come down from the sages of the old. When British Government Courts were first established Pandits versed in Hindu sastras were appointed and the Judges administered justice with the aid in their interpretation of Hindu Law till a time when the leading treatises of Hindu Law were translated by eminent scholars.

In this so-called codification clause 5, class 1 (1), widow, son, daughter have all been made simultaneous heirs and in clause 7 their shares have been specified.

Mitakshara and Dayabhaga are the leading authorities of Hindu Law in India. The author of Dayabhaga flourished in the first part of the 11th century and the author of Mitakshara was anterior to Dayabhaga. Their commentaries of Yajnavalkya are the guiding principles of Hindu Law in different parts of India as modified by custom. Daughters do not inherit during the lifetime of sons and the females widows, daughters, mother, etc., all used to have limited estate but this Code gave them absolute right like men. The Hindu Law and long series of decision of Privy Council recognized the limited nature of their estate. Formerly in Bengal the mothers used to get a share of the property of her husband equal to each of her own sons when there was a partition among them. In 1937 by Act XVIII, it was enacted that, when a Hindu governed by the Dayabhaga school dies without making a will, his property shall with the incidents of a Hindu woman's estate devolve upon his widow along with his male lineal descendants, if any, in the same manner as it devolves upon a son. The same rule is made applicable to a Hindu widow governed by any other schools of law or by custom, as far as the separate, i.e., self-acquired property is concerned. Now the present code seeks to give absolute right to a Hindu widow on the ground that Muslim women, Christian, Jain women all take a full estate and it is difficult to maintain that Hindu women alone are incompetent to enjoy full rights when "We have women legislators, women lawyers and women ministers." The analogy of other system of law is hardly applicable. Each system has its own law for the peoples guidance. The Muslims have their authority in their Koran and certainly we cannot be asked to follow it and similarly the Christians

and other people have got their own law and why we should be asked to change our own law which has come down to us from time immemorial. The Privy Council has adopted the limited interest of the women in accordance with the Hindu Law and now our system will have to be altered because there are other systems which do not agree with us. This argument has not been advanced for altering other systems, which do not agree with us. Then the other grounds of there being women legislators, lawyers and ministers. It is difficult to see the force of this argument. A law cannot be changed for the benefit of a few people and there cannot be different law of inheritances for different classes of people. Among the countless women of the country how many of them are legislators, ministers and we are to change our law for their satisfaction. This is an absurd proposition.

To give absolute right to women will be most dangerous. The Code has forgotten the theory of spiritual benefit to be conferred on the departed soul. It may be matter of joke with the framers but millions of people of India do believe in efficacy of this benefit. In fact our law of inheritance given by Dayabhaga is based upon the theory of spiritual benefit. In 1937 there was tremendous opposition to giving full right to women inheritors and the legislator had to drop this right. Simultaneous heirs are quite unknown in Hindu Law. The framers of the code have probably taken this evasion from the analogy of the heirs of Muslim law. When a Muslim dies, his property is divided among various relatives and to prevent this disintegration Wakf laws (Acts VI of 1913 and XXXII of 1930) have become necessary. The Hindus will find the same difficulties in keeping their property intact. The Hindu widow inherits her husband's estate in the character of being the surviving half of the husband; all wives are not entitled to succeed, those who are lawfully wedded and with whom the connexion is religious and permanent so as to subsist in the next world are recognized as heirs. When therefore this position terminates by remarriage her right to the deceased husband's property ceases (Act XV of 1856/I.L.R. 19 Cal. 289 *Matangini v. Ram*). The present Code has not even taken any notice of this law (Act XV of 1856) and of the judicial decision.

Daughters.—There seems to be no reason why daughter will get a share when sons are existing. The doctrine of spiritual benefit of the Bengal school has been lost sight of. Maiden sister is not entitled to any share but only to maintenance till marriage and to the expense of her marriage. There is no reason why daughters married to different family should have share in her father's property along with the sons. They will have their inheritance in their husband's family. All these well-known principles have been lost sight of. There is some difference between Mitakshara and Dayabhaga as regards the succession of daughters. There seems to be no reason why the personal laws of the people of different countries should be disregarded and all should be brought to the same level.

Other heirs.—The order of successions among other heirs has been changed. In Mitakshara mother comes first but in Dayabhaga father comes first in the rank of inheritance. In Mitakshara and Dayabhaga the enumeration of heirs is well defined and people are following their own systems from the immemorial and there seems to be no reason why they should be forced to abandon their own system. Sister is no heir under the Bengal school and this has also been changed.

Stridhana.—There are various kinds of Stridhana according to Hindu Law. The definition of Stridhana is faulty and liable to objection. Stridhana according to the proposed Code includes property inherited by a woman from male owner. This is objectionable. In no system of Hindu Law woman has absolute right to property inherited from male owner. There is serious objection to change the order of succession and the people will be greatly prejudiced. In a vast country like India one code of law cannot hold good for all parts. The custom and the law followed for ages cannot be altered by a stroke of pen. By clause 17, the Code seeks to introduce Anuloma or intercaste marriage which has been interdicted in Kaliyuga and this proposition has been accepted by our law courts as valid, and binding (*Sospuri v. Dwarikaprasad*, 10 A.L.J. 181). It has been held that a marriage between a Dome Brahman and a Haree

girl is against Hindu Law (*Melaram Nadial v. Thanuram Brahma*, 9 W.R. 552). Justice Mitter says "The plaintiff is a Dome Brahman and the girl is Haree. It is to be observed that Domes and Harees are different caste, the general Hindu Law being against it, local custom is the only authority by which such a marriage can be sanctioned. The case was remanded for a finding whether there was such a custom."

In a Tippera case a marriage between a Vaidya and a Kayastha was held to be valid by local custom, but it was admitted in that case that the prohibition, propounded by late authorities has been accepted by court as settled law on the subject (*Ramlal Sookal v. Abbot Ch. Mitra*, 7 C.W.N. 619). In a recent case the Allahabad High Court remarked that whatever may be the case in ancient times and whatever may be the law in other parts of India at the present day a marriage between a Brahman and Chattri is not lawfully marriage in these provinces (*Padam Kumari v. Suraj Kumari*, I.L.R. 28 All. 458). It will be most indiscreet to change a law which has been accepted by our law courts. It will bring confusion in society and the whole foundation of the caste system will be unsettled. The Code quotes a Bombay case but it is to be seen whether the decision was founded on custom. In 2 Bom. L.R. 128 (1900). In 14 Bom. L.R. 547 (1912), the Bombay High Court did not allow a marriage between a Rajput and a Brahman girl or between a Brahman woman and a Sudra. If the marriage is invalid as being against Hindu Law as propounded then the offspring's right to property must be disallowed and the doctrine of *factum valet* cannot be brought to their aid.

In clause 20 of the Code it has disregarded the injunction of Hindu Law as regards certain disqualified persons (Manu Chapter 89, 201 verse) and also both the schools of Hindu Law. The principle is quite clear. The disqualified persons are entitled to maintenance but they cannot be entrusted with the ownership and management of the property as it will be lost in no time. There is another ground that these disqualified persons cannot impart religious efficacy to the departed soul.

Divorce and widow marriage.—They are not recognized by our law and religion. Dharma Sastras enjoin that marriage once contracted will last for ever and cannot be set aside for any reason and therefore divorce is not recognized. Those who wish to avail themselves of the provisions of divorce and widow marriage have their remedy under the Special Marriage Act of 1872 and they will have full liberty as contemplated by the Code. Hindus are extremely religious people. Their laws of succession, inheritance and marriage, are based upon the religion and the British Government from 1793 A.D. onwards has prohibited interference with the Hindu Law regarding succession, inheritance and marriage but the so-called law committee have brushed aside those injunctions. It is difficult to see that there was any necessity for such radical changes and nobody has applied for them.

I have noted a few objections. The whole Code infringes almost all the well-established principles of Hindu Law and it will bring disorder and chaos in society and as such it should be rejected *in toto*. It has been never the intention of the British Government that our personal law should be changed wholesale. The Hindus will anxiously await the action of the Government as the people are vitally interested the matter should not be left to the votes of some interested persons.

In dealing with monogamy the Code has not taken into consideration the following provisions of the Hindu Law based on Sastras.

The principle law giver Manu says in verso 81, Chapter IX that if a wife does not give birth to a male child within eight years after menstruation or who begets only female child consecutively for eleven years or if all the children of the wife die after birth or shortly after then the husband after waiting for 8, 11, or 10 years, respectively, may take a second wife. If a wife who always uses unpalatable harsh language towards the husband, he may take a second wife immediately. Verse 82 says, if a wife is permanently invalid but who is well behaved towards the husband, he may take a second wife with the consent of the first wife.

It is to be noted that a male child is a necessity to a Hindu for giving religious efficacy by giving Pinda after

the father's death. Whether the framers of the Code accept the proposition is not the point. We are concerned with the religious belief of the people who are to be guided by the *would be* Act. The Hindu custom of taking a male child in adoption is due to this belief.

This provision of monogamy without any consideration of the above points is a direct interference with the religion of the people.

11. The District Bar Association, Sylhet.

The present attempt at codification of Hindu Law on un-Hindu lines is the cumulative result of the co-ordination and combination of all these anti-Hindu forces.

The two main subjects for which the present legislation is proposed are marriage and inheritance. In both these, the proponents of the Bill have totally disregarded the Hindu sentiment, and Hindu culture and Hindu traditions. When two years ago, separate bills on these two subjects were circulated for opinion; a good number of opinions were received both for and against them. From a study of the present Bill we find that the framers of the present Bills have on certain minor points considered the opinions of those only who supported the proposed legislation but have not a word to say about those who opposed it as a pernicious piece of legislation. The present draft is sent out to the public to carry the impression that there was no opposition at all amongst the Hindus to the proposed codification though the word is rather a misnomer as the proposed Code is not a mere codification but a legislation which seeks to introduce revolutionary changes which will undermine the Hindu society. This is another factor which justifies the apprehension of the opposers. We shall only refer to a few provisions of the Bill itself to show how far our apprehensions are justified.

Take for instance the matter of succession to a male Hindu.

A son and son's son and son's son's son, widow and daughter will inherit together. Then again when the widow dies the sons and daughters only will inherit; son's son and son's son's son will vanish from the scene. From the male deceased the sons and widow will take one share each, son's son and son's son's son will take one share *per stirpes* and a daughter will take a half share. When the widow will die her share will be inherited by the son and the daughter. The son takes a half share while the daughter takes one share. According to this mode of succession the sons will be always at a disadvantage when the number of daughters is more than that of the sons. Our Muhammadan brethren are already groaning under a law of succession which reduces the property to innumerable fragments as soon as a person dies, and in a good number of cases they take to the subterfuge, of creating wakfs. The proposed legislation is far worse than the Muhammadan law on the point.

Under the Muhammadan Law a widow takes only $\frac{1}{4}$ when there are children and that also goes to sons and daughters, the son taking one share while the daughter takes a half share as in the case of the male propositus in the present Bill. To add to this, all the females, in addition to their right to inherit have been endowed with a right to maintenance and an unmarried daughter to the marriage expenses too. This is not understandable. If a person has the right to inherit, why he or she should be given an additional right to maintenance and to marriage expenses?

There are such other absurdities and anomalies but we need not go into the other details as it is needless to dilate upon the details of a piece of legislation which appears to have been conceived with a motive to injure a community rather than to help it.

7. Next we come to the law of marriage and divorce. The provisions are most pernicious. Monogamy according to western standards has been sought to be introduced into Hindu Society. Why this uncalled for anxiety? Monogamy is not an unmixed blessing in the west nor is polygamy rampant amongst the Hindus so as to require suppression. If they are really out to suppress this evil they may try their chance where it really exists. But there seems to be no inclination to do that. The Hindus are never a polygamous community in practice. Even their own lawgivers have never encouraged this but have

allowed certain relaxations in cases where it is really necessary by permitting a man to take a second wife.

Normally all married people desire children and their lives become miserable when they have none. Hindu sastras more particularly stress upon the necessity of marriage for having a son. When there is no son born to a couple a man has been given the option to marry a second wife for that purpose. So absolute suppression means wounding the feelings and sentiments of real Hindus. And enforced monogamy will give rise to many other social problems as in the west. Who knows that Europe will not take to polygamy after the present war to recoupe their decimated population.

8. This question has a political bearing as well. In Indian politics counting of heads seems to be the guiding policy. A Muhammadan is permitted to have four wives at a time and to add to the number of the community while the poor Hindu is going to be restricted to one wife so as to be deprived of the right to multiply in case of an emergency.

9. So far as the proposal for divorce is concerned, it is strange that the recent law on dissolution of Muhammadan marriages is sought to be bodily introduced. Is this codification of the Hindu Law? The most unfortunate aspect of the proposed Bill is that polygamy on either side (male or female) has not only been made invalid but penal too.

10. As we are against the very principles on which the proposed legislation is based we only express our disapproval of it and register our protest against any attempt at legislation on the proposed lines and refrain from entering into a detailed examination of the clauses.

11. We do not understand why this hurry and anxiety to introduce drastic legislation, and that on the plea of codification at a time when the whole world is in a state of turmoil, society in the melting pot we the poor Indians are the worst sufferers. In none of the belligerent countries, a single soul has perished for want of food. But it is known to everybody what happened in Bengal last year. We would request the authority to drop this Bill and not to agitate the mind of Hindu India when it is pre-occupied with other problems.

12. In this connection, it should also be noted that the present Central legislature is a superannuated body and it does in no way reflect the mind of, nor represent the community.

We would also not like that any legislation which is designed to shake the foundations of the Hindu community should be considered by a legislature composed of members many of whom are not at all acquainted with the customs, traditions and sentiments of the Hindu community and of some others who are out to humiliate the Hindu community.

In our opinion the proposed code if passed into law will bring about economic ruin, social disintegration and cultural degeneration of the Hindu Community as a whole.

12. The Bar Association, Hallakandi.

It appears from the draft Code that one uniform law of inheritance in intestate succession has been arrived at. There seems to be no logical reasoning to bring in almost revolutionary principles in the matter of succession in so far as Dayabhaga school is concerned, unless there are cogent ground the laws of inheritance should be left as they are.

The rights of women to succession may be improved with due safeguard to the disintegration of property of a propositus. A daughter living outside the family of a propositus may have a right of maintenance to the extent that she is unable to maintain herself from her husband's estate.

Sacramental marriages should be allowed according to custom in different parts of India but civil marriages may be allowed to provide shelters to such Hindu couples who would be debarred otherwise to unite in sacramental marriages.

Divorce may be effected only in non-sacramental marriages. Dissolution through Court should be permissible with retrospective effect as provided in clause 30 of the Draft Code. Maintenance to a wife, living separate and leading a pious life should be provided in case of habitual cruel treatment in body and mind. The cruelty should be clearly defined to check the irresponsible husbands. A concubine should have no maintenance, there should not be any union without civil or sacramental marriage and the law should not afford any sanctuary to such persons.

The law, as embodied in Rulings of High Courts and Privy Council, will suffice for the protection of minors.

Too much of Courts' interference in minor's properties should not be encouraged.

13. The Bar Association, Silater.

We are opposed to the provisions of the Bill as they are intended to introduce revolutionary principles in the laws of inheritance.

14. The Bar Association, Barpeta (Assam).

This Association fully endorses the fundamental principles of the draft Hindu Code, as laid down by the Hindu Law Select Committee. It welcomes its noble move to enact a common and unified Hindu Code which was so long wanting in the Hindu Society. To bring about integrity among the various parts of the Hindu Community and to bind the people professing the same religion under the common law is a great need of the day.

This Association, however raises its objections to the proposed provision in the Code as regards daughters' right of inheritance, on this ground, that it will bring about disunity and disruption among the Hindu families and disintegration of the ancestral property may be its result.

15. The Bar Association, Mangaldai, Secretary.

1. I do not appreciate the proposal of merging the Dayabhaga and the Mitakshara in one mould in the matter of succession.

2. The very idea of registering sacramental Hindu marriages may be repulsive to the orthodox Hindus and as such there should be no provision for registering such marriages.

16. The Secretary, Nowgung Bar Association.

Hindu daughters should be included in the list of heirs as shown in the draft.

2. I am definitely against the inclusion of sub-clause (a) of clause 3 of Chapter I of Part IV with the deletion of this clause 24 of Chapter II of Part IV becomes unnecessary.

17. The Secretary, Bar Association, Dubri.

I submit that in 'Intestate succession' I am opposed to inclusion of "daughter" as a simultaneous heir with widow, son, etc., and also to the provisions relating to Civil marriage and divorce as the changes, are revolutionary in character and will undermine the solidarity of the Hindu Society.

18. Mr. N. C. Ganguli, Secretary, Tezpur Bar Association.

Moulding of the two systems of law, Dayabhaga and Mitakshara in the same line is not approved.

2. Registering of Hindu marriages is also considered objectionable.

3. The very idea of codification of the Hindu Law is not viewed with favour.

The female heirs should not be given absolute rights.

19. Mr. B. Rajkhowa, Honorary Registrar, Dibrugarh.

The draft appears to be suitable. It avoids conservatism on the one hand and radicalism on the other hand.

It is a very continuous draft and should take the sting out of the opposition. The outstanding feature is that the women are freed from the many handicaps from which they have long been suffering. Monogamous marriage is a brilliant spot in the draft—as also the provision for divorce. I beg to add a few personal views of my own:

(1) No marriage should be permitted unless the bride has completed her sixteenth year.

(2) No marriage should be permitted unless she has given her consent in writing.

(3) Registration of sacramental marriages should be compulsory and not optional. In the rural areas in Assam, many marriages take place according to local customs. Such marriages, according to the draft, will be deemed sacramental marriages. But it will be difficult to prove them in a Court of Law, if such marriages be not compulsorily registered. This is specially important in the case of garden coolies and other depressed classes.

(4) In clause 30 (a) and (c), the period, in my opinion, should be "not less than three years." "Not less than seven years" seems too long.

(5) Another clause should be added

"(g) If the husband or the wife habitually ill-treats the petitioner."

(6) Another clause should be added

"(h) If the petitioner's life be made intolerable on account of incompatibility of temperament between the couple."

(7) There should be another provision, under clause 33 in the draft, which may run as follows:

"In cases of (c), (d), (f), (g), (h), the petition may be recorded and the petitioner may be required to renew the petition on expiry of a period of six months when final order will be passed—as there may be chances of the parties coming to a settlement in the meantime."

(8) There should be another provision, under section 34 in the draft which may run as follows:

"A decree for dissolution of marriages will be passed, if both the parties agree duly by mutual consent. In such case, no reason need be assigned for the course taken. Such a petition should be presented by both the parties concerned."

20. Mr. Jatinra Nath Chatterji, M.A., B.L., Secretary, Hindu Dhana Sabha, Dhubri.

I personally condemn the Draft Hindu Code as it will vivisect the Hindu society and it will create divisions and subdivisions in a family. If this Hindu Code be passed into Act, then the solidarity of Hindu society will vanish. Just like a Muhammadan family, a Hindu family will be divided into many small fractions—strangers intruding the estate and taking away their share. If we compare on Hindu family with that of a Muhammadan family, started at the same period we will find after some generations that the Hindu estate is in its former existence while the Muhammadan estate has dwindled into petty fractions.

Under the present Hindu Women's Property Act, a Hindu female is getting a share in the estate. If daughters be allowed a share then she will acquire property both in the family, of her father and husband.

It is desirable that this Code should not be passed into law.

21. The Secretary, Goalpara District Association, Dhubri, Goalpara.

From the general principle, it is desirable that the Hindu Law, which was promulgated by the ancient sages in the prehistoric age, should undergo a change, so that it may pace with the present progressive time. The idea of prudence and accommodation to changing circumstances should lead to the gradual removal of the rigidity of the Hindu Law, Customs and usages. The same kernel of the Hindu Culture pervades the whole Hindu Community, but outward appearances are of such a nature, that it throws a great obstacle in the ascertainment of the definition of "Hindu". The uniformity of the Hindu Law

is sure to remove the differences, which are now prevalent amongst the Hindus and thus pave the way for the unification of the Hindus. From the cursory view, which I have taken of the draft Code, if it be passed into an Act and becomes the Law, it will remove the anomalies, ambiguities and the difficulties in all matters vitally touching upon the growth and unity of the Hindu Community, specially in the matter of Marriage, Divorce and Succession. With this, I, on behalf of my association, give my full support to the Draft Code and if necessary I shall support this view, before the Committee, if it happens to come.

22. Mr. Jogesh Chandra Biswas, Tarapur, Silohar.

The effect of inheritance of paternal properties by married women.—(1) It will be difficult to utilize the properties from a distance and it is likely to involve them with liabilities, as has always been the condition of cultivators and middle-class people due to surrounding adverse condition.

(2) A woman or her heirs may and are likely to sell the property at a distance and in the absence of capacity of co-sharers of that locality, third persons will take hold of the shares to the disadvantages and more sufferings of the local heirs.

(3) Thus, joint good properties being divided and collapsed, the power of withstanding clashes from undesirable persons in the rural areas will be crushed and it will bring about another form of miseries widely over all. We, in the rural areas, feel the utility of a joint property not only in economical point of view but also in time of miscellaneous alarming situation. The most needy ones and beggars also get the benefit directly or indirectly.

(4) Suitors for daughters of rich men will come forward to share the property rather than love, whereas, the condition of the wretched girls of poor fathers shall run worse than now.

How women should get hold of some sort of properties without effecting the present system.—(1) An unmarried girl (if she is not willing to marry or if want of good suitors compels her to remain so) is rightly deserved to get a share of her father's property.

(2) A married woman should have legal right over half the property of her husband and at her death, the sons will be the legal heirs. If this is introduced, a woman shall remain quite free from the economical tie of her husband, and at the prior death of the husband, the illiterate sons also will not disregard her for fear of losing property. In many cases, we find that the sons also do not care for their old mother. I urge the Committee to take this fact into deep consideration.

Re-marriage.—(1) The ideal should be to marry once only. In cases of young widow and widower, marriage should be allowed among men and women of same condition, so that widow-marriage may come to a success. Though it is introduced, it has not yet an effect in the society.

(2) For man also restrictions should be in age of marriage. Sometimes young girls are tied in marriage with old men. This bad system should be strictly avoided.

(3) Before negotiation of a marriage, the guardian must take opinion of the bride and bridegroom. Nothing should be done against their hearty consent to avoid painful outcome.

(4) Unfit either physically or mentally should be prohibited to marry.

Divorce.—(1) Of a good many cases, brief notes on a few within my knowledge are given in the enclosed sheet, wherefrom, it will be possible to think over if this system will do any good to the points in view. If not, what is the utility of adding this word to the purest idealism of the Hindu Religion?

(2) The reason of disorders are want of proper education on morality and idealism, as introduced by the *richis*.

Conclusion.—The matter has been deeply thought and discussed over by the leading gentlemen and ladies. Opinions, for and against, have been thoroughly studied. The reformers, I hold, will keep in view that over 90 per cent population of this country are either ill-trained or

not trained at all. Scattered meetings here and there have little echo of the public voice.

We need not carry on foreign culture in this country. The rights were not lacking in foresight. Modifications of mis-followings may be carried on with strict adherence to Hindu philosophy. As for divorce, the effects on this system may clearly be seen in the foreign countries,

wherefrom, many reformers are now highly appreciating the ideal of Hindu marriage.

For the present time of abnormal economic depression, our main point should be co-operation and mutual help. Any effort frustrating this main point in the society should be strictly avoided.

VIII. ORISSA.

1. B. K. Ray, Esq., Advocate-General of Orissa.

In clause 2 (definition and interpretation) the word "sister" should be interpreted so as to include "half-sister."

2. In the case of provisions relating to succession of property of males, if it be and as it has been decided by the makers of the Code that the daughters will be simultaneous heirs with sons, grandsons and great grandsons and also with their mothers, the same rule ought to be followed in the case of sons' daughters and daughter's daughters' sons, daughters' daughters, sons' sons' daughters, etc., that is to say, they should be simultaneous heirs with sons' sons' or sons' son's sons in the case of succession to their grandfathers or great grandfathers estates. This will introduce no anomaly because the descendants either male or female of a son or son's son of the deceased are mere representatives of their father or grandfather in the matter of succession, being thus entitled to inherit as between themselves the share which should have come to their aforesaid ancestors had they been alive on the death of the deceased. This rule should be followed wherever it is necessary. In my view, therefore, there is no point in giving preference to a son's son over a son's daughter or to daughter's son over a daughter's daughter or similarly to son's daughters' son over son's daughter's daughter, so on and so forth.

3. As at present the proposed Code gives preference to brother and brother's son over the deceased's own descendants either through male or female. I see absolutely no point in that. The efficacy of offering Pinda is no longer considered as a test of preferential right in the order of succession and consanguinity is taken to be the test. The order of succession, therefore, should be so devised as to give the deceased's own descendants either through males or females howsoever remote preference over his father's descendants such as in case of classes III, IV, V and VI.

4. I should suggest that while the deceased has got male descendants alive and any one or more of his female heirs howsoever remote dies leaving no male issue the heritage ought to revert to such of the male descendants of his in such order as would conform to the rules of preference prescribed in the Code. In view of this observation the rules of preference contained in clause 9 should be amended.

5. I have nothing to add with regard to (i) order and mode of succession to Stridhana, (b) general provisions, and (c) testamentary succession.

6. With regard to maintenance, it should be open to the owner of an estate to deprive any of his dependants, of it out of his estate after his demise. This right of deprivation of the right of maintenance by testament will be confined to those cases in which the testator while alive could deprive them of it.

7. With regard to the law relating to marriage the strictness of monogamy should be relaxed at least to the extent of a man having liberty of marrying more than one wife for the purpose of procreation of children provided the wives of his earlier marriages one after the other turn out to be barren for the time being. I doubt if the effect of the strictness of monogamy has at all been seriously considered in its bearing on the social welfare of the people. The marriageable age both in case of males and females should be fixed, say, 21 in the case of males and 18 in case of females.

8. In the fitness of things, provisions enabling declaration of nullity of marriage and dissolution of marriage are to stand; there should also be provisions for judicial separation as well.

9. I have nothing to say with regard to the part dealing with minority and guardianship.

10. With regard to the part relating to adoption, my suggestion is that adoption should be prohibited in cases where the adoptive father has got either agnatic or cognatic descendants howsoever remote. So far as my personal view goes, the system of adoption may be completely abolished particularly in keeping with the theory underlying rest of the Code, abrogating the efficacy of offering Pindas in matters of succession. Institution of adoption was only justifiable on that theory. If a daughter, daughter's daughter, son's daughters' daughter can succeed without any of them having right to offer Pinda there is no reason why their existence should not be a bar to the adoption of a son. If the Code makers may not go so far as to abolish the institution of adoption at least they should provide that wherever there are male descendants either through males or females howsoever remote there will be no power of adoption.

11. Clause 21 at 41 seems to be entirely misconceived. In the earlier part of the Code a father gets absolute power of disposal of the joint family properties (the theory of a vested birthright having been completely abandoned) while according to clause 21 adoptive parents are debarred from such a right, though on account of a contract entered into at the time of adoption. The theory of Hindu law is, when the adoption is motivated by some material consideration that is invalid. Looking at from that standpoint also it is against the very essence of the Hindu law and religion that one should be given in adoption only in consideration of securing certain property to him. In my view, clause 21 of the Bill should be completely deleted.

2. Pandit Nilakanta Das, M.A., M.L.A. (Central), Cuttack.

I am against the codification of the personal laws of the Hindus. The whole basis of the sacramental law is that its source is the Holy Text and not a statute. This basis is wholly lost by codification. True enough that most of the Hindu law to-day is judge-made law, and in an ordinary case the judge goes to the law reports and not to the Shastras. But resort to the Shastras is often had even to-day and this must be within the personal experience of the members of the Committee. The fundamental fact, however, remains that the judge-made law on any point is but an interpretation of the particular injunction of the Shastras. The Shastras remain the fountain-head of the law and not the statute of a mundane legislature. In the popular mind Shastras prevail because they are Shastras as they have prevailed for centuries. I do not think there is any justification whatsoever for gratuitously giving a profound and even violent shock to this popular belief.

I am implacably opposed to making any changes by the Committee in the present law either on the ground of securing uniformity or on any other ground whatsoever. I can at least appreciate, even though I may not be able to approve of, an attempt to abolish all personal laws, Hindu and Muslim, and to substitute a uniform territorial law instead. Lord Wavell may well make his name immortal in India by getting a Code. Wavell enacted in the same way as a greater soldier did in his own country, by Code Napoleon. But any attempt to make fundamental changes in the personal laws of the Hindus either to make the law uniform or to put into effect certain so-called reformatory ideas and idiosyncrasies calls for the severest condemnation. A change in the personal law should be made only when the people affected by it ask for the change in an unmistakable way. It is not to be imposed upon them. As a democrat I hold that the legislature should have express sanction of the electorate before it attempts to make such a change, and then only on the initiative of a representative and responsible Government. There can never be a more flagrant, more wanton, more criminal abuse of the power of the state than for

an irresponsible, irremovable, unresponsive Government to force through a moribund legislature the recommendations of a committee whose personnel have been severely criticized by reasonable sections of public opinion.

On merits, too, I am opposed to the changes proposed. The draft Code makes out no case for forcing monogamy and divorce on the Hindu community. So far as marriage is concerned, the committee in its wisdom propose two forms—sacramental and civil. Why should there be any place for civil marriage in a statute codifying personal law? Then there is the most obnoxious provision of allowing the daughter to succeed along with the son, and in order to remove the difficulty of a daughter becoming a coparcener in a Mitakshara family, the committee propose to abolish coparcenership and devolution by survivorship. Never in all history was such a fundamental change proposed in such a light hearted fashion.

3. Orissa Women's League of Service, Cuttack.

Regarding adoption.—In case the adopted son dies, widows having authority to adopt must be given the right of adopting another son.

2. Regarding maintenance.—If a son earns, he will be made liable and bound to maintain his old parents especially where they are in less favourable circumstances than the son.

3. Regarding divorce.—The sons will not be bound to maintain the parent who seeks the divorce, excepting for these amendments suggested the sub-committee wholeheartedly supported the draft.

4. Andhra Mahila Samaj, Berhampur, Ganjam district (Orissa) Srimati P. Mangamma—Hony. Secretary.

All the rules in the Hindu draft Code are particularly necessary for the good of all ladies and this Code corrects to a great extent the age-old injustices done to women.

5. R. L. Narasimhan, Esq., I.C.S., District Judge, Cuttack, Sambalpur.

I am in full agreement with the provisions of the draft Hindu Code subject to the following modification:—

Clause 19 of Part II which deals with disqualification of an unchaste wife seems to be rather vague and it may cause considerable difficulties in administration. The word "unchastity" has not been defined and it is difficult to say whether the framers of the Code intended that it should be synonymous with "adultery" as understood in the Indian Divorce Act or as defined in the Indian Penal Code. Apparently an isolated act of adultery is not contemplated in clause 19, but this should be made clear by defining the word "unchastity."

Similarly, condonation of unchastity should be clarified by adding an explanation to the clause of the lines of explanation 5 to clause 12 of the Indian Divorce Act.

As regards registration of adoptions, I would suggest that it should be made compulsory and not optional and consequential amendment should be made so that the application for registration may be made in the Civil Court of the lowest jurisdiction and not in the Court of the District Judge. Parties would be put to considerable harassment if they are required to apply to the District Judge for adoption, especially in a place like Orissa where the headquarters of the judgeship is far away.

6. Rai Bahadur Charuchandra Coari, M.Sc., B.L., District Judge, Ganjam—Puri.

The subject on which a discussion has been invited is so complex, the social fabrics of the Hindus it purports to affect are so varied and the consequences that will arise are so far-reaching that at the outset I must have to admit that I do not feel competent to make any just and detailed comments on the proposed Code.

2. In the explanatory statement it has been observed that one of the objects of the Committee is to evolve a uniform Code of Hindu Law which will apply to all Hindus.

I have not been able to anticipate whether any uniformity in this respect among all the Hindus is at all desirable or feasible. As to its feasibility an illustration shall be found in the matter of tenancy laws that even now obtain in this small Province of Orissa. You will notice that for the North-Orissa it is the Orissa Tenancy

Act is in force. For the ex-Madras area it is the Madras Estates Land Act which is still in operation. For the Old Sambalpur district and the ex-Central Provinces area it is an old regulation that is still in the Statute book. I am sure the Government of Orissa would not have taken time to blend these different tenancy laws into homogenous one if that would have been feasible. At least a pretext that the achievement of uniformity necessarily involves the adoption of one view in preference to others on particular matters is available to be urged in its favour but the legislature is even now feeling diffident to use this pretext as a handle for the fusion of those different laws into one.

3. The sponsors of the Bill no doubt think that codification of the Hindu Law is a necessity and it is overdue. I regret I am not one of those who possess such progressive ideas. I am not aware if in the rest of the world there is any Code like the one sponsored by the Committee to govern any race in the matter of observance and performance of their social rights and customs and the consequences that would follow by reason of such observance and performance. For instance I am not sure if the British Common Law can be characterized to be the result of Acts passed by the Parliament or the effect of the rigidity of the customary laws explained as exposed as occasions arose therefor by judicial decisions. This shall be my main argument against the introduction of the Bill before the councils for their consideration.

4. Again, in the explanatory statement, it has been mentioned that the proposed Hindu Code should be as complete as possible, for it is generally felt that the evils of piecemeal legislation on this subject should be avoided. I am not certain whether the draft Code has at all achieved that object, as also whether it is desirable that for each event in the daily lives of a class or sect an incomplete Statute can be deemed to be a real necessity.

5. I do not know whether the draft Code is presented for public consideration with any political motive. If that be so, I cannot be justly called upon to make any comments of a Bill like this for till now I have not acquired any political views to mould my thoughts and actions.

6. I also entertain serious doubt whether the time is opportune for the consideration which the proposed Code would so obviously require for the final shape it has to take. Still the world is in the midst of a bloody war. It is obvious that this war forms an index that at least in some parts of the world subversive minds are working to stifle the natural flow of modern civilization. The social structures of various countries are so to speak in melting pots. It is difficult to assume what shape the cult of the future civilization will take. When the war in all its worst fury is raging at the very door of our country speaking for myself I must leave to make it clear that it would indeed be a very unwise step for the Indian Legislatures at this point of time to take the responsibility of considering whether there should be a Hindu Code and then what form it should take. The consideration of the question should be shelved at least till the termination of the war, else it may be reasonably apprehended that future generations shall refer to this act of the present legislatures as an instance of hasty legislation.

7. I do not know if I would be correct and within my bounds to anticipate that the sponsors of the Bill are under an impression that the Hindu males do not show proper respect to their womenfolks. It strikes me to be the central idea for which a codification of Hindu Law is felt to be a necessity. Illustrations in support of this idea are said to be furnished in the males right to perform as many marriages as they would like and that the females are never considered to be absolute owners of properties which they inherit. If I am permitted to express my view in this respect I might put it simply like this: Though the Hindu Law sanctions more than one marriage, a male seldom indulges in exercising his this prerogative. And that though women of other nationalities do enjoy rights of absolute ownership in the properties which they inherit or acquire by devolution of interest, this factor alone cannot justify an inference that Hindu women as a class have been made subordinate to the whims and caprices of Hindu males. The central idea in Hindu culture is motherhood and the accepted principle among the Hindus is that motherhood is next to Godhood.

8. The principles of law which now govern the Hindus are apparently so elastic and run so obviously in accordance with natural justice and good conscience, that any attempt to make them lose their this elasticity must be made to subject to severe test before it can be pronounced that this attempt is conducive to better results and more prosperous conditions of the Hindus at large. If the results that will arise cannot be so described, we should take time to form an ultimate impression that codification of Hindu Law is a necessity and it is long overdue.

9. These are some of the broad ideas I have been able to form about the absence of necessity for a Hindu Code and the inexpediency for its now being introduced before the Central Legislatures.

10. I shall try to illustrate my view points by reference to some broad characteristic provisions introduced in the Bill—

(a) In my view the Committee have not been able to define what the expression "Hindu" as is to occur in the proposed Code should legally mean. It begins and ends by stating that a Hindu in this Code means a person professing the Hindu religion (vide Part I, section 2). I do not improve in my notion about a person being or not being a Hindu when I read this definition of the expression Hindu. Can a Muhammadan by birth who professes Hindu religion be deemed to be a Hindu under the Code or conversely can a Hindu by birth who does not profess any religion be deemed to be a Hindu? In my view the question has to be tackled at its root because it is the personal laws of a race that are sought to be made rigid and moulded.

(b) Illustration (a) under the definition of the expression "Hindu" runs thus: A convert to the Hindu religion is a Hindu. I am not certain whether the Hindu religion is justly possible to be described as a proselytising religion.

(c) In clause 3 of Part I it is provided in regard to any of the matters dealt with in this Code, its provisions shall supersede any custom or usage not expressly saved. This provision is subversive to all recognized principles of law. Law sanctions custom and seldom overrides it. It is indeed unfortunate that with an object of bringing uniformity, the Code will be empowered to go to such a length as to provide a repugnant law like this.

(d) Though the object of the Code is to avoid piecemeal legislation, section 1 of Part II of the proposed Code provides that agricultural land would be exempted from the consideration of the Code in the matter of intestate succession. Thus the Act itself provides an instance of piecemeal legislation, for in this respect the Committee have asked the Provincial Legislatures to formulate their own laws which would in the matter of intestate succession govern the agricultural lands of the Province. It may be remarked without any fear of contradiction that it is the agricultural lands that would form the bulk of properties which would form the subject of intestate succession. The intended Code cannot achieve its primary object to bring any uniformity at least in this respect for each Province has its own individual problems to consider and solve. After the recent pronouncement of their Lordships of the Federal Court that agricultural lands do not come under the provisions of the Hindu Women's Property Act I am afraid not more than two of the nine Provinces have enacted their own Provincial laws in this respect. I refer to this fact particularly because some of the subjects contained in the draft Code have been placed in the Government of India Act under the head concurrent list. Doubts may arise whether such legislations would be *intra vires*.

(e) The Code intends to vest the females with absolute rights in the properties which they would inherit. Clause 13, Part II, forms an illustration to the point. This in my view is opposed to one of the fundamental principles that shall be found in Hindu Law. I am unable to make out whether this law is likely to perpetuate the family rites of the propitiator or to preserve the integrity of the corpus of the properties of the deceased. I cannot assume that by this means the widow shall as a matter of course lead a more healthier life because she will have the satisfaction of handling those properties in her absolute right. In fact this aspect of the Hindu women's rights to properties does not appear to me to admit of a very easy solution, i.e., through process of simple legislation.

(f) Clause 17, Part II, provides that a male or a female Hindu can contract a marriage outside his or her caste. I

really feel puzzled whether the proposed Code should aim at altogether removing the caste system prevailing among the Hindus. I am not certain whether the caste Hindus will tolerate or repel this idea. No doubt sometimes it is said that it is the existence of the caste system among the Hindus that is responsible for the destitute condition of the Hindus as a race. I cannot say with any authority whether among other communities class distinctions in some form or other do not exist at all. If they do not exist why among the Hindus the existence of caste system should be resented as obnoxious. In my humble opinion the last word on the subject has not yet been pronounced. In this connection I must refer to section 9 of the Civil Procedure Code. There are decisions of the Indian High Courts which have laid down in the matter of caste customs that over which ecclesiastical chief has no jurisdiction, civil courts cannot interfere. Shall I be correct to say that legislation in this respect even in Germany or in Russia has to all intents and purposes failed to meet the demands of natural justice?

(g) Clause 11 of Part III-A cuts at the root of the fabric of the joint co-parcenary system obtaining in Mitakshara families. In the matter of testamentary and intestate succession in respect of agricultural lands the rule of survivorship has been abolished. I must feel nervous if I am to make my comments on any law proposed to be enacted which tries to shake the foundation of the joint family system obtaining among the Hindus. I must also point out in this connection that the Code does not maintain any distinction in this respect that exists between the Mitakshara law and the Dayabhaga law, though it is known that the two laws are based altogether on different principles.

(h) Not only the Code has aimed to provide rules for marriage but it also provides rules for divorce (vide Part IV). The American Judge Lindsay in his oft read publications has expressed genuine doubt whether it is not true that the existence of the rule of divorce is responsible for contracting irresponsible marriages. Even when modern minds are not certain whether the rule of divorce should be relaxed or should be made more rigid it is too stiff a subject for me to make any comment on for it is known to every born Hindu that the idea of divorce is repugnant even to Hindu women.

(i) The Code provides that after the commencement of the Act marriages can be performed either in sacramental form or as civil marriages. (vide clause 18 of Part IV). Clause 6 of the same part provides that for facility of the proof of the marriage even in respect of sacramental marriages either party may go in for registering his or her marriage. The idea underlying this provision seems to be that even in case of sacramental marriages divorce can be sanctioned. In clause 29 of the part an example to this idea shall be found. I cannot say if this provision should at all find a place in the Statute book.

(j) In the matter of succession, daughters have been placed in the same footing as sons. In my view the position is uncertain whether it is the daughters or the daughters-in-law if at all who should succeed; for after marriage a daughter adopts her husband's gotra. The principle underlying succession among the Hindus is based on sapindaship. It is difficult to assume that after their marriage daughters would be at all anxious to maintain the integrity of the rites obtaining in their father's families.

11. I began with a remark that the subject is so complex and varied that it is beyond my capacity to make any reasoned comments for or against the desirability of bringing any code like the Hindu Code in the Statute book and I have enumerated at least some instances to indicate that the central ideas underlying the proposed Code are directly opposed to the fundamental principles of Hindu Law as explained in the text books and judicial decisions. I have also pointed out that the time is most ill-suited for a discussion on a subject like this. For all these reasons my concluding remark shall be that the Bill should not now be introduced into the Council for consideration.

7. The District Officer, Cuttack.

The provisions of the draft Code on other matters seem salutary. The District Officer is in favour of the

enactment of the provisions entitling the widowed daughter as well as unmarried illegitimate daughter to maintenance, and prohibiting polygamy.

8. Sri Kopargam Ramamurti, Pleader, Berhampur, Ganjam (Orissa Province).

I heartily support the fundamental changes introduced in the present day Hindu Law by this Code. I had the honour of submitting, in August 1942, as Secretary of the Social Welfare Association of Aska, our opinion in support of the intestate succession and marriage bills while making a few suggestions and recommendations. I am happy to find that some of them have been accepted and incorporated in the present Code. I hope those Bills will be correspondingly amended or withdrawn in favour of the proposed Code as a whole.

2. I am particularly glad to note that you have framed as suggested by us, a liberal definition of the term "Hindu," including under it not only persons professing the Hindu religion but also Buddhist, Sikhs and Jains, wiping off from the civil marriage sections of the Code and of Act III of 1872 all vestiges of Dr. Gour's amendment of 1923, some of which lingered and created anomalies in the Marriage Bill of 1942. But I regret that by some oversight, you forgot to repeal one vestige from the two declaration forms about religion to be signed by the bride and bridegroom respectively as per Second Schedule of Act III of 1872. I request therefore that in column (4) of the First Schedule of the present Code at page 46, it may be inserted as amendment No. 4 that the following words and brackets shall be omitted in both places where they occur in the said forms:—

"[or (as the case may be), I profess the Hindu or Buddhist, or Sikh or Jaina religion]."

3. I am glad that the existence of the Brahma Samaj is at last legally recognized through the present Code and the express provision is made that "a person who joins the Brahma Samaj is a Hindu," just as any member of the Arya Samaj, whether drawn from a Hindu or non-Hindu community, was recognized as a Hindu by special statute in 1937. But the present innovation about Brahmism is made by way of illustration to the second part of the definition as if all Brahmism in general, without reference to their communal origins, are already subject to Hindu Law. It is our general impression, however, that what has been so far decided by the courts is only to the effect that Hindus who join the Brahma Samaj or even repudiate the Hindu religion at their marriage as required by Act III of 1872, do not thereby cease to be governed by Hindu Law. Christians, Moslems, Parsis and Jews who have joined the Brahma Samaj, are not, it is feared, already governed by Hindu Law, like the Hindus, but continue to be governed by their own respective family laws. For the consolidation, stability and progress of the Brahma Samaj, it is absolutely necessary and desirable that it should have a family law for all its members. We rejoice that such law, which the Samaj should have got long ago, is sought to be provided by you in this Code. Our only doubt is, whether, in any disputed case, the new illustration can be upheld in full as having the power to enlarge the scope of the section in the face of the Privy Council decision reported in A.I.R. 1938, P.C. 67. I request therefore that the following further alternatives may be inserted directly in the first part of the section after the words "or Jain Religion":—

"or a person who joins the Brahma, or Arya Samaj."

4. By way of implementing fully the same just and liberal policy as above indicated, I request that the declaration forms of the Fourth Schedule printed at page 47 of the present Code, which give liberty to the bride and bridegroom to assert their distinctive religious appellations although they all come under the term "Hindu" according to definition in the Code, may be amplified by adding, after the words, "or Jains religion", the further alternatives:—

"Or I am a member of the Brahma Samaj, or the Arya Samaj (as the case may be)."

5. In Part II, clause 5 (class I) and in Part VI, clause 22 (3) of the draft Code we are opposed to the ruling of the Madras High Court that the son adopted by one's son-in-law after the death of one's daughter shall be deemed to be her adopted son competent to inherit to the

deceased lady's father. It is unjust to her father, who may have had no notice at all of the adoption. To enable him to prevent the succession by will Mr. S. Srinivasa Aiyangar's support to it is lamentable. Sir M. Venkata Subbarao, retired High Court Judge of Madras, in his review of Mr. Aiyangar's Edition of Mayne's Hindu Law in the "Hindu" of Madras, gives true expression to the shock the ruling gave to the general public. Such adopted son of a widower should be placed on the same footing as the adopted son of a bachelor.

6. Part IV, Chapter I, clauses 3, 4 and 5 as first printed in this draft clause are preferable to the alternative clauses 3, 4, 5 and 6 printed immediately after them which are clauses 4 to 7 of the Marriage Bill now before the Assembly. I hope that Brahma and Arya Samaj customs are sufficiently covered by the wording of clause 4 of the present draft which refers to "customary ceremonies."

7. Part IV, Chapter I, section 24 (page 28).—In the Bill before the Assembly as well as in this Code, this section purports to be a combination of clauses 15 and 16 of Act III of 1872 and is offered as an improvement upon the latter which does not make void a bigamous marriage contracted after a civil marriage under the Act though it is made punishable. But while making this improvement the new clause confines the punishability as well as voidity only to a bigamous marriage between two Hindus and omits those words of section 16 of Act III of 1872 as make such bigamous marriage penal even if the bigamous party had changed his or her religion, say to Islam, before the second marriage. Perhaps you had thought it undesirable or impossible to invalidate or punish a Moslem marriage through a Hindu Code, though it may be bigamous. Please see if this part of section 16 can be incorporated in section 24 so that bigamy after renouncing the Hindu religion may be at least punishable, though not void.

8. Part IV, Chapter I, section 29 (i), clause (iv).—Please add after the words "that either party was a lunatic or an idiot" the further alternative "or was infected with leprosy."

9. Part IV, Chapter I, clause 30 (b).—Please omit the words "virulent and incurable", before the words "form of leprosy." It is anyhow loathsome and intolerable for close contact and practically incurable. Though the Tropical school of Medicine claims to be able to cure it, it is only full of excuses for its manifest failures, and its treatment is not even available to most sufferers and is very disappointing, but no doctor can be expected to depose that any case is incurable.

10. Part IV, Chapter I, clauses 30 (a), (b) and (c).—Seven years is too long a period to take out of a man's or woman's life. It destroys every chance of further happiness and makes divorce thereafter practically worthless. It should be reduced to five years as proposed by Mr. S. SRINIVASA AYYANGAR, or even to three years as proposed by Dr. DESHMUKH in case of desertion. It is a forlorn hope to placate the orthodox by making the condition so stringent, because their opposition is implacable and fundamentally against the concession of divorce under any circumstances and even to codification itself.

11. Part IV, Chapter I, clause 30.—I am for adding another clause after (f) to make it unnecessary to undergo all the heavy expense and unseemliness of washing domestic linen before a Court. Among the castes which allow divorce by custom the mutual consent of the parties embodied in a "chand patra" is quite sufficient to effect the divorce. Provided that such a document is registered, mutual consent should be made sufficient for all under the Code.

12. Part VI.—Clause 15.—In case of Adoption the stake being property, downright perjury and forgery are already rampant and are invariably successful in robbing widow and daughters of their just inheritance. Now that "giving and taking" is made the sole essential to valid adoption, I suggest that not only the execution but registration of an adoption deed be also made another essential, as in Ajmere-Merwara.

In conclusion, I reiterate my gratitude to the learned Committee for the patriotic and humanitarian service rendered to the Hindu Community by their arduous labours.

II.

I regret I made a mistake in paragraph 5 of my letter of 20th November 1944 in dealing with the status of the widower's adopted son in relation to the adopter's pre-deceased wife (see Part VI, clause 22 (3), of draft Code).

I wrongly stated that Mr. S. SRINIVASA AYYANGAR supported the view taken by the Madras High Court, that the adopter's deceased wife must be treated as the boy's adoptive mother. I find on reference to the 10th Edition of Mayne's Hindu Law (Page 259, page 189), that his opinion, based upon the Dattaka Mimamsa, is that a person can be the mother of the adopted boy only when she is in existence as a wife of the adopter at the time of adoption, and therefore not even the adopted son of a bachelor can claim as his adoptive mother the subsequently married wife of his adopter. I therefore press my objection already expressed to the widower's adopted son claiming the deceased lady as his mother and seeking to inherit her father's property like a Dhotra.

2. Part VI, clause 12 (2)—Adoption.—I object to the provision that a father can give away his boy in adoption even against the mother's protest. I suggest that her consent too should be made essential, as she is more closely interested in the boy than the father in natural affection.

3. The daughter's share of inheritance to the father should be equal to that of a son not less; and similarly her share in the mother's property should be equal to not more than that of a son. It is only by equalizing their shares at each point that equality as a whole should be achieved since the quantities at each point are unascertained and must vary. To make a daughter's share in father's property a half on the ground that she would have a chance of inheriting something from her husband is to presume that her father and husband are equally rich and it is also wrong in principle as it goes against the principle of sex equality. Let the husband also inherit to the wife along with her son and daughter.

4. As regards the deprivation of the pre-deceased son's widow and the widow of a predeceased son's predeceased son of the shares given already under Dr. DESHMUKH's Act on the plea that it will lead to too much fragmentation, is unjust. They represent their deceased husbands who would have received their share in spite of such excessive fragmentation. This latter question of fragmentation must be dealt with politically for the whole country by some method like the Russian system but not by depriving individuals of their rights in whatever share they are justly entitled to.

5. Son's daughter and daughter's daughter (Clause 5, Class I of Part II). It is not in conformity with the principle of natural affection to place them in Class II. They must be placed in Class I immediately after the father and before the brother.

9. Sri Govindprasad Saha, Pleader, Jaipur.

Part I.—Preliminary.

In the definition of *stridhana* in Clause 5 (j) of Part I, the words "by inheritance" and "at partition" be deleted.

If these be provided in the draft Code, the system of offering *pinda* will be frustrated as the female heir is very likely to alienate the property inherited, and also properly obtained or partition, soon after, she get it. Moreover in the Hindu Women's Right to Property Act of 1937-38, lately promulgated, she has been allowed a limited interest, but not absolute ownership, after due consideration.

In clause I (ii), Part II, the following clause to be added after the words "enactments":—

"Or gift or disposition in the manner of direction indicated by the donor or deviser in his deed of gift or disposition."

From the enumeration of simultaneous heirs in clause 5, Part II, class I, the word "daughter" be deleted. In case the daughter included among the simultaneous heirs the property will be for ever lost to the family to which it belongs, and also it will lead to excessive fragmentation. However the unmarried daughter may be included in the list of simultaneous heirs.

In this whole clause the order of succession given is not proper. The proper order is suggested. Also there should be no classification as it will lead to various complexities.

The proper order is:—

(1) simultaneous heirs—widow, son, son of a pre-deceased son and son of pre-deceased son of a pre-deceased son, and unmarried daughter, (2) married daughter, (3) married daughter provided for, (4) daughter's son, (5) mother, (6) father, (7) father's son, (8) father's son's son, (9) father's mother, (10) father's father, (11) sister, (12) sister's son (13) son's daughter, (14) daughter's daughter, (15) brother's daughter, (16) sister's daughter, (17) father's son's son's son, (18) father's brother, (19) father's brother's son and thereafter to follow the old line in the manner indicated herein.

From Clause 7 (d), Part II, the words "whether issue" be deleted, and the word "unmarried" be added after the word "intestates."

The whole illustration in clause 13 (i), Part II be omitted.

From Clause 24 (b), Part II the word "Tenants-in-common" be deleted.

The following proviso to be added to clause I, Part III-A I.—

"Provided that where in a joint family when there are unmarried sons or sons having no issues or widows, their interest after their death shall devolve upon other living brothers by survivorship."

The whole clause 2, Part III-A should be deleted as its retention will do away with the main principle of *Mitakshara* law.

The whole clause 8, Part III-A and II should be deleted and the following be substituted—

"There shall be rateable distribution among the creditors of the deceased and the dependent entitled to maintenance."

The following clause be added to clause, 3 (a) of Part IV:—

"When the wife or wives of a male person prove barren or suffer from a loathsome disease the husband may marry."

The provisions on Clause 6, Part IV be deleted as such a provision is altogether unnecessary.

The provisions regarding Civil Marriage be altogether deleted from the draft Hindu Code, as it is in clash with the system of sacramental marriage. Moreover where the special marriage act is already on the statute the incorporation of civil marriage in the draft Hindu Code is undesirable and is detrimental to the sanctity of Hindu system of marriage.

Clause 24, Part IV, *punishment for bigamy*.—The whole clause should be deleted.

Clause 27.—The whole section should be deleted.

Clause 28.—The whole section should be deleted.

The whole chapter on Nullity and Dissolution of Marriage (Chapter III, Part IV) should be entirely deleted.

The heading in clause I, Part VI should be substituted as follows:—

"Adoption should be both in Dattaka and *Krtrima* form as before."

The clauses (2) and (3) to this section be deleted.

The provisions of clause 7, Part IV should be deleted.

In clause II (i) (b), Part VI, add the word "behind" after the word "living," and delete the word "surviving" occurring after the word "him."

In clause 13, Part VI, add the words "in Dattaka form" in the last.

After sub-clause (2) of clause 20, Part VI the following clause be added as number (3):—

"(3) If no objection made within ninety days from the date of the publication of the notice, or if objection made and disallowed, the Court, shall give direction for the entry to be made in the register maintained for registration of adoptions."

Excepting the second schedule all the other schedules be omitted.

10. Mr. L. N. Misra, Government Pleader, Puri.

The various provisions as embodied in the draft Code are opposed to principles on which Hindu Law has been based. It is likely to create fragmentations of property and thereby reduce many families to ruin. It is unjust in as much as it gives daughter's share in father's property but does not give any share to the son in mother's *stridhan*.

property. It will give rise to various litigations and joint family properties will be squandered away. The law relating to marriage is repugnant to Hindu ideas.

11. Mr. Lokenath Patnaik, M.A., B.L., Advocate, Puri.

The proposed measures are opposed to Hindu ideas and social polity.

2. Codification of Hindu Law will arrest its natural growth on the lines of natural social evolution and would impose on Hindus a highly artificial and foreign system which would produce anomalous results.

3. The enforced grafting of the Muhammadan or Christian mode of succession on Hindu Society will produce conditions, which besides leading to disputes, disruptions and litigations, would tend to break up and disintegrate Hindu family and social life and would lead to its extinction.

4. The abolition of the system of co-parcenary and giving shares to daughters would produce the same result.

5. Codification of the vast and complicated system of Hindu Law would require contract modifications and amendments and would lead to endless complications.

6. The enforced abolition of customary and local laws would create revolution in the social structure.

7. Codification of Hindu Law is not desirable and practicable.

12. Mr. S. Supakar, Pleader, Sambalpur.

I. *Introductory.*

Perhaps the most outstanding feature of the draft Hindu Code is the abolition of the right of survivorship and the principle of vested interest by birth of sons, grandsons, and great grandsons in ancestral property in places governed by the Mitakshara School of Law. This is in clear contravention of the text of Yajñavalkya who says Bhaoryā pitāmahopātā nibandho dravyameva cha

Yatra syāt swāmīyam pituh putrasya chaiva hi

in other words, in the land and movable properties of the grandfather, the father and son have equal rights. Of course the author of the Dayabhaga has strained the text by explaining it away as meaning that the father has no right to make an unequal distribution of the ancestral property among his son. Thus Jimutavahana does not recognize the principle of vested interest of the sons, etc., but this is against the natural meaning of the above Shloka.

In a country, where about 90 per cent of the people live by agriculture, the joint family system is a boon. When we compare the Mitakshara System with the Dayabhaga, we find that though the Dayabhaga is in many respects more liberal than the Mitakshara, still it must be admitted on all hands that the Mitakshara System of giving vested rights to the co-parceners in the co-parcenary property is a more democratic institution. It prevents a spendthrift or inconsiderate father from squandering away the ancestral property. When all over the world, and especially in India, there is a cry for democracy and when there is a cry for extension of franchise in the Government of the country, think of the adult son disenfranchised from his own family. The Hindu Code, if enacted, will deal a death blow to the joint family system, which has for over a score of centuries contributed to the peace and good will of a Society, mainly agricultural.

As a justification of the abolition of the right of survivorship the draft Code has cited the example of the Deshmukh Act. Notwithstanding the fact that the Deshmukh Act was in contravention of the Smriti texts, it had one redeeming feature, viz., there was not much fragmentation of land and the property did not pass out of the family for ever. The widows mentioned in the Deshmukh Act had a limited interest in the property they got and on their death, the property reverted to the family of the propositus. In many cases, however, the widows either lived in the family of their deceased husbands or claimed the more convenient right of maintenance, so that there were few cases even of temporary fragmentation of the property. The Hindu Code has cited the Deshmukh Act as a precedent in the partial abolition of the right of survivorship by legislation but the Code has repealed this very act *in toto*, and the chief excuse for the abolition is that the giving of share to the son's widow, etc., would have led to excessive fragmentation. These widows have again been relegated to the inferior pre-1937 position

of maintenance holders. Of course, the position of the widow of the propositus has improved in some sense.

Commenting on the Deshmukh Act, two eminent High Court Judges, the Editors of the ninth edition of Mulla's Hindu Law remark, "As it is, the Act though simple in appearance, is a fine instance of zeal outrunning discretion." The same remark applies with greater force to the Code which unsettles many of the settled principles of Hindu Law out of sheer love of iconoclasm. Compared with the draft Code, the Deshmukh Act is a piece of cautious legislation and meant to effect an evolutionary change in a society slow to change, it gave the widow a right, but it was a limited right and one which she could exercise at her option; for she had an alternative right of maintenance. On the other hand, the draft Code gives every female heir an absolute right in the property inherited by her, which will henceforth be her stridhan.

II. *Devolution of heritable property of male intestates.*

(A) *Principle of devolution.*—Manu says—

Putria rikthaharah pituh Anantarah sapindad-yastasya tasya dhanam bhabet.

In dealing with the order of devolution of property, Vijnaneswara and Jimutavahana have fixed the order of devolution under certain fixed principle, viz., on the interpretation of the word Sapinda. Vijnaneswara has interpreted sapindaship as propinquity of blood whereas Jimutavahana has interpreted it as competency to offer spiritual oblation. There is no such principle governing the order of devolution in the draft Code. The list of enumerated heirs is most arbitrary. There is no justifiable reason for preferring a very distant non-enumerated agnate to a nearer cognate.

If the framer of the draft Code wished to depart from the Mitakshara and Dayabhaga, they should have, following the principle of natural love and affection given preference to the lineal descendants over ascendants and collaterals specially amongst the non-enumerated heirs. In setting up their own rules of preferring agnates to cognates, the framers of the draft Code give us something really original!

That takes us to the definition of the terms "agnates" and "cognates" under the Code. The sanskrit equivalent of "agnate" according to the Code is Gotraja. But we know that as soon as a woman is married she passes out of the gotra of her father and acquires the gotra of her husband. Thus the definition of the term "agnates" is irreconcilable with the idea of "gotra" at present obtaining in the Hindu Society and the conception of "gotra" by our ancient jurists. Yet, after all that the Code says that "gotra" and "pravara" have the same meanings as in the Hindu Law before the commencement of this Code. Except perhaps under the Bombay School, the term "agnate" connotes only male relations of the same "gotra" and the inconsistency between the definitions of "agnate" and "gotra" is bound to lead to a good deal of confusion.

The daughter can be called an agnate or "gotraja" only until she is married and not after that and that is why an unmarried daughter is preferred to a married daughter under the current decision of Hindu Law, which is supported by Vishnu who says "Patnee patyur dhanaharee ya syadabyabhicharinee Tadabhabe tu duhita yadyanoodha Chabettade." The draft Code makes no distinction between daughters, unmarried and married or widowed, rich or destitute—distinctions which are good under the present system of Hindu Law.

The definition of the term "cognate" is still more confusing. In the absence of the definition of the term "related by blood" the term "cognate" is so wide that any Hindu can be said to be a "cognate" of any other. And lest we should, labouring under the old pre-Code ideas, consider the daughter-in-law included, in and the daughter excluded from the agnatic relationship, the authors have reminded us in Clause 8 (4) that:—

"A woman shall be entitled to inherit as an agnate of her father's agnates and a cognate of his cognates and shall not, by reason only of her marriage be entitled to inherit as an agnate of her husband's agnates or a cognate of his cognates."

Before dealing with intestate succession, I may say that in our country, most people of the Hindu community die without a will and therefore perhaps in about 99 per cent of cases the property of a Hindu devolves by intestate succession. Hindu jurisprudence does not contemplate

testamentary succession, because the order of succession and the shares of the heirs are fixed by religious injunctions. Although testamentary power of Hindu has been recognized and exercised, still, simplicity, ignorance, illiteracy of the people help the preponderance of intestate successions over testamentary ones, and any law which regulates intestate succession is bound to affect the social and economic life of the Hindus, notwithstanding the fact that under the new Code people have better legal and moral scope for changing the mode of succession by testamentary disposition.

(B) *Simultaneous heirs.*—The draft Code provides for simultaneous succession of the widows, the son, the daughter, the son of a predeceased son and the son of a predeceased son of a predeceased son. It appears that besides these heirs, the dependent parents and the widowed daughter-in-law were also contemplated as simultaneous heirs but the draft has kindly omitted the parents and widowed daughter-in-law on the ground that their inclusion would have led to excessive fragmentation. The parents and the daughter-in-law who are agnatic relations, are in most cases, expected to live in the family of propositus and even if they do not, the heirs of the parents are in most cases the heirs of the propositus and consequently the property would not pass out of the family. The same argument applies to the case of a daughter-in-law provided she takes, as at present only, a life estate under the Doshimukh Act. Contrasted to the exclusion of dependent parents and widowed daughter-in-law is the inclusion of the daughter as a simultaneous heir. It is an innovation of far-reaching consequence, specially because henceforth she will inherit from her father not merely a life estate but with full ownership in the property.

Each of the daughters will get half as much as each of the sons. Under the Muhammadan Law also, a daughter gets half as much as a son. But it will be remembered that when sons, grandsons, etc., are living, the daughter has no duty to offer spiritual oblation to her father or his ancestors nor has she any pious obligation to pay her father's debts.

I presume the textual basis upon which the framers of the draft Code have banked for the idea of simultaneous succession of the daughter with the son and others is a sloka in Yajurveda which says—

Asanakritastu sanskarya bhratribih poorbasanskritaih

Bhaginyashcha nijadanshad dattwansham to tureyakam.

In other words where the sons partition the property after the death of their father, they should perform the Sanskars of the brothers whose sankars have not been performed and they should set apart quarter of their share for the sanskara (marriage expenses) of their sisters. But the above shloka follows as a natural corollary from the obligation of a son. A son inherits, not only the property but also the liability of his father and it is therefore his duty to see that the daughters of his father are married and that is why the smriti provides that the son should spend quarter of his share to see his sister married.

Under the present condition of our country, giving a share to the daughter will create difference and disputes among the sons and the son-in-law because for all practical purposes the son-in-law will be the *de facto* heir whereas the daughter will be only a *de jure* heir.

If the daughters are made simultaneous heirs with the sons and widows, there will be excessive fragmentation and a portion of the property will pass out of the family for ever. The supporters of the Code meet this objection by saying that the Muhammadan Law makes the daughter a simultaneous heir. It may be remembered that whereas under the Muhammadan Law, not only cousin marriage is not prohibited but is definitely encouraged so that the property may not pass out of the family, while the draft Code makes rigid prohibition not only of cousin marriage but marriage between any two persons who are sapindas of each other.

Right of sons inter se.—In clause 7 (6) it is said that each son of the intestate shall take one share, whether he was undivided or divided from or reunited with the intestate. The present law is that when one or more sons separate from the father, the share of the father devolves on the sons joint or reunited with the father to the exclusion of the separated son. After the Code, a divided

son will get great advantage over the other sons. Let us, for example, suppose that an only son of a widower separates from the latter thus getting $\frac{1}{2}$ of the joint family property. Subsequently the father marries and begets a son through the second wife and dies. His half share will now be divided into three equal shares, the elder divided son gets $\frac{1}{3} + \frac{1}{3} = \frac{2}{3}$ and his half-brother and step-mother son get only $\frac{1}{3}$ each. The disparity would not have been so great under the present system of Hindu Law. This rule will give an impetus to the sons to separate from their fathers at an early date, so that they may inherit an additional share on their father's death and therefore this provision of law will accelerate the disintegration of the joint family system to a large extent.

The disruption of Joint family.—Part III-A of the Code which purports to take away the right of survivorship and the rights of sons, etc., by birth, does so only with respect to the devolution of the property of an intestate after the commencement of the Code. Therefore, it does not take away the vested right which a Mitakshara son, grandson or great-grandson now possesses in the coparcenary property. It does not contain any provision debarring the acquisition of a vested interest by birth of a son born in a joint Mitakshara family even after the Code comes into force. The only change which Part III-A and specially clause 2 thereof will bring about is the change in the mode of devolution of only the fractional interest of a male intestate dying after the commencement of the Code. The persons who will continue to have a right by birth will have a right to demand partition and maintenance from the joint family. Therefore for several decades to come, the Code will not be successful in blending the two schools of Mitakshara and Dayabhaga but will create such confusion in the places now governed by the Mitakshara School of Law that it is difficult to imagine the consequence. Besides, in the transitional stage, there will be excessive fragmentation of land and other properties.

Indeed the transitional period necessary to convert a Mitakshara family into a full fledged Dayabhaga family may be very long, for, the entry of successive coparceners into the family by birth will counter-balance the exit of old fathers and grandfathers with their shares to pass unto their heirs.

(C) *Other heirs in the Compact series.*—Under all Schools of Hindu Law there is a list of heirs, which goes by the name of compact series. Except in the Bombay School the compact series includes the heirs mentioned in the list of simultaneous heirs, the parents, the brother, the brother's son, the brother's son's son. The above series is consistent with the decision of the Privy Council and is also in keeping with the doctrine of spiritual benefit. The Bombay High Court has excluded the brother's son's son from the compact series on the ground of usage. The draft Code, perhaps out of an overwhelming deference to the usage in the Bombay School, has imposed this usage on the rest of India by excluding from the compact series, the brother's son's son, who has an unquestionable right to come immediately after the brother's son. Nine other descendants of the propositus intervene between the brother's son and brother's son's son.

At present, under all Schools of Law, the list of heirs, and specially the compact series of heirs is so arranged that usually one heir succeeding another in the Chart, is the sole heir not only of the propositus but also of the heir immediately preceding in the Chart. The daughter and the daughter's son are, of course, indispensable interpolation in the series, because they are the reminiscences of the ancient practice of Putrikaputra and Kaneena. There are breaks after the son's son's son and the daughter's son because the sons of these two heirs are not competent to offer spiritual oblation to the propositus. Of course, if either of these heirs get the property, he will pass on the property to his next heirs, but if neither of these heirs exist the property is bound to change line and revert to the parents. The brother, the brother's son and the brother's son's son follow the parents one after the other and any of these heirs is not only the sole heir of the propositus but is also the sole heir of the heir immediately preceding. In short, consistent with the doctrine of competence to offer spiritual oblation, there is a sort of rule of perpetuity in the chart, and the presence of absence of an intermediate heir does not very much affect the line of devolution.

Contrast this logical sequence of heirs with the mode of devolution as contemplated under the draft Code. If the draft Code laid down the simultaneous succession of the daughter with the son, it has abandoned the principle at all subsequent stages.

Now since the son and the daughter are made simultaneous heirs, we naturally expect that when none of these simultaneous heirs exists the property would devolve simultaneously on the next heirs of the son and the daughter. In other words, it should have devolved simultaneously on the son's daughter, the daughter's daughters and the daughter's son. As it is, in the absence of any of these simultaneous heirs only the daughter's son is the heir whereas the son's daughter and the daughter's daughter, succeed one after another when all the heirs in the compact series are exhausted.

Let us now come to the case of either the mother or the father who come successively after the daughter's son, we know that when the mother succeeds to her son, she takes the property, like all other female heirs, as her *stridhana*. So we should expect that after the father or the mother, the brother and the sister should have succeeded simultaneously taking unequal shares and their sharers should have varied according as they succeed either the mother or the father. As it is, we find that in the Code, after the father the brother only succeeds and the sister is deferred to a very late stage, after all the compact series of heirs, all the descendants in Class II and after the brother's son's son. Similarly, under the principle of simultaneous succession, the brother's daughter should have succeeded simultaneously with the brother's son after the brother but under the Code, the brother's daughter comes at a very late stage. Thus, the draft Code, has not followed the principle of simultaneous succession consistently and the presence or absence of an intermediate heir affects the line of devolution considerably.

The authors of the draft Code have introduced their novel principles which are not consistent with the juristic conception of Hindu Law; but have not followed their own principles consistently. If they had the idea of giving the right of inheritance to all descendants, male or female, as they have done in introducing Class II of the enumerated heirs, they should have given preference to these descendants over the parents, the brother and his son. The result of mixing up new ideas with old is that we find a square peg in a round hole.

(D) *Other enumerated heirs.*—In Class II of the series of enumerated heirs are included nine descendants up to the third generation. What about the more remote descendants? If the authors of the draft Code had taken the principle of spiritual benefit into consideration, they could not and should not have omitted the three male lineal descendants of the son's son's son from the list of enumerated heirs. Even if they did not take into consideration the doctrine of spiritual benefit, there is no reason why the descendants of great-grandchildren should have been omitted from Class II. If Class II has been introduced and given a high place simply on the ground that the heirs referred to therein are descendants and should be given preference over the ascendants and collaterals, there is no reason why the list should have terminated with the descendants of the third degree. The exclusion of these remote descendants shows clearly how the Code has confused the idea of spiritual benefit with the idea of preferring descendants to ascendants and collaterals. The present Hindu Law, the Muhammadan Law and the Indian Succession Act do better justice to these remoter descendants.

Similarly, the agnatic collaterals like the male lineal descendants of the brother's son's son or of the father's brother's son's son do not find place in the list of enumerated heirs, although as *gotraja sapindas* they have very good claim to come in Class III and Class IV respectively.

If the brother's daughter and sister's daughter are competent heirs as father's descendants, there is no reason why the father's brother's daughter and father's sister's daughter should not come in Class IV which includes the father's brother's son and father's sister's son. Similarly, the father's father's brother's daughter and father's father's sister's daughter are conspicuous by their absence from Class V. Is this the way of giving better rights to female heirs? One suspects that these persons have been omitted from the list, lest it should be a long one and to make the law simpler. Brevity is the soul of wisdom but it is difficult to say that brevity is the soul of justice also.

The mother's parents are the first two heirs in Class VI of enumerated heirs. Perhaps neither the ancient text writers nor *Vijñaneswara* nor *Jimutavahana* contemplated these two persons as heirs of the propositus, although they are very near relations both from the standpoint of propinquity of blood or spiritual efficacy. The relationship of these two persons with the propositus is very peculiar. We know that in most cases of marriage in Hindu Society, the bride's father makes a gift of his daughter to the bridegroom and he would not, after *Kanyadan*, even touch the water in the son-in-law's house, much less think of inheriting the son-in-law, and therefore these relatives were perhaps incapable of inheriting the daughter's son. The nearest heir in the mother's family to inherit the propositus according to *Vijñaneswara*, is the mother's brother's son and according to *Mitra Misra* is the mother's brother. None of the texts or commentators mention the mother's parents as heirs. *Shrikrishna Tarkalankar*, a comparatively recent writer, is perhaps the earliest authority in introducing the mother's parents as heirs and even he classifies them as *Bandhus*. At any rate, these relatives should not have been elevated to the rank of enumerated heirs.

But there is one consolation, namely, that there are many other heirs preceding the mother's parents. These heirs have to cross at least 38 hurdles to reach the propositus. Therefore I hope the case of the mother's parents succeeding the propositus will be few and far between. But when I deal with the chapter on succession to *stridhan*, I shall attempt to show how frightfully easy and frequent it will be for man or woman to inherit his or her own son-in-law.

The list of descendants of the maternal grand-parents is not exhaustive.

(E) *The non-enumerated heirs.*—If we compare the claims of the enumerated heirs with those of the non-enumerated heirs we find that many of these non-enumerated heirs have far better claim to priority over many of these enumerated heirs, whatever standard we might adopt for determining priority of claim. Thus when the competing heirs are the son of the great-grandson and the mother's father, one can hardly find any reason for preferring the latter to the former. Or take the claims of the son of the brother's son's son or of the son of the paternal uncle's son's son, who unlike the son of the great-grandson, are frequently living realities at the time of the death of the propositus. As a matter of fact, the paternal uncle's son is the first cousin and may be much older than the propositus and therefore his grandson may be existing at the time of the death of the propositus. Think of the grandson of your first cousin or the son of your second cousin coming after your father's father's sister's son.

The authors have laid down certain of their own rules of preference in clause 9 of Part II, but unfortunately, those rules apply only in the case of non-enumerated heirs. These rules of preference fail, if they are applied to the enumerated heirs. The list of enumerated heirs appears to have been prepared without any principle and without much thought, even the rules of preference are controlled by clause 4 which prefers the most distant non-enumerated agnates to the nearer cognates, and the result is that the order of devolution will really be very much arbitrary and against any system of juristic conception.

(F) *The disinherited relations.*—Let us now consider the plight of the widowed daughter-in-law, the grand-daughter-in-law and the great-granddaughter-in-law. It is said that "a woman shall not by reason only of her marriage be entitled to inherit as an agnate of her husband's agnates or as a cognate of his cognates." Therefore, although these widows are very near relations of the propositus, they are not heirs at all. Therefore, if a man dies leaving behind him a widowed daughter-in-law and a very distant agnate or cognate, the distant agnate or cognate will inherit the property in preference to the daughter-in-law. She cannot even prevent the property from escheating to the Crown in the absence of any of the heirs mentioned in clauses 5 to 10, although strictly speaking she is a *sagotra* of her father-in-law and can offer spiritual obligation to the propositus and his ancestors.

The Bombay School of Hindu Law, which recognizes the rights of many female heirs to inheritance, either as *gotraja sapindas* or as *Bandhus*, gives very high place to the widows of the family. The widows of the six male lineal descendants come shortly after the compact series of heirs. The widows of the six male lineal descendants

of the father and of the grandfather respectively are classed among gotraja sapindas. As such, even under the Bombay School, these widows come long before heritable Bandhus like the brother's daughter, sister's daughter, etc., many of whom are now classed as enumerated heirs.

The Code has excluded a woman from inheriting her father-in-law. Probably because she inherits her father. But there may be, and there are always cases of daughter's of poor parents marrying in rich family. Therefore, if the authors of the Code thought it proper to exclude the daughter-in-law from the list of simultaneous heirs, there is absolutely no reason why these near widowed relative should not have found place either in the list of enumerated heirs or non-enumerated heirs. Even if a woman inherits a big property from her father, there is no reason why her father-in-law's property should pass to a distant cognate or escheat to the Crown, even in spite of her existence.

If we see the inheritance chart of the Muhammadan Law or the Indian Succession Act, we do not find the widows of the male lineal descendants in the list of heirs. But it must be remembered that if a Christian or Muhammadan woman is widowed at a comparatively young age she has fair chance of getting a second husband and therefore the problem of widows of male lineal descendants does not arise. On the other hand, under the Hindu Law, although the Hindu Widow's Remarriage Act has been in our statute book for nearly a century, the problem of widows and specially child-widows is a baffling one, even in the most advanced society. Therefore, the total exclusion of the widow of the male lineal descendants, leaves the woman in a bad plight, specially in the Bombay Presidency, from which the authors of the Code seem to have derived much inspiration in their zeal of emancipating the woman.

III. Stridhana.

(A) Definition.—All properties of a woman are to be henceforth her stridhana. Property inherited by or got at partition by a woman, which is not now classified as stridhana will henceforth be the stridhana of a woman, and a woman shall have full right of transfer, etc., over her stridhana. This is also a change of far reaching consequence and in a country, where Purdah system, illiteracy and want of practical experience of the world among women prevails, giving full right to woman may do more harm than good to the women themselves.

The defenders of the Code justify the extended definition of stridhana by quoting Vijnaneswara, who unlike many other commentators, includes property obtained by inheritance or partition in the category of stridhana. But it must be remembered that Vijnaneswara contemplated only the widow, the daughter, the mother, the father's mother and the father's father's mother as heirs, out of whom, all except the daughter are agnatic relations.

(B) Successions to stridhana.—In dealing with succession to stridhana, Yajnavalkya says—

"Apraja streedhanam bhartur-brāhmādishu chatush-shwapi Dubhitronam prasocita chechheshesu pitrigāmitat." In other words, if a woman dies without issues, her stridhana if she were married in the first four forms of marriage, viz., Brahma, etc., the property should go to the husband; if the marriage be in other forms, it should go to the parents.

Commenting on this text Vijnaneswara says that stridhan of a woman should first go to the daughter. Even among the daughters the unmarried daughters have got the first preference, and in the absence of unmarried daughters, the destitute daughters are preferred to the daughters established in life. In the absence of daughters, the stridhana devolves on the daughter's daughter stirpally. In the absence of daughter's daughters, the property devolves on the daughter's son's, the son's and son's sons, respectively, each of the preceding class excluding each of the succeeding classes.

The draft Code provides that stridhana, at the first instance, should be divided among the daughters and sons, each daughter taking twice as much as each son. In the absence of daughters and sons, the stridhana is to be divided among the son's sons, the son's daughters, the daughter's sons and daughter's daughters. Thus the position of the issues of a daughter has become worse under the draft Code. Because so long as a single son or daughter is living at the time of the death of the woman possessing stridhana, the daughter's issues have no chance of inheritance. Even when they inherit, in the absence of sons and daughters, they inherit along with the sons' issues. Under the present law every daughter's daughter and daughter's son has a fair chance of inheriting the

grandmother, but under the Code daughters and sons exclude the grandchildren through predeceased daughters and sons. Although the Code provides for the simultaneous succession of all the grandchildren in the absence of children, it does not provide for simultaneous succession of grandchildren along with children, as in the case of devolution of property of a male intestate, the son's son and the son's son's son takes along with the son, the daughter and the widow. Thus, if a woman dies leaving behind her one son and several grandchildren through predeceased daughters, the son will take the whole of her stridhan to the exclusion of the grandchildren.

Regarding the mode of distribution of the property among the grandchildren, the succession is to be stirpally, and as between the son and daughter of a particular issue, the son will take half the share of a daughter. Illustration (iii) appended to clause 14 makes the mode of distribution among grandchildren clear. It runs as follows:—

"The surviving relatives of a woman are a son and two daughters by a son A and three sons and four daughters by a daughter B. A's son takes 1/15th of the property, each of A's two daughters takes 2/15th, each of B's sons takes 2/33rd and each of B's daughters 4/33rds.

Under the present law, of course, the property would be divided into four equal shares among the four daughter's daughters.

I need not say that the above illustration in the Code shows clearly how the stridhana of a woman will be subject to much more excessive fragmentation than the property of a male intestate.

Succession to stridhana of an issueless woman.—Under the ancient texts and opinion of the commentators, if an issueless woman was married in the first four approved forms of marriages, the property should devolve on her husband and his relatives but if the woman was married in an unapproved form the property should at the first instance devolve on her father and his relation. It may appear very strange at first sight that the mode of devolution of stridhan after a certain stage should depend on the form of marriage. But this is a distinction which is based on the sociological insight of our ancient law givers, who cared more for principle and logic than for simplicity and uniformity.

Under the four approved forms of marriage, the bride's father makes a gift of the bride to the bridegroom and after the marriage, would not think of taking water in his son-in-law's place much less think of inheriting the son-in-law. Besides, the approved forms of marriage effect a change in gotra of the bride. For these reasons the husband and his relations have preferential right to inherit the stridhan of a woman. On the other hand, out of the four unapproved forms of marriage, the Asura form is the gift of the daughter for valuable consideration and the Gandharva marriage is love marriage and the Rakshasa and Paisacha forms are merely other names for abduction. In none of these unapproved forms is the gotra of the bride changed from her father's to her husband's. Therefore under these unapproved forms of marriage the father and his relations can have no conscientious scruple to inherit the stridhan of a woman. Therefore according to all schools of law except the Dayabhaga, the stridhan of a childless woman married in an approved form devolves, at the first instance, on the husband and his heirs and in default of these heirs, the property devolves on the father and his relations.

Jimutavahana, the author of Dayabhaga, who restricts the connotation of stridhan by excluding property obtained by partition or inheritance from its category, has a different chart of devolution of stridhan. In the case of the stridhan of an issueless woman married in an approved form, the property goes to the husband but in default of husband, it passes to the brother, mother and father successively instead of devolving on the husband's relations.

Although the Dayabhaga differs from all schools of law, it will be seen that at least the brother gets priority over the parents.

The draft Code, with a view to make the law simpler and more uniform, has provided for one mode of devolution irrespective of the fact whether marriage was in an approved or unapproved form.

If the Code wanted to do away with the distinction between the approved and unapproved forms, it should have followed the existing legal presumption that—

marriages are in approved forms, and therefore in the case of the stridhan of an issueless married woman, if should have given preference to the husband and his relations over the parents and their relations in determining the mode of devolution.

The result of bringing in the parents immediately after the husband in the chart of succession to stridhan will be that there will be too many cases of people inheriting their sons-in-law—an idea which is perhaps repugnant to the Hindu Society.

Let me give a simple illustration to elucidate the above proposition. A man dies leaving behind him a widow and only one son. Under the draft Code his property will be divided into two halves, one-half going to the widow and the remaining half to the son. Let us say now the son dies leaving the mother as his nearest heir. Now the whole property vests in the widow as her stridhan half as the heir of her husband and the other half as the heir of her son. Now if the widow dies, the property inherited by her from her husband will pass to her husband's next heir, but the other half, which she inherits from her son, will pass to her mother or her father as her stridhan heir and the poor mother will now have the misfortune or inheriting to her own son-in-law practically. Such cases will be of very frequent occurrence. Thus the father-in-law will inherit to his son-in-law nearly as frequently as the son-in-law will inherit the father-in-law, of course, through the daughter.

Since all kinds of property of a woman will henceforth be her stridhan, the problem of devolution of the stridhan of a woman will not be as unimportant and as rare as it is now. It will be as important a subject as the devolution of the property of a male intestate. If, in the definition of stridhan, the authors of the Code followed the interpretations of Vijnaneswara, they should not have ignored his interpretation in the mode of devolution. Or, they should have at least provided, in the line of the Bombay school, that the stridhan which a woman derives from her husband's family, should, after her death, pass not merely to the husband but to his relations before passing on to the parents. One does not mind so much the property of a man passing into the family of one's daughter's husband, but the Hindu society will not favour the idea of even a portion of a man's property passing into the family of his wife's father, when all his near agnatic and cognatic relations are living.

IV.—Conclusion.

In these days of paper scarcity, it is impossible to write a detailed criticism of the whole Draft Code. If we read between the lines of the Code, we cannot help thinking that, in preparing the Draft Code, the authors of the Draft Code have not given sufficient thought to such an important matter, which will affect the lives and property of crores of people.

It is fortunate that the Hindu Law Committee, has, at present, dropped the idea of sponsoring the portion dealing with marriage and divorce.

Lest I should take too much space, I have made a brief criticism only of the chapter on succession and have not dealt with other problems regarding marriage, divorce and adoption, which are also open to severe criticism.

The authors seem to be anxious to get it somehow passed early so that the Act may come into operation on the 1st January 1946. Why such undue haste? I think most educated people have not yet fully realized that such a drastic change is going to take place in the law of the land, and that the Hindu Law Committee is going to give us a Pandora's Box as the next New Year's Day present.

The Draft is Hindu Code in name, but in reality it is the negation of most of the juristic conceptions of Hindu Law.

Giving the daughters simultaneous right of succession with the son and giving all women heirs full right to the inherited property seem to be the trump cards of the Committee for gaining the sympathy and support of women. But think of the disinheritation of the widows of the family, and many discrimination against the woman. Think of the fragmentation of land and the sea of litigation into which the Code will launch the whole of the Hindu society. Taking all things into consideration, the Draft Code, as it is, in my humble opinion, deserves a place, not in our statute books, but in the waste paper basket.

13. Rai Bahadur Gopal Chandra Praharaj, K.I.H., Advocate and Zamindar, Cuttack.

I have gone through the provisions of the Draft Code and am of opinion that it clashes with the age-long religious traditions, sentiments and principles of the Hindus. The provisions regarding intestate succession, marriage, adoption will revolutionise the Hindu society, will slacken and demoralize family ties and will result in serious dissensions, strifes and litigation which will be harmful to the Hindus. The proposers of this Code want to model the Hindu society with the mentality of the modern material civilization, which, according to numerous deep thinkers of the west, is leading the world to the abyss of ruin.

So I am of opinion that the Code which is the creation of some people who profess to be Hindus should not be passed into law. I emphatically aver that the proposers of this revolutionary Code do not represent the majority of the Hindus who will be affected by this legislation, and who will never support this change. The few who support it are Hindus in name but not in heart, who want revolutionizing the Hindu society but not reforming it.

14. Rai Bahadur Chintamani Acharya, Honorary Secretary, The High Court Bar Association, Cuttack.

1. We are always opposed to legislative interference on the personal law of the Hindus. The declared policy of the British Government, was a policy of non-interference with the personal law, but in spite of it several interferences have already been made in the past although there were protests from different quarters, the proposed Code is a step which can never be supported by any sensible section of the Hindus. The explanatory statement appended to the proposed Code does not indicate any necessity of such changes. In 1937 a legislation had been introduced as Hindu Women's Right to Property Act of 1937, but the Federal Court of India by its decision, dated 22nd April 1941, on a special reference by His Excellency the Governor-General held that the Hindu Women's Right to Property Act, 1937, amended in 1938, was not operative to regulate succession to agricultural land in the Governor's Provinces and was operative only to the extent of non-agricultural land. It is still a matter of controversy as to what is meant by agricultural and non-agricultural land.

2. The chapter on succession entirely breaks the solidarity of the Hindu family and will effect the breaking up of the joint family into pieces and will bring about strained relationships amongst relations who are living in amity and good will, the system of introducing shares in groups is unknown either to Mitakshara or to Dayabhaga. The Hindus are not to be treated on a par with the Muhammadans and no analogy of the Muhammadan Law is to be drawn into Hindu Law.

3. The most objectionable part in the proposed Code is that dealing with intestate succession and this part should be omitted altogether and the principles of survivorship and inheritance with the order of succession as in vogue at present should continue in respect of coparcenary property and separate property.

15. The Jaipur Bar Association.

Before proceeding to comment on the sections and clauses of the Bill, we beg leave to state that the Hindu law, which owes its origin from time immemorial, has been respected and followed by the Judges of the British Courts from the lowest to the highest and neither the Judges who have to deal with the laws and those who have to follow the dictums of the courts based on the interpretation of these laws have complained that the system is not suited to the Hindu society and that drastic changes are necessary to bring in uniformity between the various systems prevalent in India. All the systems prevalent throughout the country aim at keeping the integrity of the property in the family as far as possible till there are males in the direct line to inherit and it is only when the direct male line fails the property passes off to the daughters or sisters or their heirs. Then again the females have been given very restricted right so that the corpus of the property will ultimately go to the hands of those who will be able to confer spiritual benefit to the soul of the deceased owner. This Draft Code altogether loses sight of this aspect of Hindu Law I mean the spiritual aspect and want to introduce the material aspect which governs the Muhammadan and Christian systems of inheritance.

Indeed the Hindu society has always in view the spiritual aspect and so marriage has been said to be a religious sacrament and not a contract as in other systems. Even in adoption the same aspect has been kept in view and there are restrictions as to who should be adopted and these religious rites have been prescribed to give the ceremony a spiritual and religious aspect. We are bold to say that these and other rules or practices that are guiding the Hindu society uptill now have gone a great way in preserving its integrity differentiating it from other communities. It is only when the society, not through some only of the so-called advanced members but as a whole want any change, the Government can think of legislating. Have the sponsors of the Bill made out a case like that? Probably not. Why then take up a legislation which will bring in a drastic change and bring in complications? The interpretations put on the original texts of Hindu Law by the highest tribunals have now to a great extent set at rest the conflicting views and people have settled themselves to follow the system. If this draft Code is passed into law some years will pass before opinions of the tribunals on the new law is obtained and till then no one will know for certain where his position is. So before bringing out a drastic change in any law or system prevalent from time immemorial a very strong case should be made out which, we regret to say, we do not find in the object and reasons. Even in the draft Code there are numerous instances where special rights and customs have to be respected to, the plea of uniformity for which this Code has been introduced cannot be sustained. Even we find that in some parts of the country those who profess the Muhammadan or Christian faith continue to follow the Hindu school of law governing succession and this shows that the system is fitted for the society than any other. Coming to the specific provisions we find that females have been given absolute rights in inherited properties where up till now they have only a limited right of woman's estate. Looking to the very limited number of educated females it is extremely unsafe and unsound policy to give them such unrestricted powers over property. It is well-known that many suits have been brought to set aside alienation by females and they have succeeded in doing so. Even the females who have executed documents have come forward to set aside the transfer as being brought about by fraud, deceit, etc. The law with regard to ladies in general is good proof of the fact that dealings with unscrupulous people have led many to go to ruin. This being the case can it be said that this Code which tries to confer unrestricted rights of transfer on females will be for the improvement of society or the status of the females?

In short the implanting of foreign system of law on a system which has been working from time immemorial will create a disruption in the social fabric and no good will come out of it rather, the consequence will be disastrous. Is it not a fact that in highly cultured Countries the freedom given to women is gradually being withdrawn? Before such a legislation is contemplated the reformers should first think of giving the females, why females the males, a better and higher education to make them fit for managing their own affairs.

The proposed Code has altogether done away with the guiding principle of survivorship which governs the Mitakshara school of Hindu Law, and which gives the sons and grandsons an inherent right in the ancestral properties. This as has been repeatedly held by the highest authorities was an effective check on the improper and unnecessary alienations by the father which sometimes goes to the extent of leaving the surviving members beggars. The principle is a very sound one as the father has not made by the least exertion to acquire the property and so he should not be allowed to squander it at his sweet will. The tribunals have therefore scrupulously guarded the interests of the sons where the father has disposed of the ancestral properties without any legal necessity. The Dayabhag school of Hindu Law is very defective in this respect and so hundreds of families have been ruined. So we are humbly of opinion that this statutory provision of the Mitakshara should by no means be abolished.

Coming to the sections of the Code we are of opinion that the definition of 'Stridhan' is extremely comprehensive in its nature and goes far beyond the imaginable expectations of females. It cannot be conceived why any property settled on a female for her convenient living and

support during her lifetime will become her absolute property. It ought to be guided by contract under which the property is settled with the female just as is the case with all kinds of maintenance grants.

Clause 5 of the Code begins with a very novel kind of inheritance by which heirs of different degrees get the property of the deceased in certain shares just as is the case in Muhammadan or Hindu laws. It should be remembered that daughters in a Hindu family are given dowries commensurate with the condition of the family and even sometimes landed property. The daughter goes to another family where she gets a right to the property of her husband. The moral or pious obligation of the father to maintain the daughter or to give her a share in the property ceases as soon as the female goes out of the family to a different Gotra. Never uptill now any complaint has been made on that score and it is difficult to understand why such an innovation is sought to be introduced. It should be borne in mind that in Muhammadan and Christian families marriage is allowed between first cousins and thereby the fragmentation of the family property is to a great extent prevented. In Hindu society such marriages are strictly prohibited and so to implant a novel line of succession without considering the other aspect is not only undesirable but positively harmful to the interest of the society.

The definition of heritable property is as we understand means the property over which one has an absolute right of transfer. If it is so, then probably the definition excludes joint property inherited from ancestors by survivorship as at present. This should be made clear that what will be joint property and what not. The illustration to heritable property shows that survivorship will apply in some cases but reading Part III (A) the contrary idea comes to mind.

Clause 7.—(a) Of course we are not in favour of giving the widow or widows a share over which they will have absolute right. Let them have life interest or widow's estate as understood now.

(b) It is inequitable to put the divided and undivided sons of the deceased in the same category so far as succession is concerned for, the very simple reason that an undivided son has to look to the interest and upkeep of the joint family and spend all his earnings over that, while a divided son goes on accumulating his own earnings having no burden on him. It should be clearly enacted that divided sons will not succeed if there be undivided sons.

(c) This clause is again a drastic change of the present law. Had the proposer of the Code given reasons for the change it would have been understood why a change is proposed. In absence of any material we are led to think that the proposers did not ever give a thought as to why the Hindu Law gives have given a particular order for succession among daughters. The material aspect is quite clear and the spiritual aspect is that the daughter who would confer spiritual benefit through her sons or daughters is preferred.

Clause 9.—Rule of preference.—It is such a complicated rule that none but a lawyer can follow it and for a layman to understand his legal position is out of the question. If legislation means that the present system should be replaced by a complicated system however salutary it may be from any other point, it should not be accepted because the people will never grasp it far less follow it.

Section 11.—It is difficult to say with any precision who will come within the scope of this definition and many cases occurred where a man leads a life of celibacy and devotes himself entirely to religious pursuits but for his support or necessary expenses he cannot give up all connections with his property. It is suggested that a clause may be added that anybody who has to all intents and purposes has become a sanyasi or brahmachari and for twelve years does not keep any connection with his property the presumption will be that he has forfeited all rights by entering the holy order.

Section 13.—The widow should not have more than a widow's estate as at present.

Section 14.—We do not approve simultaneous succession. Let the succession to stridhan remain as it is.

The provisions regarding marriage and dissolution of marriage and divorce are repugnant to Hindu ideas and the innovations introduced strike at the very root of the spiritual aspect of marriage. Of course the provisions to some

extent go to alleviate the sufferings of females who for no fault of theirs are deprived of the bliss of conjugal love but as we see in England and America the divorce courts will always remain busy as many cases will crop up and the parties will have to wash much dirty linen in public courts.

To sum up we are of opinion that though some of the provisions of the proposed bill are desirable or even necessary but no inroad should be made on the spiritual aspect of the Hindu law.

16. The Bar Association, Bargarh, Sambalpur District, (Orissa), (Balimkeswar Misra—President).

The Hindu thinks more of the life to come than of the present mundane life. The Hindu law is essentially based on Hindu religion and Hindu scriptures. The proposed Hindu Code attempts at introducing drastic and revolutionary changes in the existing ancient Hindu religion, Hindu culture and civilisation, and likewise in the Hindu social and family life.

The provisions of the Bill relating to marriage and divorce, adoption, and inheritance in particular, are extremely repugnant to the feelings of the Hindus.

The members of this Bar Association are convinced that the present codification of the Hindu law is not only not necessary but positively harmful.

Instead of promoting unity in Hindu society it will create more diversity than at present. Besides by splitting up family property and importing strangers the Bill will injuriously and very seriously affect the financial position of the Hindus.

In the considered opinion of the members of this Bar that the Bill should at once be dropped and not proceeded with any further.

17. The Muktiars' Bar Association, Cuttack.

This association is of opinion that the present Hindu Code Bill goes against the religious sentiments and age old tradition of the Hindus. The provisions made in the Bill regarding intestate succession, marriage and adoption are quite contrary to the principles of the Hindu scriptures. Moreover these provisions in Hindu law will create a great disorder in the social life of the Hindus. Hence the opinion of this association is not in favour of this "Hindu Code Bill."

18. The Bar Association, Balasore.

I have the honour to report that our association is entirely against the provision of draft Hindu Code inasmuch as the provision of the Code with regard to specially succession, marriage and adoption are ante-religion and repugnant to Hindu taste and temperament and legislation on the above topics is uncalled for. The introduction of the system of simultaneous heirs in the Hindu law will lead to fragmentation of property and unnecessary litigation. Women have been given undue preference, specially the daughter has been allowed to inherit both to her father and husband. This fact only will result in the disruption of the family.

The law regarding marriage affect the religious sentiment of the Hindu public.

I may inform you that the general Hindu public are greatly perturbed over the provision of the Code and there have been widespread agitation among the rural Hindu public of the district of Balasore against the draft Code. Nobody except some society ladies and gentlemen influenced by western culture and law is in favour of the Code. With the above observation we strongly oppose the codifying of the Hindu law and specially the provision of the draft Hindu Code.

19. Pandit Parikhit Das Sharma, Secretary, Utkal Branch of All-India Varnashram Swaraj Sangha, Cuttack.

1. Religiously viewed, the draft Hindu Code is against the spirit and teachings of Hinduism of Sanatan Dharma based on the vedas, smritis, puranas and other shastras.

2. Culturally viewed, it is against the ideology and culture of Hindus, fondly and proudly preserved by the generality of Hindus from immemorial times and kept up at present.

3. Socially viewed, it would tend to break up the Hindu social order, the unique institution of caste, and the invaluable joint-family system.

4. Morally viewed, it would tend to demoralize Hindu society and social life by giving facilities for divorce, widow marriage, contractual marriages, and inter-communal marriages.

5. Viewed from the domestic point of view, it would tend to break up the economic and social solidarity and moral restraint of the present social life and joint-family system.

6. Viewed from the purity point of view, it would tend to make widows, unmarried girls and women in general an easier prey to money-hunting outsiders and self-seeking crooks.

7. Viewed from the national point of view, it would tend to introduce looser principles of life, looser ideas of marital ties and obligations, and thus weaken the whole fabric of national strength.

8. Viewed from the just point of view, it would break up the integrity, uniformity and solidarity of Hindu law and endanger its very existence by transforming it from a religiously based law into a secular legislative piece changeable, variable and removable according to the exigencies of the Government and notions of Legislatures from time to time.

9. Viewed from the standpoint of racial physical strength it is likely to tend to dissolve the peculiar physical vitality and endurance of the Hindus kept up by the Varnashram social system and would make them an easier prey to less scrupulous races and peoples.

10. Viewing the results from the international point of view the Code is likely to undermine those peculiar assets, ideals and practices which have made for the unique glory, mission and status of India in the enlightened men of the world.

11. Viewed from the academic point of view, it would substitute English language instead of Sanskrit as the basic language of the Hindu law and deprive the law of the technical sense of the Sanskrit texts, which are properly and adequately interpretable by pandits learned in Sanskrit lore.

12. Viewed from the Hindu women's point of view the proposed secularized Code is not wanted by the generality of Hindu women who regard the religious ideals and injunctions as more permanently reliable and valuable than the temptations held out by changing man-made regulations.

13. Viewed from the constitutional standpoint such a transformation of the Communal Hindu Law cannot properly be within the sphere and jurisdiction of a mixed legislature of members of various communities secularly elected for secular purposes.

14. Viewed from the *De Facto* Hindu standpoint, the Hindu law is the law of the Hindus; Hindus are the religious community; believing in Hinduism is the religion based on *Smritis*, *Smritis* and other *Shastras*, the Hindu Law is accepted wholly or partly, by other communities which have no scriptures in common with the Hindus, but to use this last fact to dynamite the scriptural and revealed basis of Hindu law and to turn it against *De Facto* Hindus would be unjust and improper.

15. Viewed from the standpoint of the incidence of opinion, the Code is strongly opposed by the Hindu Religious Heads, orthodox Hindu Pandits, and Hindu religious bodies who collectively represent the Hindu community, the dissenters, protestant reformers, and mixed association of Hindus and non-Hindus cannot be authoritative in this matter; the generality of laymen hardly understand all the implications of the formation and contents of the new Code, the generality of women understand very little of it and generally do not take part in such matters and those few who are agitating for the Code are reformers and dissenters by the very token.

16. Viewed from the standpoint of peace and order, the Code would make for greater social disorder and accelerate the forces of materialism, discontent, revolt and revolution.

17. Viewed from the conservative Hindu standpoint the machinery of the present constitution and Government is unsuited to the proper representation of the Hindu community in the Legislature which are, therefore, unsuited for deliberations on communal matters.

18. Viewed from the general historical standpoint, the proposal for such a Code practically disregards the great, unwritten, inalienable and fundamental right of the people to be ruled by their own ancient sacred laws, without any executive or legislative interference which rights were practically reassured in the great Proclamation of 1858 A.D. when the British Government assumed sovereignty in India.

It is therefore, our considered and emphatic opinion that the whole moment of preparing a new Hindu Code is

uncalled for, unnecessary and highly ruinous to the Hindu community and culture, and from all points of view, highly undesirable. It deserves, therefore, to be totally abandoned, in the justice and fairness to the Hindu community and Indian ideals.

20. Pandit Sri Damodar Shastri, Ayurvedopadhyaya, Vidya-vinode, Kavya-Mimansa-Smriti Tirtha, Priest of Lord Jagannath, Puri (Orissa).

It is not my opinion to go against the Vedas made by God, the priceless wealth of the Hindus and the religious scriptures (Manu, etc.) made by the past wise sages who could look into time distinctly and intuitively and who established the Hindu sociology that (the Vedas and Dharma Sastras) makes the Hindus happy both in this life and the life to come. At present a few non-Hindus and some modern Hindus who are influenced by the Muslim and Christian civilization are trying their best to destroy our Hindu culture, civilization and sociology by bringing our Hindu Code into force. This Code should not be named the Hindu Code, but may be named the Muslim Code or the Christian Code inasmuch as it supports the views of those communities and goes against and harms the Hindus essentially and directly.

Registered Marriage.

In our religious marriage means the final reformation practised on a Hindu couple according to the principles laid down in the Vedas and the Grhyasutra. It gives divine and happy effects to the couple concerned if it is done properly but it ends in misery and unhappiness in case any of the Vaidic principles is disobeyed in the least. (Vide Achara Adhyaya—56, Yajnyavalkya).

Moreover the registered marriage implicitly though not explicitly includes the widow marriage, descending marriage or the annulment marriage and the ascending marriage or the pratiloma marriage. This can never be the opinion of our Hindu Dharma Sastras. Among us it has been in force that a bride or a groom can marry a groom or a bride from the same varna to which he or she belongs. Formerly the Brahmans used to marry girls from the four varnas, the Kshatriyas from three, the Vaisyas from two and the Sudras from their own varna. But the reverse was not true. That is, a Kshatriya could not marry a Brahman girl or a Vaisya a Kshatriya girl, or a Sudra a Vaisya girl. The reason of this is that a girl of higher varna is respected by a man of lower varna. Marriage of a Brahmin with a Sudra girl is not even admitted by the Vedas the Yajnyavalkya, and other Smritis and the Kalibirya Prakaran.

The Sapinda and Sagotra Marriage.

The Sapinda and Sagotra marriage is dangerous from the standpoint of science, manners and customs. If this be not admitted, he or she shall marry a girl or a boy of his or her blood relations which is harmful from the standpoint of science, morality and theology. That is why the past wise sages have laid down rigid rules in our Dharma sastras. (Vide—Aswalayan Grhyasutra, Parashara Grhyasutra, etc.)

(Vide Manu Samhita—3rd chapter, 5th sloka, Yajnyavalkya Byabehara Chapter—52 sloka and Kasyapa Smruti, Mitakshara Smriti, Apastambha Smriti, etc.)

That the daughter shall have rights in the paternal property as the sons have sounds absurd and unreasonable and it is definitely harmful in future in accordance with our Hindu Dharma Sastras. "Pindum Datwa Dhanum Haret" this means that the son who gives Pinda to his father is morally the heir of his father's property and not the daughter. The son is directly responsible for his father's Pinda, though the daughter is indirectly responsible for the same. The son of the daughter can offer Pinda to his maternal grand father as his son but not as his grandson. Moreover the grand son offers Pinda first to his mother or father and then to his maternal grandmother or maternal grandfather and the great-grandson does not offer Pinda to his maternal great-grandfather. On the other hand the son, the grandson and the great-grandson can offer Pinda to their fathers, paternal grandfathers and great-paternal grandfather in chronological order. (Vide Manu Samhita—9th Chapter—140 sloka).

Love, affection and respect play a prominent part in deciding the question of inheritance of property. The father loves his sons more than his daughters. The daughters are thought to love and respect their husband while the sons are taught to love and respect their parents.

Hence it is clear that the sons inherit their father's property while the daughters are maintained by their husbands. Moreover the daughters get dowry and ornaments from their fathers at the time of their marriage. In case the husband dies accidentally she is maintained by her sons and grandsons. But if the husband dies leaving his wife without son and property she should be maintained by her father or brother till she is alive. But for this none should think that she should be given a share from her father's property.

In our religion the woman is never independent. In her childhood she depends on her father, in her youth on her husband and in old age on her son. This rule is strictly obeyed irrespective of caste. This is because our Hindu women think that their chastity remains safe and secure so long they are with their father, husband or son. Hence no new Hindu Code is necessary for our Hindu women.

(Vide Manu Samhita, 9th Chapter, 2nd, 3rd, 5th, 6th, 7th and 13th slokas.)

21. Pandit Kaviraj Ananta Tripathi Sarma, M.A., P.O.L., Bhesajamandir, Parlakimedi.

I have to state that framers of the draft Code followed neither Mitakshara nor Dayabhaga. In certain cases they have overruled even the prevalent customs and made the problem more complicated. In my opinion the draft Code will ruin the Hindus and their religion.

PART II.

1. Daughters should not be made simultaneous heirs. They should be placed after the simultaneous heirs.
2. Widowed daughter-in-law should be placed after son as a simultaneous heir.
3. Widows should be deprived of their husbands' properties in case they seek remarriage. Before they claim they must give full assurance that they should not marry again.
4. The surviving spouse and descendants of a marriage contracted by a male or female Hindu outside his or her caste should not be treated in the like manner as the surviving spouse and descendants of a valid marriage contracted within his or her own caste.
5. Marriages contracted by males or females outside the caste should not be treated as valid marriages.
6. In section 21 of Part II the clause "unless such children or descendants are Hindus at the time when the succession opens" should be omitted.

PART III (a).

1. The right by birth should not be abolished. It should stand as it is.
2. Mitakshara school should be made essential to all Hindus and Dayabhaga school should be abolished.
3. In section 5 of Part III (A), the widow should be excluded from the enumerated list of dependants, as she has to be taken as a simultaneous heir as long as she remains a widow.

PART IV.

1. All the Hindu marriages have been made monogamous but provision should be made for "Adhinedana" (taking of another wife even in the existence of a wife) in certain cases.
2. Divorce should not be introduced. Introduction of it is not desirable; but, on the other hand, it is dangerous.
3. Marriage between the parties having the same gotra and common pravara should be prohibited.
4. Sacramental marriages should be confined to the parties of the same caste only. Even the civil marriage between the parties of different castes should not be allowed in the Pratiloma form.
5. Registration of the sacramental marriage even as optional is not necessary; nor is it desirable.
6. The rules relating to divorce should not be made applicable to the parties of sacramental marriages in any respect.

PART VI.

1. In specifying the capacity to take in adoption, it has been stated that a Hindu whose wife is living may adopt without any reference to her and notwithstanding her dissent. It is very vague. Only a Hindu without probability of having a son through his wife is permitted to adopt a son whereas a young Hindu living with his wife and having the capacity of begetting a son through her is not permitted to adopt a son. In such a case he must obtain the consent of his wife and withstand her dissent.
2. The eldest son or the only son of a father should not be allowed to be adopted.

3. The substitution of "He must not be older than his adoptive father or mother" for "He must not have completed his fifteenth year" is clear and simple.

22. Sri Parashuram Guru, President, Sanatana Dharma Rakshini Utkal Brahma Samaj, Sambalpur, Orissa.

In my opinion and in the opinion of my Samaj, the proposed Hindu Code strikes at the very root of the Vedic Hindu religion and ancient customs of the Hindus and as such neither the Central Legislature nor any of the Provincial Legislatures had or has any right to legislate or to codify upon matters of religious and social laws of the Hindus, which are in accordance with the *Dharma Sastras* and dictates of *Brahma Rishis* and ancient Hindu customs, especially in its present proposed form.

The proposed provisions are unwarranted, unjustifiable and are against the spirit of the solemn declaration of Queen Victoria and the Government of India.

Hence in the opinion of my Samaj and myself the proposed Hindu Code embodying provisions quite against the spirit and dictates of *Dharma Sastras* and detrimental to the ancient Vedic Hindu religious customs, which are being rigidly respected and followed by all Hindus, should be dropped altogether.

23. Sri R. C. Misra, President, Aranyak Brahman Samaj, Sambalpur.

In my opinion and in the opinion of my Samaj, this so-called Hindu Code strikes at the root of the Vedic Hindu religion and as such neither the Government of India nor any of the Provincial Governments possess or has at any time possessed any right to legislate upon matters of private laws of the Hindus and the present policy of the Government of India of codifying Hindu Law through the agency of the Central Legislature specially under its present form and constitution is most reprehensible, unwanted and unjustifiable and is against the solemn declarations of Queen Victoria and the Government of India.

Hence in the opinion of my Samaj and myself, this code embodying as it does so many provisions quite opposite to the spirit and letter of the *dharma shastras* and detrimental to the Hindu culture and civilizations, should be dropped altogether lock, stock and barrel.

24. Sri Govinda Das, Vidwan, Oriya Pandit, Maharajah's College, Parlakimed.

The Hindu religion is founded on *shastras* and custom. Still if the reforms contemplated at present are considered to be opportune and are likely to promote public good then they may be introduced. But taking into consideration the tenets of Hinduism and the present time and tendencies, it does not in my opinion, appear to be advisable to bring about the reforms of the draft Hindu Code, except those embodied in Chapters 5 and 6.

25. Pandit Shyam Sundar Nath Sathoo, Darpan House, Cuttack.

I have looked into the provisions contained in the draft Hindu Code prepared by the Hindu Law Committee and the Explanatory statement prefacing it. Frankly speaking, I cannot agree with the Committee's proposals specially in regard to the law of intestate succession and matters arising therefrom, including marriage and divorce. I am opposed to any encroachments being made on the existing law in such matters as that would annihilate the entire fabric and structure of Hindu society. In short, I would like the existing law to stand as it is since it is based on true *sastric* principles and directed towards the good of the society.

26. Pandit Sri Chandrasekhara Brahma, Vidyaratna, Sankhya Tirtha, Vedanta Tirtha, Sahityapodhaya Sarma, Retired Sanskrit Pandit, Aska, Ganjam.

I find that if the provisions of the draft Code are allowed to be enacted into law, it will tend to abrogate and be subversive of all the social customs and rules of succession and rights of women, etc., prevailing at present and the Hindu *dharma* which consists of *Achara*, *Vyavahara* and *Prayaschitta* will in course of time lose its religious fervour and solemnity. The proposals do not also find support in ancient *sanskrit* treatises whose binding nature has been unquestionably admitted for ages past.

I am therefore of opinion that the draft Hindu Code, if at all, should be so remodelled as to be consonant with the *smritis* and other ancient authorities whose doctrines

are to be invariably followed so long as Hinduism exists on earth. I have refrained from commenting on the proposals adumbrated in the draft lest each item therein should have to be criticised making my criticism a big volume.

II

I think that if this Code comes into operation the Hindus, for whom it is intended, will receive a death-blow. The age-long unity of geographical India cannot be dreamt of in future from the cultural and social standpoints. Socially viewed by a true Hindu, the operation of this Code will leave no room for distinction between real Hinduism, based on the *vedas* and *smritis* on the one hand and other religions on the other. In no time will litigation spread like wild fire, the percentage of literacy being very low.

Further, this Code gives rise to many suspicions; undue stress has been laid on clear facts probably with a view to making the ordinary Hindu feel that his religious feelings are never wounded. I cannot for a moment think that the Committee can quote the Hindu *smritis* to justify every step; a *smriti*-knowing Pandit is bewildered to find *Asmatra* (not in accordance with the *smritis*) statements.

The Committee's views are far away from the *smritis* as regards succession, marriage and divorce. The protection that women got in Hindu *smritis* is not to be found in the draft Hindu Code. On the other hand, on the questions of succession and divorce, they are deemed much inferior and put into a very insecure position respectively.

In brief, I may say that this Code as it is, will do more harm than good to the religion-fearing Hindu society.

27. Harihara Misra, Kabyathirtha, Dharmadhyaka of Dharakote and Secretary, Dharmaprasarini Samiti, Dharakote.

Hinduism and Hindu Law are not separate from each other. Change in Hindu Law means change in Hinduism. At any time it cannot be changed. The Hindu Law Committee appointed by the Government is quite against Hinduism. If such laws will be made for the Hindus by the Rau Committee, Hinduism will be at stake, ultimately leading to its destruction. Therefore I oppose the work of the Rau Committee.

28. Pandit Sri Jagannath Rath, Sahityacharya, Sanskrit and Oriya Pandit, Khallikote Collegiate High School, Berhampore.

The said scheme is opposed in the extreme to the *vedas* and the Hindu scriptures and puranas, and, if codified, it will cut at the root of the *Barnashram dharma*. Just as the Christian community is apt to be greatly perturbed if the ideals of Christian religion as preached in the Bible are frustrated, just as the Muhammadan community is apt to be agitated if the Quran is injured, similarly, it is but natural to bring excitement among the Hindu community when their *vedas*, religious scriptures and puranas are decried.

29. The Berhampur Pandit Sabha.

This Sabha, having closely scrutinized the draft Code and realizing that it will attenuate the Hindu culture if put into practice, strongly protests against the passing of the same into law.

30. Rai Bahadur T. Venkatakrishnaiya, B.A., B.L., Landholder, Chatrapur, Ganjam district, Orissa.

Preliminary.—The consideration of the draft Hindu Code should, in my opinion, be kept in abeyance until normal conditions are restored after the termination of the war.

It is impossible in these times of stress and strain brought about by war conditions and by the scarcity of food, disease, etc., for the public to give the matter the consideration it deserves. I am therefore strongly of opinion that the proposed codification should be put off indefinitely.

The present legislatures are, in my opinion, not competent to deal with matters of this kind. They consist of members who have long outlived their terms of office which has been extended beyond the period for which they were originally elected. In my opinion the proposed Code should not be placed before them for consideration but should, if at all, be placed before a legislature elected on this specific mandate.

Further it is not proper that under the guise of codification of an existing law based on *smritis*, customs and decisions of courts, new changes of a violent and far-reaching character should be introduced. Some of the changes proposed are such as would undermine the very foundations of law and customs and are totally unsuited to the conservative

temperament of the people. It should be remembered that the vast majority of the Hindu population live in villages far away from courts and registration offices and are illiterate and cannot be expected to adopt the medium of wills for the disposal of their property.

The religious sanction is the very basis of the Hindu law and the present changes are not sought to be based on any such sanction. They are deliberately based for no cogent reasons on a violation of such sanction to such an extent that it can hardly be called Hindu law. For these reasons I am opposed to codification of the character now proposed.

There is no reason also why the valuable variations of the smriti texts followed in different localities and based on different schools of thought and customs should be done away with. (These variations go to prove the live character of the principles on which they are based and should not lightly be brushed aside. They show that the law bears a close relation to the stages of development of particular sections of the community.)

General.—Hindu social institutions are based on a well-defined plan conceived by sages and have been reared on enduring foundations. It is not as if they have been left to be evolved in the natural course of events. Before seeking to interfere with the plan to suit modern conditions, which may after all be fleeting, care should be taken to see that the very foundations are not undermined. Otherwise they would cease to be true Hindu social institutions and should not be designated as such.

According to the Hindu, this life has a meaning only as a link between the past life and the future. It is a stage of transition from past birth towards future birth or births until the final aim of life-moksha or final liberation is achieved. The soul of man is for the Hindu, immortal and the bodies in which he lives during the stages of transition are subject to change.

It follows therefore that man has to follow his dharma as laid down by shastras and should not shape his conduct solely with reference to the tendencies and affection prevailing for the time being. Thus alone can he control his future life, i.e., by following his swadharmā he can counteract his past karma and safeguard himself from the effects of his future karma. Artha and kama (profit and pleasure) which are the objects of life of a man in the marga (the pursuit path of life as opposed to the pravirti renunciation path) should be controlled by dharma. Therefore changes which are not reconcilable with dharma should be deprecated. This trinity (dharma, artha, and kama) is the sweet fruit of the "Tree of life." It is the fulfilment of the object of the life's taking birth in flesh. Manu mentions three debts as concomitants of the three ends of the Path of Pursuit. These are the debt to the Gods (Devas), the debt to the ancestors (Pitris) and the debt to the preceptors (Rishis). The debt to the Pitris can only be discharged by the bringing forth and the rearing up of a progeny (Dharma Praja) and taking as much trouble for them as the ancestors have done for the debtor. In making such repayment every head of a house becomes an office-bearer, a trustee and exercises powers of some sort.

It is submitted that these supreme considerations should be kept in view with care and devotion in making an attempt to frame a true Hindu Code. It ceases to be Hindu to the extent to which the changes make a departure from the supreme Dharma.

Hindu law as now administered is well understood with all its variations and also well settled. A uniform code obliterating these variations would certainly unsettle the existing law and in consequence would stand in need of much "interpretation." During at least a long transitional period there are bound to be doubts, strife, litigation and unhappiness. The codification would therefore be a measure inflicted at a heavy cost and should, in my opinion, be avoided.

Further the uniform code proposed cannot presumably be applied to Hindu communities resident in independent States where different rules regarding succession, marriage, etc., prevail. The advantages which the Committee have in view cannot therefore be achieved for the whole of India. On the other hand in the case of the Hindu communities resident in the two areas—British India and the States—which are connected by marital and other social ties, complications would arise regarding the laws applicable respectively to them.

The Mitakshara law is now applicable to a major portion of the country and the framers of the code in their desire

to have a uniform system for the whole of India have done away with Mitakshara Law and have introduced something like the Dayabhaga system of law for the whole country. Their idea seems to be that the Hindu joint family system has outlived its usefulness in the country and therefore all systems of inheritance which are based on the need to preserve the integrity of the joint Hindu family should be done away with. It is submitted that such a move is erroneous in principle and undesirable for adoption.

The joint family system has contributed to the stability of the Hindu society. Its advantages have far out-balanced the disadvantages. In its best form it has worked as a co-operative institution with the family as the unit. It has also prevented excessive fragmentation of holdings. Lastly the demand for a change is by no means widespread and it should not in any case be introduced in the name of codification.

The Hindu society has developed with an innate consciousness of the Dharma relating to inheritance, etc., as laid down in the Smritis. There are also healthy variations by way of customs and traditions. It is not therefore true that the Hindu law has become atrophied or fossilized. The customs have grown with reference to various sections and states of society in varying stages of development. They should all therefore be preserved as such and no violent or hasty departure from the existing systems should be attempted. There is no evidence at all that the majority of the people wanted a change.

The proposals in the draft Code constitute an important departure from the existing law in the following respects:—

(i) The elimination of the Mitakshara system of Co-partnership.

(ii) The abolition of the doctrine of limited estate for women in inherited property.

(iii) The dissociation of the doctrine of spiritual benefit for the law relating to succession.

(iv) Abolition of sanctity of sacramental marriage.

My comments on the provisions of the proposed Code are given below:—

Part II.—Intestate Succession.—A share in the intestate's property of a daughter as a simultaneous heir along with the son.—The law of inheritance is based at present on two considerations—

Religious.—The offering of the Pinda for the pitras can only be done by the son and not by the daughter (who goes into a different gotra).

Secular.—The idea underlying the present law and custom in its secular aspect is that property should be preserved and its safety ensured. Under the proposed law the happy married life of the girl will be seriously marred. The girl given in marriage will have to struggle throughout her life torn by two considerations (i) Affection for her brothers and the family of her birth and (ii) the desire to preserve the peace of her own family life. This would lead to continued unhappiness. In the present stage of the Hindu society women in a very large majority of cases are unable to manage their properties or act as equals to men in social position. It is therefore undesirable to make daughters simultaneous heirs along with sons.

Clause 3 is both drastic and objectionable. There has not been an adequate study of investigation into the various customs and usages followed in respect of succession, marriage, or adoption among the various sections which constitute the Hindu society such as to necessitate the enactment of a sweeping change. Hence the basic principle of Hindu law that any custom or usage in force in the case of any community ought to be preserved respected followed.

Clause 13.—In the definition of Stridhana the words "By inheritance" should be omitted. What is meant by Stridhana is property belonging to a woman over which she has absolute control. What she gets by inheritance is not such property and should not be at her absolute disposal.

Part II.—Sub-clauses (ii) and (iii) of clause 1.—Intestate Succession.—Under these clauses property which descends under the law of primogeniture or by the terms of any grant and property governed by Marumakkattayam law of inheritance, etc., has been excepted. In my opinion if such exceptions could be made of inheritance under special laws or special customs there is no reason why in the name of uniformity Mitakshara law should be abolished and something akin to Dayabhaga law made applicable to the whole of the country.

General.—The changes in succession proposed and the enumeration of heirs and the rules as to preference, etc., are so complicated that it is not possible even for ordinary educated persons to know who will succeed in all cases where a person dies leaving no nearer heirs. In the case of nearer heirs also the changes sought to be made are so strange and novel as greatly to go against the settled notions of the common people. To introduce such changes violently by means of a code appear to me to be undesirable as the people will find it difficult to follow it in practice. Generally in Hindu society, especially among the very large majority living in villages, succession follows tradition and custom which is well understood. The changes would affect every Hindu family in the country, rich and poor, educated and ignorant, and those residing in towns and villages. It is too much to expect all of them to remain cognizant of these changes which do not make for simplicity. Even in highly educated countries the laws of inheritance do not appear to have been codified and India where a large majority are illiterate and live in comparative ignorance and follow customs based on well understood traditions, such changes seem to be highly undesirable. They will only lead to litigation and consequent unhappiness.

Clause 5—Class I—Heirs in the compact series.—A daughter should not be included in this class of heirs. She should come as No. 2 and the remaining heirs enumerated accordingly.

Clause 11 (3)—Clause 7 (b)—Manner of distribution among simultaneous heirs.—Sister and sister's son should come after 3. It is objectionable and should be omitted.

Clause 8—Order of succession among non-enumerated heirs.—The rules proposed are very complicated. It is much better that the existing rules which are simple should prevail.

Clause 9—Rules of preference.—The proposed rules are complicated. No change in the existing law is necessary.

Clause 14 (b) (1 and 2)—Order and mode of succession to Stridhana.—The existing rule according to Mitakshara (Stridhana) should be followed.

The existing rule should be followed. In certain cases (4, 5 and 6) under the existing law husband's heirs come before mother and father. This distinction has to be retained as there is a sound reason behind it.

14 b, 8 (c) i. Objectionable—should be deleted.

Clause 17—General provisions.—Should be deleted. It is objectionable because under the proposed change there is a premium given to go out of caste.

Section 19.—The proviso is highly objectionable—should be deleted.

Clause 21.—Remove the words occurring after "Unless such children are descendants".

Clause 23.—The existing law should be preserved leaving it to the interpretations of courts.

Clause 24 (b)—Mode of succession of two or more heirs.—Add "Except in the case of daughters and widows."

Part III (A)—Provision common to testamentary and intestate successions—Scope and operations of Parts I and II.—The existing law should remain and no change should be made. The existing law acts as a salutary check on the extravagance of the father. Its removal would operate most prejudicially to the interests of the family.

II. Maintenance.—

Clause 5—(IX) Dependants enumerated.—Re-cast as follows:—

"Any unmarried illegitimate daughter so long as she remains as unmarried minor."

Clause 6—Amount of maintenance—(h) Proviso.—The proviso introduces a hard and fast rule which is undesirable. A certain elasticity in these matters is much to be preferred.

Part IV—Marriage and divorce—Chapter I—Celebration of marriage.—1 (a) ii.—This clause is somewhat different from the existing interpretation of definition of Sapinda. The existing interpretation may remain.

(b). The prohibitions introduced exclude many kinds of marriages that are now in vogue and should therefore be omitted. Further the prohibition regarding marriage of children of two sisters which is now observed in certain classes is sought to be removed by this clause. Such prohibitions as are now respected need not be done away with. In these matters in which no public policy is involved, custom should be allowed to have its sway and no innovations should be introduced by way of legislation.

2. Two forms of Hindu Marriage.—Hindu Law recognised only one form of marriage—sacramental marriage. A civil marriage cannot be a Hindu marriage excepting certain cases of customary marriages prevailing among Sudras—e.g., Thuva Thuva marriage among Oriya sudras. The paramount object of marriage according to Hindu Dharma is the perpetuation of the father's line by way of securing Dharma Praja.

It is an indissoluble union not merely for worldly purposes such as Artha and Kama but for spiritual purposes mainly Dharma and Moksha of the married couple. Dissolution and divorce are unknown to Hindu Law of the three higher castes. In the case of others, customs may allow dissolution and divorce. Religious Karma is possible only for a married couple united by sacramental marriage and not for others. Those who seek to be married for a secular purpose may choose to do so and may preserve to themselves a right of dissolution and divorce; but those who enter into a sacramental marriage shall have no such right.

3. (a). This condition is objectionable. The husband may for the sake of perpetuating the line be driven to the necessity of marrying a second wife. After all monogamy is the rule actually followed in a very large majority of cases and cases where it is departed from are exceptional. Such departures are based on religious or economic considerations. Legislation to correct an evil so exceptional in character and scarcely prevalent should not be resorted to.

In this respect the husband and the wife cannot stand on the same footing. After all the wife acquires the name and gotra of the husband's family and goes to the husband's home to perpetuate his line. The reverse is never the case.

Clause 6 (a) and (b)—Sacramental marriage not to be deemed as valid in certain cases.—Highly objectionable—should be deleted.

Clause 6—Optional registration of sacramental marriage.—This is undesirable. And so for the factum of a sacramental marriage has rarely been brought into question. Indeed there should be no registration in the case of a sacramental marriage.

Clause 7—Requisites of a Civil Marriage—Condition 4.—The proviso should be removed. The consent is as much necessary in the case of a widow as in other cases.

Clause 2A—Punishment of Bigamy.—This should be totally deleted.

Chapter III—Clause 29—Decrees of nullity and dissolution of marriage.—These should not apply to sacramental marriages.

Part V—Minority and guardianship—Clause 6 (2), powers of a natural guardian.—It is wrong in principle not to differentiate the natural guardian from a guardian appointed by the Court. Save in exceptional cases the dictates of affection of a natural guardian would make him not only for the benefit of the minor. He should have the discretion which he can exercise under the existing law. This should be deleted.

De facto guardian—Clause 10 (a).—Existing law needs no change. Add clause 10 (a)—"The guardian of a Hindu minor shall be of the same caste as of the minor."

Part VI—Adoption—Clause 1 and 2.—The existing law should be preserved. There is no need to do away with the customs prevailing in particular tracts.

Clause 5—Explanation.—The Madras view provides the via media between the different laws prevalent in India on this question. It also provides a necessary safeguard against the caprices of a widow.

57. *Manner of giving authority, etc.*—This should be deleted and the existing law preserved.

Clause 13 (V).—This is unnecessary. Any unmarried boy whose upanayanam has been performed should be capable of being adopted.

Clause 15 (2)—Actual giving and taking essential but not Datta Homam.—"Datta Homam" is essential in the case of the first three castes—except in cases where the boy to be taken in adoption is an agnate. It is an essential ceremony where there is a change of gotra.

Section 19—Divesting of estates (1) and (2).—The present law should be kept intact. No change necessary.

(3) The present law may be followed. No change is necessary.

Section 21—Rights of adoptive parents to dispose of property.—Delete clause 2.

Section 22 (4)—*The adoptive mother if any in case of adoption by male.*—The first wife should be the adoptive mother.

Chapter II—*Registration of adoptions.*—Registration should not be made essential adoptions.

31. B. C. Nayak, Esq., Retired Deputy Collector, Sambalpur.

It must be admitted that many reforms in the Hindu society are absolutely necessary. But before any new reform is suggested one must think several times before he gives his verdict finally. The framers of the draft Hindu Code have attempted to revolutionise the Hindu society proposing to introduce some measures which are not absolutely necessary. I will deal only with a few of them. I will earnestly request the legislators not to decide anything before they are satisfied that a particular change is indispensably necessary.

Right of inheritance of daughter.

In view of the fact that a widow is made simultaneous successor to an intestate estate along with the sons and others this right to a daughter is unnecessary. So long as a girl is not married she has her father's house as shelter and she has all the amenities of life. As soon as she is married she gets her right of inheritance in her husband's family. If over and above this she is given a share of her father's properties then there will be unnecessary extra provision for her, whereas a portion of the property belonging to one family will be transferred to another. It is quite apparent that the draft proposes to give full estate to the daughter and if this be so the property of the father will irrevocably go away to another family and thereby would reduce the affluence of the father's family to at least some extent. This will cause dissatisfaction and undesirable effects. It will be foolish to assume that the habit of centuries can be changed by one piece of legislation. Instead of getting the relief that the daughters would expect to get if this Draft is passed as law the daughters will certainly find themselves the target of many fraudulent practices. One cannot change human nature by sermons that the brothers must not be selfish as to deny their dear little sister a bit of her father's estate.

There may be a bid for marriage with heiresses and while there is a possibility of this killing the dowry system the right of inheritance of the daughters may lead to the practice of demand of a price from the bridegroom. The order will only be reversed.

Nobody will object to the emancipation of women. But if the draft is passed as law the women of India would be given such rights as would make the ordinary Hindu family quite different from what we are accustomed with. The total economic independence will be more harmful because of the liability of the women as a class and ignorance. All that I mean to say is that the time for such measures has not come. The rights given by the Hindu Women's Right to Property Act are tolerably sufficient, and no greater measures are necessary.

It is one thing to have a right and it is another to be able to maintain it. A married girl may be liable to gift away the property she has inherited from her father in favour of her son or husband and supposing they unscrupulously drive her out she can hardly expect help and shelter from the members of her father's family who will always be entertaining a grievance that it was due to her that a portion of the property they would have enjoyed was spoilt. This would also lead to litigation and speculation.

If, however, the view of the majority of the people of India is in favour of giving such a right to the daughter she should be given life estate over the properties she inherits from her father, and her right to succeed should open only on the death of her father. If by any chance she is the only heir of her father under circumstances provided by the existing Hindu Law she can however have full estate over the whole of her deceased father's estate and her life interest will merge in her full interest.

II. The widow has been given the right to inherit her deceased husband's heritable properties along with her son and daughter but this right has not been given to the widower. If the draft is accepted this provision should be made.

III. *Daughter's son—Son's daughter.*—It is apparent that the framers of the Bill have looked more on equity and common sense than on the scriptures. If this be

so there is no reason why a son's daughter should not rank in the same category of heirs as the daughter's son. In my view the son's daughter should come earlier than the daughter's son in the matter of inheritance.

IV. In their desire to imitate the Christian Law or any other law the framers of the bill seem to overlook the fact that if full testamentary powers are given to the father natural love for the children may not always be a check against squandering away the family property at the cost of the children. This risk is greater in a country where the majority live in villages, are uneducated and under the clutches of the village headman or money-lenders. This will ruin the innumerable rural families.

If this right is at all given this must extend only over the portion of the property which the father would have got as his share had he separated from his sons or heirs. He will of course have full testamentary powers over his self-acquired properties.

V. Though not prohibited by law monogamy is the rule and polygamy is the exception in the Hindu society. So to stop the exception a special legislation is not absolutely necessary. In any case a Hindu must have a chance to beget a son through his wife for satisfaction of certain religious obligations. There are cases where a Hindu adopts a child in order to satisfy the said obligations. But supposing in a case a Hindu male is deprived of the privilege of fatherhood on account of the barrenness of his wife there is no reason why he should not beget a natural son by marrying another wife. There are cases where the first wife has induced the husband to take a second wife for this purpose and there are also cases where the husband has remained satisfied with his lot. I think there should be a provision which will enable a Hindu male to take a second wife when the first wife permits him to do so on the ground of her barrenness and a proper court is satisfied that the permission is bona fide. There is no reason why this right should not be given to the Hindu male who desires to have the company of his first wife whom he still loves when the principle impotency on either party has been accepted by the framers of the law as a ground for divorce.

VI. *Divorce.*—Western countries are now racking their brains to find out a solution of the marriage problem. The people have realised that the right of divorce instead of being a boon has become a curse. The legislators of our country will be well advised if they study the divorce problem of other countries first. As a principle divorce under certain circumstances may be desirable but will not be judicious.

32. Mr. G. Ranga Row, B.Sc., Secretary, Andhra Literary Association, Cuttack.

1 (a) *Clause 5, Part II.*—It appears unfair to place the intestate's widow and his widowed daughter-in-law in different categories. The former is included in the list of simultaneous heirs, while the latter is shown as a dependant who may claim maintenance under suitable conditions. It is stated in clause 7 (c) of Part II that only the sons of a predeceased son of the intestate get their father's share and distribute it among themselves. The predeceased son is thus treated as a surviving one, and the property falling to his share is redistributed not among all the surviving members of his family as is done in the case of the intestate but is entirely given to his sons only. It may be easily argued that the widow and the daughters of this predeceased son have got as much right over the share allotted to her/his husband/father (since the share is treated as the predeceased son's own property inherited from his father as if he had survived the intestate) as the intestate's widow or his daughters have on the intestate's property. So it appears sensible that by virtue of the very clause that gives a place to the intestate's widow and his daughters in the list of simultaneous heirs, the widow daughter-in-law and her daughters, if any, should also be given a similar status to share her husband's/their father's share of the Intestate's property along with the sons (of the predeceased son). It would be invidious if the two widows are given differential treatment.

It is therefore better if the wording under class I under clause 5 dealing with the simultaneous heirs is changed somewhat in the following manner (in the appropriate legal language):—

Class I—Heirs in the compact series.—(1) *Widow sons and daughters of the intestate.*—In case any predeceased son leaves a family behind him the share he would have

got if he had survived the intestate should be allotted to his family members who should divide it among themselves in the same way as if he (the predeceased son of the intestate) had died intestate.

Such an alteration appears to be reasonable and should readily commend itself. It does not also affect the shares of the surviving sons or daughters or the widows of the intestate.

(b) Again the method of distribution as outlined in clause 7 also appears to require a little alteration in commensurate with the general commitments of the parties concerned.

The son has to maintain a family, educate and marry his children, whereas the widow mother need only look after her own cares and comforts, which also will be little if she condescends to live with one or other of her sons which is generally the case. As for the daughter, she is going to another house and depends on her husband's income. So she is not as helpless as her mother, and should therefore get less than her mother who in turn should get less than her son who has to support a family.

Arguing on these grounds, I consider the widow should (each in case of more than one) get half the share of the son; and the daughter one-fourth the share of the son. In other words the share of each son, widow and daughter should be in the proportion of 4 : 2 : 1.

The following illustration will make the point clear : An intestate leaves two widows, W-1 and W-2; three surviving sons, S-3, S-4 and S-5; and four daughters, D-1, D-2, D-3 and D-4. Two of his sons, S-1 and S-2 were predeceased. The predeceased son S-1's family consists of his widow S-1W, three surviving sons, S-1S-2, S-1S-3, S-1S-4 and two daughters, S-1D-1 and S-1D-2 as also a widow S-1S-1W and a son S-1S-1S of his (S-1's) predeceased son S-1S-1. The predeceased son S-2's family consists of his widow, S-2W and a son S-2S. All the widows remain unmarried. The two widows, three surviving sons, four daughters, two daughters-in-law, four grandsons, two grand-daughters, one great-grandson and a predeceased son's widow daughter-in-law, will take the shares according to the suggestions outlined in the foregoing paragraphs :—

Thus my suggestions are twofold with reference to the distribution of the property :

(1) The widow daughter-in-law should not be left in the lurch to fight for the maintenance, but should along with her daughters, if any, be given a place in the simultaneous heirs for her husband's property as was done in the case of the intestate's family. It would be unfair if they were made to suffer simply because the intestate's son predeceased the father.

(2) The division between the sons, the widows and the daughters should be in the proportion of 4 : 2 : 1.

II (a) Under Part IV, chapter I, clause (i), (b), the last category "children of brothers" appears superfluous and may perhaps be omitted as brothers' children fall under the category of "Sapindas" which is covered by clause (i) (a).

(b) The following should also be included in the provisions for the dissolution of marriage (vide clause 30, Part IV) :—

"If any awkward bodily deformations or other unnoticeable defects like acute deafness or dumbness of either party are purposely kept a secret from the other party."

These provisions for the dissolution of marriage should be brought into force with retrospective effect.

(c) Clauses 3, 4 and 5 of Chapter I of Part IV as embodied in the Code should be preferred to the alternative clauses in the Bill introduced in the Assembly.

33. Mr. E. K. Jyotish Bisarada, P.O. Khalikote, district Ganjam.

The word Hindu as applied in this Code is not at all applicable to the other sects, viz., Buddhist, Sikhs, Bramho, etc., for the reason that they do not observe the caste rule as written in Hindu Dharma Sastras.

2. Daughters cannot be given a share if there are living sons or grandsons. In cases where there are no sons or grandsons the daughters may be given one-third of the property and the remaining property should be enjoyed by the adopted son and the parents equally.

3. Civil marriage cannot be regarded as a lawful marriage until and unless it is performed with all the caste scruples duly observed.

4. There will be no divorce in any case where such system has not been existing till to-day.

5. There will be no second marriage by the husband without the consent of the first wife in case she has incurable disease or she proves barren.

6. There will be no second marriage for a wife where such system is not prevalent.

7. Registration for intestate succession is not necessary for Hindus.

8. If the upanayana ceremony is over the boy cannot be taken for adoption.

34. The Secretary, Orissa Landlord's Association.

The Association do not propose at present to enter into the discussion about the different provisions of the Bill but are of opinion that for the following reasons the consideration of the Bill should be dropped for the present :—

(1) As the changes proposed are varied and drastic and seriously affect the social and economic condition of Hindus as about 99 per cent of them are ignorant of the English language in which the Bill has been framed and hence debarred from forming any opinion, it is very necessary that the provisions of the Bill should be translated into vernacular languages and distributed through the presidents of each union or village panchayat who will call a meeting of the inhabitants and explain and communicate the same to the Collector. This adoption of the procedure will give the large mass of Hindus affected by the provisions of the Bill, an opportunity of expressing their opinion.

(2) The adoption of the above procedure will no doubt cause some delay but in view of the fact that the Committee appointed to codify the Hindu Law took about four years to prepare the draft, there should not be any hurry and delay of another year or so will not matter much.

(3) It is regrettable that when the efforts of all should be directed to the active prosecution of the war to achieve victory and save the country, such a contentious measure should be introduced. This may be conveniently postponed till country settled down to pre-war conditions. Those section of people especially the few educated females who are clamouring for reforms may be reminded that if they could wait for about half a century of British rule, they can conveniently wait for another couple of years during which period they can gather strength.

(4) When strenuous efforts are being made to bring about unity among different groups in the country the introduction of such a contentious measure will create a division inside the Hindu community.

(5) There is another very serious objection to the present Hindu Code is that it should apply only to Hindus residing in British India. Though India is politically divided socially India is undivided, that is, Hindus residing in British and Native India are governed by the same laws based on Sastras. Hence the operation of the Code in British India along will create serious complication in the social relations of Hindus residing in British and Native India.

For the above among other reasons the Association are definitely of opinion that the consideration of the draft Bill be dropped for the present till the opinion of the mass of the people are obtained through the procedure suggested above.

35. The Orissa Provincial Andhra Association, Cuttack.

1. This meeting of the Andhra public of Cuttack, wholeheartedly supports the provisions of the Draft Hindu Code and is of opinion that the Code when put into action greatly improves the status of women in India.

2. This meeting supports the provision for divorce in the Rao Committee's Draft Hindu Code, as divorce is a necessity when marriage fails to give happiness for the wife and the husband reduces married life to a hell.

This meeting objects to the provision of the Code with regard to the daughter's right for property, for if this comes into force Hindus will practically come under Muslim Law and the disintegration of property will result and the place of the joint family will be at stake.

36. The Oriya People's Association.

The proposal to amend and codify certain branches of Hindu Law has been before the Hindu public for some

time past. From the volume of opposition already made the proposal should have been dropped altogether. A new code for the Hindus in the line laid down in the Bills is fraught with serious consequences to their social and economic life. The sponsors of the Bill do not realize that the mass of the Hindu population are not aware of the changes that are going to be introduced into their every day life by their so-called representatives in the Legislative Assembly. No attempt has been made on the part of Government to obtain public opinion on the subject by publishing the provisions of the Bill in provincial vernaculars. With all respect to the authors of the Bill, we consider it our duty to say, that from their very mode of life and their changed views they are not the proper persons to undertake a legislation of this nature which affects millions of Hindus still unreconciled to the western mode of thinking and living. The Bill aspires to enact uniform law for all Hindus. Considering the differences now existing between the different provinces in the matter of customs and usages which are parts of Hindu Law that aspiration will scarcely be realized; but an attempt in that direction will plunge the Hindu Society in chaos and disorder.

The explanatory statement attached to the Bill is not at all convincing before examining the provisions of the Bill. It should in the opinion of the Association be thrown out on the simple ground that it will create a sharp division between the Hindus living in British India and those living in the States. It may be a pious wish on the part of the authors of the Bill that their law will be adopted elsewhere but in the opinion of the Association there are various grounds against it.

The Indian States do not form a consolidated territory within India. They lie scattered from the Himalayas up to Cape Comorin interspersed with British Indian territory.

The law of succession, marriage and divorce that may be forced upon the Hindus of British India, may bring upon them the contempt of their co-religionists living within the States. We cannot even imagine the extent of mischief that will be created in the social relation between the Hindus of British India and those living within the States.

There is another ground which we shall urge against this legislation. In western countries law is an act of the State, whereas with Hindus, the Hindu Law is based on Sastric rules prescribed by spiritual leaders of the time, the Rishis. There is an admixture of religious sentiments in all branches of Hindu Law which are foreign to the laws of western countries. No real Hindu would like interference with their private laws by any non-Hindu. The Legislative Assembly is constituted of Hindus and non-Hindus and the idea is revolting to the Hindus that their private law should be changed by persons who are quite strangers to their social and economic life.

It is a pity that at a time when strenuous attempt is being made to bring about unity among Indian population a legislation would be thought of, which will have the inevitable effect of creating a sharp deviation amongst Hindu population of India.

It appears that the authors are very insistent in having a new code. In spite of strong opposition they succeed in having the new code on the Indian Statute Book, then instead of coming into force throughout British India it may be left to the option of the Provincial Government to introduce such of its provisions into their provinces as they may consider necessary.

It may not be out of place to mention that the world is now in the throes of a great change. A legislation of the nature now proposed may be postponed without any prejudice to anybody, till things assume normal conditions. If there be individual cases within the knowledge of the authors of the Bills where immediate action is necessary the object can be attained by having recourse to the existing laws without creating a drastic change in the Hindu Law. The Association strongly protests against any expenditure of public money to satisfy the whims of some unorthodox Hindus.

37. The Golconda Vyapari Srivaishnava Association, Berhampur.

Report of the Sub-committee consisting of Messrs. N. V. Ranganadham, B.A., Vakil, N. Balaramadas, B.A., B.L., Vakil and B. Narasimhaswami, B.A., B.L., Vakil (Retired).

2. The avowed purpose of the present item of legislation regarding Hindu Law, being to formulate a complete Code so as to avoid the evils of piecemeal legislation, the object will be far from being achieved by the present draft as it is: a wide range of topics concerning the personal Law of Hindus having been compulsorily left out of consideration on account of the limitation imposed on the Central Legislature not to touch certain matters exclusively reserved for the Provinces. A better method, under the circumstances, would have been for the Central Legislature to bring out a comprehensive draft touching all the topics that have any bearing on Hindu Law in all its branches, to enact as Law such of the provisions therein as are within its own competence to legislate upon and leave the rest to the consideration of the Provincial Legislatures for adoption as Law. Such procedure would have brought out clearly the intention of the framers of the Code and the basis on which it is enacted.

3. Mr. N. V. Ranganadham, a member of this Sub-Committee expresses himself against the present legislation and states his reasons as follows:—

"The object of the framers of the Code is also to evolve a uniform Code of Hindu Law, which will apply to all Hindus by blending the most progressive elements which prevail in the various schools of Law which prevail in different parts of the country." Mr. Ranganadham submits that the Draft Hindu Code as framed far exceeds the so-called progressive elements which prevail in the various schools of Law by which is meant The Mitakshara, The Dayabhaga, The Mayukha. See for example the definition of the terms "Hindu," "Sapinda," "Stridhana," and the like and also the introduction of simultaneous heirs as defined in the present draft Code.

Mr. Ranganadham also suggests that the joint family system, the Hindu co-parcenary and the right by birth and the right by survivorship are with one stroke of the pen given the go-bye. It is submitted that for the proper growth and improvement of any Hindu Society in all its aspects, the joint family system is the only check against several abuses and departures from social and religious customs which have been in existence for ages and which, coupled with the marriage rules and obligations have acted very largely to bring about the well-being and welfare of the Hindu Society. The right by birth in joint family property largely restrains the head of the family from extravagance and from improper alienations. The principle of survivorship is largely responsible for preventing large scale fragmentation of properties. Even in the Dayabhaga School, in the case of co-widows inheriting property, the right of survivorship is applied. Any Code which does away with the above principles is fraught with immense dangers resulting in numberless law suits and the consequent estrangement of cordial family feelings.

With these preliminary observations regarding the necessity for this legislation and also regarding the incompleteness of the Draft Hindu Code, we proceed to examine the various sections in the Code and express our views thereon.

At the outset, the definition of the term "Hindu" appears to us to be a bit too wide. We know that the word eludes any definition. We are also alive to the difficulty of bringing under one category the various peoples that are now governed by what is known as "Hindu Law." The marginal note to the section states that the definition of Hindu has been added for the purpose of simplifying the drafting. It is not, however, easy to forget the ordinary connotation of the word. Using the word even for the limited purposes of the Code, one is apt to fall into error and to lose sight of its implications. The present definition coupled with the provisions in the Code relating to the matters dealt by it—especially those relating to marriage, tends to efface, in course of time, all lines of demarcation between the different peoples to whom the British Government have been by historical accident administering Hindu Law. Each race possesses precious characteristics and distinctive features of its own; and as such; each race has its specific contribution to make for the betterment of the nation as a whole. It is therefore necessary to maintain the integrity of the race so that each may progress on its own lines and perfect its particular good traits for the common benefit of all. Then again the institution of Varna Ashrama the basis of Indo-Aryan Social Polity, will be obliterated, if we bring in within the definition of

"Hindu," a person who is admittedly a non-Hindu in beliefs and practices, and allowing marriages between "any two Hindus" as is proposed to be done under the draft Code. We are aware that abuses have crept in at present into that hoary institution. But that is no reason for abolishing it altogether.

In view of the extreme difficulty—nay impossibility of defining and labelling with a name all the groups of persons that are governed by the Hindu Law, we may as well give up the attempt, without any detriment to the present piece of Legislation. Even the most meticulous and carefully worded definition of "Hindu," seems to lead to endless controversies. We would therefore delete clause II of section 2, Part I and recast Clause I of that section as follows:—

"This Code applies to all persons who, if this Code were not in force, would have been governed by the Hindu Law or by any custom or usage as part of that law," viz., enumerate all the persons or classes of persons to whom this Code applies.

(2) *Stridhana*.—Mr. Ranganadham is against allowing a woman absolute right of ownership in the property acquired by her by operation of law. He would give her only a life interest therein, as at present. The property inherited by her or given to her for maintenance, must in justice, according to him, be prevented from passing into a different family for ever. He therefore deletes from the definition of stridhana the words "whether by inheritance . . . arrears of maintenance"—Part I-5 (j).

Messrs. Balaramadas and Narasimhaswamy welcome the step of giving a woman full rights of ownership in property howsoever acquired by her—as that would give a woman a desirable degree of independence in social life and would incidentally do away with the legal difficulties connected with the tenures called a "Widow's Estate" and the *Jike*. They, therefore, retain the definition of stridhana as it is.

4. *Succession—Part II—Enumerated heirs—Class I*.—Mr. Ranganadham is against "widow" and "daughter" being bracketed with son, grandson and great-grandson as "simultaneous heirs." The primary obligation of the latter three and the duties they have to discharge religious as well as secular, by virtue of their relationship with the intestate, override, in his opinion any claim of "widow" or "daughter" to share the property along with them. The widow can come in, only on failure of son, grandson and great-grandson, and the daughter only after the widow. Even then, in consonance with his view expressed in paragraph 3 above, the widow and the daughter should have only a life interest in the property inherited, the property to revert back on her death, to the heirs of the last full owner were he dead just then.

Messrs. Balaramadas and Narasimhaswamy are alive to the fact that the son, grandson and great-grandson have onerous duties to discharge to the intestate and his family. But that should not according to them, completely shut out the widow or daughter from a share in the inheritance along with the son, grandson and great-grandson. They opine that two-thirds of the intestate's property may go to the group of sons, grandsons and great-grandsons and the remaining one-third to the group of widows and daughters.

Class II.—Nearness of blood, combined with natural affection incline us to promote "son's daughter" and "daughter's daughter" to Class I and place them in order after "father" and before "brother."

Class III.—For the same reason we would place "sister" after "brother" and "sister's son" after "brother's son." Immediately after the sister's son as placed by us should follow "brother's daughter" and "sister's daughter."

The order of succession proposed by us would give these persons preference over people whose relationship with the intestate is remoter by a degree lower down.

5. *Manner of distribution—Section 7*.—Consistently with our observations in paragraph 4 above, there is to be an alteration in the manner of distribution of intestate's property. In the place of clauses (a), (b), (c) and (d) we would recommend the following:—

According to Mr. Ranganadham: The immediate heirs of the intestate, viz., sons, sons of predeceased sons and sons of predeceased sons of predeceased sons, shall take per stirpes, whether divided or undivided or reunited with the intestate.

According to Messrs. Balaramadas and Narasimhaswami:

(a) Sons, sons of predeceased sons and sons of predeceased sons of predeceased sons, whether divided or undivided or united with the intestate shall take together two-thirds of the intestate property; the manner of sharing as among themselves being that they take per stirpes.

(b) The remaining one-third of the property shall be taken by the widow (or widows if there be more than one) and also daughter (or daughters if there be more than one) married or unmarried or widowed, rich or poor, with or without issue or probability of issue. The widows and daughters shall all share this one-third per capita. To this Mr. Ranganadham adds the following proviso, if widow and daughter are to be, classed as simultaneous heirs with sons grandson and great-grandson, viz. :—

"The widows and daughters shall possess only a life interest in the property inherited by them provided, however that they may alienate the same for all purposes for which they could have alienated under Hindu Law as it was before the coming into force of this Code. The property left by them at their death shall revert back to the heirs of the last full owner who would have inherited his property had he died at the time."

6. *Application of the Partition Act, 1893. Clause 13*.—This is unnecessary, if Mr. Ranganadham's view is to prevail because the woman will then have only a life interest.

Messrs. Balaramadas and Narasimhaswamy would retain this clause 13.

7. *Manner of sharing Stridhana between son and daughter—Clause 14 [Clause (i)]*.—By way of compensation for the curtailment of the daughter's share as proposed by us in connection with succession to a male intestate, we would alter this sub-clause as follows:—

"In Stridhana devolving on sons and daughters under entry (1) in clause (b) all the daughters together shall take two-thirds of the intestate's property and the sons the remaining one-third."

8. *Surviving spouse and descendant of marriage outside one's caste—Clause 17*.—As we are against marriages outside one's caste (as will be seen from our observations on clauses relating to marriage) this clause is highly objectionable in our opinion and must be deleted.

9. *Unchaste wife disqualified—Clause 19*.—Just as unchastity of a woman during the husband's lifetime is deemed a disqualification for inheriting his property, so also unchastity after the husband's death should also in our opinion be held a disqualification for the widow to enjoy the property of her late husband. Suitable provision must be made against this subsequent unchastity as well.

10. *Maintenance III-A—Clause 4*.—We add the following sentence to the proviso.—

"This proviso shall not however come into operation in case the dependant to whom the maintenance is to be awarded happens to be the father or the mother." For, we think that the parents of the deceased have a sort of priority of right to be maintained overriding the claim of any one else to the property of the deceased.

Clause 6.—As the non-liability of certain persons to contribute to maintenance by virtue of the proviso to clause 4, will correspondingly increase the burden of maintenance as against others liable to contribute, we add the following as sub-clause (j) as one of the circumstances to be considered in determining the amount of maintenance.

"The heaviness of the incidence of maintenance on persons liable to contribute consequent on the non-liability to contribute of persons coming under the proviso to clause 4."

11. *Part IV—Marriage and Divorce—Clause 2*.—Marriage being the pivot on which hinges the purity of any race, it cannot be disposed of lightly. It is one of the sacraments conceived by the sages to conduce to the spiritual well being of the individual and through him of the society at large. The paramount object of marriage, according to Hindu Dharma is not sensual self indulgence but perpetuation of the line and race. As such, marriage must be accorded a place of high sanctity.

Mr. Narasimhaswamy insists that marriage must be treated only as a sacrament and should never be viewed in the light of a contract. The marital tie—he urges—should be a bond unbreakable for life. He is therefore

against any provision being made for civil marriage or dissolution of marriage. He would recast clause 2 as follows:—

"There shall only be one form of marriage under this Code, viz., a sacramental marriage."

Messrs. Ranganadham and Balaramadas, too, give a highly respectable place to marriage. They are alive to the sanctity that must be attached to it. All the same, by way of concession to the trend of modern thought prevailing in some quarters they deem it desirable to make provision for Civil Marriages and Dissolution of Marriages.

The words "*The Hindu*" in clause 2 may be deleted and words "under this Code" may be inserted after the word "marriage."

12. Clause 3.—The words "between any two Hindus" are to be deleted.

Clause (a) is to be recast as follows:—

"The marriage shall be only between two persons, a bride and a bridegroom, neither of whom has a spouse living provided, however, that a man may take another wife, if the one already existing at the time gives her consent in writing registered to do so."

Though it is desirable that monogamy should be the rule, provision has to be made for cases where the wife herself for various reasons requires the husband to marry another woman also.

13. The requisites enumerated in clause 3 are not sufficient in our opinion, to ensure racial purity. Besides, marriages between persons of different religions, of alien habits, customs or usages, or of dissimilar cultures tend to disharmony in the family and should not therefore be approved.

The following clauses may therefore be added:—

(f) If either party is a person professing any religion, the other must be of the same religion.

(g) If either party is a member of any caste, the other must be of the same caste;

(h) If either party is a member of any well recognised racial community the other party must be of the same racial community unless the guardians of the parties give their previous consent in writing to the marriage."

Illustrations to elucidate the meaning of "racial community."

(1) A Bengalee cannot marry a Tamilian or a Canarese or a Punjabi.

(2) An Andhra cannot marry an Oriya or a Bengalee.

14. Civil marriage—Clause 7.—Mr. Narasimhaswamy, who does not countenance the idea of a marriage as a contract deletes all the clauses from 7 to 22 inclusive.

Messrs. Ranganadham and Balaramadas who, do not object to allow a civil marriage but none the less give the institution of marriage a highly honoured place, incorporate therein all the requisites of a sacramental marriage except the necessity of going through any religious rites or ceremonies for the solemnization of marriage. A considerable body of men have lost their faith in the efficacy of any ceremonies, and it is meaningless as well as ridiculous to compel such people, while engaged in a really solemn and serious act as marriage to go through the farce of a ceremony which they little respect. They add therefore to clause 7 as additional requisites the clause (d) of clause 3 and the newly proposed clauses (f), (g) and (h) of the same clause. Besides this the words "by any two Hindus" occurring at the beginning of clause 7 shall be deleted and requisite (1) shall be worded as follows:—

"The marriage shall be only between two persons, a bride and a bridegroom, neither of whom has a spouse living, provided, however, that a man may take another wife, if the one already existing at the time gives her consent in writing registered to do so."

15. Clause 18.—There appears to be no necessity for this clause as registration of sacramental marriage if desired—for purposes of evidence has been provided by clause 6 and nothing is gained by converting a sacramental to a civil marriage for all the requisites of a sacramental marriage (except the ceremonial) are to be—as per the observations noted in paragraph 14 above incorporated into a civil marriage also.

16. Clause 23.—The word "Hindu" may be deleted and "person" may be inserted instead.

17. Clause 24.—Replace "Hindus" by "persons" and add "unless the marriage is saved by the proviso to clause (a) of clause 3."

18. Nullity and dissolution of marriages.—Mr. Narasimhaswami deletes clauses 29 to 32 inclusive.

Messrs. Ranganadham and Balaramadas do not object to their retention. They however propose a few changes here and there.

Clause 29.—(1) Delete "and at . . . suit" and insert in its place "and continues to be so till the time of presenting the petition." Impotency must be a continuing one to justify nullification. Besides a "petition" is contemplated and not a suit.

(iii) Delete "having been married in a sacramental form" because all the requisites of a sacramental marriage are to be incorporated into a civil marriage.

Delete also "provided that . . . part," for clause 18 itself is to be deleted.

Clause 30.—In the several grounds enumerated under this clause replace the words "seven years" by "three years" because if a marriage is to be dissolved the sooner the better.

19. Part V—Minority and guardianship—Clauses 2, 3 and 6.—The word "Hindu" may be deleted where it occurs. There is no justification for clause 6. Clause 6 may be deleted.

Clause 9.—Delete "Hindu" and "as" and "a" and add at the end "in the religion in which he is born."

Mr. Balaramadas wants that clause 6 should be retained as it is. But Messrs. Narasimhaswamy and Ranganadham desire that clause 6 may be deleted because the natural guardian, who from his natural affection to his ward is expected to safeguard the interests of the minor, must be given greater freedom and independent judgment to act than being reduced to the position of a statutory guardian appointed by Court.

20. Part VI—Adoption.—Delete "Hindu" wherever it occurs and replace it by "person" or make some other suitable change in the part.

Clause 5.—Delete the explanation to this clause and substitute "A man can adopt only with the consent of his wife or wives if any living at the time." To maintain the family peace and harmonious relationship between the adopted son and the adoptive mother, it is necessary that the wife should also be a willing party to the act of adoption.

Clauses 6, 7 and 8.—Replace "Hindu" by "person." We propose to add another clause to clause 6: "Where a person in giving to his widow authority to adopt, combines with the authorization an express command to adopt, she shall, unless it becomes impossible or impracticable or highly undesirable to carry out the command, shall do so within three years of the death of her husband, failing which any Sapinda of the husband may compel her by a suit to adopt a boy that may be recommended by Court; and in the event of her not complying with the decretal orders of the Court, she shall be directed of the property inherited by her from her husband."

Clause 12.—Capacity to give in adoption.—Delete in clause (2) "and he may . . . dissent" and add instead "but he can exercise it only with the consent of the mother given in writing, if she be alive." The mother who is primarily concerned in bringing up a boy and hence attached to him, in a degree stronger than the father, should consent to give away the boy to another family.

Clause 13.—Change "fifteen years" to "seven years" in clause (e). The boy to be adopted must be as young as possible. It is desirable that he should not have passed the age of childhood at the time of adoption. He should not have formed any strong bonds of attachment in the family of his birth which it might be difficult for him to tear away from.

Clause (1).—Recast the clause as follows:—

"He must be of the same religion as that of the adoptive father, that is the father by or to-whom he is to be adopted."

Clause 16.—Delete "Hindu" and substitute "person."
(ii) Add to the explanation: "If the widow, for any reason, finds it difficult to act according to the direction of the husband, she may by a petition seek the advice of the Court. Notice of such petition shall be given to all persons interested."

38. A Sub-Committee consisting of lawyers, ladies and pandits, elected by the Berhampur public.

Part VI of the Code—"Adoption"

(a) *Ladies*.—[Clause (2) of 12 under adoption].—Adoption is to be made with the consent of both mother and father either in giving or taking the adoption.

(b) *Lawyers*.—Registration is necessary in the case of adoption. Also mother's consent is necessary.

(c) *Pandits*.—"Homam" is necessary in adoption.

Guardianship—Part V.—All agree unanimously with the proposed Code.

Part IV—Chapter I—"Marriage".—All agree unanimously with the Code except one Pandit who says that a man should be given a chance with the consent of his wife to marry a second time. The argument placed by him is that a man may have no issues even after his wife attains her 45th or 50th year of age and in such a case he will then have at least an opportunity of having issues through the second wife either directly or indirectly (Dharma Santanam). He is of opinion that the issue by Dharma Santanam is far superior to "Adoption." He further proposes that Sagotra and Sa Pravara marriages should be prohibited.

Chapter II—"Marriage consideration".—All agreed unanimously with the Code.

Part IV—Chapter III—"Divorce"—Ladies, Lawyers and Pandits.—All are of opinion that in section 30, clauses (a), (c) and (e), the period fixed should be three years instead of seven years.

Part II—"Dayabhagam"—Intestate succession

Ladies and Lawyers.—Equal rights of inheritance to father's or mother's property should be given to both sons and daughters.

Pandits.—(1) One Pandit is of opinion that ladies should be given equal rights with men. (2) and (3) are of opinion that daughters should not have rights to father's properties but equal rights should be given to both sons and daughters in the case of mother's properties. (4) Another agrees with the proposed code but wants a widow should have only limited rights in property inherited from her husband. (5) One other rejects the Rau Committee's Reform Code in toto.

Part III

Ladies.—No one should have right to alienate ancestral properties by will. These properties should go to the heirs.

Lawyers and Pandits.—As per code.

Part III A—"Maintenance"—Section 3 (VII)—Ladies and Lawyers.—The widows of son, grandson and great-grandson mentioned in this clause should be removed from the maintenance list and placed among the simultaneous heirs enumerated in Part II, Section 5, Class I, Clause (i) along with predeceased daughter's daughter.

Part I—Definition of a Hindu.—Ladies, lawyers and Andhra Pandits are agreed with the proposed code but the Utkal Pandits opposed the inclusion of Buddhists, Jains and Sikhs under the head of Hindus.

39. Mr. B. Venkateswarlu Pantulu, Retired Tahsildar, Parlakimedi.

Some portions of the revised Hindu Code dealing with marriage, divorce, etc., are highly antagonistic to the age-long and deep-rooted religious sentiments of the Hindus. The draft Hindu Code contains many foreign to the Hindu population. The general opinion of the Hindus (public) is that the draft Hindu Code is opposed to the Sanathana Vedic Dharma of the Hindus. The above is the views of the pandits of these parts and I must agree with them.

40. Sri Jadhunath Kavva Tirtha, Head Pandit, Sanskrit Töll, Angul and Bhagirathi Das, Angul Town.

By reading the draft Hindu Code more than once from its start to finish we understand that this law will in every respect be quite adverse to the greatness of the Hindu religion. It is simply absurd to think that this law would be made applicable to the whole Hindu nation of India. As the mode of treatment in different places is not the same due to the differences between water, air and earth of the different places similarly the approved usages of the Hindu religion are not the same in the different provinces of India; this is not also desirable. So the applicability of this law all over India equally is impossible. It will be more time-taking to show the differences of this code by comparing it with the Hindu Religious Code bit by bit. Even then whatever differences could be marked

by us in this code according to our intelligence during the short time at our disposal are given below:—

Part II.—Illustration regarding dwyamushyayana son; there should be equal right both on 'Daya' and 'Pinda.' It must be definitely provided that this must be of the same heritage.

Part II, Clause 5.—According to the Hindu religion those who give 'pinda' are eligible to inherit the property. So those who are directly or indirectly entitled to give 'Pinda' are the heirs. But according to this section those who are not entitled to give 'pinda' have been regarded as heirs, as for example, "Daughter's daughter's daughter." We do not consider that these should be regarded as heirs.

The problem of inheritance by those related by half blood should not be taken into consideration in view of the possibility of revolution.

Part IV.—For all purposes marriage within one's own caste is equal to the marriage outside one's caste; this is not approved by all nor is it approved by the sastras.

The illustration given in the portion dealing with 'sapinda' relationship is not quite happy and appropriate. If the question would be approached in the light of the illustration various difficulties will arise in connection with the order of 'sapinda' relationship; for the illustration itself is opposed to the sastras.

Relationship by half-blood and illegitimate blood is condemnable; because the Hindus are always religious-minded. All their action should be according to the canons of religion. Persons of half-blood or illegitimate blood are nowhere tolerated by the Hindu Religious Institutions. So their relationship should always be avoided.

Sacramental marriage could never be invalidated by divorce. There should be some other provision in its place.

According to the previous part a male Hindu of 15 years of age has no right to give his consent for marriage. So it should be against law to bestow him the capacity to take a son in adoption; hence it is not reasonable.

Part VI, Clause 5.—It should be illegal on the part of a husband whose wife is living to adopt without any reference to her and notwithstanding her dissent, as the result of it will be very unpeaceful.

Part VI, Clause 14.—In the sentence "who are capable of being adopted" there appears to be some printing mistake in Oriya as it is not on all fours with the succeeding sub-section.

Part VI, Clause 22.—In case there being a natural son the question of mother and step-mother should be considered; but in the case of adoption there should be no such consideration. For in that case it will lead to unnecessary difficulties at the time of division of the property. If the adoptive father marries again then it is somewhat reasonable that she should be the step-mother of the adoptee.

When a bachelor adopts it is desirable to regard the wife subsequently married by him as the adoptive mother because in the performance of religious rites the assistance of the mother is essentially necessary. Especially it is unreasonable to contemplate, a step-mother there being no mother at all.

Where a diseased Hindu male has left several widows they may adopt a son on behalf of their husband if they are of one opinion and in that case each one of them should be considered as the adoptive mother.

41. Mr. Raghunath Panigrahi, Sahitya Bagisha.

1. *Monogamy*.—By this it is clearly indicated that instead of an increase of the Hindu population there would be a great reduction in the population of the Hindus. In view of the rising population of the non-Hindus in India it is not at all desirable.

2. *Divorce*.—By this the conjugal love between husband and wife and the devotion of a wife towards her husband will be greatly affected. It will also enable a husband to find reasons to see his wife with a suspicious eye. Over and above this if a wife seeks for a divorce during the illness of her husband what will happen to the future life of that husband?

3. According to the sastras it is not desirable that a daughter should inherit her father's property. As the son has a right to perform all the religious rites his right to

property has been established. Besides this, the amendments which the Committee have suggested and which are likely to affect the religion and culture of the Hindus will do more harm than good to the Hindu society.

In view of want of time and being afraid of the length of the discourse I cannot quote here the canons of the Hindu religion and the practices prevalent among the people. In person before the Committee I will offer my opinions in detail about the above points at Berhampur.

42. Mr. Somanatha Sastri and thirty-two others, Udarsingi, P.O. Bodokhmandy, Ganjam district.

Based as it is, essentially on custom and local usage, any codification, however exhaustive it may pretend to be, can under no circumstances be exhaustive and the lacuna it will leave will be sure to have disastrous effects on the Hindu religion.

(1) For instance, the effect of the Bill is to destroy the Joint Hindu Family System which has been working on harmoniously from time immemorial.

(2) The enforcement of monogamy, a system so strange to ancient Hindu Law will retard the growth of the Hindu population, will cause misery to so many unfortunate childless parents and what is more will sap the human force which is essential for the defence of such a vast country as India.

(3) Again, the system of divorce, whose disastrous effects the Westerners do always enjoy and condemn will demoralise Hindu Society, will disrupt so many Hindu families and cause misery to many happy couples disinclined on slight and temporary pretexts.

Hence, for the good of all, we suggest to leave Hindu Law as it is, because any change and enlargement in its provisions would be attended with disastrous and destructive effects, on the Hindu Society.

43. Mr. P. Jagannathaswami, M.A., L.T., Retired Principal, Maharajah's College, Pariakimidi.

As I am not a student of law, I shall confine myself to some general principles involved in the draft code and I do so also for the reason that if agreement is had on those principles the details may more easily be worked out by experts, and statisticians.

Firstly, whether legislation of a direct nature as interference by legislature in the matters of what is called Social Reform is desirable or not, may no longer retard the consideration of the draft proposals. In these days of interference by the State into every activity of the life of the community, the question of the advisability to legislate on matters of marriage and divorce should not be allowed any consideration. When politics and economics, social and moral problems were thought as being exclusive of each other, the above question had a place for controversy. But not now, when the life of the group is one indivisible whole, the manifold activities of which are within the purview of the State organization.

The main questions raised in the code may be summed up by saying that attempts are made to have a code instead of case law, because of the ambiguities prevailing at present on account of the several High Courts and different benches of the Judicial Committee. Secondly, the customary law in the several parts of this single continent may in the main outlines at least be made uniform. Both are desirable. In view of the solidarity claimed by the Hindu community on the basis of national aspirations, it is but fair that their law should be one but not many.

If so, it is asked why Dayabhaga system of inheritance be allowed to supersede the Mitakshara. Not only does it simplify matters but it does away with the mischievous distinction between ancestral and self-acquired property. In these days of socialistic tendencies to level down distinctions of property, it is better to have as few differences as possible. The laws in the draft code of succession and maintenance perhaps aim at the fragmentation of property. But I apprehend one danger with regard to the future of agriculture in the country. As it is, agricultural land is badly suffering on account of small holdings and bad fragmentation. When for purposes of improved methods and intensive forms of agricultural operations, collective farming and large-scale farming are found necessary and agricultural reformers have been advocating defragmentation, it is not prudent legislation which does not aim at it. I suggest

that the law of primogeniture and impartible estates be considered as possible improvements with a view to make these agricultural improvements possible, if State ownership is vetoed out.

The other reform that has been attempted in the code is the raising of the status of the woman. There should be no grudging against it. When prejudiced critics of Hindu Sociology attack the low social status of the Hindu woman, research is made into ancient texts to discover that in the past Hindu woman occupied a high status almost equal to that of man. Why should there be any grudging when that is 'resuscitated'. Man and woman should be equal in the eye of the law. The law of divorce and of maintenance for the mistress and illegitimate children are therefore in the right direction. As orthodox people, if there be any really and strictly orthodox in these days of universal English education and inevitable railway travel, are privileged to have their sacramental marriage, there is no valid reason for opposition to Civil Marriage. But there seems to be one serious drawback: the position of the widowed daughter-in-law is without adequate reason lowered from that granted to her in the 1938 Act; she also should be a simultaneous heir and not merely a maintaineess.

On the plea that agriculture and land belong to the provincial administration, the code seems to have left dealing with it in the details of inheritance and succession and maintenance. In order to have uniformity all over the country some device should be invented even moving the parliamentary interference to achieve it with regard to them. Right to partition either in land and house property should not be allowed to lead to quarrels and unfruitful bits. Some devices similar to compensation of a compulsory nature should be considered, as in Muhammadan law or say in the law of pre-emption.

Perhaps the safeguards against undue use of divorce make it useless even in cases where it is most needed. If divorce is genuinely provided for, the machinery should make it possible to succeed.

44. Mr. Manoranjan Ray, Judge, High Court, Sonapur State (Retired Additional District and Sessions Judge, Beagal).

I was in the Bengal Judicial Service from 1908 to July 1934 and can confidently say from my own personal experience while I was in East Bengal that Muhammadan sisters are always fighting with their brothers over their shares in their paternal properties and that fragmentation of landed properties and quarrel and litigation between brothers and sisters are inevitable if shares are given to married daughters as well. Muhammadans have to take recourse to the law of *wakf* to save their *zamindaris*.

I therefore earnestly request the Committee to think twice before recommending the rights of inheritance for married daughters.

They may be given an equal share with sons in respect of other properties. They are merged in other families and so they should not get a share of homesteads and other lands.

As regards monogamy, there is absolutely no reason or necessity to enforce it by law when the Hindus are practically monogamists. In exceptional cases, e.g., when the wife is barren or invalid, a second wife may have to be taken and it is much better to take another wife in such a case than to divorce the invalid wife and marry again.

Divorce may be allowed in exceptional circumstances, i.e., for cruelty and desertion and other reasons given by Parasara, but not for change of religion.

I have no objection to sagotra or inter-caste marriage as it will not be compulsory, but optional and no exception can reasonably be taken to what is called permissive or enabling measures in legal parlance.

Registration of Hindu marriage, which is a sacrament and not a civil contract is quite unnecessary and should not be enforced.

I never came across a single case for restitution of conjugal rights among Hindus and never found a single Hindu husband or wife denying marriage, though I know of many cases among Muhammadans in which marriage was denied by the wife.

It is curious and strange that Hindu girls should clamour for monogamy while Muhammadan girls should remain silent when they are the greatest sufferers.

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