

- ✓1. The Hindu Code - Part-1 (Intestate Succession - 1942)
- ✓2. The Hindu Code - Part-2 (Marriage - 1942)
- ✓3. Opinions on the Hindu Code Part-I (Intestate Succession - 1942)
(circulated in 1943)
4. Opinions on the Hindu Code Part-2 (Marriage - 1942)
(circulated in 1944)
5. Report of the Joint Committee of the Late Indian Legislature on the Hindu Code - Part-1 (Intestate Succession)
6. Opinions on the Hindu Code Part-1 (Intestate Succession) as amended by the Joint Committee of the Late Indian Legislature.
(circulated in 1944)
7. Opinions on the Hindu Code (1947).
(circulated in 1948)

[To be introduced in the Legislative Assembly.]

BILL

to amend and codify the Hindu Law relating to intestate succession.

WHEREAS it is expedient to amend and codify, in successive stages, the whole of the Hindu Law now in force in British India;

AND WHEREAS it is expedient first to amend and codify the general law of intestate succession;

It is hereby enacted as follows:—

PRELIMINARY.

1. (1) This Act may be called the Hindu Code, Part I (Intestate Succession).

Short title,
extent and
commence-
ment.

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

(3) It shall come into force on the 1st day of January, 1946.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

Definitions and
interpretation.

(a) one person is said to be an "agnate" (*gotraja*) of another, if the two are related by blood wholly through males;

(b) one person is said to be a "cognate" (*bandhu*) of another, if the two are related by blood, but not wholly through males;

(c) "heir" means any person, male or female, who is entitled to succeed to the property of an intestate under this Act;

(d) "heritable property" means property which belongs to an intestate in his or her own right and passes by inheritance as distinct from survivorship;

Illustration.

All property of a Hindu governed by the Dayabhaga School of Hindu Law is heritable property, as it passes by inheritance and not by survivorship; so too is the self-acquired property of a Hindu governed by any Mitakshara School of Hindu Law, as such property also passes by inheritance and not by survivorship.

(e) "Hindu" includes any person who, if this Act were not in force, would be governed in matters of intestate succession by the Hindu Law;

(f) "related" means related by legitimate kinship, and any word expressing relationship or denoting a relative shall be construed accordingly;

(g) two persons are said to be related to each other by the "full blood" when they are descended from a common ancestor by the same wife, and by the "half blood" when they are descended from a common ancestor by different wives;

(h) "son" includes a *dattaka* son, *dyūyamushyāyana* son and *kṛtrima* son, but not a *dāstiputra*; and *dattaka* son, *dyūyamushyāyana* son, *kṛtrima* son and *dāstiputra* have the same meanings as in the Hindu Law;

(i) "*stridhana*:" means property acquired by a woman by inheritance or devise, or at a partition, or in lieu of maintenance, or by gift from a relative or stranger before, at, or after her marriage, or by her own skill or exertions, or by purchase, or by prescription, or by any other mode whatsoever.

(2) In this Act, unless there is anything repugnant in the subject or context, words importing the masculine gender shall not be taken to include females, and for the purposes of this Act,—

(a) a person is deemed to die intestate in respect of all property of which he or she has not made a testamentary disposition capable of taking effect;

(b) a woman shall be deemed to be an agnate of her father and his agnates, and shall not, by reason only of her marriage, be deemed to be an agnate of her husband or his agnates;

(c) the domicile of a Hindu shall be determined in accordance with the provisions contained in sections 6 to 18, both inclusive, of the Indian Succession Act, ^{1925,} ~~xxxix of 1925~~;

(d) when an adoption takes place,—

- (i) in the case of a *dattaka* son, the natural tie is severed and is replaced by the tie created by the adoption,
- (ii) in the case of a *dyayamushyayana* son, the natural tie continues side by side with the tie created by the adoption,
- (iii) in the case of a *kritrima* son, the natural tie continues, while the tie created by the adoption is limited to the person adopted and the person or persons adopting him.

Illustration.

A adopts C, son of B. C has a son, D, born to him after the adoption. Then, for the purposes of inheritance, the following consequences will result, depending upon whether C was adopted as a *dattaka*, *dyayamushyayana* or *kritrima* son of A.

If C was adopted as a *dattaka* son, he becomes the son of A and ceases to be the son of B. He also becomes the grandson of A's father and the nephew of A's brother, and so on. He ceases to be the grandson of B's father and the nephew of B's brother. Likewise, D becomes the grandson of A but not of B.

If C was adopted as a *dyayamushyayana* son, he becomes the son of A, but continues to be the son of B as well. He also becomes the grandson of A's father and the nephew of A's brother, but continues as well to be the grandson of B's father and the nephew of B's brother. Likewise, D becomes the grandson of A, and of B as well.

If C was adopted as a *kritrima* son, he becomes the son of A while continuing to be the son of B as well. He does not, however, become the grandson of A's father or the nephew of A's brother, but remains the grandson of B's father and the nephew of B's brother. D on birth becomes the grandson of B and not of A.

Application of Act.

3. This Act regulates the succession to the heritable property of a Hindu, other than one governed by the Marumakkattayam, Aliyasantana or Nambudri law of inheritance, dying intestate after the commencement of this Act, in the following cases, namely:—

- (a) where the property is movable property, unless it is proved that the intestate was not domiciled in British India at the time of death,
- (b) where the property is immovable property situated in British India, whether at the time of death the intestate was domiciled in British India or not:

Provided that this Act shall not apply—

- (i) to agricultural land, or
- (ii) to any estate which descends to a single heir by a customary or other rule of succession or by the terms of any grant or enactment:

Provided further that upon the death of any woman who at the commencement of this Act had the limited estate known as the Hindu woman's estate in any heritable property, such property shall devolve on the persons who would under this Act have been the heirs of the last full owner thereof if he had died intestate immediately after her.

Succession to the property of males.

4. The heritable property of a male intestate shall devolve according to the rules laid down in this Act—
Devolution of heritable property of males.
- (a) upon the enumerated heirs referred to in section 5, if any;
 - (b) if there is no enumerated heir, upon his agnates, if any;
 - (c) if there is no agnate, upon his cognates, if any;
 - (d) if there is no cognate, upon the heirs referred to in section 10, if any.

5. The following relatives of an intestate are his enumerated heirs:—

Class I.—Widow and descendants:—

- (1) Widow, son, daughter, son of a pre-deceased son, and son of a pre-deceased son of a pre-deceased son (the heirs in this entry being hereinafter in this Act referred to as "simultaneous heirs").
- (2) Daughter's son.
- (3) Son's daughter.
- (4) Daughter's daughter.

Class II.—Mother, father and his descendants:—

- (1) Mother.
- (2) Father.
- (3) Brother.
- (4) Brother's son.
- (5) Brother's son's son.
- (6) Sister.
- (7) Sister's son.

Class III.—Father's mother, father's father and his descendants:—

- (1) Father's mother.
- (2) Father's father.
- (3) Father's brother.
- (4) Father's brother's son.
- (5) Father's brother's son's son.
- (6) Father's sister's son.

Class IV.—Father's father's mother, father's father's father and his descendants:—

- (1) Father's father's mother.
- (2) Father's father's father.
- (3) Father's father's brother.
- (4) Father's father's brother's son.
- (5) Father's father's brother's son's son.
- (6) Father's father's sister's son.

Class V.—Mother's mother, mother's father and his descendants:—

- (1) Mother's mother.
- (2) Mother's father.
- (3) Mother's brother.
- (4) Mother's brother's son.
- (5) Mother's brother's son's son.
- (6) Mother's sister's son.

6. Among the enumerated heirs, those in one Class shall be preferred to those in any succeeding Class; and within each Class, those included in one entry shall be preferred to those included in any succeeding entry, while those included in the same entry shall take together.

Illustrations.

(i) The surviving relatives of an intestate are his widow, his mother and his father's father. The widow who is included in Class I is preferred to the mother who is in Class II and the father's father who is in Class III.

(ii) The surviving relatives are two daughters and a son's daughter. The daughters who are included in entry (1) of Class I are preferred to the son's daughter who is in entry (3) of the same Class, and the two daughters take together.

(iii) The surviving relatives are a widow, two sons, three daughters, two grandsons by a pre-deceased son and a great-grandson by another pre-deceased son's pre-deceased son. All of them, being enumerated heirs included in entry (1) of Class I, succeed simultaneously, no one excluding the others.

Manner of
distribution
among
simultaneous
heirs.

7. The distribution of an intestate's property among the simultaneous heirs in entry (1) of Class I shall take place according to the following rules, namely :—

(a) The intestate's widow, or if there is more than one widow all the widows together, shall take one share.

(b) Each son of the intestate shall take one share, whether he was undivided or divided from, or re-united with, the intestate.

(c) Sons, sons of pre-deceased sons, and sons of pre-deceased sons of pre-deceased sons, shall take *per stirpes*, that is to say, the sons of a pre-deceased son shall take the share which would have been taken by him if he had been alive at the time of the intestate's death; and likewise, the grandsons of a pre-deceased son shall take the share which their father would have taken if he had been alive at the time aforesaid.

(d) Each of the intestate's daughters shall take half a share, whether she is unmarried, married or a widow; rich or poor; and with or without issue or possibility of issue.

Illustrations.

(i) The surviving relatives of an intestate are three sons, five grandsons by a pre-deceased son, and two great-grandsons by a pre-deceased son of another pre-deceased son. Each son takes 1/5th of the heritable estate, each grandson 1/25th, and each great-grandson 1/10th.

(ii) Only a widow or daughter, and no other simultaneous heir, survives an intestate. The widow or daughter, as the case may be, takes the whole of the heritable estate.

(iii) The surviving relatives of an intestate are two widows, a divided son, two undivided sons, an unmarried daughter, two married daughters, a widowed daughter, and four grandsons by a pre-deceased son. The two widows together take one share, each of the three sons takes one share, each of the four daughters takes half a share, and the four grandsons together take one share. Thus, each widow takes 1/14th of the heritable estate, each son 1/7th, each daughter 1/14th, and each grandson 1/28th.

Order of
succession
among non-
enumerated
heirs.

8. (1) The order of succession among agnates and cognates, other than enumerated heirs, shall be determined by applying the Rules of Preference in section 9.

(2) For the purpose of applying the said Rules, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent, or degrees of descent, or both, as the case may be.

(3) Degrees of ascent and degrees of descent shall be computed in the manner indicated in the illustrations below :—

Illustrations.

(i) The heir to be considered is the father's mother's father of the intestate. He has no degrees of descent but three degrees of ascent represented, in order, by (1) the intestate's father, (2) that father's mother, and (3) her father (the heir).

(ii) The heir to be considered is the father's mother's father's mother of the intestate. She has no degrees of descent, but four degrees of ascent represented, in order, by (1) the intestate's father, (2) that father's mother, (3) her father, and (4) his mother (the heir).

(iii) The heir to be considered is the son's daughter's son's daughter of the intestate. She has no degrees of ascent, but four degrees of descent represented, in order, by (1) the intestate's son, (2) that son's daughter, (3) her son, and (4) his daughter (the heir).

(iv) The heir to be considered is the mother's father's father's daughter's son of the intestate. He has three degrees of ascent represented, in order, by (1) the intestate's mother, (2) her father, and (3) that father's father, and two degrees of descent represented, in order, by (1) the daughter of the common ancestor, *viz.*, the mother's father's father, and (2) her son (the heir).

9. The Rules of Preference referred to in section 8 are as follows :— Rules of Preference

Rule 1.—Of two heirs the one who has fewer or no degrees of ascent is preferred.

Rule 2.—Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent.

Rule 3.—Where the number of degrees of descent is also the same or none, the heir who is in the male line is preferred to the heir who is in the female line at the first point (counting from the intestate to the heir) where the lines of the two heirs can be so distinguished.

Rule 4.—Where neither heir is entitled to be preferred to the other under the foregoing Rules, they take together.

Illustrations.

In the following illustrations, the letters F and M stand respectively for the father and the mother in that portion of the line which ascends from the intestate to the common ancestor, and the letters S and D for the son and the daughter respectively in that portion of the line which descends from the common ancestor to the heir. Thus MFSS stands for the intestate's mother's father's son's son (mother's brother's son), and FDS for the intestate's father's daughter's son (sister's son).

(i) The competing heirs are (1) FFSD (father's brother's daughter) and (2) FDDS (sister's daughter's son). Although No. (2) is descended from a nearer ancestor yet, as No. (1) is an agnate while No. (2) is only a cognate, No. (1) is preferred to No. (2).

(ii) The competing heirs are (1) SDSS (son's daughter's son's son) and (2) FDDS (sister's daughter's son). No. (1) who has no degree of ascent is preferred to No. (2) who has one degree of ascent.

(iii) The competing heirs are (1) FDDD (sister's daughter's daughter) and (2) MFSD (maternal uncle's daughter). The former who has one degree of ascent is preferred to the latter who has two such degrees.

(iv) The competing heirs are (1) FDSSS (sister's son's son's son) and (2) MFSSD (maternal uncle's son's daughter). The former who has only one degree of ascent is preferred to the latter who has two such degrees.

(v) The competing heirs are (1) MFDSS (mother's sister's son's son) and (2) MFFDS (mother's father's sister's son). The former who has two degrees of ascent is preferred to the latter who has three such degrees.

(vi) The competing heirs are (1) MFM (mother's father's mother) and (2) FFFDSS (father's father's sister's son's son). The number of degrees of ascent in both cases is the same, *viz.*, three, but the former has no degree of descent while the latter has three such degrees. The former is therefore preferred.

(vii) The competing heirs are (1) FMF (father's mother's father) and (2) MFF (mother's father's father). The number of degrees of ascent in both cases is the same, and there are no degrees of descent. The lines of the two heirs diverge at the very first point, No. (1) being in the male line and No. (2) in the female line. No. (1) is preferred to No. (2).

(viii) The competing heirs are (1) FDSS (sister's son's son) and (2) FDDS (sister's daughter's son). The heirs are equally near both in ascent and descent. The dissimilarity in the lines occurs at the third point. At this point No. (1) is in the male line and No. (2) in the female line. No. (1) is therefore preferred.

(ix) The competing heirs are (1) FMFSS (father's mother's brother's son) and (2) FMFDS (father's mother's sister's son). The former is preferred.

(z) The competing heirs are (1) FDDS (sister's daughter's son) and (2) FDDD (sister's daughter's daughter). The former is preferred.

(zi) The competing heirs are a daughter's daughter's son of one sister (FDDDS) and a daughter's daughter's son of another sister (FDDDS). Both of them take the estate in equal shares.

Heirs not related by blood.

10. If there is no cognate entitled to succeed under section 4, the heritable property of the intestate shall devolve, in the first instance, upon his preceptor (*āchārya*); if there is no preceptor, upon the intestate's disciple (*śishya*); and if there is no disciple, upon the intestate's fellow-student (*sa-brahmachāri*).

Rules for hermits, etc.

11. (1) Where a person completely and finally renounces the world by becoming a hermit (*vānaprastha*), an ascetic (*yati* or *sanyāsi*), or a perpetual religious student (*naiṣkṛhika brahmachāri*), his property shall devolve upon his heirs, in the same order and according to the same rules as would have applied if he had died intestate in respect thereof at the time of such renunciation.

(2) Any person who has so renounced the world shall not inherit to any relative of his, by blood or marriage, but the inheritance shall, in such a case, pass to the heir who is next in the order of succession.

(3) Any property acquired by such a person after his renunciation shall, on his death, devolve, not upon his relatives by blood or marriage, but as follows :—

(a) in the case of a hermit, upon a spiritual brother belonging to the same hermitage (*dharmaśrātraika-tīrthi*);

(b) in the case of an ascetic, upon his virtuous disciple (*śacchishya*);

(c) in the case of a perpetual religious student, upon his preceptor (*āchārya*).

Stridhana.

Right of women over stridhana.

12. A woman shall have the same rights over her *stridhana*, including the right to dispose of it by transfer *inter vivos* or by will, as a man has over property acquired by him in the like manner, that is to say, a woman's rights over her *stridhana* shall not be deemed to be restricted in any respect whatsoever, by reason only of her sex.

Order of succession to stridhana.

13. The *stridhana* of a woman dying intestate, in so far as it consists of heritable property, shall devolve as follows :—

(a) Property inherited by her from her husband shall devolve upon his heirs, in the same order and according to the same rules as would have applied if the property had been his and he had died intestate in respect thereof immediately after his wife's death.

Explanation.—For the purposes of this clause, property devolving on another widow of the husband, whether under this clause or under entry (9) in clause (b), shall be deemed to be property inherited by such widow from her husband.

(b) Other property shall devolve upon the following relatives of the intestate, in the order mentioned, namely :—

- (1) Daughter ;
- (2) Daughter's daughter
- (3) Daughter's son ;
- (4) Son ;
- (5) Son's son ;
- (6) Son's daughter ;
- (7) Husband :

(8) Husband's heirs, in the same order and according to the same rules as would have applied if the property had been his and he had died intestate in respect thereof immediately after his wife's death;

(9) Mother;

(10) Father;

(11) Father's heirs, in the same order and according to the same rules as would have applied if the property had been his and he had died intestate in respect thereof immediately after his daughter's death;

(12) Mother's heirs, in the same order and according to the same rules as would have applied if the property had been hers and she had died intestate in respect thereof immediately after her daughter's death.

(c) Where of two or more heirs of the intestate, no one is entitled to be preferred to any other under the provisions of this section, they shall take together.

14. If the *stridhana* of a woman devolves on two or more of the following relatives, namely, daughters, daughters' sons, sons' sons and sons' daughters, they shall take it *per stirpes* and not *per capita*. Succession to stridhana in certain cases.

Illustration.

The surviving relatives of a woman are four grand-daughters by one daughter, A, and three grand-daughters by another daughter, B. Each of A's daughters takes $\frac{1}{8}$ th of the property and each of B's daughters takes $\frac{1}{8}$ th.

General Provisions.

15. Heirs related to an intestate by the full blood shall be preferred to heirs related by the half blood, if the nature of the relationship is the same in every other respect. Full blood preferred to half blood.

Illustrations.

(i) A brother by the full blood is preferred to a brother by the half blood; but a brother by the half blood succeeds before a brother's son by the full blood, a brother being a nearer heir than a brother's son.

(ii) A paternal uncle by the half blood is preferred to a paternal uncle's son by the full blood, an uncle being a nearer heir than an uncle's son.

(iii) A full brother's daughter's daughter is preferred to a half brother's daughter's daughter; but the former is not preferred to a half brother's daughter's son, as the nature of the relationship is not the same in the two cases. The latter, who is a nearer heir by virtue of Rule 3 in section 9, is preferred though he is only of the half blood.

16. A person who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate. Right of child in womb.

17. The surviving spouse and descendants of a valid marriage contracted by a male or female Hindu outside his or her caste shall, for all the purposes of this Act, be treated in like manner as the surviving spouse and descendants of a valid marriage contracted within his or her own caste. Rights of surviving spouse and descendants of a valid marriage.

18. If an intestate's widow has been unchaste during his lifetime and after her marriage, she shall, unless the unchastity has been condoned by her husband, be disqualified from succeeding to his heritable property, and it shall devolve on his other heirs as it would in her absence: Disqualification of widow who was unchaste during husband's lifetime.

Provided that the right of a widow to inherit to her husband shall not be questioned on the ground aforesaid, unless—

(a) the husband has deprived her of any portion of his property on that ground by a valid testamentary disposition subsisting at the date of his death, or

(b) a Court of Law has found her to have been unchaste as aforesaid in a proceeding to which she and her husband were parties and in which the matter was specifically in issue, the finding of the Court not having been subsequently reversed.

Murderer disqualified.

19. A person who commits murder or abets the commission of murder in furtherance of his or her succession to any property shall be disqualified from inheriting such property; and the inheritance shall, in such a case, pass to the heir who is next in the order of succession.

Disease, defect, etc., not to disqualify.

20. No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity or, save as provided in sub-section (2) of section 11 and sections 18 and 19, on any other ground whatsoever.

Mode of succession of two or more heirs

21. If two or more heirs succeed together to the property of any intestate, they shall take the property—

- (a) save as otherwise expressly provided in this Act, *per capita* and not *per stirpes*; and
- (b) as tenants in common, and not as joint tenants.

Escheat.

22. If the intestate has left no heir, or no heir qualified to succeed to his or her heritable property, such property shall go to the Crown.

Repeals.

23. The enactments specified in the Schedule are hereby repealed to the extent mentioned in the fourth column thereof.

THE SCHEDULE.

(See section 23.)

Year.	No.	Short title.	Extent of repeal.
1	2	3	4
1928	XII.	The Hindu Inheritance (Removal of Disabilities) Act, 1928.	The whole.
1929	II.	The Hindu Law of Inheritance (Amendment) Act, 1929.	The whole.
1937	XVIII.	The Hindu Women's Rights to Property Act, 1937.	Section 3; sub-section (7).

STATEMENT OF OBJECTS AND REASONS.

In consequence of certain difficulties of interpretation arising out of the Hindu Women's Rights to Property Act, 1937, and the amending Act of 1938, the Central Government appointed, in January 1941, a Committee (sometimes referred to as the Hindu Law Committee) to examine these Acts as also certain Bills introduced, or proposed to be introduced, in the Indian Legislature to amend them. The Committee made a detailed examination of the subject after eliciting public opinion by issuing a questionnaire. In June 1941 they submitted a Report unanimously recommending that the Hindu Law should be codified in successive stages, beginning with the law of succession, to be followed by the law of marriage.

The Report had a favourable reception and the recommendations contained in it were accepted by the Central Government. Accordingly, the Committee proceeded to draft a Bill on the Hindu Law of intestate succession, as the First Part of the contemplated Code. They began by preparing four memoranda on the subject, which were then circulated for criticism to prominent lawyers and other interested persons throughout India. The memoranda have been in circulation, as mentioned, since August 1941. Legal opinion has, for the most part, been very favourable, criticism being confined to certain points of detail. In the light of the criticisms received the Committee prepared a revised draft Bill which the present Bill follows with only one or two small drafting alterations. The explanatory note which follows was drawn up by the Committee and explains the main principles of the Bill as well as the provisions of each clause. The memoranda on which the Bill is based have also been printed as an Appendix to the Bill.

NEW DELHI ;

The 27th May, 1942.

S. SULTAN AHMED.

EXPLANATORY NOTE.

Broadly speaking, the provisions of this Bill are based on the Rules for All-India at the end of the Third Memorandum and the *Stridhana* Rules in the Fourth Memorandum prepared by us in July 1941. For convenience of reference, all the four Memoranda are printed as an Appendix to this Bill. They were circulated to prominent lawyers and other interested persons throughout India for criticism. The opinions received were mostly favourable; where the critics suggested modifications the suggestions have been carefully considered and necessary changes made in the Bill. A study of the Memoranda will be of assistance in understanding the Bill.

The main features of the Bill are—

- (1) that it embodies a common law of intestate succession for all Hindus in British India;
- (2) 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
- (3) that it abolishes the Hindu woman's limited estate.

The first of these objects is proposed to be secured by adopting for the most part the Dayabhaga scheme for near succession and the Mitakshara scheme for distant succession—a compromise which, as will be clear from the Memoranda appended to the Bill, does no great violence to either school. By “near succession” we mean the comparatively near relations enumerated in clause 5 of the Bill; and by “distant succession” we mean the comparatively distant agnates and cognates not so enumerated.

The Mitakshara jurisdictions have already accepted the changes made by the legislation of 1929, giving a higher place to the son's daughter, the daughter's daughter, the sister, and the sister's son; they should find no great difficulty in accepting now a similar promotion to higher rank of certain other near relations (such as the paternal aunt's son and the maternal uncle's or aunt's son) who are included in the Dayabhaga scheme of near succession. Similarly, the Dayabhaga jurisdictions ought not to find it difficult to accept the few changes needed to assimilate the two schools in this matter. A uniform law is well worth this small price.

The sex disqualification against women inheriting property has few defenders at the present time. Nevertheless, over a large part of India, women, with a few exceptions, are still debarred by law from inheriting property, e.g., in Bengal, even today, a sister cannot inherit to her brother even if there are no other heirs. Under the Bill, she will be able to do so in her proper place. [See Class II, entry (6), amongst the heirs enumerated in clause 5]. We have

not only included the nearer female relations amongst the enumerated heirs, but have also made it clear that women are included in the terms "agnate" and "cognate" and therefore in the scheme of distant succession detailed in clause 8.

As regards the Hindu woman's limited estate which the Bill seeks to abolish, it is unnecessary to repeat here what has been said in our Fourth Memorandum (see Appendix to the Bill). There is a considerable body of opinion that this particular limitation has no real basis in the *Smritis*. Dr. Mitter, who has discussed this question at great length in his Thesis on "The Position of Women in Hindu Law" (1913), has observed that although the doctrine has been firmly established by judicial decision, nevertheless, so far as *Smriti* authority goes, there is very little of it to support the theory of the limited estate of women in inherited property (*loc. cit.* p. 526). This agrees with the opinion of Sir M. Venkatasubba Rao quoted in our Memorandum that the doctrine is "a pure creation by judicial decisions unsupported by ancient *Shastras*." Dr. Jayaswal in his Tagore Lectures of 1917 on "Manu and Yajnyavalkya" has stated that "all the commentators are equally guilty in reducing the right of the widow to a limited interest" (*loc. cit.* p. 236). In the earliest and probably the most important case (1826) in which the nature and extent of the widow's interest came under discussion by the Privy Council, *viz.*, *Kasinath Bysack v. Hurroosundery Dossee*, there was a difference of opinion amongst the Pundits: the Court Pundits stated that if a widow were to alienate the inherited property for other than the permitted purposes without the consent of her husband's relations, the alienation would be invalid; four other Pundits, on the other hand, stated that though she would incur *moral blame*, yet the act would be valid against the relations of the husband. In other words, in the opinion of these four Pundits, the *Shastras* have merely imposed a moral duty and not a legal limitation upon the widow even in a Dayabhaga Province. Doubtless there are opinions on the other side also, *e.g.*, Dr. Altekar's conclusion is that while some *Smritis* definitely limit a woman's estate, others are merely silent on the point. ("The Position of Women in Hindu Civilisation", 1938, p. 315). But on the whole, it seems safe to state that *Smriti* authority for the doctrine of the Hindu woman's limited estate is not unequivocal.

In India, Muslim women, Christian women, Parsi women, and Jaina women, all take a full estate; it is difficult to maintain that Hindu women alone are incompetent to enjoy full rights. 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 most serious aspects of this disability are (1) that it is one of the most fruitful sources of litigation in our Courts today, and (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 from the sale of the property. As to (1), we have Dr. Mitter's observation that "the cases relating to the extent and nature of woman's estate which come before our Courts are more numerous than the other cases on Hindu law put together," an observation which is perhaps as true today as when he wrote. ("The Position of Women in Hindu Law", 1913, page 526). As to (2), it may appear at first sight that as, even under the existing law, a widow has full powers of alienation for legal necessity, she ought to get full value for her property. But it is notorious that she does not; for, if the reversioners do not join in the sale, the purchaser, not being sure of the legal necessity, cannot afford to pay the full value of the property, and in most cases the reversioners will not join unless they get a share of the price. The result is that although in theory the woman has full powers of alienation in such cases, in practice she cannot realise the full value of the estate. "All purchasers from a Hindoo widow know or ought to know by this time the extreme risk of such a transaction, and if they choose to run it, and to buy, without consulting the next heirs, or without taking such further steps as would enable them at some future time, should necessity arise, to prove that they made diligent and careful enquiry as to the existence of a legal necessity before buying, they must take the consequences." [*Mahomed Ashruff v. Brijassuree Dossee* (1873) 10, W. R. 426]. The knowledge of this risk has, if anything, grown in the sixty or seventy years since this warning was uttered. Thus a limitation doubtless intended by its authors only to restrain waste when the owner is not in real need has in practice come to have the effect of reducing the value of her property when she is in real and urgent need.

We have considered various alternatives for remedying this mischief. One suggestion made to us is that a widow, proposing to sell for legal necessity, should apply to Court and that the Court after notifying the reversioners, should grant or refuse permission. If permission is granted, it is to be deemed conclusive proof of legal necessity, so that the purchaser is completely protected.

The drawback to this plan is that the Court proceedings will take time, particularly if reversioners come forward with objections. In practice this will mean that she must buy off the objectors if her need is urgent, besides incurring the inevitable expenses of a Court proceeding. Another suggestion is that the right of challenging alienations should be confined to certain relations, instead of being given to all reversioners. In practice this will mean that the widow, when in real need, will have to share the price with the selected near relations. On the whole, the best solution seems to be to put Hindu women on a par with other women in India who get full rights and to abolish the limited estate. The experience of the Jaina community, who seem to have carried the rights of the widow even further, appears to be encouraging. A writer on Jaina law states that the son in a Jaina household is placed in a subordinate position and postponed to his mother, who takes the paternal property as absolute owner and can give it away to anybody she likes. "The effect of this healthy rule is that the son has got to be well-behaved, obedient, and a model of virtue to win the favour of the mother". ("The Jaina Law" by Champak Rai Jain, 1926, page 12, foot-note). This shows at any rate that the abolition of the limited estate need not spell disaster to the family.

We would also point out that under the scheme of the Bill, the widow, the son, and the daughter are all simultaneous heirs, the daughter getting half the share of the widow or the son. When we come to the chapter on maintenance we intend to make proper provision for the maintenance of the parents and any widowed daughters-in-law of the intestate. All the persons entitled to maintenance or to a share of the estate under the existing law being thus provided for, we do not see any danger in making the widow's estate absolute.

We shall now notice in detail the more important clauses of the Bill.

Clause 1 (3).—The Act is intended to come into force on January 1, 1946. This date of commencement is suggested (a) in order to give Governors' Provinces sufficient time to pass complementary legislation in respect of agricultural land; (b) in order to give the Hindu community sufficient time to adjust itself to the proposed changes; and (c) in order to give the Central Legislature sufficient time to codify other branches of Hindu law so that there may be an entire Hindu Code in operation from January 1, 1946.

Clause 2.—Sub-clause (1) (a) and (b).—The definitions of "agnate" and "cognate" must be read with clause 4 which lays down that in certain events agnates succeed before cognates to the property of a male intestate Hindu. We have added a provision in clause 2 (2) (b) to make it clear that a woman, even if married, is to be regarded as an agnate of her father and of his agnates. She will therefore inherit as an agnate in the family of her birth. This provision merely embodies an extension of the principle upon which a sister has been given a place among the *gotrajas* or agnates of her brother by the Mayukha in Bombay and by the legislation of 1929 in other Mitakshara jurisdictions:

We are aware that, according to Hindu ideas, a girl, upon marriage, is deemed to be re-born in the *gotra* of her husband. Strictly speaking, therefore, she is a *gotraja* of her father until marriage and of her husband after marriage. In fact, on this basis we framed a rule for the succession of the widow of a *gotraja sapinda* in our original proposals (see, for example, Rule 8 of the Rules for All-India in our Third Memorandum); but the rule has been heavily criticized as being of a type peculiar to the Bombay school and unknown to any other system of law in the world. In deference to this criticism we have omitted the rule; under the Bill, therefore, she will have the right to succeed as an agnate in her father's family but not in her husband's. Except in Bombay, she has, generally speaking, no such right in either family under the existing law; and in Bombay she has at present such a right in her husband's family, but not in her father's. Even as regards Bombay, the provision in the Bill has the advantage that she is less likely to be disinherited (by will) by a blood-relation than by a relation by marriage. In certain other respects also she gets much better rights under the Bill than she enjoys at present, whether in Bombay or elsewhere: she not only gets a share of her father's property, but also a very high place as an heir to her grandfather, whether paternal or maternal. In view of these compensations, and for the sake of uniformity, we consider that the Bombay school might well accept the provisions of the Bill.

Sub-clause (1) (d).—This sub-clause defines "heritable property". What property is heritable and what is not is a question with which the law of intestate succession as such is not concerned; it is only concerned with laying down how property is to devolve if it is heritable. In other words, if the nature of the property is such that it passes, upon the owner's death, to his heirs, the law of intestate succession lays down who are to be considered the heirs. Whether the property is of this character or not must be dealt with elsewhere. Thus the interest of an undivided coparcener in a Mitakshara joint family is not, under common Hindu Law, "heritable property",

since it passes not to his heirs but to his surviving coparceners. The position may have been changed by the Deshmukh Act, but the question is not intended to be dealt with in the present Bill; it will be dealt with when the question of the Mitakshara joint family comes under consideration.

The words "which belongs to an intestate in his or her own right" have been inserted for the purpose of making it clear that property vesting in any person as a trustee or in some similar capacity is not heritable property.

Sub-clause (I) (e).—This sub-clause is not meant to make any change in the existing position as to the application of Hindu law.

Sub-clause (I) (g).—The definition of "full blood" and "half blood" is in accord with what we believe to be the Hindu law on the subject: "among brothers, such as are of the whole blood take the inheritance in the first instance since those of the half blood are remote through the difference of the mothers" (Mitakshara, Chapter II, Section IV, 5—Setlur's Collection).

Sub-clause (I) (h).—The terms here used are well-established Sanskrit expressions used in Hindu law which we have thought it unnecessary to translate. The "*dāsiputra*" is the son of a "*dasi*", that is, a Hindu concubine in the continuous and exclusive keeping of his father. Under the existing Hindu law, he has a peculiar position, being entitled to certain rights of inheritance amongst Sudras, but only to maintenance amongst the other castes. We propose to remove this distinction and to exclude him from inheritance amongst Sudras as well.

The other terms "*dattaka*", "*dvayāmushyāyana*", and "*kṛtrima*" describe various forms of adoption. For purposes of inheritance we propose, generally speaking, to put all these adopted sons on the same footing as *aurasa* sons of the adopter, although with certain differences as to the effect of adoption on their previous or natural ties. In the case of the "*dattaka*" son, the effect of adoption is to sever the natural tie altogether for purposes of inheritance; in the case of the *dvayāmushyāyana* and the *kṛtrima* sons, the natural tie continues side by side with the tie created by adoption; but in the case of the *kṛtrima* son, the latter tie extends no further than to the person adopted and the person or persons adopting. Thus the son of a *kṛtrima* son cannot inherit as a grandson of the adopter, nor can the *kṛtrima* son himself inherit as a grandson of the adopter's father. The tie created by this form of adoption is limited to the adoptee and the adopter. All this is made clear in the provision included in clause 2 (2) (d). It merely embodies the existing Hindu law on the subject. We have not thought it necessary to distinguish between a "*nityadatta dvayāmushyāyana*" and an "*anityadatta dvayāmushyāyana*" because the latter is now obsolete. (See Mayne, 10th Edition, p. 280). It is worth considering whether the law should not be further simplified by putting all adopted sons, whatever the form of adoption, on the same footing as natural-born sons for purposes of reckoning relationship.

As already stated we propose to abolish the distinction between an adopted son and an *aurasa* or natural-born son for purposes of inheritance. Rules of intestate succession should be as simple as possible. Variations to meet individual cases may well be left to the individual owner to make by will. When, as in ancient Hindu law, wills were unknown, it might have been necessary to insist upon every shade of difference between one sort of heir and another. But now that wills have become a recognised part of Hindu law it is possible to simplify the rules of intestate succession without hardship to anybody.

Hindu law treats an adopted son as entitled to inherit just as if he were a natural-born son except when a son is actually born after the adoption. When, however, a son is born after adoption, he (i.e., the after-born son) usually gets the larger share of the father's property, the relative shares of the two sons being different in the different schools of law. In Bengal, the adopted son usually takes one-third of the father's estate, in Benares, one-fourth, in Bombay and Madras, one-fifth; but amongst Sudras in Madras and Bengal, an adopted son shares equally with an after-born son. Not only do the texts on this subject differ, but the same text has been interpreted in different ways in different parts of India. Further complications are likely to arise when there are other competing heirs. However, as the result of the Deshmukh Act, which gives the widow equal rights of succession with a son (in accordance with a principle which we believe to be in the true spirit of Hindu law), it is probable that adoptions will become increasingly rare in future and the time therefore seems ripe for doing away with these complicated distinctions between adopted sons and "after-born" sons. No such distinctions appear to be recognized in the text of Vṛiddha Gautama cited in the *Dattaka-Mimamsa*, Section V, 43: "A given son (i.e., an adopted son) abounding in good qualities existing: should a legitimate son be born at any time, let both be equal sharers of the father's whole estate." There appears

to be nothing in this text to restrict the rule laid down therein to any particular caste. Thus, according to this text, there is no difference (whether amongst *dwijas* or others) between the shares of the adopted son and an "after-born" son, if the adopted son "abounds in good qualities", a condition which is presumably satisfied in every adoption (see Manu IX, 168-169) and upon which Courts cannot, in any case, be expected to pronounce. It must be remembered that a *dattaka* son loses all his future rights in the family of his birth as a consequence of the adoption and it seems hardly fair that he should ever count as anything less than a natural-born son in the family of his adoption.

Sub-clause (1) (i).—In framing this definition of "*Stridhana*" we have followed Vijñaneswara. Our reasons for doing so have been fully explained in our Memorandum on the subject appended to the Bill.

Sub-clause (2)—opening words.—The usual rule in construing statutes is briefly that "he" includes "she". In the drafting of this Bill we have had to be stricter in the use of words, since in the existing Hindu law woman's property differs from man's as regards the order of succession and in certain other respects.

Sub-clause (2) (a).—The definition of intestacy is taken from section 30 of the Indian Succession Act, 1925.

Sub-clause (2) (c).—This merely adopts by reference certain well-established rules relating to domicile contained in the Indian Succession Act, which do not at present apply to Hindus.

Clause 3.—In making the Bill applicable to the movable property of Hindus domiciled in British India and (with certain exceptions) to the immovable property in British India of all Hindus wherever domiciled, we are merely following a well-established rule of private international law. A similar provision is to be found in section 5 of the Indian Succession Act.

Following the principle of section 19 of the Indian Succession Act we have made the Bill applicable to the movable property of a person not proved to have been domiciled outside British India.

We have, for obvious reasons, excluded Hindus governed by the Marumakkattayam, Aliyasentana or Nambudri Law of Inheritance.

In clause (i) of the first proviso to the clause we have excluded agricultural land, because the Central Legislature cannot legislate upon succession in respect of agricultural land situated in Governors' Provinces. If and when Governors' Provinces enact complementary legislation in respect of agricultural land, it may be necessary for the Centre also to enact parallel legislation for the Chief Commissioners' Provinces in a similar form.

Clause (ii) of the first proviso excludes impartible estates. The subject of impartible estates constitutes a separate branch of Hindu law and must be dealt with separately.

It will be seen that the Bill is intended to regulate succession to the property of Hindus dying after the date of its commencement. What is to happen if the last full owner died before the aforesaid date but was succeeded by a limited owner who died after that date? The second proviso makes it clear that in such a case the reversioners will be determined in accordance with the provisions of the Bill, as if the full owner had died immediately after the limited owner.

Clause 4 repeats in substance one of the rules for All-India at the end of our Third Memorandum.

Clause 5.—We have made some important changes in this clause as compared with the corresponding provision in our Third Memorandum. Under our original plan, the unmarried daughter and the widowed daughter-in-law were to share equally with the son and the widow, the married daughter getting no share. But the exclusion of the married daughter has been criticised by lawyers of weight, and is opposed to the view of the majority of those who answered our questionnaire last year. They considered that there should be no distinction between the married and the unmarried daughter in the matter of inheritance. We have accordingly proposed in the Bill that each daughter, whether married or unmarried, should get half the share of a son. The general opinion even among women (judging from the answers to our questionnaire) appears to be that the daughter's share should be half that of a son. Dr. Altekar after an elaborate discussion of the question expresses a similar view ("The Position of Women in Hindu Civilisation", 1938, pages 278-299), although he considers that the daughter should lose her share upon marriage. We have already explained why we have abandoned the distinction between married and unmarried daughters. We would add that a provision that the daughter should forfeit her inheritance upon marriage is liable to be attacked on the grounds that it can be defeated by a prior alienation, that it is a temptation to avoid marriage and live "in sin", and so forth.

Turning to *Smṛiti* authority, we find certain rules as to the portion to be given to the daughter at a partition of the paternal estate; but they are not quite clear. According to *Yājñyavalkya* and *Manu*, the sons have to give the daughter a "one-fourth" share, but there have been differences of opinion as to how this "one-fourth" is to be calculated. *Manu's* text, literally translated, runs:

"The brothers should severally give to their maiden sisters out of their own shares, each a one-fourth part out of his share; those refusing to give shall be degraded." (IX, 118).

On a strict construction of this text, it would follow that if there were three sons and one daughter, each son would in the first instance take a one-third share and would then have to give one-fourth of that share to the daughter, so that the final result would be that each of the three sons and the daughter would have one-fourth. In this particular case, therefore, the daughter's share would be equal to that of the sons. If there were two sons and one daughter, the distribution would be $\frac{3}{8}$ ths for each son and $\frac{1}{4}$ th for the daughter, so that the daughter's share would be $\frac{2}{3}$ rds of the son's; and so on. The result would be different in different cases according to the number of sons and daughters. *Vijñaneswara's* interpretation of the "one-fourth" share is that the daughter should have $\frac{1}{4}$ th of what she would have got if she had been a son. According to *Sukrasmṛiti* (circa. 1300 A. D.), if a person divides his property in his own lifetime, he should assign one share each to his wife and sons, half a share to his daughters, and one-fourth of a share to his daughters' sons; but if the division takes place after his death, the sister is to get one-eighth the share of the brother.

Since *Smṛiti* authority is not clear and since there is a general trend of opinion that the daughter's share should be half that of a son, we have thought it best to give the unmarried daughter as well as the married daughter a share equal to one-half of that of a son.

This has made it necessary to re-consider the question of the widowed daughter-in-law. It will be remembered that under the *Deshmukh* Act, she shares equally with the widow and the son; and this was also what we proposed in our Third Memorandum. But now that we are providing for her as a daughter in her own father's family, it seems unnecessary to provide for her again in her father-in-law's family. She will, of course, continue to take a share of her husband's property as his widow; it is only the further share in her father-in-law's property that we have thought it unnecessary to give her, in view of the share which she will now get in her father's property. As between a share in her father-in-law's property and a share in her father's property, we believe the latter to be more secure, because there is less chance of the provision being defeated by a will. A father-in-law is more likely to disinherit his daughter-in-law than a father his daughter.

We have worked out the details of a concrete case, typical of its kind, for the purpose of seeing how the provisions of the Bill compare with our original proposals in the Third Memorandum. Let us suppose that *A*, the daughter of *B*, is married to *C*, the son of *D*, and, since we have to take a case involving widowed daughters-in-law, let us suppose that *C* dies first, then *D* and then *B*. To make the test a fair one, we must assume that each of them dies leaving a widow, a son, a widowed daughter-in-law, an unmarried daughter and a married daughter, and also that they are all equally rich. For simplifying the calculations, let us assume that they each leave property worth Rs. 12,000.

Then upon *C's* death, *A*, as his widow, gets, under the Bill, one-third of Rs. 12,000, i.e., Rs. 4,000 (*C's* son getting Rs. 4,000 and each of his daughters getting Rs. 2,000). Under our original proposals *A* would have got one-fourth of *C's* property, i.e., Rs. 3,000 (*C's* son, *C's* widowed daughter-in-law and his unmarried daughter each getting Rs. 3,000).

Upon *D's* death, *A*, as his daughter-in-law, gets nothing under the Bill, the daughter-in-law not being an heir; under our original proposals she would have got one-fourth of his property, i.e., Rs. 3,000.

Upon *B's* death, *A*, as his daughter, gets under the Bill half of a third of his property, i.e., Rs. 2,000. Under our original proposals, not being an unmarried daughter, she would have got nothing.

The net result is that in all she gets Rs. 6,000 under the Bill (Rs. 4,000 from her husband *plus* Rs. 2,000 from her father) and she would have got the same sum under our original proposals also (Rs. 3,000 from her husband *plus* Rs. 3,000 from her father-in-law). Thus from the point of view of the daughter-in-law, the scheme of the Bill is on balance at least as good as our original plan, quite apart from the possibility of her being disinherited by her father-in-law. We have also little doubt that an owner of property, if asked to choose between a scheme which gives a share to his daughter and one which gives a share to his daughter-in-law, would normally prefer the former.

On the whole, therefore, we think that the changes made in the Bill in this respect are an improvement. In addition, we would suggest that when the subject of maintenance is taken up, the obligation of a father-in-law to maintain his widowed daughter-in-law, which is at present merely a moral obligation, be changed into a legal obligation. The combined effect of such a provision and the provisions which we have embodied in this Bill would be that instead of a precarious right of inheritance of a son's share in her father-in-law's property upon his death, she would get (a) the certainty of maintenance during his life and (b) a reasonable certainty of half of a son's share in her father's property.

If, however, our original scheme or the scheme of the Deshmukh Act is preferred to the scheme of the Bill, there would be no difficulty in making the necessary amendments.

In our original rules there was one relating to widows which provided that a woman who is a widow when succession opens (excepting the widow of the deceased himself) shall take the place which her husband would have occupied in the order of succession if he had been alive at the time. This rule, if retained, would have obviated the necessity of enumerating separately, amongst the heirs, the mother or the father's mother or the mother's mother or the father's father's mother of the intestate. But there has been much opposition to the rule and we have, therefore, abandoned it. Consequently, it is now necessary to mention these relations separately and we have had to consider whether in this enumeration the mother should come after the father, the grandmother after the grandfather, and so on. Yajnyavalkya mentions father and mother together (*Pitarau*, that is, parents) without specifying which parent is to come first; the Mitakshara puts the mother first; the Mayukha and the Dayabhaga put the father first; Srikara is of opinion that both parents are meant to take jointly. The point does not appear to be of cardinal importance in normal circumstances. But on general considerations it would seem that the mother should come before the father as an heir to the son because, if the father happens to have married a second and younger wife, there is a chance of the deceased's own mother suffering. We have, therefore, in this instance, preferred the Mitakshara order. On similar grounds we have put the father's mother before the father's father, the mother's mother before the mother's father and the father's father's mother before the father's father's father. In so doing we have followed the spirit of Brihaspati's rule that in all cases of a conflict between two texts of law, equity should be resorted to.

The high place given to the son's daughter and the daughter's daughter needs a word of explanation. These are grandchildren of the intestate himself and cannot in justice be separated from his other grandchildren, the son's son and the daughter's son. They have accordingly been placed immediately after the latter.

We have not enumerated in Class I of clause 5 the son's son's daughter, the son's daughter's son, the son's daughter's daughter, the daughter's son's son, the daughter's son's daughter, or the daughter's daughter's daughter. If they are to be included—and there are many who think that they ought to be—they should come in the above order immediately after the daughter's daughter in Class I. That is their logical place, as they are all descendants of the intestate, and the usual rule is that his own descendants should be preferred to his ancestors or their descendants. We have made it clear elsewhere that provision should be made in the proper place for the maintenance of the intestate's aged parents, whoever may inherit the estate. Similarly, there is something to be said for including the brother's daughter and the sister's daughter amongst the enumerated heirs; if they are to be included, they may be placed in that order immediately after the sister's son in Class II.

As explained in our Third Memorandum, if we omit the female heirs enumerated in this clause (clause 5) the enumeration is identical, both in order and content, with Jimutavahana's as interpreted by G. C. Sarker. The female heirs are either those enumerated by Jimutavahana himself or those mentioned in Act II of 1929 re-arranged in order of propinquity. We have also added the mother's mother, as all the other grandparents are heirs.

Clause 6—merely embodies one of the rules in our Third Memorandum and needs no further explanation.

Clause 7—prescribes the mode of distribution of an intestate's property amongst his widow or widows, his sons and his daughters.

Sub-clause (b), it will be noticed, makes no distinction between divided and undivided sons. On this point there has been a conflict of judicial decision and we have adopted the view which leads to the simplest rule.

Sub-clause (d) abolishes the distinction which at present obtains between daughters, married and unmarried, or rich and poor, or with and without male issue, or the possibility of male issue. This is in accordance with the desire of the majority of those who answered our questionnaire on this point last year.

Clause 8.—This clause deals with what we have called “distant succession”. The distinction between agnates and cognates goes back to Yajnyavalkya and has, therefore, been retained in the Bill. But for this traditional distinction, we should have been strongly inclined to put into a single class all relations outside the enumerated heirs and to subject them to the general Rules of Preference set out in clause 9. This would have simplified the law still further and made it more equitable.

Clause 9.—These general rules have had wide approval. They have been fully explained in our First Memorandum (see Appendix to the Bill). We have there pointed out how these rules not only flow from the indications that Vijnaneswara has given on the subject, but also yield results in accordance with the decided cases. We would only add here that these rules can be applied with equal ease, whether the distinction between agnates and cognates is abolished or retained. In deference to the wishes of certain critics we have inserted provisions in the Bill explaining how degrees are to be computed. See clause 8, sub-clauses (2) and (3). We think that the Rules of Preference embodied in the Bill will considerably simplify the law of Bandhu succession. We have given a large number of illustrations in this clause for the purpose of elucidating the application of the rules.

Clauses 10 and 11.—These clauses follow the well-known rules of the Hindu Law on the subject and need no explanation. If they are considered unnecessary, they can be left out.

Clauses 12 and 13.—These substantially follow the corresponding provisions in our Fourth Memorandum and need little explanation. For the sake of uniformity we have adopted in the main the Mitakshara order of devolution for *stridhana* as explained in our Memorandum. It will be noticed that in the case of the property of a Hindu male dying intestate, his widow and his son each get one share and his daughter half a share. The widow's share becomes her *stridhana* under the definition in clause 2 (1) (i) of the Bill; but upon her death it descends to the son and the daughter in the proportion of 1 : $\frac{1}{2}$ under clause 13 (a). In view of this provision, the preference given to the daughter in respect of other portions of her mother's *stridhana* might, we think, be accepted by all schools in the interests of uniformity.

In response to criticisms we have made four small changes in our original proposals. (1) In our original proposals we had a rule that property inherited by a woman from a *male owner* shall on her death devolve upon the heirs of that owner. In response to criticisms from Bombay we have confined the corresponding provision in the Bill to property inherited by a woman from her husband. (2) For reasons already mentioned we have abolished the distinction between married and unmarried daughters. Under our original proposals, which strictly followed the Mitakshara order, the unmarried daughter was the first heir to her mother's *stridhana*, and then came the married daughter. We have now put all daughters, whether married or unmarried, first in the list of *stridhana* heirs. (3) The son's daughter does not at present appear to be a *stridhana* heir at all; but a daughter's daughter, a daughter's son, and a son's son are all heirs. It is not easy to see any justification for the exclusion of the son's daughter and we have accordingly included her as an heir immediately after the son's son. (4) The daughter's husband was included in our original proposals as a *stridhana* heir in accordance with Brihaspati's text (Brihaspati XXV, 88 and 89). In response to criticism from Madras, we have now omitted this heir.

Clause 14.—provides for stirpital succession to *stridhana* in certain cases. It makes no change in the existing Hindu Law.

Clauses 15 and 16.—These embody existing provisions of the Hindu law.

Clause 17.—There have been differences of opinion whether *anuloma* marriages, that is to say, marriages where the husband is of higher caste than the wife, are or are not valid. It is unnecessary to discuss this question here in any detail; but it may be mentioned that such marriages were not uncommon amongst Hindus until about the 10th century A. D. Baudhayana, Vishnu, Manu, Yajnyavalkya and Brihaspati all lay down rules for determining the shares of sons born of wives of different castes, which in itself is proof that such marriages were then sufficiently common to need legislating for. Indeed, even later, the authors of the Mitakshara (11th century A. D.) and the Daya-bhaga (14th century A. D.) expressly recognize the validity of these marriages (Mitakshara Ch. I, Section VIII, 2 and Section XI, 40; Daya-bhaga Ch. IX, 2, Setlur's Collection). There is, however, no doubt that inter-caste marriages have been included amongst things not to be practised in the *Kali* age in some of the Puranas and are now regarded as invalid in certain parts of India. But where they are regarded as valid, as in Bombay (I. L. R. 55 B 1), it is, to say the least, an unnecessary complication to treat either the widow or the issue as having inferior rights of succession.

In the first place, the *Smritis* are not in entire agreement as to the relative shares of the sons of the different wives. Thus, according to Vishnu, if a Brahmin has only one son, whether by a Brahmin or a Kshatriya or a Vaisya wife, that son inherits the entire property of the father; but if by a Sudra wife, he inherits only half the property of the father. According to Manu, however, "whether the man have sons or have no sons, no more than a tenth part must be given to the son of the Sudra wife", while according to Devala, the only son of a Brahmin, by a Sudra wife, is entitled to a third part of the father's property. Jimutavahana attempts to reconcile these discrepant texts by suggesting that the larger share is claimable where the son is endowed with "science, morality, and virtue", a difficult test for Courts to adopt. Again according to Vishnu, if a Brahmin has a son by a Kshatriya wife, the shares of the two sons are to be as 4 : 3; but Brihaspati directs that the son of a Kshatriya wife, if elder by birth and endowed with superior qualities, shall have an equal share with the son of the Brahmini. Similarly Baudhayana lays down that of the sons by a woman of the same caste and by one of the next inferior caste, if the latter be the more virtuous, he may take the allotment of an eldest son. Thus virtue is made the test and not the caste of the mother.

In the second place, merely because the parents have entered into an *anuloma* union, it is hardly just to punish their children by depriving them of their ordinary rights of inheritance. If the union is legally valid, it should not entail any legal disabilities, particularly to the innocent children.

In the third place, when, e.g., Kayasthas are held by one High Court to be Sudras and by another to be Kshatriyas, any law based on these distinctions of caste might prove anomalous in its practical operation.

For all these reasons, the simplest course is to put all legal marriages on the same footing as respects the legal rights of the parties and their issue. If a marriage is legally valid, it should entail no legal disabilities either to the parties or to the children.

Clause 18.—Clause 18 deals with the unchastity disqualification of widows. This point was noticed in para. 11 (ii) and paragraph 24 of the Hindu Law Committee's Report. The provision in the Bill embodies the compromise referred to in the aforesaid paragraph 24. As explained in our Report, the proviso to this clause has been considered necessary for the purpose of preventing widows being blackmailed by unscrupulous reversioners.

Clause 19 embodies a principle of the existing law resting on considerations of public policy.

Clause 20.—The time has now arrived for abolishing the other disqualifications of Hindu law such as congenital blindness, deafness, etc. The legislation of 1928 has already abolished them in part in the Mitakshara jurisdictions; they might now, we think, be abolished completely everywhere. They are difficult to justify in equity, and with the progress of medical science it must become increasingly difficult to say what defects or diseases are incurable. If the heir is incapable of managing his property there are ample provisions in the law at present for the appointment of a competent manager or guardian.

Clause 21.—Sub-clause (a) merely embodies the existing Hindu law. Sub-clause (b) makes a change in the existing Hindu law in certain respects. Under the existing Hindu law whether of the Dayabhaga school or of any Mitakshara school, where two or more widows inherit to their husband or, except in the Bombay Presidency, where two or more daughters inherit to their father, they take as joint tenants with rights of survivorship. Now that we propose to give these heirs an absolute estate, it seems to us that they should take as tenants in common as daughters do in the Bombay Presidency when inheriting to their father.

Clause 22.—Clause 22 provides for escheat to the Crown in the absence of heirs.

Clause 23.—It will be noticed from the Schedule of Repeals that we propose in this Bill only to repeal sub-section (1) of section 3 of Act XVIII of 1937. Sub-section (2) of section 3 of that Act deals with the interest of an undivided coparcener in a Mitakshara joint family, a subject which is not covered by the present Bill. We have therefore left intact the provisions of the aforesaid sub-section (2) and the other connected provisions of that Act.

APPENDIX

First Memorandum.

INTESTATE SUCCESSION.

Mitakshara School.

1. It is convenient to deal first with the succession of *males to the property of males*, as regulated by the Mitakshara unmodified by Statute Law.

2. When a Hindu male governed by the Mitakshara school dies intestate in respect of heritable property, it devolves in the following order on the following classes of relations (omitting females for the moment):—

I.—The “compact series” of heirs, namely,

- (1) son, son of pre-deceased son, and son of pre-deceased son's pre-deceased son (succeeding simultaneously),
- (4) daughter's son,
- (6) father,
- (6) brother,
- (7) brother's son.

(We end the “compact series” with the brother's son, because after that the Bombay school diverges from the others).

II.—*Gotrajas or agnates of the deceased*, (i.e., persons related to him wholly through males) other than those already enumerated under I.

III.—*Bandhus or cognates of the deceased*, (i.e., persons related to him, but not wholly through males) other than those already enumerated under I, (i.e., other than the daughter's son).

Each class excludes the next and within each class, the heirs who come earlier in order exclude those who come later.

3. To complete this scheme it is necessary to arrange all the agnates and cognates in classes II and III in a definite order, so that we may be able to tell at once which of two competing heirs has the better right of succession. We must also consider the question of setting some limit to the number of possible heirs in each class. On these points the law cannot yet be said to be settled; there are still some differences of opinion between the various High Courts. We may settle it now thus.

4. *Arrangement of heirs in classes II and III.*—The following rules are simple to apply; they agree with such indications as the author of the Mitakshara has given on this subject; and they yield results sufficiently accurate for all practical purposes. They have the further advantage that they are exhaustive in the sense that they furnish a decisive test in every imaginable case.

Rule 1.—Of two heirs, the one who is nearer in ascent succeeds first.

Illustration.—Suppose the competing heirs are (1) the father's son's son (FSSS) and (2) the father's father's son's son (FFSS) of the deceased. The first is removed from the deceased by one degree in ascent and three degrees in descent—four in all; the latter by two degrees in ascent and two in descent—also four in all. But since the former is nearer in ascent, he succeeds under this rule. This agrees with the decision in *Buddha Singh v. Lattu Singh*, 42, I. A. 208.

An amplified form of the rule is that the descendants of the deceased himself succeed before those of his father; those of his father before those of his grandfather; those of his grandfather before those of his great-grandfather; and generally those of a near ancestor before those of a remoter ancestor.

For brevity, the ascending links may be represented by the symbols F (father) and M (Mother), and the descending links by S (son) and D (daughter). Thus FMFSSDS will stand for the father's mother's father's son's son's daughter's son of the deceased owner. There are three ascending links and four descending links in this chain.

Rule 2.—If the two heirs are equally near in ascent, the one who is nearer in descent succeeds first.

Illustration.—Suppose the competing heirs are (1) the father's father's son (FFS) and (2) the father's father's son's son (FFSS). Here both are two degrees in ascent from the deceased; but the former being only one degree in descent succeeds before the latter who is two degrees in descent.

Rule 3.—If the two heirs are equally near both in ascent and descent the one who is in the father's line of ascent succeeds first.

Illustration.—Suppose the competing heirs are (1) the father's mother's father's son's son (FMFSS) and (2) the father's father's father's daughter's son (FFFDS) of the deceased. Here both are three degrees from the deceased in ascent and two in descent; but the latter being in the *father's line of ascent* throughout succeeds before the former who is in the mother's line after the first link. The rules must be applied at *each point* of ascent. Thus suppose the competition is between (1) the father's mother's father's father's daughter's son (FMFFDS) and (2) the father's mother's mother's father's son's son (FMFMSS). Here the first link in the chain of ascent is in both cases in the father's line and the second link in the mother's line; up to this point, therefore, the lines are the same. But after that, the first link in the case of No. (1) is in the father's line and in the case of No. (2) in the mother's line. Therefore, No. (1) succeeds before No. (2) under this rule.

Rule 4.—If all the preceding rules fail to decide between the two heirs, the one who is in the son's line of descent succeeds first.

Illustration.—Suppose the competing heirs are (1) the father's mother's father's father's son's son's son (FMFFSSS) and (2) the father's mother's father's father's son's daughter's son (FMFFSDS). Here, rules 1, 2 and 3 are all inconclusive; but the former heir is in the son's line of descent throughout, while the latter is in the daughter's line after the first descending link. Therefore, the former succeeds before the latter.

5. In essence the tests are only two: first, that of number, applied successively to the links of ascent and the links of descent, and secondly, that of sex applied similarly—resulting altogether in four simple rules.

6. These rules must be applied in the order mentioned above and by their very nature, they are bound to yield a definite result in every imaginable case. To see how they work, let us apply them to some of the decided cases of class III:—

(a) *Muthusami v. Muthukumarasami*, 23 I. A. 83.—The competing heirs were (1) the mother's father's son (MFS) and (2) the father's father's daughter's son (FFDS). Here rule 1 immediately decides the issue in favour of No. (1), who has only two degrees of ascent against three of his rival. The result is in accordance with the decision both of the Madras High Court and the Privy Council.

(b) *Adit Narayan v. Mahabir Prasad*, 48 I. A. 86.—The competition was between (1) MFDSS (mother's father's daughter's son's son) and (2) MFFDS (mother's father's father's daughter's son) of the deceased. Here again (1) has only two degrees of ascent against three of (2) and therefore must succeed. This agrees with the Privy Council decision (reversing that of the Patna High Court).

(c) *Balusamy v. Narayana*, 20 Mad. 342.—FDSS succeeds before MFSS, which accords with our first rule, since the former has only one degree of ascent against two of the latter.

(d) *Krishna Ayyangar v. Venkatarama Ayyangar*, 29 Mad. 115.—FFDSS succeeds before FFFDS, which follows from our first rule.

(e) *Dattatraya v. Gangabai*, 46 Bom. 541.—SDS succeeds before FDD; our first rule gives the same result, since the former has no degrees of ascent at all against one of the latter.

(f) *Kalimuthu v. Ammamuthu*, 58 Mad. 238.—Succession opened before the commencement of Act II of 1929. Held that DDS succeeds before FDS, which follows from our first rule.

(g) *Uma Shankar v. Mst. Nageshwari*, 3 Pat. L. J. 663.—The competition was between MFS and FDSS. The Patna High Court held by a majority of three to two that MFS succeeds before FDSS, a decision which, according to Sarvadhikari's Hindu Law of Inheritance, is not correct (1922 Edition, pages 621, 635) and which has again been criticized by Sir Vepa Ramesam (retired Judge, Madras High Court) in the Madras Law Journal (Golden Jubilee Number, 1941 page 34). Our first rule gives preference to FDSS.

(h) *Sham Devi v. Birbhadra Prasad*, 43 All. 463.—In this case the Allahabad High Court held that FFDSS succeeds before FDSS, whereas our first rule indicates the contrary. Mulla considers that the case was erroneously decided (Mulla's Hindu Law, 1940, pages 61, 63).

(i) *Vedachela v. Subramania*, 48 I. A. 349.—MFS v. FFDSS. Here our first rule is inconclusive, as the degrees of ascent are two in both cases. So we must apply the test of number to the links of descent under our second rule. MFS having only one link of descent must succeed before FFDSS who has three such links. The result is in accord with the Privy Council decision (reversing the decision of the Madras High Court).

(j) *Jotindra Nath Roy v. Nagendra Nath Roy*, 58 I. A. 372.—The competition was between FFDS and MFDS. Here, our first and second rules are inconclusive; so we must apply the test of sex to the links of ascent under

our third rule. The result is that FFDS must succeed before MFDS, which accords with the decision in the case.

(k) *Tirumalachariar v. Andal Ammal*, 30 Mad. 406.—The competition was between DSS and DDS. Here, there are no links of ascent in either case and three links of descent in each. So the first three rules are inconclusive and we must apply the fourth rule, which at once shows that DSS (who is in the son's line of descent from the daughter) must succeed before DDS (who is in the daughter's line of descent from the daughter). The result is in accord with the decision in the case.

(l) *Rami Reddi v. Gangi Reddi*, 48 Mad. 772, and *Ram Charan Lal v. Rahim Baksh*, 38 All. 416.—MFSS was held to succeed before MFDS, which is in accordance with our fourth rule; but they were held to be entitled to succeed equally in *Rajappa v. Gangappa*, 47 Bom. 48. The correctness of this last decision has, however, been doubted in Mulla's Hindu Law (1940, p. 61).

7. It will be seen from the above summary of the decided cases that the rules suggested by us give the right result in almost every instance and that in the rare instances where they give a result differing from the actual decision, the correctness of the decision has already been doubted on other grounds by authorities of weight. We have also compared the result of applying our rules with the table of *atmabandhus* as set out in Mulla's Hindu Law (1940, pp. 62-64): there is agreement in 50 cases out of 56.

8. We venture to think that the cases of difference are not of much practical importance; indeed as regards one of them (No. 28 of Mulla's table), the author himself observes that the place given to this heir in his table is highly anomalous and that it is futile to discuss the question until it actually arises. One deviation from the table, though remote and not likely to be of practical importance, may be specially mentioned. According to our rules, MFS comes before FFDS and similarly MFFS before FFFDS; but while the former result agrees with the table in Mulla's Hindu Law, the latter does not. Mulla puts FFFDS, as a *pitribandhu* before MFFS as a *matribandhu*. Neither our result nor Mulla's follows directly from the meagre indications on this subject contained in the *Mitakshara*.

The actual instances mentioned by Vijnaneswara are :—

FFDS	} <i>Atmabandhus (a)</i>
MFDS	
MFSS	
FFFDS	} <i>Pitribandhus (b)</i>
FMFDS	
FMFSS	
MFFDS	} <i>Matribandhus (c)</i>
MMFDS	
MMFSS	

and he observes that "by reason of near affinity", the order of succession is first (a), then (b), and lastly (c). It will be noticed that all the heirs mentioned have the same number of links of descent (namely, two), but not the same number of links of ascent. In these cases it is obvious from Vijnaneswara's solution, that he gives precedence first to those with the fewest links of ascent (namely, the *atmabandhus*) and next to those in the male line of ascent (namely, the *pitribandhus*). The case of MFFS v. FFFDS is not directly covered by these examples; it is, in fact, their converse, because we have here the same number of links in ascent but different in descent. The same principles can, however, be applied: that is to say, we must give precedence first to the heir with the fewer links of descent and if that test fails we must give preference to the male line in descent. The governing principle laid down by Vijnaneswara, even in the instances given by him, is that of "near affinity" (*antarangahva*). It is therefore in accord with his principles to hold that MFFS has a higher place than FFFDS, since the former is nearer in descent and no further in ascent than the latter. It is also in accord with Brihaspati's text "where many claim the inheritance of a childless man, whether they be paternal or maternal relations or more distant kinsmen, he who is the nearest of them shall take the estate" (Brihaspati XXV 62). Since we have to generalise in any case from Vijnaneswara's few hints, a generalisation which yields simple rules is obviously preferable to any other.

9. So far we have been considering the working of these rules mainly as regards heirs of class III (cognates). As regards class II (agnates), only rules 1 and 2 are relevant and they are sufficient; they are identical in effect with the two rules enunciated at the end of s. 43 of Mulla's Hindu Law (1940, p. 44) and they seem to give the correct order in every case of male succession in the Bombay Presidency. (Mulla's Hindu Law, 1940, pp. 80-84). There appear to be some differences between the Bombay and the other sub-schools of the *Mitakshara* as regards the order of the remoter agnates: e.g., in Madras FFFSSS appears to be preferred to FFSSSS or even to FSSSS (*Soobramiah v. Natarajan*, 53 Mad. 61) while the Bombay order is FSSSS (No. 24 in the table at pp. 80-84 of Mulla's Hindu Law, 1940), FFSSSS (No. 38 loc. cit.) and FFFSSS (No. 52

loc. cit.). The Bombay order follows the normal rule that the descendants of a near ancestor succeed before those of a remoter one. We feel justified in ignoring these minor differences in the interests of uniformity.

10. One point calls for some notice at this stage. The application of our first rule to all agnates (class II) will in theory result in preference being given to FSSSSSSS, a *samanodaka*, over FF and some other *sapindas*, the former having only one degree of ascent and the latter more than one. We could, if necessary, avoid this theoretical result by subdividing class II into *sapindas* and *samanodakas* and applying our rules separately to each subdivision; but *samanodakas* are not so frequent in practice as to necessitate this complication. The rules of intestate succession should be as few and simple as possible, hard and rare cases being left to be dealt with by will.

11. We suggest that our four rules are a sufficiently correct translation of the recognized principles of Mitakshara succession. And in fact, as we have already seen, rules 1 and 2 are merely generalisations of the Mitakshara principle that *atmabandhus* succeed before *pitribandhus* or *matribandhus* and rules 3 and 4 of the principle that *pitribandhus* succeed before *matribandhus*.

12. The existing law, particularly as to the succession of cognates, is complicated, indefinite, and incomplete. We must attempt to restore Vijnaneswara's simplicity but combine it with the greater precision now needed. We believe that without any departure from his principles the whole law of Mitakshara male succession (unmodified by Statute) can be exhaustively embodied in the following few rules, which merely reproduce what we have already said :—

"Rule 1.—When a Hindu male governed by the Mitakshara school dies intestate in respect of heritable property, it shall devolve, as respects his male heirs, in the following order on the following classes of relations, namely :—

I. The "compact series" of heirs, that is to say,

- (1) son, son of pre-deceased son, and son of pre-deceased son's pre-deceased son (succeeding simultaneously).
- (4) Daughter's son.
- (5) Father.
- (6) Brother.
- (7) Brother's son.

II. *Agnates of the deceased* (i.e., persons related to him wholly through males) other than those already enumerated under I.

III. *Cognates of the deceased* (i.e., persons related to him, but not wholly through males) other than those already enumerated under I (i.e., other than the daughter's son).

Rule 2.—(a) Each class excludes the next and within each class the earlier group excludes the later.

(b) In each group, persons related to the deceased by the half blood succeed immediately after persons related by the full blood.

Rule 3.—The order of the heirs in classes II and III shall be determined by the next four rules.

Rule 4.—Of two heirs, the one who is nearer in ascent succeeds first.

Rule 5.—If the two are equally near in ascent, the one nearer in descent succeeds first.

Rule 6.—If the two are equally near both in ascent and descent, the one who is in the father's line of ascent succeeds first.

Rule 7.—If the two are equally near in ascent and descent and the chain of ascent, if any, is the same in both cases, the one who is in the son's line of descent succeeds first."

These rules, as already explained, involve no change in the traditional Mitakshara law of male succession. They aim merely at re-stating the old principles in a more precise form.

13. We may now consider whether it is necessary to limit the number of heirs in classes II and III in any way. The rules we have proposed can be applied to every imaginable case however remote the competing heirs may be so that from this point of view no limit is necessary. Moreover, there have been differences of opinion amongst the High Courts as to where the line is to be drawn for "heritable *bandhus*". On the whole there seems no particular advantage in prescribing any limit in this behalf.

14. Statute Law has made certain changes in the traditional rules, e.g., by giving a place to the sister's son in class II; but the main change effected by legislation has hitherto been in respect of female heirs, a subject to which we next turn our attention. A fundamental principle which we think it is now time to adopt is that no woman shall be disqualified for succession merely by reason of her sex. Taking this as our starting point we have to consider how best to fit women into the above scheme. This will be dealt with in our next memorandum.

Second Memorandum

MITAKSHARA SCHOOL.

Succession of female heirs to the property of a male.

1. We have seen that the entire Mitakshara law of succession as respects male heirs to the property of a male can be summed up in three classes of heirs and four rules of propinquity. We have now to consider the question of female heirs succeeding to the property of a male.

2. The fundamental principle is that no woman should be disqualified for succession by reason merely of her sex. No longer can we subscribe to Baudhayana's doctrine that "women being devoid of the senses are incompetent to inherit". Once this disqualification is removed we do not believe that there will be much difficulty in fitting them into the classes and rules already prescribed.

3. Class I, "the compact series of heirs", will need to be enlarged so as to include not only the women enumerated in Yajnyavalkya's well-known text, namely, the widow, the daughter, and the mother, but also those enumerated in the Mitakshara and the Mayukha, namely, the father's mother and the sister, as also those who have been provided for by special legislation, namely, the widows of pre-deceased sons and grandsons, the son's daughter and the daughter's daughter.

4. Class II (agnates of the deceased) and class III (cognates of the deceased) will need no change merely because of the admission of women. A woman who is related to the deceased wholly through males (excluding, of course, herself) will be considered an agnate, and other female relations will be considered cognates. There is, therefore, no difficulty in placing women in one class or the other.

5. The four rules of propinquity determining the place of each heir in class II or in class III can also be applied to women without any change.

6. There is, however, one special rule which we should like to make for women who are widows when succession opens. Such women should be entitled to take the place which their husbands would have occupied if they had been alive at the time. We propose this rule not only as the logical result of Brihaspati's dictum that a widow is the surviving half of her deceased husband but also because we consider that our laws of succession should be in aid of our ideals of marriage. Clearly, a widow who succeeds to property as the living half of her deceased husband has fewer temptations to depart from the high Hindu ideal of "fidelity until death". Of course, if she re-marries, she will forfeit her inheritance.

7. As a consequence of the "Deshmukh Act" (Act XVIII of 1937 as amended by Act XI of 1938) granting simultaneous and equal rights of succession to the widow, the widowed daughter-in-law, etc., along with the son, etc., we suggest that the *unmarried* daughter should also be included in the "simultaneous succession group". The married daughter may be placed outside and immediately after that group.

8. We can, therefore, perhaps put the whole law of Mitakshara succession to the property of males in the form of the following rules:—

"Rule I.—When a Hindu male governed by the Mitakshara school dies intestate in respect of heritable property, it shall devolve in the following order on the following classes of relations, namely:—

I.—The "enumerated heirs", that is to say,

1. (a) Widow ;
(b) son ;
(c) son of pre-deceased son ;
(d) son of pre-deceased sons' pre-deceased son ;
(e) widows of (b) (c), and (d) ; and
(f) unmarried daughter (all succeeding simultaneously and with equal rights).
2. Married daughter.
3. Daughter's son.
4. Mother.
5. Father.
6. Brother.
7. Brother's son.
8. Father's mother.
9. Sister.
10. Father's father.

11. Son's daughter.
12. Daughter's daughter.
13. Sister's son.

II.—*Agnates of the deceased*, (i.e., persons related to him wholly through males) other than those already enumerated under I.

III.—*Cognates of the deceased*, (i.e., persons related to him, but not wholly through males) other than those already enumerated under I.

Explanation.—A woman who is related to the deceased wholly through males (excluding herself) is an agnate and any other female relation a cognate for the purposes of these rules.

Rule 2.—(a) Each class excludes the next and within each class the earlier group excludes the later.

(b) In each group, persons related to the deceased by the half blood succeed immediately after persons related by the full blood.

Rule 3.—The order of the heirs in classes II and III shall be determined by the next four rules.

Rule 4.—Of two heirs, the one who is nearer in ascent succeeds first.

Rule 5.—If the two are equally near in ascent, the one nearer in descent succeeds first.

Rule 6.—If the two are equally near both in ascent, and descent, the one who is in the male line of ascent succeeds first.

Rule 7.—If the two are equally near in ascent and descent and the chain of ascent, if any, is the same in both cases, the one who is in the male line of descent succeeds first.

Rule 8.—A woman who is a widow when succession opens (except the widow of the deceased himself) takes the place which her husband would have occupied in the order of succession if he had been alive at the time, without prejudice to any other rights which she may have by birth.

Third Memorandum

INTESTATE SUCCESSION.

Dayabhaga School.

1. As in the case of the Mitakshara school, we shall deal first with the succession of *males to the property of males*.

2. To save space we shall adopt the usual symbols ; F for father, M for mother, S for son, and D for daughter. Thus, MFSS will stand for the mother's father's son's son (i.e., first cousin on the mother's side), of the deceased owner.

3. The Dayabhaga law of succession regarding certain heirs, of whom we may mention SDS and SSDS as typical, is in an unsatisfactory state. Golap Chandra Sarkar's view is that according to the Dayabhaga itself, properly interpreted, and supplemented by the *Dayalatva*, these heirs come as *bandhus* or cognates in the Mitakshara order, after all the agnates down to *samanodakas* have been exhausted (see pages 473 *et seq.* of Golap Chandra Sarkar's Hindu Law, 1940). He states that apart from giving FDS, FFDS, FFFDS, MF, MFS, MFSS, MFSSS and MFDS an earlier place, Jimutavahana intended to leave the order of succession such as it is according to the Mitakshara (page 477 *loc cit.*). It follows that heirs like SDS and SSDS were intended to retain their Mitakshara rank, which would be amongst the cognates.

4. Dr. Sarvadhikari, on the other hand, places SDS and SSDS very high in his table, that is to say, immediately after DS and before F. This is undoubtedly their place if the principle of "spiritual efficacy" is strictly followed, for each of them, like DS, gives a *pinda* to the deceased owner himself, while F does not. Similarly, he gives FSDS, FSSDS and the rest comparatively high places appropriate to their "spiritual capacity".

5. It appears, however, that according to the principles laid down in certain decisions of the Calcutta High Court, the place to be assigned to these heirs is neither so low as G. C. Sarkar would give them nor so high as in Dr. Sarvadhikari's table, but between FFFDS and MF (G. C. Sarkar's Hindu Law, 1940, pages 475, 476 and Mulla's Hindu Law, 1940, page 94).

6. For the present we propose to follow Golap Chandra Sarkar, partly because our own reading of the texts (omitting those passages of Srikrishna's *Dayakrama Sangraha* which were held to be interpolations in Gobinda Hareekar v. Woomesh Chunder Roy, W. R. Special No. 176) agrees with his, and partly because his view causes the least divergence between the Mitakshara and the Dayabhaga schools.

7. The Dayabhaga law of male succession to the property of males will then reduce, like the Mitakshara law, to three classes of heirs and four rules of propinquity. Of the three classes of heirs, the first class, which we may term the class of enumerated heirs, will differ from the corresponding Mitakshara class; but otherwise there will be no difference between the two schools.

8. We may enunciate the Dayabhaga rules thus :—

"Rule 1.—When a Hindu male governed by the Dayabhaga school dies intestate, his property shall devolve, as respects his male heirs, in the following order on the following classes of relations, namely :—

I.—The enumerated heirs, that is to say,—

- (a) S, SS, SSS, DS ;
- (b) F, FS, FSS, FSSS, FDS ;
- (c) FF, FFS, FFSS, FFSSS, FFDS ;
- (d) FFF, FFFS, FFFSS, FFFSSS, FFFDS ;
- (e) MF, MFS, MFSS, MFSSS, and MFDS.

SS, if his father has pre-deceased the intestate, and SSS, if both his father and his father's father have pre-deceased the intestate, succeed simultaneously with S ; otherwise the heirs named above succeed in the order in which they have been enumerated.

[The heirs named above are those expressly enumerated either by Yajnyavalkya, Jimutavahana, Srikrishna Tarkalankar, or Raghunandana ; hence the term "enumerated heirs". The doctrine of "spiritual efficacy" is implicit in the order of the enumeration and need not be separately enunciated. It will be noticed that the enumerated heirs consist, first, of certain descendants of the deceased himself, then, the father and his descendants ; then the father's father and his descendants ; and so on. The descendants in question comprise the son, the son's son, the son's son's son, and the daughter's son ; and similarly, the ascendants comprise the father, the father's father, the father's father's father, and the mother's father.]

II.—Agnates of the deceased other than those already enumerated under I.

[If necessary, these can be subdivided into *sakulyas* and *samanodakas*; but it is doubtful if such a subdivision is of sufficient practical importance. The laws of intestate succession should, as we have already said, be as simple as possible.]

III.—Cognates of the deceased other than those already enumerated under I.

Rules 2 to 7.—As in the Mitakshara school (Memo. I)."

It will be noticed that except as to class I of rule 1, the classes and rules are the same as in the Mitakshara school. If women are included in the scheme of succession, we can perhaps put the whole law of Dayabhaga succession to the property of males in the form of the following rules:—

"*Rule 1.*—When a Hindu male governed by the Dayabhaga school dies intestate, his property shall devolve in the following order on the following classes of relations, namely:—

I.—The "enumerated heirs", that is to say,

- (a) (1) widow (2) son (3) son of pre-deceased son (4) son of pre-deceased son's pre-deceased son (5) widows of (2), (3) and (4), (6) unmarried daughter (all succeeding simultaneously and with equal rights), (7) married daughter, (8) daughter's son.
- (b) F, M, FS, FSS, FSSS, SD, DD, FD, FDS;
- (c) FF, FM, FFS, FFSS, FFSSS, FFDS;
- (d) FFF, FFM, FFFS, FFFSS, FFFSSS, FFFDS;
- (e) MF, MFS, MFSS, MFSSS, MFDS.

[No. 5 in (a) above is the result of the "Deshmukh Act"; No. (6) is added to the "simultaneous succession group" in order to avoid any injustice to the unmarried daughter; SD, DD and FD in (b) are inserted immediately before FDS in the spirit of Act II of 1929. The other women in this class, namely, widow, daughter, mother, father's mother, and father's father's mother are in Jimutavahana's enumeration.]

Classes II and III of Rule 1, and the other Rules, as in the Mitakshara school (Memo. II)."

Comparing class I above with class I of the Mitakshara school (Memo. II), we find that up to FSS (brother's son) the two are almost identical the only difference being that while F comes before M in the former, the order is reversed in the latter. The Mayukha and the Smṛiti Chandrika, like the Dayabhaga, place F first and this ranking is more in accordance with our general rule (Rule 8) that a widow takes the place of her husband. Possibly therefore there should be no great objection to placing F before M (and similarly FF before FM) in the Mitakshara jurisdictions as elsewhere. If as regards the other "enumerated heirs" also the two principal schools could agree to have the same heirs in the same order, we should be able to have a common law of intestate succession for the whole of India. We suggest that class I of Rule 1 as set out by us for the Dayabhaga school should be adopted with one small change for the whole of India (including Bengal) in the interests of uniformity. The change suggested is the transfer of SD and DD from I (b) to the end of I (a).

Proposed Rules for all India.

9. We would therefore propose the following rules for the whole of India:—

"*Rule 1.*—When a Hindu dies intestate in respect of heritable property, it shall devolve in the following order on the following classes of relations, namely,—

I.—The "enumerated heirs," that is to say,—

(a) *The intestate's widow and descendants:—*

- | | | |
|--|---|--|
| <ol style="list-style-type: none"> (1) widow; (2) son; (3) son of pre-deceased son; (4) son of pre-deceased son of pre-deceased son; (5) unmarried daughter; (6) married daughter; (7) daughter's son; (8) son's daughter; and (9) daughter's daughter. | } | (all succeeding simultaneously and with equal rights). |
|--|---|--|

(b) *The intestate's father and his descendants:—*

- (1) F (2) FS (3) FSS (4) FSSS (5) FD (6) FDS.

(c) *The intestate's father's father and his descendants :—*

(1) FF (2) FFS (3) FFSS (4) FFSSS (5) FFDS.

(d) *The intestate's father's father's father and his descendants :—*

(1) FFF (2) FFFS (3) FFFSS (4) FFFSSS (5) FFFDS.

(e) *The intestate's mother's father and his descendants :—*

(1) MF (2) MFS (3) MFSS (4) MFSSS (5) MFDS.

[SD and DD are the intestate's own descendants and therefore belong logically to I (a).]

It is unnecessary to mention the son's widow, or the grandson's widow or the great-grandson's widow or M or FM or FFM separately, because by virtue of Rule 8, if widows when succession opens they take the place of their respective husbands.

It will be noticed that if we omit the female heirs in this class, the enumeration is identical, in order and content, with Jimutavahana's as interpreted by G. C. Sarkar. The female heirs are either those enumerated by Jimutavahana himself or those mentioned in Act II of 1929.]

II.—*Agnates of the deceased*, (i.e., persons related to him wholly through males) other than those already enumerated under I.

III.—*Cognates of the deceased*, (i.e., persons related to him, but not wholly through males) other than those already enumerated under I.

Explanation.—A woman who is related to the deceased wholly through males (excluding herself) is an agnate and any other female relation a cognate for the purposes of these Rules.

Rule 2.—(a) Each class excludes the next and within each class the earlier group excludes the later.

(b) In each group, persons related to the deceased by the half blood succeed immediately after persons related by the full blood.

Rule 3.—The order of the heirs in classes II and III shall be determined by the next four rules.

Rule 4.—Of two heirs, the one who is nearer in ascent succeeds first.

Rule 5.—If the two are equally near in ascent, the one nearer in descent succeeds first.

Rule 6.—If the two are equally near both in ascent and descent, the one who is in the male line of ascent succeeds first.

Rule 7.—If the two are equally near in ascent and descent and the chain of ascent, if any, is the same in both cases, the one who is in the male line of descent succeeds first.

Rule 8.—A woman who is a widow when succession opens (except the widow of the deceased himself) takes the place which her husband would have occupied in the order of succession if he had been alive at the time, without prejudice to any other rights which she may have.

10. The rules are mainly those of the Mitakshara, while the enumeration in class I is mainly that of the Dayabhaga. The scheme as a whole is therefore a compromise between the two schools. We cannot emphasize too strongly that the proposed rules are the rules of *intestate* succession, liable to be over-ridden by a will. Since any owner of property can put them out of action by will if he does not like them, there can be no great objection to having a uniform set of rules for the whole country.

Fourth Memorandum

STRIDHANA OR WOMAN'S PROPERTY.

*Mitakshara School.*Definition of *Stridhana*.

Though there are said to be about eighty different *Smritis* treating of *Stridhana*, only eight are referred to by the Commentators; but even so "there is hardly any text of importance on the subject which has not received different constructions" (Banerjee's *Hindu Law of Marriage and Stridhana*, 1923, p. 326). The result is that the subject of *Stridhana* has become most difficult.

2. Some of the difficulties of the subject will, we venture to think, disappear, if we distinguish carefully between property on the one hand and dominion over, or devolution of, property on the other. To take a familiar example, a male owner governed by the *Mitakshara* may possess (a) separate property and (b) an undivided coparcenary interest in ancestral property. Both (a) and (b) can properly be described as his "property", but the extent of his dominion over (a) is greater than over (b): e.g., he can make a gift or devise of (a) but not of (b). Again unless he makes a will in respect of (a), the devolution of the two descriptions of property after his death may be different: e.g., if his only survivors are a daughter and an undivided brother (a) will go to his daughter; and (b) will go to his brother. But although there are these distinctions between (a) and (b) it seems unnecessary and is not usual, merely for the purpose of marking those distinctions, to confine the term "property" only to (a); (b) as well as (a) is his "property". Similarly, a man's movable property may in certain circumstances devolve differently from his immovable property; but again both are properly described as his "property".

3. So too, merely because a woman may have different degrees of dominion over different portions of her "property" or because their devolution after her death may be different, it seems unnecessary to say that any particular portion is her "property" and that any other portion is not. From this point of view it seems to us that Vijnaneswara's interpretation of the term *Stridhana* is the most convenient: according to him the term "conforms in its import with its etymology and is not technical". We shall therefore adopt the following definition for the *Mitakshara* jurisdictions: *Definition*:—" *Stridhana*" means any property belonging to a woman.

Dominion over *Stridhana*.

4. In our previous memoranda we have proceeded on the footing that no woman shall be disqualified for succession merely by reason of her sex. Equally fundamental seems the proposition that no limitation should be imported into the nature of an estate merely because it is held by a woman. If, for example, she has taken under a gift or will specifically giving her a limited estate, such as an estate for life, then, of course, she will only have a limited estate just as a man would in similar circumstances; but the mere circumstance that she is a woman should create no presumption that hers is an inferior or limited estate. This is in strict accordance with Vijnaneswara's ideas, for the *Mitakshara*, while it includes all property belonging to a woman in the term *Stridhana*, nowhere imposes any limitation on her dominion over it. There are restrictions and prohibitions upon her husband and any other kinsman or heir using her property, but none upon the woman herself. And as for the doctrine of the perpetual tutelage of the Hindu woman, from which a property limitation is often sought to be inferred, Vijnaneswara himself never refers to the doctrine in this connection, and his reference to it in another connection is significant:

"The text of Narada, which declares the dependence of women, is not incompatible with their acceptance of property: even admitting their dependence". (Mit. Ch. II, Sec. I, 25). In other words, in Vijnaneswara's view, this dependence, even if admitted, has little bearing on property rights—a conclusion which is borne out by the fact that according to all schools of Hindu law, a woman has absolute power of disposal over certain kinds of *Stridhana*. The law, as now administered, has become complicated and inconsistent. In Bombay, a daughter inherits from her father with absolute rights, but not a widow from her husband; in Mithila, a widow inherits movables absolutely, but not immovable property; everywhere, an unmarried woman has full dominion over the whole of her *Stridhana* and a married woman over her *Saudayika stridhana*. These complications are difficult to understand on the theory of perpetual tutelage. They have arisen, we think, because we have departed from Vijnaneswara, and the solution is once more to be found in a return to his ideas.

5. The latest discussion of this subject is by Sir M. Venkatasubba Rao, Retired Judge, Madras High Court, in the Golden Jubilee Number of the Madras Law Journal. After discussing the texts, he observes: "The doctrine of limited estate is thus a pure creation by judicial decisions unsupported by ancient *Shashtra*.

"In the realm of Hindu Law, this rule more than any other has produced grave social injustice. Kinsmen of all sorts swoop down, goodness knows from where, to clutch at the property, and this not only on the death of the woman, as reversioners are permitted by law to harass her even during her lifetime. There is no class of suits which shock a judge's sense of justice more than suits by reversioners. To mitigate the evil, rules of evidence have been relaxed to protect transfers by Hindu women and the doctrine of necessity has been greatly stretched. Nevertheless how many titles (some even of sixty or seventy years' standing) have had to be upset and how many homes have been wrecked! To what unending litigation, chicanery and subterfuge does this rule not lead!" (pp. 42, 43, *loc cit.*)

6. We therefore suggest the following rule for all the Mitakshara sub-schools:—

"There shall be no presumption that an owner's rights over property whether acquired by inheritance, gift, devise or in any other way whatsoever are limited merely because the owner is a woman".

7. It is to be noticed that the rule does not go beyond negating a presumption from the mere sex of the owner. If, for instance, there are limitations in the owner's title-deed, the rule has no application.

Devolution of *Stridhana*.

8. The following rules are proposed for the Mitakshara jurisdictions:—

"1. If a Hindu woman dies intestate in respect of *Stridhana*, it shall devolve according to the following rules.

2. That part, if any, of the *Stridhana* which was inherited by her from a male owner shall devolve upon his heirs in the order in which they would have succeeded to his property.

3. Save as aforesaid, *Stridhana* shall devolve upon the following relations of the intestate in the following order:—

- (a) unmarried daughter;
- (b) married daughter;
- (c) daughter's daughter;
- (d) daughter's son;
- (e) son;
- (f) son's son;
- (g) husband;
- (h) husband's heirs in the order in which they would have succeeded to his property;
- (i) mother;
- (j) father;
- (k) father's heirs in the order in which they would have succeeded to his property;
- (l) mother's heirs in the order in which they would have succeeded to her *Stridhana*;
- (m) daughter's husband".

9. It is to be noticed that these rules, like the corresponding rules for the property of males, are meant to apply only in cases of *intestacy*, so that any woman who has property to leave and wishes to depart from the rules can do so by making a will. In these circumstances, there is little chance of hardship and great gain in simplicity in having uniform rules. Hence our proposal that these rules should be adopted for all the Mitakshara jurisdictions.

10. As regards rule 2, we would point out that according to Vijñaneswara property inherited by a woman is *Stridhana* and follows the same line of devolution as any other description of *Stridhana*. However, as case-law has departed from Vijñaneswara in this respect, we have proposed this rule as a compromise.

11. Rule 3 follows mainly Vijñaneswara's enumeration. The only changes worth mentioning are (i) that we do not propose a separate line of devolution for the *Stridhana* of an unmarried woman nor for that of a woman married in an "unapproved" form nor for the variously-defined kinds of property known as *Sulka* and (ii) that we have added the son-in-law as an heir [*vide* (m) of the list] in accordance with Brihaspati's text (Brihaspati, XXV, 88 and 89), the other heirs mentioned in that text being already included in (h) or (k).

Dayabhaga School.

12. Hitherto we have dealt with *Stridhana* in the Mitakshara schools or sub-schools; we have now to deal with the subject in the Dayabhaga school. Jimutavahana has a different definition of *Stridhana* from Vijñaneswara's and what is more, Jimutavahana unlike Vijñaneswara definitely limits a widow's rights in the property inherited by her from her husband. The line of devolution also is different. If, on these grounds, it is considered absolutely necessary to have entirely different sets of rules for the two schools, we anticipate no great difficulty in drafting separate rules for the Dayabhaga school. But it would be an enormous simplification if the rules we have proposed for the Mitakshara jurisdictions on this subject could be adopted for the whole of India. In this connection we would invite attention to the observations in G. C. Sarkar's Hindu Law, 1940, pages 562 and 564.

GOVERNMENT OF INDIA.
LEGISLATIVE ASSEMBLY DEPARTMENT.

A

BILL

to amend and codify the Hindu Law relating to intestate succession; and Annexure.

(The Honourable Sir S. Sultan Ahmed.)

[To be introduced in the Legislative Assembly.]

A

BILL

to codify the Hindu Law relating to marriage.

WHEREAS it is expedient to amend and codify, in successive stages, the whole of the Hindu Law now in force in British India ;

AND WHEREAS it is now expedient in pursuance of that design to enact a law of marriage for Hindus ;

It is hereby enacted as follows :—

PRELIMINARY.

1. (1) This Act may be called the Hindu Code, Part II Short title, extent and commencement.
(Marriage).

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

(3) It shall come into force on the 1st day of January, 1946.

2. In this Act, unless there is anything repugnant in Interpretation. the subject or context,—

(a) "caste" means one of the four primary *varnas* or castes into which Hindus are divided and does not include any sub-caste ;

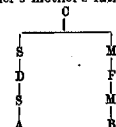
(b) "*gotra*" and "*pravara*" have the same meanings as in the Hindu Law ;

(c) (i) "*sapinda* relationship" with reference to any person extends as far as the fifth generation (inclusive) in the line of ascent through the mother and the seventh (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation ;

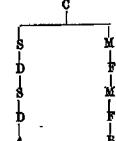
(ii) two persons are said to be "*sapindas*" of each other if one is an ancestor of the other within the limits of *sapinda* relationship, or if they have a common ancestor who is within the limits of *sapinda* relationship with reference to each of them ;

Illustrations.

(i) *A* is the son's daughter's son's daughter of *C*, who is the mother's father's mother's father of *B*. Here *C*, the common ancestor, is the fifth generation from *A* in the father's line and the fifth generation from *B* in the mother's line. *A* and *B* are *sapindas* of each other.



(ii) *A* is the son's daughter's son's daughter's daughter of *C*, who is the father's mother's father's mother's father of *B*. Here *C*, the common ancestor, is the sixth generation from *A* in the mother's line and the sixth from *B* in the father's line. *C* being outside the limits of *sapinda* relationship with reference to *A*, *A* and *B* are not *sapindas* of each other.



(d) two persons are said to be within "the degrees of relationship prohibited by this Act," if they are related by blood to each other lineally, or as brother and sister, or as uncle and niece, or as aunt and nephew.

Explanation.—For the purposes of clauses (c) and (d) relationship includes—

(i) relationship of the half blood, that is, descent from a common ancestor by different wives, as well as of the full blood, that is, descent from a common ancestor by the same wife ;

(ii) illegitimate blood relationship as well as legitimate ;

(iii) relationship in the family of adoption as well as in the family of birth;

and all terms of relationship shall be construed accordingly.

Two forms of
Hindu
Marriage.

3. There shall be two forms of the Hindu marriage, namely :—

- (a) a sacramental marriage;
- (b) a civil marriage.

Sacramental Marriages.

Requisites of a
sacramental
marriage.

4. A sacramental marriage may be solemnized between any two Hindus upon the following conditions, namely :—

- (a) neither party must have a husband or wife living at the time of marriage;
- (b) both the parties must belong to the same caste;
- (c) if the parties are members of a caste having *gotras* and *pravaras*, they must not belong to the same *gotra*, or have a common *pravara*;
- (d) the parties must not be *sapindas* of each other;
- (e) if the bride has not completed her sixteenth year, her guardian in marriage must consent to the marriage.

Ceremonies
essential for
sacramental
marriage.

5. Two ceremonies are essential to the validity of a sacramental marriage, namely :—

- (a) invocation before the sacred fire;
- (b) *saptapadi*, that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire.

The marriage becomes complete and binding when the seventh step is taken, and consummation is not necessary to complete a marriage or make it binding on the parties.

Marriages
according to
custom
deemed to be
valid
sacramental
marriages.

6. Notwithstanding anything contained in sections 4 and 5, a marriage shall be deemed to be a valid sacramental marriage if it is solemnized in accordance with the customs or usages of any locality or community to which both the parties belong, or the rules of any school of personal law which they both follow, whether such community be a caste, sub-caste, sect, tribe, or other group :

Provided that the condition specified in clause (a) of section 4 is fulfilled and that the parties are not within the degrees of relationship prohibited by this Act.

Sacramental
marriages not
to be deemed
to be invalid
in certain
cases.

7. No sacramental marriage solemnized after the commencement of this Act shall, after it has been completed, be deemed to be, or ever to have been, invalid merely by reason of one or more of the following causes, namely :—

- (a) that the parties to the marriage do not, or did not, belong to the same caste;
- (b) that the parties belonged to the same *gotra* or had a common *pravara*; or
- (c) unless there was force or fraud, that the consent of the bride's guardian in marriage to the marriage was not obtained.

Civil Marriages.

Requisites of a
civil marriage.

8. A civil marriage may be contracted under this Act by any person professing the Hindu religion with any other person professing the Hindu, Buddhist, Sikh, or Jaina religion upon the following conditions, namely :—

- (1) neither party must, at the time of the marriage, have a husband or wife living;
- (2) the man must have completed his eighteenth year, and the woman her fourteenth year, according to the Gregorian calendar;

(3) each party must, if he or she has not completed his or her twenty-first year, have obtained the consent of his or her guardian in marriage to the marriage;

(4) the parties must not be within the degrees of relationship prohibited by this Act.

9. (1) The Provincial Government may appoint one or more Registrars under this Act for any portion of the Province. ^{Marriage Registrars.}

(2) The officer so appointed shall be called "Registrar of Hindu Civil Marriages" and is hereinafter referred to as "the Registrar".

(3) The portion of territory for which any such officer is appointed is hereinafter referred to as his district.

10. (1) When a civil marriage is intended to be contracted under this Act, one of the parties must give notice of marriage to the Registrar before whom it is to be contracted. ^{Registrar.}

(2) The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given.

(3) Such notice may be in the form given in the First Schedule.

11. The Registrar shall file all notices given under sub-section (1) of section 10 and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book furnished to him for that purpose by the Provincial Government, to be called the "Hindu Civil Marriages Notice Book", and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same. ^{Notice Book.}

12. (1) Fourteen days after notice of an intended marriage has been given under section 10, such marriage may be contracted, unless it has been previously objected to in the manner hereinafter provided in this section. ^{Objection to marriage.}

(2) Any person may, before the expiration of fourteen days from the giving of the notice of an intended marriage, object to such marriage on the ground that it would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) and (4) of section 8.

(3) The nature of the objection made shall be recorded in writing by the Registrar in the Hindu Civil Marriages Notice Book and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him or on his behalf.

13. (1) If an objection is made under section 12 to an intended marriage the Registrar shall not allow the marriage to be contracted until the lapse of fourteen days from the receipt of such objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, until the lapse of fourteen days from the opening of such Court. ^{Procedure of Registrar on receipt of objection.}

(2) The person objecting to the intended marriage may file a suit in any Civil Court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree, declaring that such marriage would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) and (4) of section 8, and the officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed. ^{Objector may file suit.}

(3) If the certificate referred to in sub-section (2) is lodged with the Registrar within fourteen days from the receipt by him of the objection, if there is a Court of competent jurisdiction open at the time, or, if there is no such Court open at the time, within fourteen days of the opening of such Court, the marriage shall not be contracted till the decision of such Court has been given and the period allowed by law for appeals from such decision has elapsed; or, if there is an appeal from such decision, till the decision of the Appellate Court has been given. ^{Certificate of filing of suit to be lodged with Registrar.}

(4) If such certificate is not lodged in the manner and within the period laid down in sub-section (3) or if the decision of the Court is that such marriage would not contravene any of the conditions prescribed in clauses (1), (2), (3) and (4) of section 8, such marriage may be contracted.

(5) If the decision of the Court is that the marriage in question would contravene any of the conditions prescribed in clauses (1), (2), (3) and (4) of section 8, the marriage shall not be contracted.

Court may
fine when
objection not
reasonable.

14. Any Court in which any such suit as is referred to in sub-section (2) of section 13 is filed, may, if it appears to it that the objection was not reasonable and *bona fide*, inflict a fine not exceeding one thousand rupees on the person objecting, and award it, or any part of it, to the parties to the intended marriage.

Declaration by
parties and
witnesses.

15. Before the marriage is contracted the parties and three witnesses shall, in the presence of the Registrar, sign a declaration in the form contained in the Second Schedule. If either party has not completed his or her twenty-first year, the declaration shall also be signed by his or her guardian, except in the case of a widow, and, in every case, it shall be countersigned by the Registrar.

Marriage how
to be
contracted.

16. The marriage shall be contracted in the presence of the Registrar and of the three witnesses who signed the declaration. The contracting may be done in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, "I, (A), take thee, (B), to be my lawful wife (or husband)".

Place where
marriage may
be contracted.

17. The marriage may be contracted either at the office of the Registrar or at such other place, within reasonable distance of the office of the Registrar, as the parties desire :

Provided that the Provincial Government may prescribe the conditions under which marriages may be contracted at places other than the Registrar's office, and the additional fees to be paid thereupon.

Certificate of
marriage.

18. (1) When the marriage has been contracted, the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose and to be called the "Hindu Civil Marriages Certificate Book" in the form given in the Third Schedule, and such certificate shall be signed by the parties to the marriage and the three witnesses.

(2) The Hindu Civil Marriages Certificate Book shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall on application be given by the Registrar on the payment to him by the applicant of such fees as may be prescribed by the Provincial Government.

Transmission
of certified
copies of
entries in
marriage
certificate
book to the
Registrar
General of
Births, Deaths
and Marriages.

19. The Registrar shall send to the Registrar General of Births, Deaths and Marriages for the territories within which his district is situate, at such intervals as may be prescribed by the Provincial Government, a true copy certified by him, in such form as the Provincial Government may prescribe, of all entries made by him in the Hindu Civil Marriages Certificate Book since the last of such intervals.

Fees.

20. The Provincial Government shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him under this Act.

The Registrar may, if he thinks fit, demand payment of any such fee before performing any duty in respect of which it is payable.

Indian Divorce
Act to apply.

21. The Indian Divorce Act shall apply to all civil IV of 1909. marriages contracted under this Act, and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the

ground that it contravenes some one or more of the conditions prescribed in clauses (1), (2), (3) and (4) of section 8 of this Act.

22. Every person making, signing or attesting any declaration or certificate required under this Act, containing a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of the offence described in section 199 of the Indian Penal Code. Penalty for signing declarations or certificates containing false statements.

XIV of 1860.

General Provisions.

23. (1) The persons entitled to be guardians in marriage— Guardianship in marriage.

- (a) of a Hindu girl who has not completed her sixteenth year, for the purposes of her sacramental marriage,
- (b) of a Hindu (other than a widow) who has not completed his or her twenty-first year, for the purposes of his or her civil marriage under this Act

are the following, in the order given, namely :—

- (1) the father ;
- (2) the mother ;
- (3) the paternal grandfather ;
- (4) the brother ;
- (5) any other agnatic male relation ;
- (6) the maternal grandfather ;
- (7) the maternal uncle.

(2) Where any person entitled to be the guardian in marriage under sub-section (1) refuses, or is, by reason of absence, desertion, disability or other cause, unable or unfit, to act as such, the person next in order shall be entitled to be the guardian.

(3) Where there are two or more persons equally entitled to guardianship under the foregoing provisions, it shall be in the discretion of the Court having jurisdiction under the Guardians and Wards Act, 1890, to decide which of them shall be regarded as the guardian. VIII of 1890.

(4) Nothing in this Act shall affect the jurisdiction of a Court to prohibit by injunction an intended marriage arranged by the guardian, if in the interests of the minor the Court thinks fit to do so.

24. Any marriage between two persons, one professing the Hindu religion and the other the Hindu, Buddhist, Sikh, or Jaina religion, solemnized or contracted after the commencement of this Act is void, if at the date of such marriage either party had a husband or wife living; and the provisions of sections 494 and 495 of the Indian Penal Code shall apply accordingly. Punishment of bigamy.

XLV of 1860.

25. The Provincial Government may, by notification in the official Gazette, make rules to regulate any matter which is to be or may be prescribed under this Act. Power to make rules.

26. The Special Marriage Act, 1872, shall be amended in the manner specified in the Fourth Schedule. Enactment amended.

III of 1872.

FIRST SCHEDULE.

(See section 10.)

Notice of Marriage.

To _____, a Registrar of Hindu Civil
Marriages under Act _____ of 1942 for the
District.

I hereby give you notice that a civil marriage under Act
of 1942 is intended to be had, within three calendar months from the date
hereof, between me and the other party herein named and described (that is
to say) :—

Names.	Condition.	Rank or Profession.	Age.	Dwelling place.	Length of Residence.
A B . . .	{ Unmarried, Widower .	{ Land- owner.	Of full age.	..	23 days.
C D . . .	{ Spinster, Widow .	{ ..	Minor	..	..

Witness my hand, this _____ day of _____, 19 ____
(Signed) A B.

SECOND SCHEDULE.

(See section 15.)

Declaration to be made by the Bridegroom.

I, A B, hereby declare as follows :—

1. I am at the present time unmarried :
 2. I profess the Hindu, the Buddhist, the Sikh, or the Jaina religion,
(as the case may be) :
 3. I have completed my eighteenth year :
 4. I am not related to C D (the bride) within the degrees of relationship
prohibited by Act _____ of 1942 :
- [And when the bridegroom has not completed his twenty-first year :
5. The consent of my father (or other guardian, as the case may be)
has been given to a marriage between myself and C D, and has
not been revoked :]
 6. I am aware that, if any statement in this declaration is false, and
if in making such statement I either know or believe it to be
false, or do not believe it to be true, I am liable to imprisonment,
and also to fine.

(Signed) A B (the bridegroom).

Declaration to be made by the Bride.

I, C D, hereby declare as follows :—

1. I am at the present time unmarried :
 2. I profess the Hindu, the Buddhist, the Sikh, or the Jaina religion
(as the case may be) :
 3. I have completed my fourteenth year :
 4. I am not related to A B (the bridegroom) within the degrees of re-
lationship prohibited by Act _____ of 1942 :
- [And when the bride has not completed her twenty-first year, unless
she is a widow :
5. The consent of M N, my father (or other guardian, as the case may
be), has been given to a marriage between myself and A B and
has not been revoked :]

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) C D (the bride).

Signed in our presence by the above-named A B and C D:

G H }
I J } (three witnesses).
K L }

[And when the bridegroom or bride has not completed his or her twenty-first year, except in the case of a widow :

Signed in my presence and with my consent by the above-named A B and C D:

M N, the father (or guardian) of the above-named A B (or C D) (as the case may be)]

(Countersigned) E F,

Registrar of Hindu Civil Marriages under Act of 1942
for the District of

Dated the day of 19

THIRD SCHEDULE.

(See section 18.)

Registrar's Certificate.

I, E F, certify that, on the of 19 A B and C D appeared before me, and that each of them in my presence and in the presence of three credible witnesses, whose names are signed hereunder, made the declarations required by Act of 1942 and that a marriage under the said Act was contracted between them in my presence.

(Signed) E F,

Registrar of Hindu Civil Marriages
under Act of 1942 for the
District of

(Signed) A B,
C D.

G H }
I J } (three witnesses).
K L }

Dated the day of 19

FOURTH SCHEDULE.

(See section 26.)

No. and Year.	Title.	Amendment.
Act III of 1872	The Special Marriage Act, 1872.	The word "Hindu", where it occurs for the second time in section 2, and the whole of sections 22 to 26, both inclusive, shall be omitted.

STATEMENT OF OBJECTS AND REASONS.

In consequence of certain difficulties of interpretation arising out of the Hindu Women's Rights to Property Act, 1937, and the Act of 1938 amending that Act, the Central Government appointed, in January 1941, a Committee (sometimes referred to as the Hindu Law Committee) to examine these Acts and certain Bills introduced or proposed for introduction in the Indian Legislature to amend them. The Committee made a detailed examination of the subject after eliciting public opinion by issuing a questionnaire. In June 1941 they submitted a report unanimously recommending that the Hindu Law should be codified in successive stages, beginning with the law of succession, to be followed by the law of marriage. The first Bill on the Hindu Law of intestate succession has already been prepared. The present Bill containing the proposals of the Committee on the law of marriage completes the second stage in the proposed codification.

The Explanatory Note which follows was drawn up by the Committee and explains the main principles of the Bill and the provisions of the various clauses.

NEW DELHI,
The 27th May 1942.

S. SULTAN AHMAD.

EXPLANATORY NOTE.

This Bill contains only the first chapter of a comprehensive law of marriage, dealing as it does mainly with the subject of the celebration of marriage. The topics of the rights and duties arising out of marriage, of nullity, separate residence and maintenance, and divorce, and so forth will be dealt with in subsequent chapters which cannot be properly drafted until we know whether the provisions of the first chapter are acceptable. Thus, to mention only one instance, if monogamy (which this Bill proposes) commends itself to public opinion, as we hope it will, no provision will be necessary for separate residence and maintenance for a superseded wife in the event of her husband marrying a second time. But, otherwise, such a provision will be necessary. We should, therefore, like the provisions of the chapter which we have drafted to be circulated for public opinion before we undertake the drafting of the other chapters.

The broad plan of the Bill is to distinguish two forms of the Hindu marriage: the sacramental marriage and the civil marriage. These already exist, although not perhaps under these names. Briefly, the sacramental marriage is the marriage solemnized according to Hindu rites and the civil marriage is the marriage contracted before a Registrar in the manner laid down in the Special Marriage Act, 1872.

As regards the sacramental marriage, the Bill makes a change in the traditional law in one very important respect, namely, that it proposes to abolish polygamy. But although this is a change from the law as administered at present, it is in truth a restoration of the ancient law at its best. The well-known text of Manu (IX, 107) enjoins mutual fidelity until death as the highest duty of husband and wife; and indeed, in practice, the vast majority of Hindu marriages are monogamous. The eminent Madras lawyer responsible for the latest edition of Mayne's Hindu Law had occasion to write on this subject a few months before his death. While deprecating any violent break with the past, he observed: "The time has certainly come for the Hindu society to discard polygamy as a rule of Hindu Law. According to 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 or when she consented, that she could be superseded and a second marriage could be validly contracted. The right to take more than one wife in former days required legal justification; but the present rule of Hindu Law that a husband is not restricted as to the number of his wives and may marry again without the wife's consent or any justification, is far worse. It is no longer in accordance with modern enlightened opinion as to the status of women or the standard of justice that should govern marital relations, that we should have in this matter one law for men and another for women. In these days when equality of women must be recognised, at least in this connection, it would be folly to postpone this reform. Today, women, especially educated women, are deeply discontented with the present law and I have no doubt that many educated men also share their views in this matter. Marriages contracted between Hindus under the Special Marriage Act are monogamous and surprisingly enough the marriages of those who are governed by the

Marumakkathayam Law of Malabar have become monogamous by a recent statute, while the general Hindu society still clings to polygamy. The reform is to my mind one of the most urgent needs and does not require elaborate justification." (The Madras Law Journal, Golden Jubilee Number, 1941, pp. 13, 14).

In answer to the questionnaire which we issued last year, the majority of our correspondents declared themselves in favour of the abolition of polygamy.

We ourselves strongly feel that no law of marriage can be looked upon as satisfactory unless it does justice to the mothers of the race.

We have, therefore, made monogamy obligatory in the Bill even as regards sacramental marriages.

As regards the civil marriage, we have retained most of the provisions of the Special Marriage Act, but have attempted to remove one of its most glaring anomalies. That Act, as amended in 1923, provides, *inter alia*, (a) for the marriage of persons neither of whom professes the Hindu religion, and (b) for the marriage of persons both of whom profess the Hindu religion. The Courts have held that when Brahmans marry under provision (a) with a declaration disclaiming the Hindu religion, they are none the less governed in matters of succession by the Hindu Law, the declaration being regarded as merely for the purposes of marriage; but when Hindus marry under provision (b) of the Act with a declaration professing the Hindu religion, they are, by virtue of section 24, governed in matters of succession not by the Hindu Law but by the Indian Succession Act. The Bill seeks to remove this anomaly by not reproducing the provisions of the aforesaid section 24.

We have anxiously considered the question of inter-caste and *sagotra* marriages. Even from the point of view of the orthodox who believe in caste and *gotra* restrictions, there is a problem to be solved. The position of the girl who has, by the mistake or fault of her father or other guardian, been married according to Hindu rites to a husband of the same *gotra* or of a different caste imperatively calls for some remedy. We cannot do better in this connection than quote Sir Gurudas Banerjee: "The position of the woman whose marriage is void *ab initio* seems to be singularly unfortunate under the Hindu Law. The causes which render a marriage void *ab initio* are, first, difference of caste in the contracting parties; and second, identity of *gotra* or relationship within the prohibited degrees. In the former case according to some authorities if the error is discovered before *garbhadhana* the girl is to perform expiation and may be married again; but after *garbhadhana*, she is no longer eligible for re-marriage and if of a lower caste she is liable to be repudiated by her husband, though she is entitled to be maintained and her issue would be considered illegitimate. In the latter case, on the error being discovered, the husband is directed to perform penance and repudiate the wife; but he is required to support her. Her re-marriage, however, is nowhere allowed, even though the repudiation takes place before consummation. The doctrine of the Hindu Law is that the girl is blemished by the mere ceremony of marriage, and if married again, the reproach of being a twice-married woman (*punarbhū*) would attach to her, even if she be a *virgo intacta*. This is hardly just. Even the virgin widow has one consolation for her hard lot, that it is due to a cause which no human foresight could prevent. But the condition of the repudiated virgin wife, who is condemned to a life of virtual widowhood for the error of a reckless guardian, is truly pitiable." (Sir Gurudas Banerjee's Hindu Law of Marriage and Stridhana, 4th edition, p. 222).

The solution that we have proposed in the Bill is to extend the *factum valet* rule to such marriages. That is to say, their validity is not to be called in question after they have been completed. This rule is constantly applied by the Courts to cure various infractions of the strict Hindu Law. We shall quote a few instances from Sir Gurudas Banerjee's Lectures:

- (1) A text of the *Matsya Sukta*, cited in the *Udvahatattva*, says, "The marriage with a girl of equal *pravaras* or with a daughter of a pupil, or of the *guru* who instructs in the *Vedas* is prohibited." All three prohibitions are in the same terms, but as regards the last two, Banerjee thinks it very doubtful whether a Court would consider them as anything more than moral injunctions. In other words, Courts would apply the doctrine of *factum valet* to validate a marriage with the daughter of a pupil or a preceptor, once it has actually taken place.
- (2) Again, in the very verse in which Yajnyavalkya enjoins marriage with a girl of a different *gotra* and *pravara*, he also lays down, in the same terms, that she should be younger than the husband and shorter in stature, and should have a brother living. But it can hardly be expected that the violation of these other injunctions would nullify a marriage already celebrated.

- (3) A man is likewise prohibited to marry a girl who bears the same name as his mother. This rule is so imperative that if one inadvertently marries in violation of it, he is required to forsake the wife entirely and to perform penance. But it is doubtful whether, after marriage has taken place, a Court would regard this rule as imperative.

Thus in all these cases, Courts would apply the doctrine of *factum valet* to cure the infraction, once the prohibited marriage has actually been celebrated. We propose to extend the doctrine to marriages which (it may be by the inadvertence or recklessness of the guardians concerned) have been celebrated between parties of different castes or of the same *gotra*. Such marriages, in the sacramental form, are not likely to be many, but if they do take place, the wife would be in an impossible position unless they are validated. Merely to allow her to marry again would hardly be an adequate remedy, for no one is likely to want to marry her in the circumstances. We have accordingly provided that the validity of such marriages is not to be questioned after they have been completed although in proper cases they may be prohibited by injunction before they are performed.

These are the main principles of the Bill. We shall now proceed to notice in detail the more important clauses.

Clause 2.—(a) The definition of "caste" must be read with clause 4 (b) which lays down that for a sacramental marriage both the parties must belong to the same caste. It is now settled law that a marriage between persons belonging to different subdivisions of the same primary caste is not invalid. Hence the definition of "caste" as not including any sub-caste.

(b) We have not attempted to translate the words "*gotra*" and "*pravara*": indeed, as regards *pravara*, G. C. Sarkar in his well-known book remarks that "the word cannot be logically defined, as it will violate the fundamental rules of definition." (G. C. Sarkar's Hindu Law, 8th edition, 1940, p. 69). *Gotras* are exogamous groups named after certain *rishis* who are reputed to have founded them. Each *gotra* is connected not only with the name of its founder-*rishi*, but also with the names of certain associate-*rishis* who are called the *pravaras* of the *gotra*. (*Pravarastu gotrapravartakasya muner vydvartako munigrah*). It is thus possible for two different *gotras* to have a common *pravara* or associate-*rishi*. It will be noticed from clause 4 (c) that the parties to a sacramental marriage must not belong to the same *gotra*; nor, even though they belong to different *gotras*, must they have a common *pravara*.

(c) This definition of "*sapinda* relationship" follows the texts of Yajñavalkya, Vishnu, Narada and Vasishtha. The relationship is necessarily mutual: A cannot be a *sapinda* of B without B being a *sapinda* of A. The mode of computing degrees is the Hindu mode according to which the *propositus* is the first generation, his mother or father the second, and so on upwards. It is not quite clear from the texts or the commentaries whether the computation, after the mother or the father, is to be restricted to male ancestors only or whether it extends to female ancestors as well. G. C. Sarkar appears to think that there is no reason to restrict it only to male ancestors (*loc. cit.*, pp. 78, 106). The illustrations under the definition follow this view.

(d) This definition has been found necessary because there is the greatest diversity amongst Hindus in different parts of India as to what are the prohibited degrees of relationship for marriage. The usual rule is that the parties must not be *sapindas* of each other. Not only, however, has the *sapinda* relationship been interpreted in different ways by different authors, but the rule itself appears to be subject to modification by custom. But obviously some kind of limit has to be prescribed to prevent incestuous marriages taking place under the guise of custom. We have not thought it necessary to go so far as to prohibit marriages between first cousins. There is a Vedic text pointing to the prevalence of such marriages; there are also classical examples of such marriages and they are not infrequent even to-day in the south of India and in Bihar. (See G. C. Sarkar's Hindu Law, 8th edition, 1940, pp. 104, 105.) In these circumstances, we have drawn the line as in this definition; it happens to coincide with the line drawn in most systems of law in other parts of the world.

Clause 4.—Sub-clause (a) introduces monogamy.

Sub-clause (a) requires that the parties must not be *sapindas* of each other [as defined in clause 2 (c)]; but it will be noticed from clause 6 that a relaxation of this condition is permitted where there is a custom or usage modifying the rule. In practice, in most parts of India, *sapinda* relationship for purposes of marriage is limited to three generations on the mother's side and five on the father's side and this is permissible under the Bill.

Sub-clause (e) should be read with clause 24 which lays down the order of guardianship for marriage. Under the Sarda Act, the bridegroom cannot be less than eighteen years of age.

Clause 5.—Describes the two ceremonies which are generally regarded as essential to a sacramental marriage. Here again, it will be seen that clause 6 permits a relaxation of the general rule in face of a local custom or special usage.

Clause 6.—The last part of the proviso to this clause is intended to prevent marriages abhorrent to ordinary sentiment, such as between uncle and niece.

Clause 7.—Is meant to validate, for reasons already explained, certain marriages after completion. So far as marriages without the requisite consent are concerned, Courts already apply the doctrine of *factum valet*.

Clauses 8 to 22.—Reproduce substantially the existing provisions of the Special Marriage Act. We have already referred to one of the anomalies in this Act; there also appears to be an omission in section 16 as compared with section 15 of the Act. It will be noticed from the last part of section 15 that if a person is already married at the time of his contracting a civil marriage under the Act, the civil marriage is void. But if after the civil marriage, he contracts a second marriage, the second marriage is apparently not void, although he may be prosecuted for bigamy. The words "the marriage so solemnized is void" which occur at the end of section 15 do not find place in section 16. We have now combined these two sections into clause 24 of the Bill.

Clause 23.—The order of guardianship for purposes of marriage is, in the Mitakshara jurisdictions, (1) the father, (2) the father's father, (3) the brother, (4) the *sakulya*, and (5) the mother. In the Dayabhaga jurisdictions the order is the same up to No. 4 inclusive, but thereafter it is, (5) the mother's father, (6) the mother's brother, and (7) the mother. The trend of recent judicial decisions has, however, been to give the mother a position next only to that of the father for the purpose of selecting a proper husband for her daughter, the *smṛiti* texts being distinguished as relating merely to the act of giving away the bride after the selection. Hence the order proposed in the Bill. The other provisions of this clause are not meant to make any change in the existing law, but merely to state it with precision.

Clause 26.—This clause repeals the amendments made in 1923 in the Special Marriage Act, as necessary provision is now made in the Bill for the civil marriage of Hindus with Hindus, Buddhists, Sikhs or Jains. It is a matter for consideration whether any of the provisions of sections 22 to 26 of that Act should be incorporated in the Bill. We have already explained why we have not reproduced section 24. As for the other sections, it is worth reconsidering whether, *e.g.*, a Hindu marrying a Hindu should be treated as an outcast merely because he has entered into a civil marriage rather than a sacramental marriage. For the present we have not thought it necessary to repeat in the Bill any of the provisions of sections 22—26 of the Special Marriage Act.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

A
BILL

to codify the Hindu Law relating to marriage, and Annexure.

(The Honourable Sir S. Sultan Ahmed.)

GOVERNMENT OF INDIA
LEGISLATIVE DEPARTMENT

PAPER No. I — (II)

OPINIONS ON

THE HINDU CODE, PART I (Intestate Succession)

(Published in the Gazette of India on the 30th May, 1942, under rule 18 of the Indian Legislative Rule)

Opinions Nos. 1—12

MADRAS

No. 1.—From the Joint Secretary to the Government of Madras, Home Department, No. 3903, dated the 21st October, 1942, and enclosures

BIHAR

No. 2.—From the Judicial Secretary to the Government of Bihar, No. 2132/A-35/42-J., dated the 20th October, 1942, and enclosures

UNITED PROVINCES

No. 3.—From the Secretary to the Government of the United Provinces, Judicial (Civil) Department, No. 1995/VIII-334-1942, dated the 15th October, 1942, and enclosures

PUNJAB

No. 4.—From the Home Secretary to the Government of the Punjab, No. 5262-J.-42/45866, dated the 24th August, 1942, and enclosures

No. 5.—From the Home Secretary to the Government of the Punjab, No. 6429-J.-42/54075, dated the 7th October, 1942, and enclosures

CENTRAL PROVINCES AND BERAR

No. 6.—From the Secretary to the Government of the Central Provinces and Berar, Judicial Department, No. 2088-1760/XIX, dated the 17th September, 1942, and enclosures

ASSAM

No. 7.—From the Secretary to the Government of Assam, Judicial and General Department, No. J.J.D.-160/42/153, dated the 15th September, 1942, and enclosures

NORTH-WEST FRONTIER PROVINCE

No. 8.—From the Home Secretary to the Government of N.-W. F. P., No. 27002-H.J./1/1, dated the 25th September, 1942, and enclosures

SIND

No. 9.—From the Dy. Secretary to the Government of Sind, Home Department, No. S-22/20-H/42, dated the 17th October, 1942, and enclosures

AJMER-MERWARA

No. 10.—From the Hon'ble the Chief Commissioner, Ajmer-Merwara, No. G/19-1, dated the 15th September, 1942, and enclosures

COORG

No. 11.—From the Chief Commissioner of Coorg, No. A-1-2068/42, dated the 7th September, 1942

PANTH-PIPLODA

No. 12.—From the Chief Commissioner, Panthi Piploda, No. 3439-B., dated the 28th July, 1942

No. 1.—MADRAS.

From the Joint Secretary to Government, Home Department, to the Secretary to the Government of India, Legislative Department, New Delhi, Ms. No. 3903, dated Madras, the 21st October 1942.

SUBJECT.—Bills—Central—The Hindu Code, Part I (Intestate Succession) and the Hindu Code, Part II (Marriage)—Amendment—Opinion.

I am directed to forward in duplicate copies of opinions of the Hon'ble the judges of the High Court, selected officers, and other persons and associations who were consulted, on the provisions of the Bills, and to say that the Government of Madras support the Bills and agree with the views expressed by the Hon'ble the judges of the High Court on the provisions of the Bills.

2. The Bills, with the Statements of Objects and Reasons, were published in the *Port. St. George Gazette* in the following languages on the dates noted against each.

English	23-8-1942
Tamil, Telugu, Malayalam and	
Kannada	4-8-1942

OPINIONS.

THE ADVOCATES' ASSOCIATION, MADRAS.

The general principles underlying the bill are acceptable. At a time when fissiparous tendencies are manifesting themselves in several directions a measure seeking to provide a uniform code of rules applicable to all Hindus alike is certainly welcome. The provision for widows—where there are more than one taking cumulatively a share, the recognition of the Daughter's right to share even if there is son or widow or both, the removal of the pre-deceased son's widow from the line of heirs to her father-in-law, the abolition of discrimination among daughters, the cutting off of the illegitimate son from the circle of heirs, the abolition of the Doctrine of "Hindu Woman's Estate" the placing of the adopted son on a par with the Aprasa son are all on the right line.

The definition of "Cognates" in S. 2 (1) (b) implies the presence of at least one male link at some point between the

parties. This will cut out, for instance, the son of a woman's second marriage from inheriting to her son first marriage and *vice versa*. Such a result could not have been intended. Hence in S. 2 (1) (b) after the words "Wholly" the words "or otherwise" may be added.

The definition of the term "Hindu" in S. 2 (1) (e) is clear, as it is, any person now governed by the Hindu Code of Intestate Succession would come within its purview and cannot be that one to whom the law applies not *proprio* but by way of custom is intended to come in. It is directed to add to S. 2 (1) (e) at the end the words "but not those whose such law applies by way of custom only."

In S. 2 (1) (f) defining "Stridhana, after the words "gift," the words "from a relative or stranger before or after marriage" seem to be unnecessary and may be omitted. S. 2 (2) (d) (ii) states that in the case of a Dnyamash son, the natural tie continues side by side with the tie by adoption and suggests that his descendants also will for rights in both families. There is no warrant for the descendants such large rights and hence it should be clear that their rights will be confined only to the father's father's birth.

S. 7 (b) abrogates the preference of an undivided son divided son. There is no reason why a son who delin takes himself off from the family should yet enjoy the rights as one who sails with the family. Nor will it be to an after born son that a brother who has already shared should again come in for a slice of the paternal share. The abrogation of the preference should hence be dropped.

S. 7 (c) states that sons, sons of predeceased sons, etc. take *per stripes*. It is not clear whether sons of existing etc., are intended to be excluded. There is no reason to present rule by which property inherited by a person in father, grandfather, or great-grandfather is ancestral party in his hands with reference to his descendants, not continue. It may be made clear that that principle intended to be affected.

Failure to include heirs like the son's daughter's son daughter's daughter, daughter's son's son, daughter's daughter, daughter's daughter's son and daughter's daughter's daughter among the enumerated heirs, and ing them to come in only as *agnates* is not justifiable particularly of the inclusion of persons like this

daughter's son and mother's sister's son in that group. We would strongly urge the inclusion of these members in that order in class I of the enumerated heirs after the daughter's daughter. Likewise we would suggest that Class V should take before Class IV of the enumerated heirs.

There is no reason for taking the father's sister, father's father's sister and mother's sister out of the category of enumerated heirs. The original draft proposals had placed them in that category and that arrangement was also logical. We would suggest their restoration to their original places.

The prescription of a different line of succession to property inherited by a widow from her other properties, is probably based on the fact that she is not an "agnate" of her husband but is affiliated into that family. Logically the same principle should operate in regard to property inherited by the mother, grandmother, etc. It is desirable that any departure from what is laid down as the normal rule of succession should rest on principle and not be arbitrary.

With the concession to the daughter of the right of simultaneous succession along with the son or widow or both to the paternal property, the reason giving preference to the daughter in the matter of Stridhana, succession has ceased to exist. There is thus no justification for retaining the above rule of preference. S. 13 (b) may therefore be amended and in entry 1 the words "son, son's son" may be inserted after the word "daughter" and the other entries as well as their numbering may be revised suitably.

Rights of the illegitimate children of fallen women, dancing girls, etc., should not be taken away and it must be made clear that illegitimacy will not be a bar to succession in such cases.

There is no meaning in retaining the rule in S. 10 in the present state of Hindu Society. In any event the rule is too vague and requires clarification as to who an Acharya or disciple is, to be workable.

Special rules as to Mutts should be reserved. Words in section 11 (3) like "in the same hermitage" would seem to be not only an anachronism but positively misleading.

Sir P. S. Sivaswamy Aiyer, Bangalore.

"Clause 2 (h).—I do not think it is necessary to define the term "Dasiputra" in as much as he has been excluded from succession. According to well-understood rules of construction terms denoting relationship refer only to legitimate relations.

Clause 5 (1).—I welcome the inclusion of the daughter among the simultaneous heirs.

Clause 7 (b).—I think it is unfair to treat the divided son on the same footing as an undivided son and give him a share along with the latter.

Clause 10.—This may be omitted. I do not think that it is desirable or necessary to provide for the succession of the Acharya or preceptor. Shishya or disciple and the Sabramhachari or the fellow student. Whatever reasons there might have been for these rules in very olden days, there is none now, except perhaps among the Dwijas or twice-born classes. The use of these terms in the case of Shudras and persons not belonging to the twice-born or Dwija classes, is absurd. The absurdity is especially apparent in the case of the term Sabramhachari. These persons have no moral claim to any part of the property of the deceased. The proper course is to provide for the escheat of the property of the deceased to the Crown.

Clause 11 (3).—The case of a Naisthika Bramhachari is very rare. I knew of only one such person and he, after many years of celibacy, became a married man or Grihastha. I doubt very much whether such a person can be regarded as having made a complete and final renunciation. Yatis or Sanyasins are common enough. A Hermit or Vanaprastha very often leads a married life though he retires to a forest to reclude himself from the world and devotes his life to spiritual contemplation, culture and progress. It is only a Sanyasin that is generally recognised as having made an irrevocable renunciation of the world. But there are cases in which a Sanyasin acquires and holds property and it may be necessary to provide for the devolution to such after acquired property. It would not be right to treat anything which may be left by an ascetic or Sanyasin, as *Res Nullius* which may be lawfully taken by any one who finds it. Nor would it be correct to hold that a Sanyasin can be robbed with impunity. The most proper provision in such cases will be to lay down that his property shall escheat to the Crown except in cases where he is a member of a religious foundation, brotherhood or organization. In this case the custom of the institution in regard to the devolution of the property should be followed.

Clause 13.—The term "Table Property" is unintelligible. This is the first time that I have come across this expression.

Clause 11 (3) (b).—The Hindu Law very often laid down rules of a vague, indeterminate and impractical character, like, for example, the reference to virtuous disciple under this Sub-Clause. These terms are very difficult to define and apply precisely who is to determine whether a person is virtuous or not.

Clause 17.—The provision for the descendants of a valid marriage contracted outside one's caste especially when it is of the Prathiloma character, i.e., when a man of inferior caste contracts a marriage with a woman of a higher caste, may meet with disapproval. But, if such a marriage is treated as legally valid, the concession of the right of succession cannot be objected to.

Clause 18.—This is badly drafted. It speaks of the unchastity of the widow during the "life time" of her husband. During his life time she was a wife and not a widow. The meaning of the Clause is clear enough. But it may be more accurately expressed. I may perhaps suggest the following language. "The unchastity of a woman after her marriage and during her husband's life time, shall not be a ground of disqualification for inheritance to him unless" (here insert Sub-Clauses A and B).

In conclusion I should like to express my high appreciation of the many improvements which have been made by the Bill in the Hindu Law of Succession and I would refer *inter alia* to (1) the abolition of woman's limited estate, (2) the inclusion of the daughter among the simultaneous heirs, and (3) abolition of joint tenancy under clause 21.

The Chairman, Advisory Board of Supervision, Madras
Seva Sadan.

* * the women members of the staff are of the opinion that the provisions in the will relating to women are satisfactory and they have, therefore, no suggestion to make either to amend or alter any of the said provisions.

Sir V. Ramesam.

When the Committee presided by Sir B. Narasinga Rao was considering the question of codification of the Hindu Law of Succession they were constantly in communication with me and to every communication made by them I sent a reply, promptly and I am glad to observe that some of my suggestions have been adopted.

But the suggestion in S. 5 and 7 (d) providing for simultaneous succession of daughters along with sons giving them half the share of a son was not then circulated to me and it is now newly introduced into the Bill. As an ideal I have no objection to the proposed method provided the social conditions and habits of people are correspondingly altered in a suitable manner I may perhaps make myself a little clearer. At present the custom of extracting a bridegroom price (Varikatanam) according to which the father of a girl has practically to purchase a bridegroom by paying a very high price is very prevalent in Southern India. It is curious that no such custom obtains in Muhammadans. Among them, a heavy *dower* payable (not immediately but on demand) to the bride is generally fixed. Among the Hindus the custom of bridegroom price acts so oppressively that many families are ruined by one or two daughters' marriages. In ordinary middle class families I know cases where the amount has gone up to Rs. 25,000. So long as such a custom prevails it is unfair to give half share to the daughter, but I am in favour of the ideal being kept up.

At present I suggest that the daughter may get a share, one-fourth of that of a son. This is in accordance with the rule laid down in the *Smrutichandrika*—an ancient authority prevailing in Southern India. As the other objectionable custom gradually falls into disuse the share may be raised to half.

There is only another remark I wished to make. This provision should not be allowed to come into force immediately. But some period (say ten or fifteen years) should be fixed at the end of which the new provision should come into operation so that families may adjust themselves to altered conditions. At present there are large number of families in which daughters are allowed to be born in the belief that after their marriages they are not a substantial burden on the family property. To allow the provision to immediately operate will work hardship. If the provision comes only after a certain time I hope the people will learn the practice of birth control or other means for diminishing the number of daughters or children generally.

As to the provision giving to women absolute rights over inherited property contained in S. 12 taken with 2.1 (i), I have already expressed the opinion in my letters to the Committee that, while the existing restrictions on women's rights in favour of remote reversioners are undesirable, in the present cultural condition of Hindu women (at least in Southern India which I know) it is desirable to continue the restriction in favour of very near reversioners in whom the deceased may be supposed very much interested such as daughter's sons, brothers, brother's sons and grandsons. I suggested this as a compromise between two opposing schools of thought. I still stick to this opinion.

The Women's Indian Association, Madras

The Women's Indian Association have very great pleasure in supporting *

* the Intestate Inheritance Bill. *

We are of opinion that the Bill has rectified the evils of inequality and injustice hitherto weighing down Hindu women. The absolute estate to the widow and a share to the daughter, are outstanding provisions and we welcome them wholeheartedly. Only we feel that the widowed daughter-in-law is grossly neglected. The illustration given is of families with property of equal value and hence the result is balanced inheritance. We wish to illustrate a concrete case.

A is the daughter of C and daughter-in-law of D. C has 5 daughters and 5 sons. D has 2 sons only and no wife (predeceased). A becomes widowed with 5 daughters. Her husband has no self-acquired property. As such what is her security? In the natural course, if A were not widowed, her

husband will get half of D's property and her daughters will share one-seventh and she gets two-seventh of the property. What A inherits as C's daughter is 1/17th. C is comparatively poorer. Under the circumstances with so many female issues, it is unjust to make A depend solely on D's moral obligation to support his 5 grand daughters and widowed daughter-in-law.

There are numerous cases of different complications like the above and we wish that the widowed daughter-in-law's position is reconsidered as per the explanatory note and without the drawbacks created by the Deshmukh Act.

In clause 1, we feel that 2, 3 and 4 should be treated as simultaneous heirs as they are all the grand children of the intestate. When there are no heirs in Cl. 1 (i), then the property will descend solely to the daughter's son when a daughter of a predeceased son will have no preference at all.

The daughter of a predeceased son and daughter-in-law, loses everything just because fate has been cruel to her and made her an orphan. If her father were not predeceased, she inherits her father's property in full and if her mother were not predeceased, she inherits her mother's property in full from her mother's father.

Illustration (2).

A Hindu dies intestate leaving his widow, who is second wife, and a daughter by a predeceased son of his wife (predeceased also). The widow inherits the property in full and the grand daughter gets not a pie. If the widow were the own grand mother, then there is the possibility of a strong moral binding through genuine affection. But in this case we can't expect the same from the step mother of her father.

Ref. Sec. 6. Illustration 2nd of Bill p. 4.

We feel that the son's daughter should get a share equal to the daughters. When the Bill seeks to rectify and do away with sex disqualification, that girls should suffer by the predecease of their father, seems rather unjust. As such, we wish some provision be made for the security of grand children of predeceased children.

We feel that the Divided Son should not be ranked equal with the Undivided Son.

In conclusion, we hope all the other Bills will follow in quick succession and thus enable the codification to be complete in a few years.

Sri K. Kuttikrishna Menon, Government Pleader, Madras.

In my opinion, it is desirable to codify the Hindu Law at least for the purpose of removing doubts and uncertainties that exist especially in the matter of intestate succession. Legislation is also desirable from the point of view of the reformists who would like to have the law changed with regard to sex disqualification by which Hindu women in general have hitherto been precluded from inheriting property in various parts of India and from owning property absolutely. I would welcome the bill to the extent it goes but in my opinion it does not go far enough.

I think the time has come when a Hindu woman should not be held disqualified from succeeding or from taking an equitable share merely by reason of her sex. The provisions of the Indian Succession Act do not make any discrimination between the sexes and in my view make an equitable and fair distribution of the property of an intestate. I would therefore apply the sections of the Indian Succession Act to Hindus also. It is only sentimental that stands in the way of Hindus adopting the provisions of the Succession Act in their entirety regarding intestate succession. The Nambudiri Brahmins of the West Coast who are considered to be very orthodox, have to a certain extent adopted the provisions of the Succession Act in the matter of intestate succession to property left by a male by giving an equal share to an unmarried daughter as to a son (*vide* the Madras Nambudiri Act, XXI of 1932). In the proposed bill each of the daughters of the intestate takes half a share whether she is married or unmarried, or a widow with or without children. I do not see any valid reason why inheritance should be limited to unmarried daughters as in the case of orthodox Brahmins governed by Madras Act, XXI of 1932 or why the inheritance of the daughter should be restricted to one-half share as in the proposed bill. I would have all daughters take an equal share with the sons regarding heritable property of all Hindus. In my view there is no reason why a son of a predeceased son should exclude a daughter's son or a son's daughter altogether, when a son does not exclude a daughter. Every child should be entitled to an equal share provided that if a child has predeceased the intestate, the descendants of such child should be entitled to the share which the child would have taken had he or she survived the intestate. If the above principle are accepted, there cannot be any objection to the application of the provisions of the Succession Act regarding intestate succession to Hindu in their entirety. Rules of intestate succession should be as simple as possible and the aim of all legislation should be to avoid uncertainty and to produce uniformity. Variations to suit individual cases may be left to the individual owner to make by will. The above observations apply also to, stridhana property left by a woman and it should be made to devolve on all children irrespective of their sex.

One other observation I wish to make is as regards the succession of heirs not related by blood provided for by sec. 10 of the proposed bill. Therein it is stated that in the absence

of a cognate entitled to succeed under sec. 4, the heritable property of the intestate shall devolve, in the first instance, upon his preceptor and, if there is no preceptor, on the disciple, and, in the absence of both, on the fellow student. Except in the case of *Sanyasins*, it would be impossible to say who the preceptor, disciple or fellow student of a particular person is and even if it were possible, there is no necessity at the present time to recognise the claim of such a person to succeed. Such a rule of succession which would prevent the Crown taking the property by escheat need not be recognised as the rule seems to me to be archaic and unreasonable and not consonant with Hindu ideas of the present day. The rule of devolution of property left by a hermit or ascetic is laid down in sec. 11 of the bill and it seems to be proper in such cases to recognise the right of a preceptor, disciple or spiritual brother to succeed.

The Servants of India Society, Royapettah, Madras.

The general principles enunciated in the explanatory note are unexceptionable. Modification of law consistent with the spirit of the times is long overdue. However, I would like to make the following observations for the consideration of Govt.

2. The position of the widowed daughter-in-law in the Bill is far from satisfactory. Under the original plan of the Committee, it was suggested that the unmarried daughter and the widowed daughter-in-law were to share equally with the son and the widow, the married daughter getting no share at all. The exclusion of the married daughter, it seems, has been heavily criticised. Therefore, the Bill empowers the married daughter to inherit along with the unmarried daughter, but this time the widowed daughter-in-law is excluded from inheritance. The widowed daughter-in-law of one family is, of course, the married daughter of another family. As she is being provided in her own father's family, it is said, she need not be provided in her father-in-law's family. This obviously refers to a case where the daughter-in-law's husband dies prior to her father-in-law. For, if he had died after his father, naturally the latter's property would have passed on to her husband, which she could inherit in the capacity of his widow. Then no question of widowed daughter-in-law arises. The difficulty arises only when the husband dies before the father-in-law or when he dies leaving no property. The Bill contemplates that merely because she has had the misfortune to lose her husband earlier she should also lose her inheritance in her father-in-law's property as well.

3. It is common knowledge, that according to Hindu ideas, a girl upon marriage is deemed to have become a part and parcel of her father-in-law's family. She abandons the *gotra* and surname of the family of her birth and adopts those of her husband. She should not therefore, be driven back to the family of her birth consequent upon the death of her husband except for such provision as may be made by the father out of natural affection. It may be that in some cases a girl is given in marriage to a boy in a family of better circumstances, than those of the family of her birth. To keep her in the family as long as her husband is alive and then to force her to rely on the less prosperous family of her birth for food and shelter as soon as the husband dies is not in conformity with the best tradition of Hindu habits. She must be given a right to take the place which her husband would have occupied in the order of succession, when it opens, if he had been alive at that time. It is highly desirable to restore either the original scheme of the committee or the scheme of the Deshmukh Act as far as it relates to the rights of a widowed daughter-in-law, in preference to the scheme of this Bill.

4. Under the existing Hindu Law a Dasiputra is entitled to certain rights of inheritance amongst Sudras and only to maintenance amongst the other castes. The Bill proposes to disinherit him equally in all the castes. It is hardly just to punish the innocent progeny for the misdeeds of their parents. The best way of discouraging such unlawful unions, if that were the object of the drafters, is to accord certain legal rights to the children of such unions, at least maintenance consistent with the position of the father. It is hoped the Government will consider the desirability of deeming a Hindu concubine who is in the continuous and exclusive keeping of a Hindu for over a stipulated period, as an 'anuloma' wife for purposes of conferring rights of succession in his property on the dasiputra or the dasi-putrika.

5. Although the Bill abolishes the distinction between an adopted son and an auresa son for purposes of inheritance, the differences in various types of adoption as to their effects on relationship still persist. I agree with the suggestion of the Committee of putting all adopted sons, whatever the form of adoption, on the same footing as natural-born sons for purposes of reckoning relationship.

6. The principle of abolishing the disqualifications of disease such as congenital blindness, deafness etc., for purposes of inheritance, is on grounds of equity. The Government may, however, consider if the provisions in the law at present are ample enough to prevent unscrupulous persons from making capital out of the estate of the defective or diseased person.

7. The contemplated removal of sex qualification for purposes of inheritance and the abolition of the Hindu women's limited estate are particularly praiseworthy.

8. Holding the view I hold that there should be no legal prohibition of any kind to the parties belonging to different castes entering even into a sacramental marriage, I have no hesitation in endorsing the view that all legal rights should accrue to the parties and their issue, whatever may be the name by which the marriage is known in legal terminology "anuloma" or "pratiloma".

The Advocate General, Madras.

I shall now take up the Bill relating to succession. The Bill in so far as it seeks to introduce a uniform law of succession to the whole of British India assimilating to the extent possible the principles of Dayabaga and Mitakshara schemes of inheritance is a bold measure in the right direction. The Bill, however, is not likely to achieve the desired end, unless it is followed up by enactments of provincial legislatures dealing with agricultural property as it is anomalous and undegradable to have two schemes of succession, one in regard to agricultural property and another in regard to non-agricultural property. It has to be borne in mind that the main population of this country is agricultural and that their property is in a majority of cases agricultural property. It is a point for the Government of India and the Indian Legislature to consider whether a measure of such a far-reaching character is to be undertaken by the present Indian Legislature in which a considerable section is not participating for political reasons.

I am in general agreement with the scheme of succession as laid down in Class I to III, but I am not in favour of Class V being postponed to Class IV merely on the ground that Class IV represents paternal kindred and Class V maternal kindred. For example, I would give a much higher place to Nos. 1, 2 and 3 in Class V to the remote relations in Class IV. I would suggest a reclassification of Class IV and Class V obliterating as far as possible the distinction between relationship through father and the relationship through the mother, regard being had to the degree of relationship rather than the relationship through the father or through the mother.

I notice that the Bill, while conceding rights of succession to daughters in the father's property does not concede similar rights to the sons in the stridhana of the mother. Whether it is advisable to extend equal rights to remoter descendants than the 1st generation or not I am for the sons being given a right concurrently with the daughters in the mother's heritage. (It may be an unequal share). As is well-known a recognition of the sons' rights along with the daughters in the mother's heritage is in accordance with the spirit of ancient Hindu Law. The ancient smriti text relating to the succession to a mother's stridhana is differently interpreted by the authors of the Dayabhaga and the Mitakshara, the former supporting the joint succession of sons and daughters—vide Banerji on Stridhana, page 376. A recognition of similar rights both in the father's and in the mother's state will promote greater concord in family circles.

In regard to Dwyamushayayana and Kritrima sons, it may be made clear that the institution is recognised only to the extent recognised by custom at the present day in particular parts of the country.

Under the Bill legitimate kinship alone gives rise to heritable capacity. In regard to degraded women or dancing girls, from the earliest times heritable capacity in regard to the mother's heritage has been recognised. I doubt if there is any justification for cutting off the rights of succession to their off-springs.

The Bill, while seeking to draw a distinction between the property of a woman inherited from her husband and her other property, does not maintain the distinction between the other inherited property of a woman and her self-acquired property. If this distinction is to be maintained at all, I do not think there is any warrant for drawing a distinction between one kind of inherited property and another, as under the various rulings of the Privy Council, inherited property of a woman from any source whatever stands on the same footing and a woman is not a stock of descent for inherited property as distinguished from self-acquired property. Possibly the Bill proceeds on the footing that the Privy Council's decision, in not recognising a woman who inherits Stridhana property, as a stock of descent, does not correctly interpret the Hindu Law texts.

Under the present scheme of inheritance as laid down in the Bill, the mother and the father are postponed to son's daughter and daughter's daughter. This is a departure from the existing Hindu Law and in view of the special reverence in which parents are held by the community a substantial portion of the property should be reserved for the mother and the father by way of maintenance.

Public Prosecutor Madras.

1. The Bill in so far as it seeks to introduce a uniform law of succession to the whole of British India assimilating the principles of all schemes of inheritance is a necessary measure. But the Bill would serve no purpose unless it is followed by enactments of provincial legislatures dealing with agricultural property as it is anomalous to have two schemes of succession simultaneously.

2. Clause 5, Clause 1 and 11.—The entry Nos. 2, 3 and 4 should be classed under one entry and treated as simultaneous heirs. Father and mother in Class II should at least rank equally with 2, 3 and 4 of Class I in view of the existing Hindu Law giving them preference.

3. Classes IV & V.—There is no necessity to prefer relationship through father over relationship through the mother. The entries should be regrouped regard being had to the degree of relationship only.

4. A provision should be made for the son having the same right in the Stridhana on the mother as the daughter has to her father's property.

From the Registrar, High Court, Madras.

I am directed to forward herewith (1) the views of the Hindu Judges of the Madras High Court who sat in Committee and considered the provisions of the Bills and (2) a minute by the Hon'ble Mr. Justice Kunhi Raman. I am to add that all the other Hon'ble Judges concur in the recommendations of the Committee and that all the Hon'ble Judges including the Hindu Judges support the recommendation contained in the last sentence of the minute of the Hon'ble Mr. Justice Kunhi Raman. (Not printed.)

Views of the Committee of Judges on the Bill relating to Intestate Succession.

The Bill seeks to alter the Hindu Law of intestate succession in material respects, and to enact one law of universal application to peoples who have been governed so far by different systems and schools of thought. Agricultural lands constitute the bulk of properties in this country and it has now been held that the Central Legislature cannot legislate in respect of the devolution of agricultural land in the provinces. So the provinces will have to enact supplementary or complementary legislation and it is at present not possible to say whether they will do so and when. Whether in this state of affairs, it is worth while to proceed with the Bill is for the Government and the Central Legislature to consider and decide.

With these preliminary observations we proceed to offer our remarks on the several provisions of the Bill:

Section 2, sub-clause (j).—The word 'related' is so defined that the Bill does not seem to take into account succession to the properties of degraded women and dancing girls. The defect should be rectified.

Section 2, clause (h).—"Son" may include the *dattaka*, the *dwyamushayayana* and the *kritrima* sons. But presumably, as it is not intended to resuscitate the *dwyamushayayana* and the *kritrima* sons where the particular forms of adoption have become obsolete, it should be made clear that the definition includes them also, only in territories or communities where such adoptions are now permissible, the territories or communities being specified.

Section 10.—This should be omitted as unworkable. *Acharya*, *sishya* and *sa-brahmachari* are loose expressions capable of different interpretations and denoting different individuals. The section will give rise to a multiplicity of claims and litigation. If there is no cognate entitled to succeed, the property should escheat to the Government as provided in section 22.

Section 11.—Though there are similar difficulties in determining who is a *vanaprastha*, a *yati* or *sanyasi*, and a *naisthika brahmachari*, we see no objection to section 11, as the heirs would be the same whether there was any renunciation or not.

Section 12.—The words "acquired by him in the like manner" do not appear to be very appropriate as they indicate acquisition as *stridhana*. So we suggest that they may be omitted and the words "his separate" may be introduced between the words "over" and "property" in the third line.

Section 13.—If a daughter is to get a share in the father's property, we see no reason why the son should not get a share in the mother's property. So we would provide in clause (1) of sub-clause (b) that the daughter, the son, the daughter of a predeceased daughter, a son of a predeceased daughter, the son of a predeceased son, and the daughter of a predeceased son, should take as simultaneous heirs, the males in the same class or category together taking a half share of the female. That is, if there is one daughter and three sons, she will take one share and each of the sons will get 1/6 share. If this suggestion is accepted, Items 7, 8, 9, 10, 11 and 12 will become Items 2, 3, 4, 5, 6 and 7 respectively.

Section 37.—It is desirable to make it clear with reference to this section that for the purposes of collateral succession the relations in the caste of the spouse alone should count where the inheritance is to his or her property. This may be introduced in the form of a proviso.

No. 2.—BIHAR.

FROM THE JUDICIAL SECT. TO THE GOVT. OF BIHAR, TO THE SECT. TO THE GOVT. OF INDIA, LEGISLATIVE DEPARTMENT, SMLA, No. 2132/A-55/42-J., DATED PATNA, THE 20TH OCTOBER 1942.

SUBJECT.—*The Hindu Code, Part I (Intestate Succession) and the Hindu Code, Part II (Marriage).*

I am directed to * * * * communicate the following observations of the Provincial Government:—

The Bills solely concern the Hindu community and while they embody some very desirable reforms, the opinions received by the Provincial Government show that they are in advance of Hindu public opinion in Bihar. The present seems to be an inopportune moment for the introduction of

legislation involving such radical changes as the Bills seek to introduce. It would be advisable to postpone such legislation till normal conditions are restored, when the Central Legislature would be in a better position to consider the desirability of introducing such far-reaching changes in Hindu law and custom.

2 I am also to enclose copies of the minutes recorded by the Hon'ble Judges of the Patna High Court on the provisions of the above-mentioned Bills together with copies of representative opinions received both from official and non-official sources.

3 The Bill was republished in English in the Bihar Gazette, dated the 1st July 1942.

Minutes recorded by the Hon'ble Judges.

I do not think the Bill requires any comment from the Judicial point of view.

Personally I am in favour of the Bill. * * *

S. B. DHAVLE

I agree with the Hon'ble Mr. Justice S. B. Dhavle that the Bill does not require any comment from the Judicial point of view.

Personally, however, I am not in favour of the Bill.

S. C. CHATTERJI

There are two Bills for our opinion. They are both of purely Hindu concern and I am not in a position to express any opinion beyond that generally speaking I am in favour of the codification of Hindu Law.

H. R. MEREDITH

I am of the same opinion as the Hon'ble Mr. Justice H. R. Meredith.

FAZL ALI

I agree with Hon'ble Mr. Justice S. B. Dhavle.

C. M. AGARWALA

I agree with the Hon'ble Mr. Justice S. B. Dhavle.

F. G. ROWLAND

I am in favour of the Bill.

MANOHAR LALL

I agree with the Hon'ble Mr. Justice S. B. Dhavle.

S. P. VARMA

I agree with the Hon'ble Mr. Justice S. B. Dhavle.

J. G. SHEARER

I prefer to offer no opinion.

A. T. HARRIES

The District Judge, Muzaffarpur.

I have the honour to state as follows:—

1. *The Hindu Code Part I (Intestate Succession).*

(1) The definition of Stridhan as given in the Bill is too wide. It should not include property inherited by a woman.

(2) Agricultural land should be excluded from the operation of this Act and any technical difficulty to include the same may be overcome by inducing the provisional legislatures to pass similar Act to regulate the succession to agricultural land.

(3) Daughters should be excluded from the list of simultaneous heirs enumerated in class I (1) of section 5. They should inherit only in the absence of the other heirs enumerated in the first entry.

(4) Clause (d) of section 7 should be omitted.

(5) Section 12 of the Bill in question should be made to apply only to property strictly known as Stridhan as defined by the Hindu Law.

(6) The order of succession to Stridhan for a Hindu governed by Dayabhag should be the same as given by Dr. Sarva-bhikari.

The Secretary, Bar Association, Muzaffarpur.

Clause 2 (1).—The definition of Stridhan is too wide. Properties in possession of a woman inherited from her husband and those given to her in lieu of maintenance should be kept in a separate category; Clause 3.—This act will not apply to agricultural land. This is too vague. It should be more definite and exhaustive explanation should be given; Clauses 10 and 11.—Provision should be made to govern inheritance of properties of dancing girls and Mohunts; Clause 12.—Rights of woman over Stridhan [as defined in 1 (i)] have been too general. There should be some restriction at least otherwise this would lead to too many disputes; Clause 13 (1).—The order of succession of Stridhan properties (the definition of which has been made too wide) does not appear to be satisfactory. All the heirs enumerated from 1 to 7 should be simultaneous heirs, and as regards the other clauses they are in favour of the proposed amendment.

The District Judge, Purnea.

* * * in my opinion no objection can logically or equitably be raised to the provisions of the Bills, the introduction of which is indeed overdue and is essential if the women of India are to attain the status which is conferred by law as well as by custom on the women of all other civilised societies. Indeed the attainment of these privileges, which elsewhere are enjoyed as of right, is an inevitable social development, which cannot be long delayed. At the same time in this country, the legal and social position of women, and in particular the institution of matrimony, are bound up with religious beliefs and superstitions, which it can hardly be doubted, still command the unquestioning allegiance of the illiterate masses and even

of a large proportion of the educated classes. Hence I apprehend that there will be considerable popular opposition to the introduction of these Bills (even although they are not to come into operation until 1946) and in these abnormal times the propriety of courting such agitation is open to grave question. * * * The provisions relating to intestate succession may lead to further undesirable fragmentation of holdings, and moreover, the prevalence of the purdah system and the almost complete absence of female education will inevitably lead to the female full owner coming under the dominance of her male relations, who will fight for and dissipate the property. Without some considerable improvement in the social position and education of Indian women, I do not think that the proposed legislation will do much to achieve its object of removing the inequities to which they are at present subject. While in sympathy with the objects of this legislation I am unable to see that any useful purpose will be served by its introduction particularly in these abnormal times. The opinion of the local Bar Association is also enclosed. The delay in submitting the opinion was due to the fact that the opinion of the Bar Association was not received by me until 30th July 1942.

The District Judge of Manbhum-Singbhum.

* * * I have the honour to enclose herewith the opinion of the local Bar Association and to report as follows:—

(1) I agree with the local Bar Association that the existing distinction between the right of a divided and an undivided son to inherit the estate of his father should be maintained. It will be highly inequitable to permit a divided son who has already taken away his share in the ancestral property to deprive the undivided son of his father's share by claiming a further share in that property. The framers of the Bill have abolished this distinction on the ground of simplicity. But mere simplicity at the expense of equity and natural justice can hardly be supported.

(2) I also agree with the local Bar Association that an unmarried daughter should not be put on the same footing as a married daughter. It is well known that marriage entails a very heavy expenditure amounting to an appreciable share of the total assets of the father and it will be highly inequitable to allow a married daughter the same share as an unmarried daughter for whose marriage her guardian may have to spend an appreciable amount subsequently out of her share of the property. If the intention is not to exclude a married daughter from any share in the property an alternative suggestion will be to permit her to take half the share of the unmarried daughter.

(3) The Bill does not remove the present unsatisfactory state of law regarding the right of a Hindu widow to inherit her husband's property if she ceases to be a Hindu before re-marriage. For instance, if a Hindu widow re-marries, under the provisions of the Hindu Widows' Re-marriage Act (1856) she forfeits the interest taken by her in her husband's estate and becomes civilly dead so far as that estate is concerned. But if she changes her religion before her re-marriage the question arises whether she can still be considered as civilly dead in respect of her first husband's property. According to Calcutta, Madras, Bombay and Patna decisions she forfeits her right to her first husband's property but the Allahabad High Court has taken a contrary view (see page 47 Mulla's Hindu Law, 9th Edition). The Calcutta, Madras, Bombay and Patna decisions appear to be correct and it is better to embody the principles of those decisions in the Code after Section 20.

(4) The Bill is open to further criticism that it does not remove the existing unsatisfactory feature of Hindu Law which puts a premium on the unchastity of widows. According to the existing law a widow who has inherited her husband's property cannot be divested of the same by her subsequent unchastity. But if she marries again she becomes civilly dead to her first husband's property in view of the Hindu Widows' Re-marriage Act (1856). The result is an open encouragement to a Hindu widow to lead a life of promiscuity after succeeding to her husband's property and to discourage her from re-marrying again and leading a respectable life. Instances are not rare where the widow's near relations have encouraged her to lead a life of open immorality and put several obstacles to her re-marriage with the sole idea of managing her deceased husband's property on her behalf. The existing law is thus extremely unsatisfactory and it ought to be remedied especially when the codification of Hindu Law is now being taken up. I would suggest that the bar imposed by Section 2 of the Hindu Widows' Re-marriage Act (1856) should be altogether removed.

(5) The word 'unchastity' used in the Bill is not capable of precise interpretation. Does it include a case where a woman attempted to commit adultery but was prevented from doing so by unforeseen circumstances? I think the word 'adultery' should be preferred to the word 'unchastity' inasmuch as it has been precisely defined in section 487, Indian Penal Code.

(6) Section 19 disqualifies the murderer as well as the abettor of the murder from succession. But it does not disqualify the person who attempts to commit murder. A person may abet the commission of murder even though the murder may not be eventually committed and under Section 115, I. P. C., he is still liable to punishment. Thus if A instigates B to murder his own elder brother C so that he may succeed to C's property but due to unforeseen causes B does not commit the murder A is still an abettor and

will become disqualified under section 17 of the proposed Act. But if A attempts to murder C and thus commits an offence under section 307, I. P. C., he is not disqualified. A person who attempts to commit an offence should be placed on the same footing as the abettor and section 19 requires modification.

The District Judge of Saran.

I have the honour to say that in my opinion it is expedient to amend the codify the Hindu Law relating to intestate succession and marriage but I propose the following amendments in the Bills:—

(1) In section 5 of Part I (Intestate Succession), the following clause be added to Class I, sub-clause (1), after the words "simultaneous heirs"—

"The male heirs enumerated in this sub-class will have the right of pre-emption without observance of any formal ceremony in case of any kind of transfer, voluntary or involuntary, including gift and lease by the female simultaneous heirs."

2. The opinion of the local Bar Association is enclosed.

The Judicial Commissioner of, Chota Nagpur, Ranchi.

I have the honour to say that whether the Hindu Law requires codification and amendment is a matter which primarily concerns the Hindus. I enclose copies of the opinions of two Hindu Officers the Muniff and the Additional Subordinate Judge, Hazaribagh, dealing with this point. I sympathise with their criticism regarding introduction of married daughters as heirs. Personally I am opposed to the dividing of property between several heirs. This leads to the creation of a large number of small estates, and is an inducement to younger sons of the family not to attempt to make a living for themselves. I think that the addition of a fresh heir is not a move in the right direction. So far as the courts are concerned, it will be a convenience to have the law applicable to Hindus in a definite Statutory form.

As regards the particular provisions of the Bills there are two points I would note regarding the Bill dealing with intestate succession:

(1) *Clause 11 Sub-clause (3).*—Clauses (a) and (b) are not clear as to how the particular spiritual brother or the particular disciple who is to succeed is to be determined. This is all right as a rule of uncodified law, but a statute should be definite.

(2) *Clause 19.*—Not only the murderer (or abettor of murder) but also persons claiming through him should be excluded.

A copy of the opinion of the Hazaribagh Bar Association is enclosed.

Hindu Code, Part I (Intestate Succession).

We are of opinion that with the progress of time the Law requires modification and the present codification seems to be in keeping with circumstances of the present age. Save and except that the limited interest of women as existing at present should not be disturbed.

The Muniff of Hazaribagh.

I have the honour to submit herewith the opinion of the Bar Association, Hazaribagh.

So far as my humble opinion is concerned while fully realising the necessity of many changes in the Hindu Law as at present administered I think this is the most inopportune moment when such changes that concern the vital interests of the Hindu Community should be introduced. The attention of the majority of the Hindus due to the international situation arising out of the war is so diverted towards it in one way or the other that it is difficult at present to concentrate upon any changes in the legal structure of the Society that has been coming on since time immemorial and has got behind it the sanction of antiquity and the legal customs. Every Hindu even to the remote villagers is aware of the prevailing law that has been coming from generation to generation and he willingly concedes to whatever is embodied in it without ever thinking of putting any obstruction to the marriage or inheritance of a Hindu. The enactment of the laws as suggested would not only disturb the age long tranquillity of the Society which forms the major population of India but would also, on account of a misunderstanding between those who believe in the moral sanction of the law as it now exists and those aware of the new enactments be disturbed with the result that recourse will have to be taken to the law Courts in every case of a person dying intestate. This would naturally result in disaster on account of its costly nature to poverty stricken people.

It appears these two bills in question are sought to be introduced in pursuance of a policy of codifying the entire Hindu law in all its branches. Not only is piecemeal legislation in absence of urgent necessity not a thing desirable by itself but also no definite opinion can be given upon such piecemeal legislation because they act and counteract on other branches not even contemplated at present. No opinion can therefore, be given about one branch of the Hindu law such as marriage or inheritance without having definite suggestions of corresponding changes in other branches. If the laws applicable to the Hindus be a compact body.

Further, it appears the bills are sought to be introduced by certain legislators without reference to the learned Pandits well versed in the original texts constituting the laws of the Hindus from time immemorial. Extracts from translations which are

at best only a reflection of the translator's mind upon the original text cannot be sufficient to justify a change in the laws of one entire community based upon their religious tenets coming on since time immemorial from generation to generation and imbibed by its members with the very breath they take from their very birth. Unless, therefore, the learned Pandits are fully consulted and the texts giving the laws to the Hindus explored such legislations as are desired to be introduced should not be hurried through.

From a cursory look at the bills as they are sought to be introduced it is apparent that so far as agricultural land is concerned the Hindus will be governed by the Provincial laws to be enacted by the Provincial legislatures. So far as ancestral, joint family property is concerned they will be governed by the law of survivorship. While so far as self acquired property is concerned the Hindus are sought to be governed in their inheritance by the acts sought to be passed under these bills. There is not only the likelihood of a confusion being made in case a person dies intestate as to the provisions of the law that would apply but also there is a likelihood of dispute arising with regard to particular properties left by him so as to bring it within the scope of one set of the laws or the other. Every bit of property left by a Hindu dying intestate will have to be scrutinized to see which law is applicable to such property. This would necessarily entail the help of lawyers and ultimately keen contests in the Courts yielding a fruitful source of litigation which by all means has to be avoided.

Though I have had not the opportunity to look into the texts or even to concentrate upon the implications of the provisions of the bills due to lack of time as the Gazette was available not without difficulty and want of a proper library to look to the provisions of the Hindu law still even by looking it superficially it is apparent that the law of inheritance according to the bills would result in the introduction of strangers into the family and may be even in the house belonging to the family. Giving a share to the daughter would mean the bringing in of her husband and his relatives as coheirs with the sons of the person dying intestate. As according to the laws and customs of the Hindus a daughter generally lives at her husband's place that share is likely to be sold to a third person completely a stranger to the family. That would necessarily result in litigation and spell disaster to the family of the deceased person. Such a course has to be avoided at any cost.

I, therefore, would prefer a postponement of such bills that have far reaching effect on the life of millions of people till after the cessation of hostilities. Thereafter if thought desirable bills embodying all phases of Hindu society may be introduced after obtaining sanctions from those individuals or bodies who are well versed in the old scriptures of the Hindus and are aware of their drawbacks or their implications thus competent to give opinion. In my humble opinion, therefore, these should not now be introduced in the legislature for enactment.

From the Additional Subordinate Judge, Hazaribagh.

I have the honour to forward herewith the opinion of the Local Bar Association. The two bills in question have been drafted in pursuance of a scheme to codify the whole Hindu Law. As appears from the documents annexed to the bills it is contemplated to make radical changes in the existing law. One drawback to proper consideration of the bills is that unless the bills relating to other branches of Hindu Law are published no body can have a clear picture of the scheme the committees have in view. As appears from the trend of the present bills it is perhaps contemplated to make far reaching changes in all branches of Hindu Law. If these bills and other bills which may follow in their wake are enacted into law, Hindu society will have to pass through a revolution the like of which it has not witnessed for two thousand years or more. Such revolutionary changes cannot be justified unless the vast majority of Hindus are in favour of them or there is necessity to remedy evils which are shocking to the natural sense of justice or are eating into the vitals of Hindu Society. I regret I have not had time to study in all their implications the different provisions of the bills but I have no hesitation in saying that the present time is not suitable for enactment of such bills into law. The present war fills so much space in the thoughts of the people that it is not possible for the Hindu community to give the bills such careful consideration as their importance demands. Moreover, many of the proposed changes are sought to be made in response to the views of certain ardent reformers. The legislature, as it is constituted, has no mandate from the electorate for supporting or passing laws which will have the effect of changing the economic structure of Hindu Society. Changes are not to be made merely because they embody lofty ideals. They should be made only when they are desired by those for whose benefit they are intended. Laws made in advance of the sentiments of those affected thereby bring in their train more evils than they seek to remedy. In view of the fact that the bills involve questions of vital importance to Hindu Society it is eminently desirable that their consideration should be postponed till after the end of the war and should be taken up by Legislatures armed with a special mandate from the Hindu community for supporting such changes.

The proposals have their roots in ideas which are alien to the very spirit of Hindu Law. No good can be done to any community by tearing it away from the moorings of its old ideals and culture. In the first bill it is stated that it will not apply to agricultural lands. That saving clause has been introduced because under the Constitution Act of 1935 the Central Legislature has no power to legislate regarding agricultural land. The authors of the Bill have made no secret of their view that they hope that the Provincial Legislature will take up the question regarding succession to agricultural land. Hindus are an exogamous community and if girls who

after their marriage leave the village of their parents are freely allowed to inherit their parents' land along with their brothers and other heirs, the result will be that the joint family system will perform be abolished and agricultural lands will come to be owned by those who live at a great distance and can never arrange for their cultivation. The vast majority of Hindu agriculturists possess small holdings and the parcels of lands falling to the share of girls of such families will be so small that the girls and their heirs will not find it worth-while to retain them and will be forced by the exigencies of the situation to dispose of their shares by sale or otherwise with the result that great heartburning will be caused to their brothers and other relations on the father's side. Competition among the villagers to purchase the shares of the girls will lead to litigation on an unprecedented scale. The joint family system has many advantages from the point of view of cultivators and petty Zamindars. With the passing of the first bill not only will be death-knell of the joint family system be sounded but the cultivable lands of villages will be fitted away among those who will not try to cultivate them and will seize the easiest opportunity of selling them for whatever they can get. Some of the evils consequent on the passing of the bills can be avoided if Hindus take to endogamy but that is a possibility which they will regard with abhorrence.

Before parting with the subject I would like to add that the evils likely to result from the passing of these bills will be mitigated to some extent if a provision is inserted in both of them to the effect that the Act will be binding only on those who declare in writing before a Sub-Registrar that they and their children will be governed by them. To safeguard the interest of the vast bulk of the Hindu community it is absolutely necessary that some such provision should be made.

The Collector of Champaran, Motihari.

2. The scope of stridhan to include properties acquired through inheritance, partition and maintenance should not be widened, as this provision is against the list given by the majority of Rishis, the Hindu Law-givers.

3. The limited interest of the women is a restriction based on the principle of prudence and caution. If this restriction is removed, the properties in a vast majority of cases during the present state of affairs will find way into the hands of crafty money-lenders and this will greatly affect the rights of the reversioners.

4. The provision in class I under section 5 referred to as "Simultaneous heirs" should be deleted. It is opposed to the spirit of Hindu Law and allows division of the property into fragments resulting in the poverty of the family. The present order of succession mentioned in section 43 of Mulla's Hindu Law should be followed.

5. The provision under clause 7(a) should also be deleted, as eminent economists have strongly criticised such a law which leads to a break-up of the family properties and prevents accumulation of capital which is necessary for the well-being of a country.

I agree generally with these views.

The Secretary, Bar Association, Patna.

The positive laws of the Rishis is mostly contained in Varanasi Khandas, but the same is inseparably bound up with the Acharya Khandas. The Dvijas or the twice-born have imposed restrictions which the Sudras have not. Divorce and widow remarriage in the most unfettered manner prevailed among the sudras long before Acts were passed by the British Legislatures, and in spite of legislations the orthodox Dvijas have looked with disfavour on the legal rights thrust on them by the legislatures.

The Bill of intestate succession makes a daughter even after she has changed her Gotra by marriage an agnate of the father. This is repugnant to all Hindu ideas. She is a Rikshas Gotra sapinda, but she can not be called a Gotraja. Then the inclusion of the widow and the daughter as simultaneous heirs is nothing but Coranic. It may very well be called a Hindusthani Code but in no case a Hindu Code.

The Aryan laws should not be replaced by the Anglicised Code. A codification of the law as it prevails is not very objectionable, but to impose fantastic new rules of succession by importing something from one and something from another school of Hindu Law is most undesirable.

The Privy Council has slowly changed much of Hindu Law but not supplanted the whole of it. The mover of the bills intends to abolish (not to amend) and codify in successive stages the whole of the Hindu Law now in force in British India.

Now let us look to the definition of "heritable property". The self acquisition of a member loses its character by not being kept separate from the joint property and a son acquires a right by his birth. If this principle is not going to be disturbed "in successive stages", the bill would effect a very low or negligible percentage of the Hindus.

The question therefore arises why not the self acquisitionists alone be called upon to deal with their property by testaments, instead of requiring orthodox people to execute wills in order to avoid the baneful effects of this intended legislation. The so called educated people are more likely to safeguard their sentiments by will than the poor and ignorant masses who have unwavering attachment for the old Hindu Law.

The opinions have been invited from people whose whole outlook is saturated with un-Hindu ideas and most of whom never cared to understand the Hindu view-point. If the Bill was circulated in Indian languages the Association is sure that it would have aroused around and vehement opposition. Further even if an un-Hindu legislation be necessary for regulating the private concerns of a Hindu, the Association

fails to find out any logic in making 'the wife' a simultaneous heir along with the sons and daughters, but not the husband a simultaneous heir of the wife.

The Bill is un-Hindu and is an attempt to change the Hindu religion and society altogether, and therefore should be thrown out.

The Secretary, Bar Association, Ranchi. The Government Pleader, Ranchi.

Hindu Law of intestate succession and the Bill introduced in the Central Assembly to codify the same.

There are various systems of Hindu Law in the several provinces in the British India and almost every system has its own law of intestate succession. The law thus varies from province to province and it must be admitted that the proposed Bill would lay down a uniform law for succession throughout 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 these disqualifications and the limitations on the estate held by Hindu women. The proposed Bill not only lays down a uniform laws of succession for all Hindus in British India but it purports to abolish all limitations to a Hindu woman's estate. A Hindu woman 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 the 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 their own affairs. It is, therefore, a doubtful expediency to suddenly clothe them with absolute rights of transfer of all properties inherited by them. In a majority of cases it can be confidently predicted that they will lose their property shortly after the inheritance. Though the estate of a Hindu woman is limited she has the full and 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 the meaning of the term legal necessity or by introducing a system of sanction from a court of law which will meet such urgent cases. I am, therefore, of opinion that limitations of a Hindu woman'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 make subject to safeguards as for example, sanction of proper court. The third important objection of the Bill 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 Bill 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 Bill lays down to different modes of succession for properties belonging to males and females. Under the existing Hindu Law female heirs are given a more favourable position in regard 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.

The Secretary, Bar Association, Gaya.

The proposed legislation is against the basic principle of Hindu Law. According to Hindu Shastras and also popular notion the daughter of the family is gifted away and ceases to be a member of her parents family. She becomes, as it were, half the body of her husband and thus become a sapinda of her new house. There is absolutely no reason in the interest of existence and continuance of the Hindu Society, to upset this idea and introduce a system of thoughts quite contrary to that of the ancient ages. The number of the females who are members of legislative body or legal profession is so small that for the sake of such a few no radical change ought to be made in the conception of Hindu Shastras, Hindu Law having kept the Hindu Society in perfectly good order since time immemorial.

To make the female absolute owner of the properties is also against the Hindu Law. The female Caste of High castes are Pardanashin, their education is almost nil and they depend entirely upon the unscrupulous servants and relatives, and others

*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 more favourable position in respect of succession in Stridhan property.

also who do not observe Purda do not have any higher education and do not mix with the outer world. We are speaking of Hindu women in general. To clothe them with absolute powers will encourage in the women freedom from the protection of their male members and will endanger the harmonious feelings between husband and wife and other relations.

The idea of the Hindu Law givers is to keep the property of the family intact and only the male members who live in the house are to participate but if females who are necessarily to leave the family on marriage are allowed to inherit the family property will be torn to pieces. The basic principle of keeping the property intact will be destroyed if such drastic change in Hindu Law is made.

To say that the females do not get proper price of property even when legal necessity exists, is a very feeble ground and if in some cases it happens, that is no sound reasoning for making the change which will upset the law which has been working so well in the Hindu Society.

It is therefore resolved that "the Committee is against the introduction of the Bill as proposed".

The Secretary, Bar Association, Chupra.

We have carefully considered the Bills and we beg to propose that the following changes are necessary in the two Bills.

(A) Bill dealing with Intestate succession.

I. In Section 2 clause (i) the words "in lieu of maintenance" should be eliminated.

II. In Section 5 class I (i) the following sentence be added after the full stop:

"The male heirs will have the right of pre-emption without any observance of any ceremony whatsoever in case of any kind of transfer voluntary or involuntary including gift and lease by the female simultaneous heirs".

III. In Section 13 (a) after the words husband the words "son, grandson, and great-grand son" be added.

on the whole we are of opinion, that the Bills are commendable and the main provisions are in keeping with the march of time although it will more seriously disrupt the already decaying joint family system.

President, Bar Association, Purnia.

Considering the unanimous opinion of the Hindu Law Committee (consisting of eminent and experienced lawyers) and of its favourable reception by the Central Government I think that the Hindu Law should be codified but in my humble opinion there are objections to some of the clauses of the Bill.

A. In Clause 5, Class I.—A distinction should in my opinion be made between divided and undivided sons—this distinction has long been maintained under the Dayabhag law and also in Bombay and Madras under the Mitakshara School of Hindu Law and in my opinion this distinction is based on sound reasoning. When a father separates from one or more of his sons and remains united with the other sons the father usually makes ample provision for the separated sons and there is no reason why they should inherit equally with the undivided sons the heritable property of the father.

B. Clause 5, Class I.—A distinction should be drawn between married and unmarried daughters and between them and childless widowed daughters. This distinction has been maintained from the earliest times. According to the Mitakshara School of Hindu Law "As between daughters the inheritance goes first to the unmarried daughters next to daughters who are married and unprovided for and lastly to daughters who are married and are enriched".—D. F. Mulla's Hindu Law, page 38.

According to the Dayabhag School of Hindu Law also the unmarried daughters exclude the married ones (Mulla's, page 83). This distinction seems to be based on sound reasoning—the expenses of a girl's marriage are heavy and therefore the unmarried daughter has to spend a considerable amount of her inheritance for her marriage and there is no reason why she should inherit equally with a married daughter.—2 W.R.C.R. 176.

For the reasons above indicated Clauses 7 (b) and 7(d) should be altered.

Clause 13.—The proviso to this clause is objectionable. I have never heard of any instance where an orthodox Hindu had recourse to proceedings under the Divorce Act against his wife and therefore an unchaste widow should not be allowed to succeed merely because the husband had not derived her of any portion of his property by a testamentary disposition or otherwise or because the husband did not have recourse to proceedings under the Divorce Act.

Lastly I am not in favour of the abolition of the limited estate of the Hindu females. This point has been elaborately dealt with in the Explanatory note (pages 2-3) but the reasons alleged for the abolition do not appear to me to be sound.

The proposed legislation does not follow the *Smritis* in every instance and there is no reason why the females should be vested with absolute right simply because some lawyers opine that this restricted right has no real basis on the *Smritis* (Champak Rai Jain's Jain Law (referred to at page 3 of the Explanatory note) describes the exclusion from the inheritance of the sons by their mother as a healthy rule as the sons are expected to be well behaved and obedient to their mother to win her favour; for the same reasons the females who have by all authorities been given a position subordinate to the male members of the family should not be given an absolute right.

The case of *Cosynath Vs. Hurasundari* referred to at page 2 of the Explanatory note is reported in Volume I of the Indian Decisions old series, page 946. This was decided in 1939; this case is referred to in the P. C. case reported in

5 M.I.A. 433. The learned Counsel for the appellant sought to distinguish the case of *Cosynath Vs. Hurasundari* but their Lordships did not even call upon the respondents and dismissed the appeal. Their Lordships observe "It has been decided by this court in the case of *Cosynath Boyaskh Vs. Hurasundari Dassi* after most full and deliberate argument and consideration that the principles which are applied in courts of Equity in England are not applicable to the case of property in India when such property is in the possession of a Hindu widow".—6 M.I.A. 433, at page 445.

In my opinion there is no good reason for changing this law which has been in existence from the earliest times. Hindu females, if young, are liable to go astray either of their own accord or under the influence or inducement of others (such instances are not rare) and they should not be left in possession of immovable property with unrestricted rights for which there is really no necessity.

The Bar Association, Shahabad.

(A) The Bill to amend and codify Hindu Law relating to intestate succession.

Clause 5, Class I.—In entry No. 1 of this clause, it is provided that son, son of a predeceased son, son of predeceased son of a predeceased son, widow and daughter shall inherit simultaneously. This omission to include widow of a predeceased son and widow of a predeceased son of a predeceased son in this entry is conspicuous. It is obvious that while the position of a widow is pathetic in Hindu Society, that of a widowed daughter-in-law is still more so. There is no justifiable reason to make a discrimination between his widow and his son's widow. In fact Act XVIII of 1937. The Hindu women's right to property Act, 1937, recognized injustice to widowed daughter-in-law and tried to better her lot by placing her in the same position as her deceased husband. It would be a retrograde step to go back upon this legislation and ignore the time spirit which the framers of the Bill profess to follow. We would therefore suggest inclusion of widow of a predeceased son and widow of a predeceased son and widow of a predeceased son of a predeceased son in entry No. 1. We would further suggest that in entry No. 1, unprovided widowed daughter alone should find place and other daughters should be placed in entry No. 2.

In entry No. 2 we suggest inclusion of mother and father along with daughter other than unprovided widowed daughter as simultaneous heirs. It is but just and proper that provision should be made for mother and father who will, in general of cases, be aged and infirm and may in some cases be physically disabled from earning their living. Entry No. 2 will read as follows. Daughter other than unprovided widowed daughter and mother and father. Entry Nos. 2, 3, and 4 will be numbered as entry Nos. 3, 4 and 5 respectively.

Clause 11.—Entries Nos. 3-7 will be numbered respectively as entries Nos. 1-5.

Clause 6.—Illustrations will undergo changes in the light of the above suggestions.

Clause 7.—(a) The intestate's widow or if there is more than one widow, all the widows together shall take half a share.

(d) Will read as follows:—unprovided widowed daughter or if there is more than one unprovided widowed daughter all such daughter together shall take half a share. Any other daughter or if there is more than one such daughter all such daughter together shall take half a share.

Sub-clause (e) and (f) are to be added and they will read as follows:—

(e) Widow of a predeceased son and widow of a predeceased son of a predeceased son or if there is more than one widow all of them together shall take half a share.

(f) Each of the daughter's sons shall take one share and mother and father together shall together take one share.

Illustrations will undergo changes *mutatis mutandis*.

9. The rules do not seem, in any opinion, to cover all cases. Take for instance the following illustration:—

The competing heirs are (1) FFFF and (2) FSSSSS. Now if rule is to be applied that is to say, of two heirs, the one who has fewer degrees of ascent is preferred, No. 2 will have preference over No. 1 as the former has fewer degrees of ascent than the latter. But No. 1 is nearer in degree than No. 2. This in our opinion is inequitable. A rule should be provided for such cases.

Stridhan.

13. (a) In this sub-clause we suggest substitution of the words 'a male owner' in place of 'her husband'. This suggestion is in consonance with the view embodied in the original memorandum. The difference by the substitution suggested is that properties inherited by a woman will devolve, on her death, on the heirs of the male owner whereas according to the Bill only properties inherited by her husband will devolve on her husband's heirs so that in respect of the properties inherited from other male owner than the husband, the heirs of the male owner will have no right. This is whitening down to a considerable degree the right of succession of the heirs of a male owner. Although our suggestion takes us back to the original view embodied in the memorandum, yet we make this suggestion for the following reasons:—

Under the existing law, a woman has only a limited estate in the properties inherited by her from a male owner and on her death, it devolves on his heirs irrespective of the fact whether that male owner is husband or any other relation revolutionary stride. We are, in the first place, abolishing the limited estate of a woman. The consequence of this abolition is that the heirs of male owner lose a very valuable and substantial right inasmuch as they cannot challenge an alienation made by her. In the second place they are deprived of

their right to inherit the properties except those inherited by her from her husband. This will be going rather too far and it is bound to evoke an outburst of protests. In abolishing limited estate, we have to take care that strangers may not be introduced and put in possession of the family property as this will lead to disintegration of the family and property will break up sanctity of Hindu home. To guard against this contingency, we would add a proviso to clause 12—

Provided that a woman, desiring to alienate her stridhan property, will give notice of this intention through court to the heirs of the last male owner of such property and give them first choice and in case of their refusal, she is competent to make alienation to anybody else.

(b) We suggest the following order of devolution:—

- (1) Daughter and son succeeding as simultaneous heirs, each taking one share.
- (2) Husband.
- (3) Daughter's daughter and son's son succeeding as simultaneous heirs, each taking one share.
- (4) Daughter's son and son's daughter succeeding as simultaneous heirs each taking one share.
- (5) Mother.
- (6) Father.
- (7) Husband's heir.
- (8) Father's heirs.
- (9) Mother's heirs.

In making this suggestion, we have taken natural affections and leanings of the woman as the guiding factor. If the woman herself weds to make disposition *inter vivos*, she would not agree to the entirety of her properties going to her daughter and no share to her son. It will be positively distasteful to her, if her wishes were to be consulted, that her son be postponed to daughter's daughter and daughter's son.

(10) We suggest this clause to read as follows:—Unchastity of an intestate's widow cannot be pleaded as a ground for disqualifying her from succeeding to her husband's property unless—

- (a) Same as in the bill.
- (b) Same as in the bill.

The Bar Association, Monghyr.

The Hindu Code, Part I.

The proposed bill aims at introducing very far reaching changes in the mode of intestate succession. It is sought to adopt the Dayabhaga scheme for *near succession* which would mean drastic changes difficult for adjustment for the Mitakshara jurisdiction (such as ours). No doubt certain changes have been made by the Legislature in 1929 affecting the mode of succession but to go as far as this Bill proposes would be difficult to accept.

The provision for simultaneous succession of a daughter along with the son would be highly detrimental and cause of ruin of family property.

So far as the provisions of removal of sex disqualifications are concerned the inclusion of certain female near relations amongst the enumerated heirs is good but to make the terms agnate and cognate applicable to them is not justified.

The Bill intends to abolish the woman's limited share. The question is a very controversial one. The doctrine has been long established by judicial decision and by putting the restrictions on the right of the women in respect of the properties inherited by them—a great benefit has ensued for long and it is apprehended once the limitations are removed, women who possess properties will lose them at the hands of unscrupulous people who under the present law have to proceed with caution.

For all these reasons we are opposed to the proposed Bill.

Secretary, Bar Association, Laheria Sarai (Darbhanga).

1. We are of opinion that the codification of the Hindu Law is a retrograde step, as it will make the law rigid, whereas the Hindu Law has ever remained elastic and has never failed to adapt itself to the changing circumstances.

2. We are further of opinion that it is not possible to consider the amendments and codification piecemeal and in parts, on merits. We must have the whole picture before us.

3. We, therefore, oppose the bills.

The Secretary, Bar Association, Purnea.

This Association does not approve of the Bill to amend and codify the Hindu Law relating to intestate succession. The Bill is not intended to bring about a uniform law of succession to the country as the Marumakkattayam, Aliyanastana and Nabudri law of Succession remain unaffected and further the law relating to Mitakshara joint family which is one of the chief sources of litigation remains unchanged. We do not find any reason why the order of succession as laid down by the Dayabhaga school of Hindu Law should be altered. The Hindu Women's Property Act has already brought about an improvement in the position of females in matters of succession and such sweeping changes as proposed in the Bill should not be introduced in these abnormal days when the country is passing anxious days and the better brains are otherwise engaged.

If the object of the Bill be mainly to improve the status of the women that purpose can be very well served without changing the order of succession if the women be allowed an absolute estate instead of a limited one as under the present law and in that case it is just and proper that succession to all classes of *stridhan* should be governed by the general law of succession.

The Assistant Secretary, Maithil Mahasabha, Darbhanga.

The Mahasabha is opposed to the bills being passed into law. The Mahasabha opposes these amendments to the present Hindu Code.

The Secretary, Sanatan Dharma Sabha, Arrah (Shahabad).

Codification of Hindu Law.

1. "The Sanatan Dharma Sabha of Arrah" expresses its deep sense of dissatisfaction and resentment at the introduction of the two bills, one amending and codifying the Hindu Law relating to "Intestate Succession" and the other codifying the Hindu Law relating to Marriage, as being repugnant to all sense of Hindu religion, Society and all that is Hindu like.

2. Before introducing any change in Hindu Law it should be kept in mind that the Shastras dealing with the rules of Hindu Society lay great stress on the principles of a very high order of spiritual and religious thoughts and ideas; besides Hindus have a deep rooted socio-religious life based on the Shastric injunctions followed and respected with implicit faith inspite of reforms attempted more than once by very capable and influential leaders of the country. Having this fact in view Queen Victoria in Her Majesty's memorable proclamation of 1858 announced that there would be no interference in the religions and customs of this country.

3. These Bills seek to introduce rigid rules of statute which will revolutionise the entire Hindu civilization and create serious confusion and chaos leading to disruption of the affectionate ties of very near and dear blood relations so natural in human societies.

4. Particularly the simultaneous succession of widow, daughter, sons and sons of predeceased sons and the like throwing the most respected mother and father in the back ground in the order of succession is an idea quite foreign to Hindu sentiment and religious heart, leading to the shocking effect of breaking through the sacred, natural and cordial relation existing among the members of the family.

5. A son has the moral duty of paying the debts of the father according to the Hindu Shastras but according to the law sought to be introduced he may get a very little share in the property of his father.

6. It is said that the new law would give greater privilege to the woman folk quite equal to males. It assumes that in Hindu society women are neglected. This is an indirect insult to the oldest civilization based on liberal and beneficial ideals.

7. The Hindu Society is based on most considered rules of the Shastras. Hindus as a rule have the greatest respect for the weaker sex in the world. They have been always anxious to place her person and honour under the shield of her father, brother, husband, son and other near male relations. They fully realise their natural weakness. The proposed legislation gives inequitable right to women, which will be dealt with hereafter in connection with succession and *stridhan*.

Particular.

(1) The definition that property acquired by a woman at a partition or in lieu of maintenance would be her *stridhan* is objectionable on the ground that in the first place such properties cannot revert after the death of the woman to the family to which they belonged, and for no fault or reason is such a family going to lose its own property and a consequent perpetuation and name of its own line, and secondly because a woman given absolute right is apt to squander away such properties during her life time making all sorts of illegal and unnecessary alienations to ill deserving persons of her own choice however scandalous or dirty it may be; besides, this involves an exceedingly inequitable ratio of acquisitions for it is only a woman who is to acquire in a three-fold manner, namely one from her parents, another from her husband and the third from her mother whereas a male is to lose in equal proportion.

(2) The share of a daughter on succession being half that of a son violates the efficacy of a pinda offering and the injunction that a Hindu must have a son to prevent his entry into hell. A Hindu son offers oblations (Pinda) and succeeds to property ancestral or acquired and of all kinds. A Hindu daughter cannot and she is to get property in another family and a lot is given by way of dowry as well. She gets a lot when the male line of her father becomes extinct. If under such advantages with the aforesaid disqualification she is to get still more it would be much too hard upon the son, and a fruitful source of ill-will from which may spring up evils of litigations of the blackest type may arise, and filial love is bound to vanish into thin air.

(3) A son has a pious obligation to pay the debt of his father even during the latter's life time but while this burden is on the son none is to be on the daughter who is to reap advantages without sharing the loss. This appears to be inequitable and unjust.

The General Secretary, Champaran District Hindu Sabha, Bettiah.

The present amendment suggested in the Hindu Law broadly defined have got 3 sins in view:—

- I Marriage.
- II Succession.
- III Stridhan.

11—Succession.

The chief change contemplated is to give shares to daughters and widows even in cases where the son is in the family. This is probably on the analogy of Mohammedan Law. Its vicious results are noticeable in the Mohammedan Society where numerous Muslim Estates have been reduced to pieces. It will cause fragmentation of Hindu Estates likewise. The females are generally not competent to manage estates and as such they fall easy prey to unscrupulous money-lenders who always keep vulture's eye over big estates.

111—Stridhan.

The scope of *stridhan* should not be widened as has been done in the present definition. The Committee have adopted the interpretation of Vidyaneswar upon the *sloka* of Yagnavalka; but the definition of *stridhan* as given by Vidyaneswar has not been accepted by different High Courts in India; so the property acquired by females from 3 sources namely, inheritance, partition and maintenance have been excluded from the category of *stridhan* property. The property given to a woman in lieu of maintenance from its very nature is a right restricted in its enjoyment to the claimant only and so does not become her *stridhan* property. Let us consider the definition of *stridhan* as given by old sages, the Hindu law-givers.

Lord Mann defines *stridhan* as follows:—

"What is given before nuptial fire, what is presented in bridal procession, what is conferred on wife through affection and what is received by her parents, and brother are called *stridhan*."

Rishi Narad mentions six kinds of *stridhan*—

- (1) Gifts before nuptial fire.
- (2) Gifts in bridal procession,
- (3) Donation of husband,
- (4) Gifts by brother,
- (5) Gifts by parents.

To the above Rishi Vishnu has added the following:—

- (1) Gifts by husband on the occasion of his marrying a second wife,
- (2) Gifts after marriage by husband's relations,
- (3) Suka.

Rishi Yagnavalka follows almost Vishnu, but the word "!" has given rise to much controversy. Vidyaneswar has interpreted the last word to mean every kind of property acquired by females as *stridhan*.

The Hindu Law-givers have given an exhaustive definition of *stridhan* but they, nowhere, mention the property acquired by female from inheritance, partition or maintenance as *stridhan*. To my mind the word "or the like" is not capable of such wide interpretation. The word must be considered *ejusdem generis* with those mentioned above. So in my humble opinion the properties acquired by females at partition or in lieu of maintenance or by inheritance should be excluded from the category of *stridhan* property.

No. 3.—UNITED PROVINCES.

From the Secretary to the Government, United Provinces, Judicial (Civil) Department, to the Secretary to the Government of India, Legislative Department, New Delhi, No. 1995/VII-384/1942, dated Lucknow, October, 115, 1942.

"I am directed to forward the opinions of the High Court and Chief Court and other associations and persons."

2. His Excellency the Governor would prefer to express no opinion in the matter which His Excellency considers the Hindu community should decide for itself.

3. The Bills were published in Part VII of the 'United Provinces Gazette, dated June 27 and July 18, 1942, in English and Hindi, respectively.

From the Registrar, High Court of Judicature at Allahabad.

"I am directed to say that the Hon'ble the Chief Justice, Hon'ble Mr. Justice H. J. Collier, Hon'ble Mr. Justice J. J. W. Allsop, Hon'ble Mr. Justice U. S. Bajpai, Hon'ble Mr. Justice Mohammad Ismail, Hon'ble Mr. Justice Kamala Kanta Varma, Hon'ble Mr. Justice A. H. deB. Hamilton, Hon'ble Mr. Justice B. L. Yorks and Hon'ble Mr. Justice P. P. M. C. Plowden have no opinion to offer.

Hon'ble Mr. Justice S. K. Dar and Hon'ble Mr. Justice G. P. Mathur and Hon'ble Mr. Justice T. N. Mulla have recorded the following opinions:—

Hon'ble Mr. Justice S. K. Dar—I am in general agreement with the principle underlying this Bill except in one particular which is the basis of the provisions contained in Sections 5, 6 and 7 of the Bill. As the Hindu Law stands at present the separate estate of a Hindu goes by an order of succession in which widow and daughters do not simultaneously inherit with the son. Public opinion has sufficiently moved to allow a widow to claim inheritance along with the son and to this extent Hindu Law may be amended and a widow, son, son of a pre-deceased son and son of a pre-deceased son of a pre-deceased son might be treated as simultaneous heirs. But in my opinion orthodox Hindu opinion in these Provinces is not yet ready to concede to daughters a share equal to half of

the son in the estate of a deceased Hindu simultaneously with other heirs enumerated in section 5, class 1 (1) of the Bill and I would, therefore, delete 'daughter' from the list of the enumerated heirs in section 5, class 1 (1).

Hon'ble Mr. Justice G. P. Mathur—Very drastic changes have been proposed in the Hindu Law relating to intestate succession, which I am afraid, would be cause of interminable litigation and may spell ruin. "Heritable property" in clause (a) section 2 does not take into account the joint family property. That property would continue to be governed by Hindu law and would exclude the female heirs. The result would be that there would be an eternal struggle between the male and female heirs. The latter would try to prove that the property did not pass by survivorship and the former would try to establish that it did.

I do not think that the provisions of Muhammadan Law allowing daughters one-half of the share of the sons have in any way been conducive to the peace and happiness of Muhammadan families. It is theoretically correct to allow daughters share but I do not approve of it on account of practical difficulties.

I am of opinion that it would be sufficient to codify the Hindu law as it now stands after recent amendments, but that it would not be right to make further proposed changes.

Hon'ble Mr. Justice T. N. Mulla—agrees with the opinion expressed by the Hon'ble Mr. Justice S. K. Dar.

2. The opinions of the District Judges of Moradabad, Agra, Meerut, Allahabad, Benares and Gorakhpur were invited on the Bills and their opinions are sent herewith.

The District Judge, Moradabad.

For the reasons given in the 'Statement of Objects, and Reasons', I am in favour of both the bills which meet the requirements of the present time.

The District Judge, Agra.

The Bill appears to me to be rather limited in scope. I would have preferred the joint family system to have been done away with so that there might be no question of any property passing by survivorship.

Clause 5, Class 1.—I would prefer "Daughter's son" "Son's daughter" and "Daughter's daughter" to be put in one entry like widow, son, daughter, etc., just after the simultaneous heirs. It seems odd for example that a daughter's son should exclude a son's daughter or that he should exclude his own sister. I therefore propose in Class 1, these three should be put in one entry to be numbered (2). As to the proportion in which they should take amendment should be made in Clause 7. These should also be called simultaneous heirs.

Clause 7.—The present clause should be numbered 7 (1) and another clause 7 (2) should be added as follows if my suggestion re amendment of Clause 5 is accepted.

7(2). The distribution of an intestate property among the simultaneous heirs in entry 2 of class I shall take place according to the following rules, viz.,

- (a) Each "Daughter's son" of the intestate shall take one share.
- (b) Each "Son's daughter" of the intestate shall take one share.
- (c) Each "Daughter's daughter" of the intestate shall take half a share.

The District Judge, Meerut.

The most pronounced departure that the bill makes in the abolition of Hindu women's limited estates. It is felt that as the woman of many other communities in India take a full estate the Hindu women alone should not be deemed competent to enjoy full rights of ownership. The law of people is fashioned on their social structure and national economy. The Hindu Law in its progress through centuries has not escaped the natural processes of evolution. The recognition of a *kritrima* son as son in clause 2 (1) (b) cannot be justified on any legal principle. A *kritrima* son is nothing more than an appointed heir of a person. He is not a son in any other respect. Such a person cannot be recognised for the purposes of collateral successions as a son of the adopter.

I have felt strongly for many years that the daughter should take a share in the heritable property of her father along with the sons, the provision that she should get half a share of a son is highly equitable. This right however in my opinion should be restricted to moveables only and not to immovable property. The aim of law is to ensure the good of the great family house and similar property we would introduce an element which would cause considerable friction, heart-burning and ill-will in Hindu families. The Hindus are exogamous people. The severity and resulting inconveniences among Muslims in India of a daughter's shares along with the sons marriages. The Hindus so long as they preserve any ideals of Hinduism would not resort to cousin marriages. The maternal cousins take place are an exception in this matter. In my opinion the daughter should have half the share of a son in moveable property of the father if it exceeds certain specified amount.

The nature of the estate inherited by Hindu women from a male should continue to be a limited one and not an absolute one.

Clause 5.—A bold attempt at recasting the list of heirs and their preferential claims to inheritance on the basis of natural affections and ties of blood is needed. The chances of a person leaving at his death a son of a pre-deceased great grand-son may be remote but there is a physical possibility of such

a contingency. There is no reason to exclude such a descendant.

In class 2 a father should have precedence over a mother or at least they should both inherit equally.

Class 3, 4 and 5.—I do not see why father's sister's son should have a privileged position over the mother's brother particularly when the law has given a very high place to a sister's son.

It seems to me that advantage should be taken of reducing the large number of heirs provided in the Hindu Law and after meeting with the claims of certain relations the property should be inherited by the state rather than individual.

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 law 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 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 among 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 today. Hindu estates, big 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 however large the number of children may be, the estate retains its integrity and no share passes out of the family. The disadvantage which Mohammedan society suffers from on account of such disintegration is partly mitigated by the custom existing among them by which it is possible to have marriages amongst cousins. Cases are not uncommon in which whatever vicissitudes a Hindu family may have passed through and whatever mercies 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 father's 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 *Abhuta 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 Anoj Das versus Ram Parpan Ramanuj 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 Bhatiaji Chela was recognised 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.

District Judge, Gorakhpur.

Personally I do not agree with all the provisions of the Hindu Code, Part I (Intestate succession). This Bill introduces two very important changes in the law of Intestate succession as it at present prevails in this country. One important change introduced is that women succeeding to property no longer take a life interest in that property. They are given full ownership of the property. The second change is that female relatives of the same degree have been given a right to succeed to property with the male relatives. The first provision granting full rights to female heirs instead of giving merely life interest is, in my opinion, very useful and salutary. I consider that there is no reason at all why a female succeeding to property should be debarred from possessing full rights in it. Once she has succeeded to the property, it should also later on pass to her own successors instead of going to the reversioner of the last male owner.

The second provision which gives a right of succession to female relatives with male relatives of the same degree does not appear to me to be necessarily an unmitigated blessing. I consider that in this country, such a provision is likely to create considerable difficulties. In India the major portion of the population lives on agriculture. Most agriculturists possess very small assets. The usual possessions of an agriculturist in this country consists of agricultural implements, bullocks, cattle and a few house-hold goods. There are also petty Zamindars in fairly large numbers and they also possess a share in land. These are the usual possessions of the great majority of people in this country. If the present Bill, as

proposed, is passed, I feel that partition of these goods between sons and daughters of the deceased will result in great hardship to the sons. Often enough, there may be cases where a man may leave behind just enough agricultural implements and animals which may suffice for cultivation by one set of people. If daughters are also given a right of succession with the sons, it is very probable that immediate partitions would have to take place. Daughters continue to be married in other families, which often live at distant places, and it is but to be expected that, on the deaths of their fathers, they would like to realize their own shares of the assets of their fathers in cash, or to carry them away with them. In such cases, the sons would find that they are left with too little goods to carry on agriculture properly. There may be cases where a man may leave only two bullocks and one plough and if he leaves behind a son and a daughter, the partition of these will make it impossible for the son to carry on the work of agriculture at all; whereas the daughter will not be very materially benefited by claiming her share and obtaining a partition from her brother. The result will be that, in most cases, families of agriculturists will find it very difficult to carry on, if a man dies leaving behind several sons and several daughters. In some cases, daughters may agree to let the sons utilize all such essential articles and may not insist on immediate partition, but these cases are not expected to be many in number. The position will be worse as soon as the daughters themselves die, because their successors are sure to insist on immediate partition. The result will be that families of small cultivators and petty Zamindars would be completely ruined and would not be able to carry on their work properly.

Difficulties are likely to arise similarly in the cases of small traders and businessmen. Immediate partitions of the business concerns are sure to ruin them. With very few exceptions, daughters get married and go into a family which maintains them, and, even if they are deprived of all share in the assets of their fathers, it does not make it impossible for them to continue to live properly. On the other hand, if shares are given to daughters, sons would often find it impossible to carry on their work at all and this would happen in a large majority of cases in this country. There may be cases where there is only one son and several daughters. In those cases, the partition of the shares of the daughters would leave the son in a still worse position and he may not have enough materials left either to carry on agricultural work or to continue the business that might have been carried on by the father.

Even in the cases of a large majority of middle class families, difficulties are likely to arise. In most middle class families, father find it a very difficult problem to provide proper careers for their sons and, if this law of intestate succession is introduced, the situations would be still worse. In a large number of cases, fathers have to support their sons in business and in all those cases, those business concerns would be affected very adversely, if partitions are sought by the daughters. Of course, there will be some cases in which succession of a daughter will not materially affect the family and the sons would be able to carry on very satisfactorily even if the daughters take away their shares. Such cases are, however, likely to be very small in number in this country. Such cases will be only those in which the person dying intestate leaves hard cash or extensive zamindari or other property.

I also feel that it will be only in these few cases that the daughters will surely be the gainers due to the introduction of the right of succession with sons suggested in this Bill. In cases where the person dying intestate leaves a large amount of property, the shares of the daughters will be material and they will be able to take them away and utilize them, but in a large majority of cases, I feel, that the daughters will be losers, if the provisions of this Bill are passed into an Act. According to the customs of the Hindu society, as constituted at present, daughters do not take any shares as heirs of their fathers, while sons are alive, but social customs provide that daughters visiting fathers or brothers are often given valuable gifts and these gifts continue over a long period. The daughters receive considerable amount of cash and movable property in these gifts. In most cases, where the family is poor, the total amount which a girl receives through gifts is usually much more than the value of her share in the assets of her father, because the gifts continue over a long time. The male members of the family also do not mind giving those gifts, because they have to be given at intervals and on those occasions and their expenses can usually be met by them from their current income. In a poor family, on an average the assets that a man may leave will not be worth more than a few hundreds of rupees. The share of the daughter will be a very small amount. Once she takes away that share and seeks a partition, it is natural that the male members of the family would not like to give gifts later on, as they do at present. In those cases, the daughters will be losers rather than gainers. In middle class families probably the cumulative value of gifts received by a girl is on an average not very much different from the value of the share she might have received, if she had succeeded to the property of her father, according to the provisions of this Bill. It is only in cases of rich families that daughters are decided losers, under the present system. In every rich family, the value of the gifts received is small as compared to the value of the share that would go to a daughter. It is only in these few cases that a daughter would be benefited by the provisions of this Bill, and I do not consider that for such cases alone such a Bill ought to be passed.

Of course, we must keep in view the fact that the passing of such a Bill will considerably change the present system of life amongst the Hindus. It is bound to affect very adversely the joint Hindu family system. Of course, the joint Hindu

family system has its defects, but it is very doubtful whether its advantages do not out-weigh the defects. The introduction of the provision giving right of succession to the females with the males of the same degree is sure to result in disruption of joint Hindu families. It will also dis-organize a number of customs prevailing amongst the Hindus and I consider that the benefits that would be derived from the Bill do not seem to justify taking the risk of introducing of these changes. There is also likelihood that the amount of litigation will very considerably increase. There will either be frequent partitions or there will be constant disputes between the male and the female successors. This is likely to arise, because the female successors, would be living apart from the male successors, would belong to different families and would have entirely different interest. Male successors of one individual usually live at one place and together and, therefore, they can manage to carry on amicably. Often enough there are disagreements and litigation arises, but it is much less frequent, because the male members usually feel that an early partition would in most cases be harmful to all the members of the family. Keeping these points in view, I feel that the provisions of this Bill giving right of succession to the females with the males is not a very useful one and is at least premature under the present conditions of Hindu Society.

An argument is frequently brought forward that the right of succession of females has been working successfully amongst Muslims and Christians. I may point out that in most cases where women could materially benefit amongst Muslims and Christians, methods of evading their succession have been introduced. Amongst the Muslims Waqfs Al-al-Anlad are executed in a number of well-to-do Muslim families and in most cases the provisions of the Waqf deeds exclude inheritance by women. In fact, most such Waqfs are executed with the specific object that the property in the family should remain with the male members and should not go to the females. Even amongst Christians in England, it was found necessary to introduce the system of Entailed Estates in order to preserve properties belonging to the families of the Nobles and the Peers.

One other evil that is likely to arise owing to the introduction of this Bill, is that there will be an attempt even amongst the Hindus to ensure that marriages of boys and girls take place within the same family. Amongst Mohammedans, there is a tendency to marry girls in the same family, so that no portions of the immoveable property may pass to other families. Marriages amongst members nearly related in blood are not considered biologically advisable. Amongst Hindus, they are considered very undesirable. It is very likely that, if right of succession to daughters is granted, there will arise a tendency to encourage marriages within the family and often amongst cousins. Such are the evils that are likely to arise, if the provisions of this Bill are changed into law. I feel that the drawbacks out-weigh the advantages of the Bill and, therefore, I consider that this Bill should not be passed.

Additional District & Sessions Judge, Gorakhpur.

My objection to this Bill is that it does not go far enough. If it is proposed to amend the existing Hindu Law I can see no reason why the amendment should not be a thorough one. Sex distinctions, in my opinion, should be abolished altogether; but in the Bill, as it stands, there are numerous instances where males are favoured more than females. For example, the son of a pre-deceased son is to inherit along with the widow, the son and the daughter of the propositus, whereas the daughter of a pre-deceased son is excluded from inheritance by the widow, the son and the daughter. Similarly a sister cannot inherit while there is a brother alive. The same discrimination between the sexes also leads to preference being given to agnates before cognates. The daughter's son, for example, is postponed to the son's son; and in the case of distant heirs those in the male line are preferred to those in the female line. Another example of discrimination is to be found in the special rules of succession to Stridhan.

In my opinion all these distinctions between the sexes should be abolished with one clean sweep. I should therefore recommend the following amendments in the Bill—

- (a) Intestate succession to a woman's property should be precisely the same as if she had been a man (substituting husband for widow wherever necessary of course).
- (b) A daughter should take exactly the same share as a son and not half a share as proposed by the Bill.
- (c) Females should inherit along with males of an equal degree of relationship.

Thus, in my opinion, the enumerated classes of heirs should be:

- (i) Widow or husband; and descendants per stirpes.
- (ii) Parents.
- (iii) Parents' descendants (brothers, sisters etc.) per stirpes.
- (iv) Grand-parents.
- (v) Grand-parents' descendants (uncles, aunts, first cousins etc.) per stirpes.

And as for more distant heirs, those descended from a nearer descendant of the propositus should be preferred and should inherit per stirpes.

The District Judge, Benares.

The Bill relating to intestate succession proposes to introduce some drastic changes in the existing Hindu Law. Some females who have hitherto not been classed as heirs are included in the category of heirs and it is proposed to confer upon them an absolute right in the estate.

The proposed legislation will hasten the destruction of Joint Family System. It is generally considered that the joint family system is gradually dying out, but in fact even now there is a very large number of joint families. It is believed that in a joint family considerable protection is afforded to all the members of the family whether major or minor, weak or strong or capable of earning their livelihood or not. The sudden death of an earning member does not dislocate the family unit. Many persons believe that only in a joint family there is full scope for self-less service. The proposed legislation would make it impossible for a new joint family coming into existence to replace those dying out by death of the members or by disruption. Under the existing law the sons inheriting self acquired property of their father or the grand-sons inheriting to their maternal grand-father take the estate as members of a joint family with right of survivorship. The introduction of female heirs, some of whom may go out of the family by marriage, will make it impossible for the continuance of the family as a unit holding joint property. It is very doubtful whether the legislation would be welcome to the majority of the Hindus who are sought to be bound by it.

Under the existing law a widow is not entitled to any share, if the deceased has left male issues, but she is only entitled to get a share equal to that of a son in case of partition amongst the sons. Under the existing law a daughter also is not entitled to any share, if the deceased has left male issues. Both the widow and the daughter in the proposed legislation would get certain share with an absolute right. Considering the present illiteracy among the women-folk it would be ruinous both in the interest of the widow and in the interest of the members of her husband's family to give her a share along with her sons and that too an absolute one. If she is a step-mother the trouble of the sons would know no bounds. If she is young and inexperienced she may fall into the trap of some designing persons and bring ruin upon herself by parting with her share. Sufficient provision has already been made for the widow by giving her a share along with her sons in the separate property of her husband under the Hindu Woman's Right to Property Act of 1937. The daughter is bound to go out of the family by marriage, and the sub-division of the property among sons and daughters is bound to lead to continuous litigation and trouble. Provision, however, may be made entitling the daughter to claim maintenance out of her father's property in the hands of his heirs provided her husband is dead and that she has nothing sufficient to fall back upon. This will to a great extent prevent unnecessary sub-division of the property.

The other objection to the proposed legislation is that son's daughter and daughter's daughter are classed as heirs before mother and father. Mother and father among Hindus are regarded with the greatest respect and affection and there appears to be no reason as to why they should be classed as heirs after son's daughter and daughter's son, who have to look primarily to their parents and their families for support. Section 2 of the Hindu Law of Inheritance Amendment Act of 1929 accordingly should stand.

The definition in Section 2 clause 2(b) that a woman shall be deemed to be an agnate of her father and his agnates even after her marriage is repugnant to the true conception of marriage among Hindus. Marriage is a sacrament and a fusion takes place between the girl and her husband upon such marriage and the girl passes into the Gotra of her husband. Such a definition accordingly is irreconcilable.

From the Registrar, Chief Court of Oudh.

I am directed to send herewith copy of opinions of the Hon'ble Chief Judge and other Hon'ble Judges of this Court as well as of the District Judges of Lucknow, Hardoi, Gonda, Fyzabad and Sitapur on the bills to amend and codify the Hindu Law relating to intestate Succession and Marriage.

OPINIONS.

The Hon'ble Chief Judge and other Hon'ble Judges of the Hon'ble Chief Court of Oudh.

In its broad features the proposed Act marks a distinct advance in the progress of the codification of Hindu Law and in the removal of archaic rules. It gives statutory recognition to many rules of succession laid down in judicial decisions. The proposed enactment tends to secure uniformity by removing some of the conflicting provisions of the various schools of Hindu Law. This uniformity would facilitate the administration of justice.

Sections 1 and 2. No comments are necessary.

Sections 3 and 4. Clarification of the question whether the provisions of the proposed Act should or should not be subject to custom deserves consideration. In the provinces of Oudh considerable difficulties have arisen owing to conflict between statute law and customary law. Act XVIII of 1876 commonly known as the Oudh Laws Act provides in section 3(b) (i) that the law to be administered by the Courts of Oudh shall, in questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption etc., be according to the custom applicable to the parties concerned which is not contrary to justice, equity or good conscience. Proviso (ii) to clause 3 only removes the conflict between the proposed Act and the statutes regulating succession to impartible estates. The words of this provision do not affect any special family or local custom having the force of law.

Sections 5 to 8. No comments are necessary.

Section 9. The rules of preference specified in this clause attempt more at enumerating the existing rules than simplifying them.

Sections 10 and 11. Embody well-recognised rules of Hindu law relating to succession and their inclusion in the Bill will give statutory recognition to the principles in force.

Sections 12 to 14. Codify the law relating to stridhan and amend it to make it more consistent with modern conditions.

Sections 15 and 16. Embody provisions which have been accepted in other systems of law.

Section 17. Validates inter castes marriages.

Sections 18 and 19. Codifies the law on matters which is of considerable importance.

Section 20. Removes the old rule which excluded from inheritance persons suffering from blindness and other diseases considered incurable in ancient times.

Sections 21 (a). Embodies the present Hindu Law.

(b) Makes a change in certain respects.

Sections 22 and 23. No comments are necessary.

W. Y. MADELEY.

4th August 1942.

My opinion on the proposed legislation is as follows.

In the illustration to section 2(d) instead of the words "self-acquired property" the words "separate property" be used as self-acquired property thrown into the common stock becomes joint property.

Section 2 (1) (h). I would not include kritrima son in the definition of "son". I think "dwyamushyayana son" must be defined. The term is sometimes used to mean a son begotten by a man on the wife of another and sometimes it means a son adopted with the express condition that he is to be the son of both fathers. The word should mean the latter only.

Section 2 (1) (i). I would not include the property acquired by a woman by inheritance or at a partition of the family property or in lieu of maintenance or by purchase with her husband's funds as stridhana.

Section 2 (2) (b). I would omit this clause.

Section 2 (2) (d) (iii). I would omit this clause.

Section 5 (1) (1). I would omit the word "daughter" and add it after this clause as clause (2) and remember other clauses as 3, 4 and 5 in place of 2, 3 and 4.

P. C. AGARWAL,

Judge.

12th August 1942.

The proposed Bill relating to Intestate Succession among Hindus represents in my opinion a distinct advance upon the provisions of the Hindu Law in force in British India in matters of succession and ought to receive favourable reception. The Bill, however, does not take into account customs prevalent in different parts of British India, particularly in the United Provinces, where widows and daughters are excluded from inheritance under ancient customs, and unless a provision is expressly made in the proposed Bill that custom will not be allowed to defeat the provisions of the proposed Bill in matters of succession, the Bill is not likely to yield fruitful results. I should suggest, therefore, that the Bill should provide that the rules of succession laid down therein will apply notwithstanding the existence of any custom to the contrary.

GHULAM HASAN,

Judge.

17th August 1942.

I agree with Mr. Justice Ghulam Hasan that the Bill should provide that the rules of succession laid down therein will apply notwithstanding the existence of any custom to the contrary.

It is proposed that the Bill shall come into force on the 1st January, 1946. Presumably it is intended that its provisions shall be applicable to all suits pending on that date and appeals (whether filed before or after the 1st January, 1946) against decrees passed prior to that date to be governed by it or not? In view of doubts that have arisen on such points in connection with recent enactments it seems very desirable that the position should be made quite clear in the Bill.

J. R. W. BENNETT,

Judge.

19th August 1942.

1. The purpose of this Bill is commendable. In my opinion a express provision should be made in the Bill to provide that the rule of succession as laid down therein will apply notwithstanding the existence of any custom to the contrary.

2. It should also be made clear what will be the effect of the Bill when it comes into force on the decrees passed prior to the date when the Bill comes into force. If no clear provision is made there may be trouble as to the retrospective effect of the Bill.

G. H. THOMAS,

Chief Judge.

22nd August 1942

The District Judge, Lucknow.

The purposes of the Bill seem to me to be entirely commendable. It is most desirable, in the first place, that there should be a common law of intestate succession for all Hindus in British India thereby assimilating the Mitakshara and Dayabhaga jurisdictions. In the second place, proper recognition will be given by the amended Hindu Law to the rights of the Hindu women as regards property. The law as it at present stands severely restricts these rights and is not in consonance with enlightened public opinion. I believe that educated Hindus generally realise that the reforms contemplated by the proposed legislation are long overdue and that Hindu society can no longer be governed by obsolete laws which were drawn up many centuries ago. The question of what shares should be given to the various heirs of an intestate person is one which must be decided after full discussion between leading Hindu jurists and is not one in my opinion which can readily be decided by a non-Hindu, but after perusing the explanatory note it is difficult to criticise the proposals and the reasoning of the sponsors of the Bill. The two Hindu Civil Judges of this judgeship have both expressed the view that the provisions of the Bill appear to be reasonable. Speaking generally it appears to me that the proposal to abolish the Hindu woman's limited estate is most salutary. This disability is peculiar to Hindu Law alone and, whatever may have been the reason for imposing it in the past, there is obviously no justification for it at the present time in view of the increasing emancipation of Hindu women. It cannot be denied that the disability is responsible for one of the most fruitful sources of litigation, the result being that money is unnecessarily squandered by parties and much time occupied by judicial officers in the disposal of these cases. It is well-known that the full value of the property transferred by a woman with a limited estate is not paid by the purchaser on account of the fact that the transfer is invariably challenged by the reversioners with the result that the limited owner suffers financially even though there may have been legal necessity for the transfer and further it is very doubtful whether the reversioners, even if successful in challenging the transfer, are any better off after having spent large sums in prosecution of the litigation. The reasons given by the sponsors of the Bill in their explanatory note for abolishing the Hindu woman's limited estate cannot be seriously controverted. The alternatives considered by them do not, as pointed out in the note, really afford a solution and I consider that they have taken the best course by resolutely abolishing the whole conception of a limited estate by placing the Hindu woman on a par with other women in India. I have no doubt in my mind that Judges as a whole will welcome the reform not only on the higher ground that it will free the Hindu woman from a most serious disability but also because it will abolish a type of case which is much too frequent in the courts which entails considerable time and trouble in deciding. The proposal to allow a widow, a son and a daughter to inherit simultaneously is also one which should meet with approval. The existing law whereby a son alone succeeds proceeds upon the assumption that the females of his family are incapable of holding and managing the property. This conception is quite obsolete and should no longer be allowed to prevail. It has been pointed out to me by one of the Hindu Civil Judges that in some places the custom of exclusion of the daughter from inheritance prevails and that as this custom is opposed to the modern idea that there should be no sex disqualification, I am of the opinion that steps should be taken to prevent such a custom from overriding the law as amended in the Bill. A clause could be inserted that a custom which defeats any of the provisions of the Act shall be deemed to have been abolished by the Act.

The District Judge, Hardoi.

I am not in agreement with some of the important provisions of the Bills and am thus unable to view the Bills with favour.

District Judge, Gonda.

I fully agree to the proposed amendment.

The District Judge, Fyzabad.

I generally welcome the Bill which proposes to give absolute right to the female heirs among the Hindus and abolishes the limited estate. This gives her right similar to women in other communities and is bound to reduce litigation immensely. The social condition and concepts had been rapidly deteriorating the position of widows without moving at the same rate towards giving such a right to them. The evils of fragmentation of the property are not to be preferred to the bettering of the living condition of the widows in the present materialistic times.

I prefer that the adopted sons should have the same rights without any reference to the form of adoption as this is bound to simplify matters.

I am also of opinion that a divided son should not have a share in the property of the intestate. This will have a moral effect on the son to behave better and not to disrupt the family. He will have to pay more regard to his father. If he is sure of no penalty in the way of inheritance the mere paternal tie may be found to be much weaker than it is supposed to be to keep the family intact these days. Moreover when he separates he is likely to be provided for by the father. By getting a share in his inheritance he is likely to get a much greater share than he would have been entitled to if he had remained joint.

I would like that the share of unmarried daughter be one and not half. The married daughter is to get more if she and the unmarried one inherits equally as the married daughter must get something out of her father's assets at the time of her marriage. The father incurs expenses on the marriage. The unmarried daughters should be reimbursed for these and her share should also take into consideration the possibility that her brothers and other simultaneous heirs may not like to incur any expenditure on her marriage when she owns some property in her own right. Such a contingency is probable for such time which need not be short till the Hindu Society as such is reconciled to the sharing of the widow and daughter in the property of the intestate when his sons survive him.

The Bill I suppose intends that custom or usage will not affect its provisions. I would prefer that this be clearly provided in the Bill and should not be left to the law courts to decide in future about it.

I think that the first word 'sons' in section 7 clause (c) is wrongly printed. If not, the provisions of section 3 appear to be inconsistent with those of clause (b) and the illustrations. This may be corrected.

I would suggest that it may be provided in section 19 of the Bill that it would apply to such person who has been convicted of murder or abetment otherwise it may occasionally and in course of time may lead to frivolous objections to one's inheriting property on this account.

* * *
District Judge, Sitapur.

* * the provisions as embodied in the two Bills appear to be satisfactory.

The Advocate General, United Provinces, Allahabad.

* * I am in favour of the codification of Hindu Law regarding these two subjects. At the risk of being called a conservative and old-fashioned man, I am not in favour of giving daughters a share in the estate of their father along with the sons nor am I in favour of allowing absolute estate to the females succeeding to the property of their male relations. In my opinion, the existing rule of Hindu Law of not allowing any share to the daughters in presence of the sons has had a very healthy effect on the Hindu society. By allowing a share to the daughters the same confusion and minute partition of the property will follow as in the case of Muslims. There will also be constant quarrels between the daughters' husbands and the sons of the family and in most cases the brothers will obtain deeds of release from the daughters by exercising undue influence or adopt other devices to defeat their shares as it has been often observed in the case of Muhammedans. Moreover, the Hindu sentiment revolts against the passing of the ancestral family property into other families absolutely. The daughter once married passes into another family and has her rights there. She is very often given good deal of dowry even by the poorest Hindu to compensate her deprivation of the patrimony. It will also effect the harmonious and affectionate relations now existing between brothers and sisters. It will be natural for the sons not to part with the property and as a result strained relations will come in, thus disturbing the peace and harmony of Hindu families. I am, therefore, opposed to daughters being allowed any share when a son or sons of the deceased are alive.

The safe-guard in Hindu law which exists at present of allowing females only a limited estate has worked very well during the past century and to my mind there are no sufficient reasons for abolishing it. Whatever might be said of the equality of sexes, I do not think that female education has spread so far in India that it can be said of every Indian woman that she is capable of managing the estate or understanding the machinations of unscrupulous persons dealing with them. We have to look to the majority of women in India and not simply to some of them who have received English education. The literacy among Indian women is microscopic and the influence of purdah system has rendered them quite helpless. To give such women absolute right of property would be placing in their hands certain means of temptations to unscrupulous relations with other persons of taking out the property from their hands. I am afraid that in most cases the result will be that the property in the hands of females will pass out of their hands either without consideration or for highly inadequate consideration leaving those females utterly destitute and without any means of living. It was to prevent such happenings and to ensure a source of maintenance for their life that the powers of females over the estate inherited by them was kept limited. At least the present state of Hindu society does not warrant this violent change in the system of Hindu Law of succession. I will, therefore, submit that the present rule of a limited estate being granted to females in inherited properties should remain untouched.

With these two exceptions noted above, I am in favour of the Bill for Intestate Succession which has been drafted by the Hindu Law Committee. I welcome the concise Rules which have been enunciated in the Bill for finding out the heirs and for giving preference among them. The clauses laying down the succession are also according to the Hindu Law and prevalent notions.

I will advise the deletion of clause (12) of this Bill and instead of it a clause should be inserted that a woman shall have a limited right over the property inherited by her from the male, that is, a right to enjoy the income of the property without power to alienate it except for legal necessity. The term 'legal necessity' may also be defined in the Bill. In any

case, this term will have to be defined in the case of alienations by *karta* of a joint Hindu family or by the guardian of a minor. Therefore, I see no difficulty in giving an exact definition of the word 'legal necessity' so as to avoid much litigations which now centres round the alienations by females. In all other respects I agree with the clauses of the Bill.

* * *
Mr. Thakur Prasad, Munsif, Bijoor.

In this article I shall deal with the Bill to amend and codify the Hindu Law relating to intestate succession.

The Public has now before it in the form of two Bills the concrete proposed enactments which vitally effect the entire Hindu population of India. If we carefully analyse the Bills we find that the authors had only one definite aim and purpose to accomplish and that is to put into actual practice the slogan of Independence for Women. There is nothing else of any practical utility in these Bills. Had it been a mere question of codification of Hindu Law much controversy would not have arisen for there the Legislature's business would only have been to marshal the rules of Hindu Law from out of the *Smritis* and *Nibandhas* and from case laws far established by the High Tribunals of the land. The Bills attempt to amend the Law and amend it not on the fundamental principles of Hindu Law but in violation of the same. While making this statement I am not unmindful of the attempt made by the Drafters of the Bill to put up a strong show that their proposed amendments are in keeping with the texts of Hindu Law. But so weak is their case on that score that they have had to confess at places in their notes that they have departed from the letter and spirit of the Hindu Law and that to serve one purpose and one purpose alone which is to put the women folk on the level of absolute equality with man. They have attempted to quote scriptures but stray rules of scriptures can be quoted by any to prove anything, for so vast is our literature on the subject. My humble attempt in this short note is (1) to show that the Bills are against the whole structure of Hindu Law and Hindu Civilization and Culture and against the whole fabric of Hindu Social Life, (2) to show that it is inopportune and untimely or at any rate far ahead of the notions and the expectations of Society as they obtain among the vast mass of humanity living in the rural areas whose lives, properties and religion are to be so vitally affected by these Bills and (3) lastly to show that there is no necessity for any such enactments.

I shall start with the last two points first. The framers of the Bills seem to be satisfied that their proposals have been received favourably by the public at large. I am of opinion that they have not directed their attention to one very important aspect of the matter. India is Rural India. The city population is a mere drop in the ocean, a hopeless minority and of an infinitesimal proportion. I may confess that these Bills may work well with the populations living in towns and with families having modern education, provided it be assumed that such a part of Hindu population has lost all beliefs in that part of Hindu religion which is affected by these amendments. An Indian Legislature must have before its mind's eyes the condition of the rural population, their beliefs, their religious, their sentiments, their modes of life, their attitude towards their females and the like factors. They must know that these Bills sweep away by a stroke of pen their cherished traditions of centuries. Every student of Hindu Jurisprudence knows the simple fundamental principle of our Great and Glorious system that our Laws are not man made. They are divine in origin. I will quote a very high authority on this point—Dr. Ganga Nath Jha, a great modern Indian Orientalist and a great Scholar of Sanskrit and Hindu Religion and Ethics. He says, "The Law of the Hindus like everything else conducive to the welfare of man has its source in the revealed word of the Veda. The Hindu will not admit of any other source for his Dharma. Jainism long before the fifth century B. C. formulated in his *Shutras* the three propositions that (a) what is good for man can be learned from the Vedas (b) it can be learned from the Vedas only and (c) whatever the Vedas say must be true. This supreme authority of the Veda is based upon its own eternal and immutable character (according to the *Purva-Mimansa* and *Vedanta* and upon the fact of its being the work of the omniscient God (according to *Nyaya*). If we trace the growth and evolution of Hindu Law from the time immemorial down to the commencement of the British Rule in India we shall find that the evolution took place at the hands of our *Rishis* in the first instance who framed their *Smritis* on the principles of the rules of the Vedas incorporating such rules or amendments of their own to suit the changed conditions of time but they did it not in violation of the divine law but in conformity with the same. At any rate it has to be admitted that they never professed to lay down any new rule of law for they worked on the same fundamental rule that Hindu Law was Divine Law. Later Commentators (*Nibandhakars*) who digested and commented followed the same process and the Hindu Law was evolved and had its growth under such a process right up to the establishment of the rule of East India Company. The King under the Scheme of Hindu Policy is not a legislature. He is subservient to Law as much as the meanest of his subjects. He has to administer the Divine Law. The present Legislature has therefore no powers to legislate. In the whole course of the long and hoary history of the growth of Hindu Law such a bold digression has never occurred. The most modern and the most learned and authoritative of our commentators, namely *Vijnaneshwar* and *Jimutvahana*, could not go to the length of laying down or of saying even indirectly that they were laying down any new rule of law. The present piece of enactment is an open violation of that funda-

mental principle of Hindu Jurisprudence. If a referendum were to be made to the entire Hindu population even the most enthusiastic of the reformers will not doubt the defeat by a vote of 99 per cent. Can we believe that Hindu India of over 95 per cent. of the village population will tolerate such open mutilations of their Laws? Will even the orthodox residents of towns tolerate them? The function of a Legislature is not to impose its convictions by enactments upon the people. Its right function is to legislate only on subjects that already exist in the notions of the people. They give legislative sanctions to rules already accepted by the masses. Sir William Jones than whom there have been very few others who had made a more critical study of our Dharma Shastras, observes in his preface to his book *Institutes of Hindu Law* as follows: "It is a maxim in the science of Legislation and Government that 'Laws are of no avail without manners', or to explain the sentence more fully that the best intended legislative provision would have no beneficial effect even at first, and none at all in a short course of time unless they were congenial to the disposition and habits, to the religious prejudices, and approved immemorial usages of the people for whom they were enacted specially of that people universally and sincerely believed that all their ancient usages and established rules of conduct had the sanction of an actual revelation from heaven". It was in compliance with this maxim, says he, that the Legislature of Britain allowed the Hindus to be governed by their own Laws. Hence in matters religious such rules of conduct must scrupulously be followed. I admit that if a law is passed quietly unknown to the people and is enforced and the people have no opportunity to analyse the law and find out its true imports and have thereafter to accept it perforce it cannot be said that the people at large have given consent to the same. My hit is towards the authority of Act II of 1929 which is relied upon by the Framers of the Bill. My point is this. Hindu Secular Law is a part and parcel of the Hindu Dharma taken in its widest sense. The Hindu secular Law is so inextricably woven up and intermingled with the pure religious law that it is impossible to frustrate one without affecting the other. Will the Legislature be justified in frustrating the whole of our Dharma Shastras on the subject of Shraddha? I will quote the same learned Doctor in what he said in connection with the Bill that was to be put up before the Legislature and which eventually became the aforesaid Act II of 1929. He said "There is a proposal (I do not know if it has become law yet), that in the middle of the list of inheritors of property as provided by the Hindu Law books one or two additions should be made. This proposal loses sight of the basic fact underlying the whole fabric of our laws of inheritance. 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 Shraddha. If that be so will it be right and fair to interpolate new names into the list while the legislature cannot suppose interfere with the liability to perform the Shraddha?" He further says "The personal law of the Hindus is so complicated and interrelated in its various factors that piecemeal legislation is bound to be a failure and to create greater confusion than there exists already." (*Vide Hindu Law In Its Sources*, Preface, Page 1). Did the Framers even give a passing thought of the effect of this law on the Religious injunctions of our Dharma on the subject of Shraddha? It may be said that it is not a correct rule of Hindu Law that the rule of succession is based on the capacity or liability of performing Shraddha, and scriptures may be quoted for it. I will lay down a very few authorities if they be needed on this point. The basic text of Manu the fountain source of law on the subject is as follows: "To three must libations of water be made, to three must offerings of Pinda (food) be presented, the fourth in descent is the giver but the fifth has no concern with them. To the nearest Sapinda the inheritance belongs; after that the distant kinsman (Saknya) shall be the heir or the Vedic Preceptor or the pupil". The text itself is as clear as daylight and Manu's authority is supreme among the Smritis. Dr. Jha's opinion itself is of the highest value. Then we have the fact that Jmutsaban based the whole of his theory of Spiritual Benefit for determining the rule of succession on this Text of Manu. I shall now leave this point to the impartial readers to form their judgments. It is irrelevant for the consideration of the validity of the Bill to take into consideration the view point of a Reformer who would say that the Shraddha or the whole of the Dharma Shastras of the Hindus are all matters of a dead past unsuited for the modern conditions of life.

So far our laws were shaped by our Rishis or by Commentators who were great Pandits, people highly learned in all our Shastras who could have a comparative knowledge of all the Smritis and of the customs and manners of our people as the first hand and above all who had implicit faith in the truth of our great religion and culture. They were thus the best persons to say what the law should be for even where they might intended to lay down new rule it will be a mere superstructure on the Vedic or Shastric foundations. Meaning no disrespect to our present day Legislatures we will not be far from the truth if we say that there are very few such members who possess that requisite merit which our Commentators at least possessed. Can the framers in all conscience say that the new law is in conformity with our Hindu Law?

As to the belief that there is a considerable response from the public for the passing of such a law I beg to differ most respectfully. The point is whose response is sought, is it the response of a handful of English educated men or of the vast mass of the Hindu public that lives in villages or at any rate of those of the Sanskrit knowing Pandits who

know the Shastras and who in some measure lead the masses in matters of Dharma? I am of opinion that the latter two classes have not yet known if there is even such a proposal before the Legislature. The Bills were published in the Gazette and some lawyers and judges gave their comments. It is a point to be noted in particular as to how many of those persons who read these gazettes and cared to offer suggestions could be said to represent the two classes of men mentioned above who of all the rest are the only persons whose opinion should count on such a subject for they constitute over 95 per cent. and are really affected. I hope to be pardoned if I say that a very small percentage, a negligible percentage of our present day lawyers and judges and students of law have had time or inclination to know much or ever a bit of the Hindu Law or Jurisprudence. What value can and should be attached to the opinion of those who know so little of the Hindu Law? By Hindu Law I do not mean the Hindu Law as commonly understood namely the rules of Hindu Law laid down in the case law, for a knowledge of the latter will not be of much value for the legislation like the present one. The best course ought to have been to get the Bills translated into Hindi and Sanskrit and to have submitted them to the examination of learned Pandits of Benares, Shantipur, Nadia and the like and got them advertised in the village side on an extensive scale and authoritative opinion of Pandita sought for the same. We should not think that there are not very large number of such men in the country with liberal views who could have best been consulted.

As to the desirability of creating laws for putting females on terms of absolute equality there is bound to be much and serious opposition from the quarters mentioned above. Where is the hurry for such a legislation in such abnormal times? There is hardly any effective women's movement in the country yet. The movements of the females here is of a period of 3 or 4 years or so and no emergency has arisen for such a drastic legislation.

Moreover the most important point to be noted is that the cry of independence for women is of a very small number of them. And if independence can be pleaded for women it can only be pleaded for the educated among them. Would it be fair to pass a law affecting about 30 crores of people in order to satisfy the desires of a few thousands? We cannot deny that our womenfolk of the villages brought up under the age-long traditions of tutelage are not fit to hold absolute estates. If we examine our Dharma shastras we shall be particularly struck by one salient feature in them and it is that the whole trend of their rules is of making laws for the village-folk. That outlook or view point is totally absent in the Bills and also in the Act II of 1929. Act II of 1929 is the most unreasonable and the most un-Hindu of Hindu Law passed by any modern Legislature. That legislation had the very least of publicity and the public which is vitally affected had the least opportunity of knowing anything about it. The most unfortunate fact is that that class of all is the least vocal and the most unconcerned in public matters. It is therefore all the more imperative on the Legislature to awaken that slumbering class and let them know what is happening regarding their religion and law. When the Congress Government undertook tenancy legislation in these provinces and elsewhere they carried on an extant village advertisement and publicity of their Bills and people in the most obscure of places knew exactly what was being passed long before the Bills were taken up before the Council. That is the sort of publication which I plead for these Bills. It will be unjust to pass a law so unknown to the masses. It will look like stabbing an unwary innocent man from behind. I will suggest that the Act II of 1929 should also be considered afresh, and put in the legislative crucible.

Now in Rural Areas the sole means of livelihood is agriculture and each family has a few plots of land to cultivate either as petty proprietors or as tenants. The big Zamindars are few in number. Our Laws will affect the millions of these small plots owners. It is a matter of common knowledge that the girls of these village families are not married in the same family or even in the same village. They are invariably married in foreign families at distant places. What is the result of giving shares in inheritance to these daughters and sisters may not be appreciated by those who have no personal experience of such village families and of such female successions. So long as these girls are not married they are members of the family and live in the family as other males but after marriage they leave the village permanently and come to their parental homes on occasions and only as guests. They become allied more or less completely with the families of their husbands and become aliens to the family of their fathers. This is not a matter of national theories of Hindu Law, this is a fact observable. These females after their long disconnection with the parental family lose much of their former love and affection. To give inheritance to these semi-aliens in preference to nearer family agnates will not be judicious. They introduce aliens in the family coparcenary and cause trouble and frictions. It is the common experience of all who have had to deal with such matters that large numbers of offences, even murders are committed to get rid of these strangers and litigations become rampant and assume various forms and prove ruins both of the families of the female as well as of the families in which they are given successions. This is my experience of these provinces (U.P.) derived from my day to day knowledge of cases as a Judge since over 14 years. They prove ruin of a large number of families. I

am talking of the effects of the inheritance of daughters and daughter's sons which is a matter of very ancient tradition but at the same time prejudice does exist even now and the notions of strangeness of a married daughter persists. I rely upon the following observations of very eminent and experienced Judges of Allahabad High Court on this point. They observed "Now without wishing unduly to disparage the oral testimony produced by the defendants, we prefer, having regard to the *undoubted prejudice there is among Hindus against succession following in the female line*.....to rely upon the documentary proof....."

(Per Straight and Tyrrel JJ in 5 All. 532 at 541.)

If such be the feelings of members of the parental families of daughters about them what would be the extent of such feelings about distant females, namely, son's daughters, daughter's daughters, daughter's son and sisters and sisters son. Our ancient law givers had much deeper and wider grasp of the intricate problems of village inheritance when they scrupulously avoided and excluded such females as would cause disruption in the Family harmony. It would not be much presumptuous on my part if I submit that we should not think ourselves much wiser than them. I will by way of digression quote some very high authorities on the merits of these ancient law givers and on that of Hindu Law. I am compelled to make the digression as I find there is a deep rooted contempt even among the Indian students themselves about the merits of our ancient law and I hope to be pardoned if I say that the Bills are the practical results of such notions. Mr. Mayne by no means a very sympathetic writer and though of very high authority observes "Hindu Law has the oldest pedigree of any known system of Jurisprudence and even now it shows no signs of decrepitude. At this day it governs races of men extending from Kashmir to Cape Comorin who agree in nothing else except their submission to it." While describing the merits of Hindu Law Sir Rash Behari Ghose observed "Hindu Law will at no distant date render the same services to Jurisprudence which Sanskrit has already rendered to the sister science of Philology". Dr. Priyanshu Sen, one of the greatest Hindu Law Scholars of his times, says that any one who has had the patience to follow the course of Hindu Jurisprudence "will be convinced that much of the hostile aspersions that has been cast against the Hindu Law by some able but ill-informed critics is the result of ignorance and prejudice acting and reacting upon each other".

Every System of Law has based its rules of inheritance and succession on principles of natural love and affection and on propinquity. The Hindu Law as is its peculiar speciality in every branch of its law emphasises the spiritual and religious matters and lays down a third condition for the inheritors, namely their capacity to confer spiritual benefits on the deceased. In most of the cases all these three elements run in the same lines, and co-exist in the same persons. Leaving the cases of educated families living in towns I can say with certainty that very few Hindus would like to allow their properties to go to sons' daughters or daughters' daughters or sisters or their sons in preference to their family agnates partly due to the engrained religious instinct, partly by the traditional apathy against females as successors, and partly for fear of disputes and disharmonies that are bound to follow such female successions. The next trouble that is caused by these foregone girls due to their marriages in distant places and distant families by their introduction back again in their fathers families by succession is that the land of the family goes out into the hands of persons who are foreigners and who in many cases do not reside in the village. It hampers cultivation and causes fragmentation of the holding besides the disharmony and dispute which alien's introduction always entails. Our Law givers must have had all these considerations in view.

And when a law is enacted against the current of natural love and affection and against the existing notions and wishes great confusions arise and society is disturbed.

A similar situation arose in Rome as is described by Sir Henry Maine in his Ancient Laws p. 222. The civil law of the Twelve Tables excluded a certain class of heirs who were particularly favourites among the families. This resulted in a great disparity between the line of succession laid down by the laws and the directions of the natural love and affection of the owner and the Praetor had to intervene by removing some of the glaring anomalies. The promptings of love and affection and the notions and desires of the owners are matters that must be particularly regarded in framing rules of law of succession. The present Bill greatly errs on this score.

As to the general observation that women are as competent as men in their business capacities for transactions of life, we cannot get over the hard fact that they are inherently weak, tender, simple and credulous and they do need man's protection. However indignant we might be against the Dictum of the Shrutis, of Baudhyana and of Manu the fact remains that women are weak have been weak and shall remain weak and shall ever need man's assistance, guidance and protection. Hindu Law and Dharma have based essentially on the Laws of Nature made ample provisions for their protection. Dr. Sen, The Tagore Law Lectures of 1909 after a careful analysis of the Hindu Law on the point of women stated at page 276 "It is therefore a great mistake to suppose that the declaration of perpetual dependence of women imports any degradation; it is only meant as a measure for their protection for they are by nature weak

and unable to bear the turmoils of the world and stand against its terrors and temptations without guidance and control". The Hindu Theory of women's tutelage was based on this sound and wholesome principle. It is a calamity for Hindus that the business of framing new laws for them has been entrusted and lies in the hands of Secular Lawyers. We need Scholars and Pandits of the comparative learning of the types of Dr. Priyanshu. Sir Sivapali Radhakrishna, Pt. Madan Mohan Malviya and others of their type who alone are by their studies, by their faiths and beliefs in our Laws and Dharmas best entitled to speak and say on that subject. Such men should have been entrusted with the business of drafting Hindu Code.

Let me now say a few words to show that the rules incorporated in the Bills are against the binding Texts of Hindu Law.

As I have stated what the framers of the Bill have done is that they have introduced new females and cognates in the list of inheritors at very high places and then given them absolute rights. They have further taken away and curtailed rights of very near Sapindas and given them to cognates. It is true Jimutvahan in his Dayabhag did attempt to introduce some cognates in the list in the 15th century in Bengal and he did succeed. But he did it on very reasonable and logical interpretation of the Manu's Texts mentioned above namely "To the three must the libations of water be made, etc.", and "To the nearest Sapinda the inheritance belongs, etc." But the wonderful reception received by Dayabhag in Bengal even among the masses was due particularly to the fact that in Bengal probably due to the impact and contact of the Muslim rule and civilization as there was a "gradual disruption of the old joint family system in Bengal owing to the operation of social and economic influences which diverted the natural affection of the people into new channels. That added to the popularity of Dayabhag. Moreover there were definite Smriti Text to support his innovations. Can we say that there is such a change in the Rural Social Life of the entire country as would receive the most un-Hindu revolutionary changes of the Bill? I may concede that among the educated families the old family tie has begun to disintegrate but they can be counted on fingers end. The framers have followed no consistent principle or rule. They had in view to push up female and cognate heirs somehow and for that they relied upon some obscure and unauthentic rules from authorities many of which carry no weight. They have stated that the Jaina, the Christian, the Parsi and Muslim women enjoy full and equal rights of succession and ownership of property in this country and argue that the same rule can easily and equably apply to Hindu women. The fact to be noted is that Jainas are essentially a commercial people living generally in cities and towns and owning properties usually other than agricultural land. The Christians and the Parsis are a people of modern education and they live more or less exclusively in towns. Hence their females also have the full advantage of a broader outlook and education and their properties are not agricultural. We could with some degree of safety entrust these rights to such women but my emphasis is that we are dealing with vast masses of village, women of this country owning not shares and deposits in Banks and houses in towns but plots of agricultural land having no education of any kind.

The introduction of Islamic Laws of succession among the converts in India should give sufficient food for thought to the supporters of this Bill. In large tracts of India that part of Islamic Law continued to be in disuse for centuries among the Hindu converts. Local customs grew up immensely in villages and families in millions where females were included among convert Muslims and such customs continue even now in spite of lapse of several centuries. In very large number of cases sisters and the like, relinquished their rights in favour of their brothers and the like for consideration or otherwise where females migrate to different places after their marriages. The most redeeming feature that counterbalances some of my objections in regard to cases of Hindus is that in majority of cases the Muslim females are married in the same families and even after marriage they continue to live in the same family of their fathers and their kinsmen and the irritant of the introduction of an alien in the family through the husband of a female is absent in cases of Muslim succession. What is the good of laying down a rule of succession when it is certain that it shall not be followed for centuries to come?

Now coming to the scheme of succession as laid down in the Bill we find that it recapitulates the list of inheritors given in Cl. 5 of the Bill, the very first item is as follows:—

- 1 (a) Widow.
- 1 (b) Son.
- 1 (c) Daughter.
- 1 (d) Son's son.
- 1 (e) Son's son's son.

All these heirs are termed as simultaneous heirs. Under Cl. 6 it is laid down that they shall succeed together. Under Cl. 7 it is provided that the widow shall take one share, and if there are more than one widow they also all shall partake in one share only. The son and each of the sons if there be more shall take one share each so will the grandsons and the great grandsons. Each of the daughters whether married or not shall take half a share. I shall oppose herewith a comparative table of lists of inheritors

accepted by all the recognized schools of Hindu Law the Table of the Bill which will show that this new list violates all the systems. In all schools of law widow has the 4th place and the daughter the 5th place. I will ask is this scheme a fulfilment of the Law or a destruction of the same?

Then this sharing system is unknown to Hindu Law and is foreign to Hindu conception. In fact they seem to have borrowed this new rule of theirs from the Muslim Law of inheritance. We have in Hindu Law the system of heirs who can be said to be simultaneous heirs. They are for instance the son, the grandson and the great grandson. But they do not take in specific shares, but as one heir. They take as joint heirs with right of survivorship. Not one text even of any obscure writer can be cited to support this foreign system. This is an abominable rule and must be condemned. It is impossible to support this rule on any text or comment of any authority on Hindu Law. The framers could find none. And in their attempt to find some show they have attempted to cite some rules of the Smritis of Manu and Yajñavalkya on the subject of partition where they had made provisions for unmarried daughters on occasions of partition in joint families. How on earth can such a rule be relevantly applied for framing rules on succession? This provision in the Bill is the most obnoxious of the rules that can be ever conceived. None of the Schools of Hindu Law not even Mayukh which has given most preferential treatment to women can give countenance to such a proposal. This is nothing short of a revolution in Hindu Law. The first five inheritors as given in the lists of all the schools are quite natural ones and in keeping with Smriti Texts. There has not been any agitation in any quarter for these destructive provisions. The framers have taken voluntary briefs and pleaded a cause unopposed to a cause so very repugnant to Hindu notions.

It is a fundamental principle of Hindu Law of succession that agnates must succeed in preference to cognates and a few cognates have been interpolated only on the basis of definite injunctions of Smritis in specific cases. Both the Dayabhag and the Mitakshara accept this rule. This Bill adopts a reverse principle. No language will be too strong to condemn this part of the Bill.

After these five heirs who succeed simultaneously under the Bill follow three other cognates as follows:—

- (2) daughter's son.
- (3) son's daughter.
- (4) daughter's daughter.

The normal position of a daughter's son in the list of all the schools is the same namely sixth. It is the same even in Bombay and specially in Mayukh. Daughter's son though not a gotraj Sapinda has been given a very high place among the Sapindas under all the schools due to the peculiar position of daughters in Hindu families as recognised by the Smritis particularly due to the Rule of Putrika Patra. But the introduction of the other two females just after the daughter's son so high up among the lists of gotraj Sapinda is another great violation of Hindu Law without any justification or necessity. In face of the standing rules of all the schools of Hindu Law the framers have had no justification in breaking that law so unceremoniously.

The Law framers have said nothing to justify their innovation for this part of their list. They make Act II of 1929 as an authority for the change. But the change they have made is still worse for the Act II of 1929 puts them at the 13 and 14th positions. This Bill puts them at the third and fourth positions. Then so far as the merits of that Act as a valid piece of legislation goes it is worse than this Bill. It was as it were stealthily placed on the Statute Book. And when the framers of this Bill were entrusted to codify and amend the law and when they propose a huge amendment and actually repeal a number of Acts was it right for them to accept that Act without any justification on the basis of Hindu Law? My humble suggestion is that that Act must be a repealed and the Bill itself repeals it in another way. Hindu Society has already suffered enough of mischief at its hands. By Hindu Society I mean the vast Hindus of the villages. I make these suggestions and submission for the Framers have taken upon themselves in their notes to give out that the changes they have introduced are all based on Texts of Hindu Law. Mitakshara Schools of Mithila, Benares, Madras and Dayabhag school of Bengal give no position to these females in the list of inheritors even as Bandhus. The Bombay Mitakshara School admits them far below and only as Bandhu and even Mayukh has the same rule for them as Bombay Mitakshara (*vide* Mulla p. 94). It may be noted that Mitakshara Law unalloyed does not allow any females even in the Bandhus List and with the exception of a few females and cognates Dayabhag also follows the same rule. The Bombay Mitakshara and Mayukh School treat them as Bandhus only (*vide* Gangaram v. Ballia Bom. P. J. 31). In Mitakshara Madras also they take as Bandhus but after all male Bandhus are exhausted (*vide* 31 Mad. 321). Under such a state of Law what justification could the framers have to put these among Gotraj Sapindas and that also so high up in their position? Act II of 1929 is no authority, in fact that itself is on the anvil. The height of the illogicality is that these two females have been placed even above mother and father of the deceased, which even Act II of 1929 did not allow.

Coming to Class II of the List of "Enumerated heirs" of Clause 5 we find that they have followed Mitakshara, Dayabhag and the rest upto brother's son. Thereafter they have put down sister and sister's son, and there

ends their Class II. In Class III they have put down father's 6 relations. In this Class III they have followed Mitakshara and Dayabhag upto the 5th position but thereafter they have applied their new Rule which is the Reverse of the True Hindu Rule namely that the females and cognates should be preferred to the males and agnates and they have put down Father's sister's son before mother's mother, as against the scheme of all the schools of Benares, Mithila, Bengal and Madras, and even Bombay.

Coming to sister and sister's son of Class II it is obvious that this is Framers another departure from the current and accepted rules of Hindu Law obtaining in practically all the schools. Personally however I think that if the main schemes of the Bill are to be allowed to be placed on the Statute Book then the sisters and their sons may remain where the Bill proposes them to be placed for the general tendency of the affection of the people would not feel so much repulsed against this rule as against the others mentioned above.

So far as these two heirs go they occupy high places in Mayukh. The sister is regarded as Gotraj Sapinda under Mayukh for that authority lays down "Being begotten in her brothers Gotra she possesses the qualifications of a Gotraj" (Mayukh Chap. 4, Sec. 8, para. 19). Even in the Jurisdiction of Mitakshara in Bombay she occupied only the 12th position and comes immediately after grandmother. In Madras also she does occupy her position among the Bandhus. Mitakshara does not specifically mention sisters as an heir. But certain important commentators of repute like Nanda Pandit do name sisters as included. (*vide* 4 Bomb. 188, 197, and 204). I have already mentioned the text of Nilkanth the author of Mayukh. Thus there is ample material on Hindu Law for giving some preference to sister and her son.

Class IV of Clause 5 follows Mitakshara in toto upto the 5th place but in the sixth place they put down a very distant cognate namely father's father sister's son in preference to the very direct descending agnates of the son namely son's son's son and his sons and grandsons who according to Mitakshara are the persons that follow immediately after.

In Class V which is the last class mentioning specific names of inheritors we find a sudden jump up of six very distant Bandhus very high up in the class of Sapindas. All these six persons are mother's relations and their only merit is that they come under the reverse rule of the Framers that cognates should be preferred to agnates, for that is the basic rule of their whole scheme.

In the changes that the Bill proposes to effect on the law of Stridhan one is that even the property inherited by a female from a male will also be her Stridhan and the other is that she will have absolute right of ownership even in such a property namely the property inherited by her from a male. They have abolished what is known as Hindu widow's estate and given full right of ownership to females in all kinds of properties acquired or held by them in any manner whatsoever. That right has been granted to her by Clause 12 read with the definition of Stridhan given in Cl. 2(1).

As I have stated in the beginning that if we carefully read and analyse the whole Bill and particularly the changes that it embodies we shall find that they have done nothing except finding out some ways rightly or even wrongly to introduce females in the list of succession even by sacrificing rights of more deserving males and putting them at places very high in the list of gotrajas. They have gone to the length of putting sons and grandsons on the same level with daughters and widows and introduced an absolutely unheard of rule of giving share to all these simultaneous heirs. They have given females absolute right of equality in holding properties thus inherited by them even from males. They have abolished limited estates. They have for this purpose alone thrown to the winds all the Rules of Shradha and of grant of spiritual benefits and the connections thereof with the law of succession. They have totally abolished the fundamental law of the Hindus that males must succeed in preference to females. They have attempted to show that their rules are based on shastras also. They have relied upon (1) Dr. Mitra's Book "The position of Hindu Women in Ancient India", (2) Sir M. Venkatasubba Rao a retired Madras Judge, (3) Dr. Jaiswal's Tagore Law Lectures 1917 and upon the dissenting opinion of some Pandita in the very early case of Kashinath Bysack v. Hurroosundery decided by the Privy Council in 1826, though it is a fact that their Lordships on a consideration of the whole material of law decided against the view proposed in the Bill. The Bill relies upon them to support the view that Hindu law does not recognize Hindu Widow's limited estate and that this rule is a creation of Law courts. The Bill and its schemes have been sought to be justified and the view has been propounded that females have rightly been placed high up in the list and have been granted absolute estates.

The position of the framers requires careful and authoritative answers. I shall do nothing but only put down the authoritative Texts of Smritis and Commentators and leave the decision to the readers.

In an Article on Widow's estate which I contributed to All India Reporter Nagpur and which was published in A. I. R. 1941 Journal page 8 I attempted to collect and put together some of the available texts on the point. I shall put down below some of the more important ones here.

(1) "While young, a woman remains under the control of her father, after marriage in the control of her husband

and on his death under the control of her sons. She does not deserve complete independence at any time." (Manu 8-7. Yajñavalkya Sec. 4).

(2) "The wife, the son, and the slave have been declared to be without property." (Manu 8-415. Mahabharata Udyog 33-64).

(3) "Women being suppressed and discarded are not mistresses themselves nor of any property" (Shatapatha Brahman 4-4, 2-12).

(4) "The male is the heir, the female is not the heir" (Mātriyani Sambhita 4-6, 4).

(5) "For women their husband's immovable property is only meant to be enjoyed". (Vivada Chandra 22-1 and 5 to 7).

(6) "On the husband's death the wife who guards the purity of the family receives his property so long as she lives but she has no rights to give away, mortgage or sell the property." (Bṛikhaṣpati and Katyāyana quoted in Smṛiti Chandrika p. 677).

(7) "The wife's inheritance to her husband's property has been declared to vest in mere enjoyment; women shall in no case dispose of the property of their husbands." (Mahabharata Dana-Dharmam quoted in Vivad Chintamani p. 228).

(8) "For women the heritage of their husbands is pronounced applicable to use. Let no women on any account make waste of their husbands' wealth" (Mahabharata quoted in Dayabhaga 3-L60).

(9) Women's business transactions are null and void except in case of distress. . . . A woman can only take a life interest whilst she is living together with the rest of the family" (Narad 3-27 to 30).

(11) 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". (Baudhyana Prasana 2 K2).

These high authorities speak for themselves and need no expostulations or comments. They conclusively lay down that a widow inherits only for life and without any rights of transfers.

I have not quoted other extreme texts which do not even give a right to succeed for modern commentators have explained them away as being no general propositions. As to the dissenting opinion of some Pandits in the case of Kashinath referred to above I herewith quote another concurrent opinion of Pandits in their Vyavastha quoted in a very valuable Book known as the Digest of Hindu Law by West and Buhart page 374-75. It is this "The widow cannot dispose of her immovable property unless she be placed under great distress". We have to bear in mind that the text of Baudhyana is a text of the Veda laying down "Therefore women are devoid of senses and incompetent to inherit". A text of Manu founded on this Shruti text is "Indeed the rule is that devoid of the senses and incompetent to inherit women are useless".

Now both the Mitakshara and the Dayabhaga act upon this principle and Text. Both these systems therefore proceed upon the rule of the exclusion of females unless admitted by virtue of special texts. Dayabhaga expressly cites the text of Baudhyana and recognizes its authority and explains that the exclusion of some females like widows and the rest does not contradict this rule inasmuch as they take under special text (vide Dayabhaga Chap. XI Sec. 6-11). It is true that Mitakshara does not expressly cite that text but the whole scheme of Mitakshara succession clearly indicates its full recognition and its most authoritative adjuncts namely Virmirodaya and Smṛiti Chandrika both expressly cite that Text of Baudhyana and Manu and lay down that rule in most unhesitating terms. They however lay down that these general rules do not apply to those females who inherit under special texts (Virmirodaya Chap. 3 Pt. 1 Sec. 13) Haradatta has also taken the same view in his commentary on the institutes of Gautama. While dealing with succession to Stridhan he observes, "But the daughter-in-law and others are entitled to food and raiment only, for the nearness as a Sapinda is of no force when it is opposed by express texts". (The Express Text referred to is of Baudhyana and Manu). Thus the obvious conclusions of all these Commentators of the south as well as of such Eminent Oriental Jurists as Jintuvahan is that females are incompetent to inherit save under special texts. I wish now to cite a very great Scholar of our Ancient Law and Dharmam of all our Shastras and also an equally eminent modern lawyer and jurist as well versed in the Western systems, I mean Dr. Privanath Sen, Tagore Law Lecturer (1909), a Frenchand-Roychand Scholar. After discussing various texts and comments he observes at p. 170 of his Hindu Jurisprudence as follows. "This makes it perfectly clear that the principle of the exclusion of the females was recognized on all hands and had been so recognized from very ancient times. It was indeed a corollary from the position of a female in the organization of the ancient Aryan Society; there her position was of lifelong dependence." He quotes Manu's famous text "The father protects her in her childhood, etc." and proceeds to observe "That being her position it was quite natural that she could not take the inheritance and the few cases in which she was called to do so seem to have been subsequent concessions made for special reasons in favour of a few very near relations such as a wife, daughter, mother, and the like". Mayukh takes in a sister on the principle that being born in brothers gotra she is gotraj. The Learned Jurist while criticising the rules of inclusion of some of the females under decisions of Bombay and Madras High Courts states, "The way in which the Bombay High Court

has admitted other females into the line of succession does not seem to me to be based on any intelligible principle but must be rested on special custom and the analogy of the reasoning employed by Mayukh in admitting the mother's right. The Madras High Court also while professing to follow the Mitakshara has admitted the claim of a number of females to inherit as Bandhus but this position is hardly justified by the Mitakshara and clearly contrary to Smṛiti Chandrika which is an undoubted authority of the Southern School: these decisions therefore exhibit a clear departure from the law as originally laid down by our sages and interpreted by the authoritative commentators."

This much I think will be quite sufficient to convince even the most doubting among us that so far as the Hindu Law goes there is no room to doubt that females must as a rule be excluded and only those allowed for whom there are well recognized exceptions, that they take at the most only a life estate and never on absolute estate. The proposals of the Bill are therefore entirely against the Hindu Law.

The Codification process in Hindu Law should have been a mere digesting of the Hindu Law as settled so far and as being the rules of that Law evolved through the Comments of Authoritative Commentators. It should never have been to change and introduce provisions that strike at the very fundamentals of the Law and the Dharmam. I emphasize these Comments of authority not with any idea of suggesting any demerits of our modern lawyers as lawyers. My point is that only those who have studied our entire system of Law the Dharmam Shastras, the Philosophy, the Logic, the Smṛitis, their Nibandhas, the Puranas and Itihasas at their sources are only properly qualified to undertake such a business of overhauling the Law for the rules framed by them will be inconsonance with the Entire Basic whole even where they would suggest changes. Such changes will not shatter the fabric and the foundations upon which our civilization and culture rests. Besides such personalities shall have the confidence of the masses and the orthodox classes. This has the process of evolution in the past. The Muslim Rulers were very wise in permitting Hindu Law to be left to its own votaries. The East India Company saw the wisdom of the Muslim Kings and continued the same policy and so did the British Government. The result of this policy was that the Hindu Jurists of the eminence of Vijnaneshwar, Jintuvahan, Raghunandan, Nanda Pandit, Mitra Misir, Madhava, Nilkantha Bhattacharya and a board of others grew up and compiled books that may stand comparisons with any legal exposition of even the most advanced of the Modern Western Jurists. This is not a mere idle brag. Eminent Orientalists and scholars of the types of Sir William Jones, Dr. Jolly, Mr. Colebrooke Macgregor and other German and English students of our Jurisprudence have showered profuse praises on them and confessed recognition of our system of law as being of very high order. There are scores of such personages in India who can accomplish such a task. Before rushing up to the Legislature it would have been highly expedient on the part of those responsible for the Bill to have summoned an assembly of such Pandits and scholars and asked them to discuss and evolve a scheme for the codification and amendment of Hindu Law. Such persons would have also been called to sit on the select committee and draft a bill. To my humble mind the answer to questioners issued and made are all valueless for the reasons suggested above. What can a Lawyer however eminent contribute towards that subject if he is supremely ignorant of our Law and Jurisprudence? And particularly so when in addition to his ignorance he has a feeling of abhorrence for all our laws and Shastras. The whole Bill itself though attempted to be couched in the language of Shastras betrays that contempt. I shall close after saying a few words to those of the supporters of such revolutionary changes and particularly to those of them "who go into raptures at the bare mention of the Twelve Table but shake their heads at the mention of the name of Manu and talk about our 'feeble civilization' and 'cruel absurdities' without feeling the absurdity of criticising upon a subject which they had no opportunity to study." I think it is highly undeserving when we with some hit of modern education being to feel that we are necessarily wiser and that our Rishis and Law givers were antiquated in their views. Let such men read some of the commentators I have mentioned above and let them fathom the depth of their Juristic learning and abilities. Sir Francis Macnaghten saw while speaking of the Hindus, "The merit of having been the founders of their own Jurisprudence cannot be denied to this people, and those who are at all conversant with the decisions of our courts will acknowledge the analogy which exists between some of their doctrines and some of the texts which I have cited from the Hindu Law. Where this is not to be found a comparison may in several instances be made without disadvantage to the Hindus." This is a compliment of a foreigner about the merits of our law as being a very scientific system as good and even better than the laws of the west. The irony is that while that section of the west which has had opportunities of studying some bit of our Law and civilization have been proclaiming our greatness, our own men who have had some bit of English Education have been insisting that our culture is a relic of absurdities and our laws are all meant only for pastoral and nomadic stage of human civilization. The greater irony is that such educated men do not know even a bit of our glorious heritage. They do not even know if there is any such thing as Hindu Law or Jurisprudence apart from what Anglo Indian Courts have laid down in their decisions. They do not know even the names of our Smṛitis or Shas-

was or even of the most modern commentators. Yet with all that they propound with that superior air of ignorant knowledge which is specially their own that our laws are no worse than the paper on which they are written. Such men should know that there is a vast literature a most sublime and scientific system of our law and jurisprudence which even a life time may not be sufficient to master which in spite of the Havoc of History and time are yet available as a glorious heritage for an undeserving generation.

I would appeal to the Framers of the Bill and to the Legislature not to attach any weight to the mass of the

answers and opinions received from such quarters. The function of the legislature is not that of a body of Reformers. Theirs is to legislate on the basis of the well recognised canons of Jurisprudence for enacting Statutes.

The Laws of the Hindus is a complex affair and the Legislature would be undertaking a dangerous risk in changing the same on the basis of conceptions and notions of foreign secularisms. The enactment proposed will affect the fate, religion, the life here and the life hereafter of millions of the Hindus of the present as well as of the successive generations. The gravity of the move must well be realized before the Statute Book is signed.

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According to the Bill.	According to the Mitakshara as administered in Benares, Mithela, and Madras.	According to Mitakshara as administered in Bombay.	According to Mayukh School of Bombay.	According to Dayabag of Bengal.
<p><i>Class I.—Widow and descendants.</i></p> <p>1. Widow. 2. Son. 3. Daughter. 4. Grand son. 5. Great grandson. (Note.—All these succeed not as single heir but separately as simultaneous heirs. The widow or if more than one all the widows take one share, the sons each take one share, the grand sons and great grandsons take one share per stirpes.) 6. Daughter's son. 7. Son's daughter. 8. Daughter's daughter.</p> <p><i>Class II.—Mother and father and later's descendants.</i></p> <p>9. Mother. 10. Father. 11. Brother. 12. Brother's son. 13. Brother's son's son. 14. Sister. 15. Sister's son.</p> <p><i>Class III.—Father's mother, father's father and his descendants.</i></p> <p>16. F. M. (father's mother). 17. F. F. 18. F. B. 19. F. B. S. 20. F. B. S. S. 21. Father's sister's son.</p> <p><i>Class IV.—M. F. M. and F. F. F. and the father's four descendants.</i></p> <p><i>Class V.—M. M. and M. F. and the mother's four descendants.</i></p>	<p>1. Son. 2. Grandson. 3. Great grandson. (Note.—All these succeed as single heir.) 4. Widow. 5. Daughter. 6. Daughter's son. 7. Mother. 8. Father. 9. Brother. 10. Brother's son. 11. B. S. S. (brother's son's son). 12. Father's mother. 13. Father's father. 14. F. B. 15. F. B. S. 16. F. B. S. S. 17. F. F. M. 18. F. F. F. 19. F. F. B. 20. F. F. B. S. 21. F. F. B. S. S. and from 22 to 54, we have ascendants and descendants of son. F. F. F. and descendants of son. Note.—Son's daughter, daughter's daughter are not even Bandhus under any of these schools except Madras. Where these two and sister and sister's son and some other females take as Bandhus but after all the agnat Bandhus are exhausted. (Vide Mulla p. 76, and 31 Mad. 32.)</p> <p>Under the Bill, the sister, daughter's daughter and son's daughter are placed among Gotraj Sapindas and very high up against the rules of all these schools.</p>	<p>Bombay Mitakshara follows Benares upto 10 and introduce sister, grand mother thereafter as Gotraj Sapindas but under this school also sons daughter and daughter's daughter take as Bandhus very low in the list. (Vide Mulla p. 74 and 81.)</p>	<p>Same as in Bombay Mitakshara upto 12. As in Bombay and Madras Mitakshara son's daughter and daughter's daughter take as Bandhus and very low in the list. (Vide Mulla p. 92 to 94.)</p>	<p>Benares Mitakshara and Dayabag run parallel upto a far distant limits. A first break however occurs at No. 12. But as in Benares sister, son's daughter and daughter's daughter are not even Bandhus and do not succeed.</p>

APPENDIX B.

I think a small and humble voice of mine will not be heard. If therefore the Bill has to be passed into law I would respectfully make the following suggestions for changes and amendments in the Bill, which if accepted may in some measure soften its rigours.

(A) The Act should not have any retrospective effect expressly or impliedly. I mean if a male died prior to the passing of the Act leaving a female as his heir holding a limited estate then in that case after the death of the female, the property should go to the heirs of the male as would be entitled to the inheritance under the existing law. This would not upset expectations or transactions undertaken or resorted to under such an expectation.

(B) The first class of Clause 5 of the Bill must be entirely changed and reshaped so as to give it some form recognized by any school howsoever reactionary in favour of the female heir, or some other form that may at least be of some such pattern. My suggestion is that from the first item of the compact heirs widow and daughter should be removed. Their inclusion in this group is violently against all Schools and revolting to the sense of the Hindu Law of Sanindaship and Saradha. How repugnant does it look to a Hindu to allow the daughter and widow to take share with a son on his father's death. Then no serious harm occurs to these females

as they succeed immediately after these three (son, grandson and great grandson). Then this sharing business among the mother, son, daughter is opposed to all notions of Hindu Law of Succession and is recognized by no school even indirectly and partially. It is an adaptation of Mohammadan Rule of succession and Hindus will feel the abrogation.

(C) The next very revolting provision of the bill is regarding placing the sons daughter and daughters daughter so high up in the list of agnates and even above the parents and brother. Even Act II of 1929 had not gone so far. It is against all the schools for as I have shown above these are all Bandhus under all the schools including Mayukh. These two should be placed just before sister in class II. As to the rest of the items and classes of Clause 5 they may be allowed to stand.

(D) As to absolute estates of females that provision should be dropped altogether if possible. Or alternately from out of the definition of Stridhan the property inherited from a male should be deleted. Or at least the property which has already vested as a widow's estate prior to the Act should not be allowed to change its character after the passing of the Act and become absolute estate. It should remain a limited estate. This provision if not undone will result into serious injustices and upset millions of transactions affected or contemplated and of hopes and aspirations already enter-

and on his death under the control of her sons. She does not deserve complete independence at any time." (Manu 8-7. Yajñavalkya Sec. 4).

(2) "The wife, the son, and the slave have been declared to be without property." (Manu 8-416. Mahabharata Udyog 33-64).

(3) "Women being suppressed and discarded are not mistresses themselves nor of any property" (Shatapatha Brahman 4-4, 2-12).

(4) "The male is the heir, the female is not the heir" (Matriyana Samhita 4-8, 4).

(5) "For women their husbands' immovable property is only meant to be enjoyed" (Vivada Chandra 22-1 and 5 to 7).

(6) "On the husband's death the wife who guards the purity of the family receives his property so long as she lives but she has no rights to give away, mortgage or sell the property." (Brihaspati and Kayayana quoted in Smriti Chandrika p. 677).

(7) "The wife's inheritance to her husband's property has been declared to vest in mere enjoyment; women shall in no case dispose of the property of their husbands." (Mahabharata Dana-Dharmam quoted in Vivad Chintamani p. 228).

(8) "For women the heritage of their husbands is pronounced applicable to use. Let no women on any account make waste of their husbands' wealth" (Mahabharata quoted in Dayabhaga 9-1-60).

(10) Women's business transactions are null and void except in case of distress. . . . A woman can only take a life interest whilst she is living together with the rest of the family" (Nared 3-27 to 30).

(11) 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" (Baudhyana Prasana 2 K2).

These high authorities speak for themselves and need no expostitions or comments. They conclusively lay down that a widow inherits only for life and without any rights of transfers.

I have not quoted other extreme texts which do not even give a right to succeed for modern commentators have explained them away as being no general propositions. As to the dissenting opinion of some pandits in the case of Kashinath referred to above I herewith quote another concurrent opinion of Pandits in their Vyavasthas quoted in a very valuable Book known as the Digest of Hindu Law by West and Buhart page 374-75. It is this "The widow cannot dispose of her immovable property unless she be placed under great distress." We have to bear in mind that the text of Baudhyana is a text of the Veda laying down "Therefore women are devoid of senses and incompetent to inherit." A text of Manu founded on this Shruti text is "Indeed the rule is that devoid of the senses and incompetent to inherit women are useless."

Now both the Mitakshara and the Dayabhaga act upon this principle and Text. Both these systems therefore proceed upon the rule of the exclusion of females unless admitted by virtue of special texts. Dayabhaga expressly cites the text of Baudhyana and recognizes its authority and explains that the succession of some females like widows and the rest does not contradict this rule inasmuch as they take under special text (vide Dayabhaga Chap. XI Sec. 6-11). It is true that Mitakshara does not expressly cite that text but the whole scheme of Mitakshara succession clearly indicates its full recognition and its most authoritative adjuncts namely Virmitrodaya and Smriti Chandrika both expressly cite that Text of Baudhyana and Manu and lay down that rule in most unhesitating terms. They however lay down that these general rules do not apply to those females who inherit under special texts (Virmitrodaya Chap. 3 Pt. 1 Sec. 13) Haradatta has also taken the same view in his commentary on the Institutes of Gautama. While dealing with succession to Stridhan he observes, "But the daughter-in-law and others are entitled to food and raiment only, for the nearness as a Sapinda is of no force when it is opposed by express texts." (The Express Text referred to is of Baudhyana and Manu). Thus the obvious conclusions of all these Commentators of the smṛiti as well as of such Eminent Oriental Jurists as Jumtavanah is that females are incompetent to inherit save under special texts. I wish now to cite a very great Scholar of our Ancient Law and Dharma of all our Shastras and also an equally eminent modern lawyer and jurist as well versed in the Western systems. I mean Dr. Priyannath Sen, Tagore Law Lecturer (1903), a Panchend-Roychand Scholar. After discussing various texts and comments he observes at p. 170 of his Hindu Jurisprudence as follows. "This makes it perfectly clear that the principle of the exclusion of the females was recognised on all hands and had been so recognised from very ancient times. It was indeed a corollary from the position of a female in the organization of the ancient Aryan Society; there her position was of lifelong dependence." He quotes Manu's famous text "The father protects her in her childhood, etc." and proceeds to observe "That being her position it was quite natural that she could not take the inheritance and the few cases in which she was called to do so seem to have been subsequent concessions made for special reasons in favour of a few very near relations such as a wife, daughter, mother, and the like." Mayukh takes "in a sister on the principle that being born in brothers' gotra she is gotraj." The Learned Jurist while criticising the rules of inclusion of some of the females under decisions of Bombay and Madras High Courts states "This way in which the Bombay High Court

has admitted other females into the line of succession does not seem to me to be based on any intelligible principle but must be rested on special custom and the analogy of the reasoning employed by Mayukh in admitting the sister's right. The Madras High Court also while professing to follow the Mitakshara has admitted the claim of a number of females to inherit as Bandhus but this position is hardly justified by the Mitakshara and clearly contrary to Smriti Chandrika which is an undoubted authority of the Southern School: these decisions therefore exhibit a clear departure from the law as originally laid down by our sages and interpreted by the authoritative commentators."

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APPENDIX B.

I think a small and humble voice of mine will not be heard. If therefore the Bill has to be passed into law I would respectfully make the following suggestions for changes and amendments in the Bill, which if accepted may in some measure soften its rigours.

(A) The Act should not have any retrospective effect expressly or impliedly. I mean if a male died prior to the passing of the Act leaving a female as his heir holding a limited estate then in that case after the death of the female, the property should go to the heirs of the male as would be entitled to the inheritance under the existing law. This would not upset expectations or transactions undertaken or resorted to under such an expectation.

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as they succeed immediately after these three (son, grandson and great grandson). Then this sharing business among the mother, son, daughter is opposed to all notions of Hindu Law of Succession and is recognized by no school even indirectly and partially. It is an adaptation of Mohammedan Rule of succession and Hindus will feel the abrogation.

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fained. To give retrospective effects where substantive rights are affected would be an anomalous rule for legislation, which should be avoided in cases of such revolutionary changes affecting centuries of traditions.

Honorary Secretary, Bar Association, Fyzabad

We regret we are not prepared to depart, in this part of India, from the age-long practice of allowing only a life estate to the female heirs in the property of the males. We grant that certain gentlemen learned in Hindu Shastras have opined that there is no warranty for giving a life estate to a female, but we also realize that a respectable number of experts in Dharmaśāstras have found it otherwise. Moreover when the Hindu Law allows Stridhan Property wherein a female gets absolute estate, we see no reason why absolute estate should be granted to the female in the property of the male. We are not prepared to reduce the status of sons or put them at a disadvantage. Neither are we prepared to allow the frittering away of a family's wealth. We are of opinion that all the advantages which the protagonists of absolute estate find in Muslim or Christian Societies are to be found by giving the female a life estate in the property of the male without its disadvantages. We have, therefore, proposed certain amendments in the light of above remarks. We have, however, given absolute estate to a widow or a daughter if no other person in class I and II of Section 5 are alive. We are also of opinion that our amendments will not only appease Orthodox opinion but will at least improve the status of women in the Hindu Society.

2. We are also strongly of opinion that the widow on remarriage should not be allowed to continue in possession of her former husband's property. We feel that the widow should not be allowed to retain her former husband's property when she shows lack of faithfulness towards the deceased by sharing her with another man though married by law. Of course we do not touch her Stridhan Property.

3. We are also strongly of opinion that a Hindu who relinquishes the Hindu religion should on account inherit or continue in possession of the property so inherited from a Hindu.

With the above changes we have no objection if the Bill is passed.

Amendments in Bill I.

Section 2(i).—Omit words "by inheritance", "at a partition", and "in lieu of maintenance" and add at the end:—
"Provided the property acquired by a female at partition shall be her Stridhan if the interest she originally held in the property was that of a full owner".

Section 5 class I.—Omit "daughter" and add "a widow of a predeceased son".

(2) add "daughter, each take one share".

(4) Omit.

Class II.—Add at the end "(8) daughter's daughter".

Add Proviso:—Daughter shall get maintenance only if she comes in class I(a). Provided also that a widow or daughter of the intestate became full owners if no other person of class I and II are alive at the time when succession opens.

Section 7(a).—The intestates widow and, widow of a predeceased son (if any) or if there are more than one such widows all such widows together, shall together take one share."

Section 11.—Add "Bairagi" after "Sanyasi" within brackets.

Section 13 (b) (1).—Add "son" after "daughter" and after "son" add husband and "each take one share".

Section 17.—Add "section 17A".

Provided that except in cases subject to Section 12 in all other cases females shall inherit as owners for life only, without powers of transfer except for legal necessity as understood in the Hindu Law; and on the death of each female the inheritance shall pass to the next heir under this Act.

Provided further that females shall inherit as full owners in those parts of India where they have been inheriting as full owners."

Section 18 (2).—Add "provided also that on remarriage the widow shall forfeit forthwith and be divested of all her rights in the property inherited by her from her husband or as a widow of a predeceased son; and the inheritance shall, in such a case, pass to the heir who is next in order of succession."

Section 19.—Add "section 19 (A)".

(a) "Any Hindu who renounces his or her Hindu religion, shall be divested forthwith of all his or her rights in the property inherited from a Hindu and succession shall at once open as if he or she has then died".

(b) No person other than a Hindu shall inherit the property of a Hindu.

After Section 21 add the following:—

"Section 22. No custom shall henceforth be considered valid if it is repugnant to the provisions of this Act in the matters of intestate succession".

Section 23 to be renumbered as 23 and 23 as 24.

Appendix to be amended in the light of the above.

General Secretary, Oudh Provincial Hindu Sabha,
Lucknow.

Section 2 (2) (d).—The rights of succession of Dattaka and Dwyamushyaya sons have not been made clear either here or in section 5. They should certainly succeed as legal sons to the adoptive parents in the absence of after-born son or sons by a married wife, but if such son or sons is or are

born and alive, the Dattaka and Dwyamushyaya get only half the share of each such son. The Sabha does not wish to give any rights to a Krittina son.

Section 5, class 1 (1).—The Sabha does not want to give any further rights to widows and daughters beyond what they already enjoy, nor does it wish to reduce them.

Add "widow of predeceased son and widow of predeceased son's son to this class."

Add section 5B as below:—

In case of change of religion of any person to Mohamadanism, or Christianity, or Judaism or Zoroastrianism, every heir whether male or female should be taken to have died immediately after such change, notwithstanding any law or usage to the contrary, so far as any benefits of succession under this Code go.

Section 7 (d).—Women shall take only a woman's estate as under the present law, and after them, the succession shall follow as under the present law.

Section 12 should be styled section 12A.

Add 12B as below:—

But a woman shall have only a woman's estate in property acquired by inheritance, or divorce or at a partition in lieu of maintenance or by gift from a relative unless the document creating it clearly gives her full ownership.

Shri Bharat Dharma Mahamandal, Benares.

The enclosed representation contains the opinion of the Mahamandal on these Bills.

A kind and thorough perusal of the representation will show to your goodself the extent of mischief which the Bills if passed into Acts are likely to make in the time-honoured religious sociology of the Sanatan Hindu.

JAGATGUNJ, BENARES CANTT.

Dated August 11, 1942.

In connection with the two bills named Hindu Code Part I (Intestate Succession) and Hindu Code Part II (Marriage) received from various Provincial Governments for submission of opinion of Shri Bharat Dharma Mahamandal thereon, I am desired by the Council of this All India Representative Association of (Sanatanists) Hindus believing in Vedas and other Hindu Scriptures, to register their strong protest against the bills and to request you to kindly submit this protest before His Excellency for favourable consideration and necessary orders.

2. In order to place before those participating in the passage of these two bills it appears very necessary to give rather a detailed though brief description of the time-honoured Dharma (religion) and Creed (Belief) of the Sanatanist Hindus according to their Dharma-Shastras (Scriptures) because it is a misfortune that they are innocently doing something they know not due to their lack of perfect knowledge of the principles of the hoary Dharma and culture of the Hindus.

4. 'Dharma' according to their ideology is that Divine Might of the Almighty which holds the universe and helps it—both microcosm and macrocosm, and the individuals or nations to make an ordered progress in this as well as in the next world and to reach the realm of Heaven. Every rule of Hindu Dharma-Shastra and mode of conduct prescribed by the same has this main object in view. It is universally accepted that the Hindus are in fact the pre-historic Spiritual Race of humanity and have always regarded their Dharma-Shastra to have been revealed from Above to the Sages of yore and not as 'man made law' subject to changes by human agencies and secular powers. They regard their Dharma to be Sanatan (Eternal) which cannot be subjected to modifications by human agencies or secular authorities.

5. The Vedas and Shastras generally make two divisions of human Dharma—one ordinary, Sadharan Dharma and the other special, Vishesha Dharma. The Sadharan Dharma means the general or universal Dharma which helps equally all human beings, all creeds, all nations and all communities through its different aspects. For examples, acts of Dana-Dharma, i.e., charity, Tapo-Dharma, i.e., austerity, Yajna-Dharma, i.e., sacrifices, Yog-Sadhana, i.e., devotional practices Jnana-Sadhana, i.e., acquiring knowledge of self, and other pious actions of body and mind and inner feelings, such as truth, justice, mercy, love, unpretendedness, rectitude, self-control, ten kinds of Ahimsa, absence of egoism, dispassion towards objects of the senses, paying reverence to the seven classes of elders, service to the Guru, purity of mind and the body and Bhakti, i.e., devotion of God; all these come under the category of Sadharan Dharma.

6. Vishesha Dharma (Special Dharma) means a particular Dharma which is applicable to sex (men and women), caste (such as the Brahmins, the Sudras, etc.), stage of life (such as Sannyas, Garhasthya etc.), and sub-creeds (such as Shaiva Dharma, Shakta Dharma, Vaishnava Dharma, etc.) of the believers of Vedas (i.e., Vaedic Dharma). The Special Dharma of the non-believers of Vedas (i.e., Avidic Dharma) also will come in the category of Vishesha Dharma, they are such as Jaina Dharma, Buddha Dharma, Christian Dharma, etc.

7. As for the Vishesha Dharma of the Hindus which is the oldest Religion of the world, it consists of the following:— They believe in (1) Varnashram order of their own particular sociology well protected by the four impregnable forts as mentioned below, (2) Vedas and other Scriptures, i.e., Smriti, Purans, etc., as direct revelation from the Occult world, (3) Existence of the mighty Occult world, its government and Occult office-bearers such as Rishis, Devas, Pitris, etc., (4) Divine Law of Karma, i.e., actions and reactions of material body, Mana (mind) and Buddhi (consciousness/faculty) as well as Samskara, i.e., seed of Karma, (5) Rebirth and the

significance of Shraddha and other ceremonies as Tarpana, etc. in order to help the departed soul, (6) Theory of Avatars, i.e., incarnations of the Almighty and His Occult Governors, (7) Upanasas, Yoga and their devotional practices, (8) Murti Puja, i.e., image worship and the scientific theory of Peethas, i.e., mystic circle linking it with the Occult organisation (9) Science of Buddha-Asuddha-Viveka (touchability and untouchability) in the interest of the purification of the five snehas (Pancha Kosha) which give cover to the Atma the soul, (10) Several classes of Jainas and Mahayajnas, i.e., Vaidik, Puranic and Tantrik ceremonies for the individual and collective good, (11) Saguna and Nirguna Ishwar-tatwa i.e., realisation of the Almighty God without attributes through self-knowledge and with attributes through mediation.

14. The Hindu religious sociology called Varnashram Dharma is perfectly guarded and fully protected on all sides by the steel walls of the four impregnable forts of (i) Achar-Vichara Dharma, i.e., the rules of conduct relating to mental and physical purity and inner spiritual culture, (ii) Varna Dharma, i.e., the birth right of the caste system, (iii) Ashram Dharma, the rules of conduct relating to the four progressive religious stages of life and (iv) Satitva-Dharma, chastity of womanhood of an extreme nature. It stands on the granite rock of the marriage ceremony-rituals and life-long religious conduct of the married couple. No king, no Government and no outward or inward force has hitherto been able to overpower it since Satyayuga, the beginning of the first cycle of the Yugas. Even in the Buddhist period when Emperors of India like the Great Ashoka and the Mighty Sudhanva embraced Buddhism—even then, the most scientific-sociology of the Hindus, based on the unchallenged Vaidic philosophy, remained unaffected. When, however, Buddhism tried to interfere with the authority of the social order of the Hindus it was banished from its motherland. Even for centuries during the autocratic rule of the Mohammedan conquerors, the Mohammedan kings failed to cause any palpable harm to this neo-religious organisation. The pre-historic Jainism which is altogether a separate creed and has no faith in the Vedas accepted the social order and became a part and parcel of Hinduism. But in the present British period of Godless education, social disruption, moral degradation and spiritual downfall, some revolutionary spirit has sprung up within the Hindu fold itself as a result of the influence of western thought and has led to the bringing forth of a reformist group.

14. As for the unkind remarks in support of the Bills it may be said that the bills aim at providing codified laws of marriage and intestate succession for Hindus as if the Hindus had no such laws. It is nothing but an irony of fate that the Nation which has been the Torch-bearer in every branch of learning to the world should be deemed to be possessing no laws of marriage and succession. In fact the Hindu laws of marriage and succession are the most scientific laws (based on the unchallenged Vaidic Philosophy) that any nation on the face of earth can boast of.

15. If the present day administrators of justice find it difficult to comprehend the philosophical basis of the Hindu Dharma-Shastras, it is no fault of the laws themselves. On the other hand it is the fault of the so-called educated Hindus who generally know nothing about their own Dharma and culture. It is because of the material outlook of the civilization in which they have been bred, brought up, educated and trained all their life. This cannot therefore be a valid reason for forcing upon the oldest and spiritually most advanced race of humanity a code of law on the lines of that possessed by other Nations of the world.

16. The Reformists express contempt at what they call the pitiable plight of Hindu women with regard to their right of succession, full ownership and divorce. But in fact, as already remarked in the beginning, they in doing so only betray their lamentable ignorance of the Hindu Dharma, sociology, ideology and culture. It is only amongst the Hindus that the women are worshipped as Goddess in all stages of life. No other nation of the world with all the women's rights of equality, freedom, succession, ownership, divorce etc., etc., has ever shown so much respect to woman as to install her at the venerable position of Goddess. The position of Hindu women in married life is far superior to that of their sisters in other Nations of the world, nay, the lot of Indian women in spite of their so-called disabilities is enormously better than that of their sisters in other Nations who enjoy the rights of property, succession, freedom and divorce etc. If statistics of the conditions of the world with regard to the various rights enjoyed by women and their consequences could ever be available the above statements could be amply supported. Any reform against the established practice in the religious social order of the pre-historic Hindu Nation by means of sanction of law is therefore bound to have its bitter reaction.

17. As the Bill relating to marriages among the Hindus requires careful consideration of their Religion and time honoured Vaidic culture, so the Bill relating to intestate succession of the Sanatanist Hindus requires first the careful study of the Siddhant (Belief) of the nation about the occult government and the occult law and order as proved by their philosophy of rebirth and life after death. They believe that the Vedas and Shastras become revealed in our Bharatvarsha, i.e., mortal world of ours, the former directly and the latter indirectly from occult world for the good of humanity. Behind the Bharatvarsha—the material world of ours, within it, before it and on all sides of it exists the mighty occult world and its divine government. The Vedas and Hindu scriptures disclose that each Brahmand (universe) including its solar system and different abodes has its own separate occult organisation and government. Each Brahmanda has its creative, preservative and destructive high occult agencies. These Godheads are respectively Bhagwan Brahma, Bhagwan Vishnu and Bhagwan

Shiva who are the direct representatives of the Supreme Lord. They are the three highest Godheads and are indestructible. The Government of the occult world has three big departments, and occult High Office-bearers of several grades and several classes for maintaining law and order in both microcosm and macrocosm of creation.

18. Bhagwan Manu is one of the important High office-bearers of the occult Government who is considered the Time-keeper of our universe, and the principal Law-giver of the Hindus and by His will the Dharma Shastras are revealed in the hearts of the Savants in the early period of the creation. Bhagwan Yama—Dharma-Raj who is another occult High office-bearer has direct control over Pitri Loka—the ordinary Heaven, Naraka Loka—the Hell and occult control over our mortal world, the Bharatvarsha. Bhagwan Dharma-Raj is the Record-keeper of the Karmas (actions of body, speech, mind and intellect) of the jivas. He sends the departed jivas to several sections of Naraka Loka (Hell) which is a kind of jail or reformatory institution of a mortal King for undergoing suffering as the adequate punishment for their misdeeds, or to different grades of Swarga (Heaven) for receiving adequate reward for their good deeds in form of pleasures and different grades of happiness in those abodes. Bhagwan Dharma-Raj is practically the central authority and organiser of the Awagamanchakra, i.e., the cycle of birth and death—of coming into the mortal world and again going to the occult world. All the office-bearers and the governors of the occult world including these two are replaced by a fresh set of personalities in every Manwantara i.e., the cycle of 306720000 human years.

19. The mortal world, the Bharatvarsha is the centre of the Awagamanchakra, i.e., coming and going cycle maintained under the Divine Law and Order. It is the place of better state of progress for the jivas. Here karma can be freely performed by the human being to improve his or her lot as well as to help the Naimittik Pitris or the departed ancestors in their onward march. Such Karmas as help the departed ancestors are known as Shraddha Karmas. They can be performed only by certain direct male descendants, i.e., who are in close blood relationship to the departed. These are clearly described in the Dharma-Shastras (Scriptures). And it is on them that the right in property of the departed devolves in order of closeness of the direct blood relationship.

20. Thus the creed of Sanatanist Hindus regarding Rebirth and Shraddha deserves a careful consideration with reference to the most scientific Law of Succession that the Varnashram sociology can boast of as being their own and most superior to all other laws of succession prevalent in other nations of the world. The guiding principle is the advancement of jiva, the Soul from humanity to Godhead through the help of Dharma and the performance of religious Sacraments that lead to the propitiation of the occult Governors with whose direct or indirect help alone the onward march can be maintained. All possessions and property therefore of an individual are accordingly inherited by one who is nearest next to him in seed and blood relationship and who can according to Dharma Shastras perform the Shraddha ceremony for the peaceful comforts of the deceased in the Pitri Loka—Ordinary Heaven, Narak Loka—Hell, and Preta Loka—Ghost-world. It is with this double criterion that the order of succession has been laid down in the Hindu Dharma-Shastras with only limited rights over property for women who as part and parcel of their husbands have no separate ownership of their own. The ownership in the property of her deceased husband therefore in the absence of certain nearer heirs rests in the widow for her life time only. Thence it reverts to the next in the seed and blood relationship to the last full owner (deceased male) as it is the latter who is closer in blood relationship and who is consequently competent to perform the Shraddha sacrament in favour of the deceased last male owner and other ancestors.

21. Similarly daughters and sisters who are married and consequently whose Gotras have thus become merged with the Gotras of their husbands have little chances of succession except for the reason of blood relationship in the absence of any other nearer blood relation who is competent to perform Shraddha ceremony for the deceased last male owner or other ancestors.

22. It will thus be seen that similar to the law relating to marriage, the Hindu Dharma-Shastras have evolved a most scientific law of succession based on considerations of not only worldly happiness but also comfort in after-life and also of spiritual advancement. In fact the whole life of a Hindu is according to Dharma-Shastras so moulded as to help him to achieve the highest spiritual attainments, and anything that deters him from this onward march is a Sin. The whole social structure of the Hindus, the duties enjoined for them to be performed during the various stages of life, in fact every routine of their life and actions whether mental or physical, the laws of their marriage sacrament, those of succession, and even the rules relating to obsequies—all aim at helping them onwards in their progress for spiritual attainments.

23. The bill relating to intestate succession has not taken the above principles into consideration and has attempted to introduce a novel order of succession. This will overthrow the whole social structure and be a source of permanent misery and Sin to the Hindu Nation. No attack against the Hindu Dharma would have been worse than this kind of enforced law.

24. In conclusion, these bills aim at striking at the very root of the Sanatan Dharma, Varnashrama Dharma and their religious sociology. If passed into Acts, the Bills will play untold havoc and cast unforeseen misery on the Sanatanist Hindus. Moreover the present times hardly warrant such drastic changes disrupting the joyful, God-fearing and a peace-loving society and throwing it off its gear. It is the passing

of such few acts in the past few years that has been responsible for the estranged relation between the Sanatanist Hindus and the Congress Government and it will only be stating fact that true Sanatanist Hindus who regard religion dearer to their lives will form the core of their heart hate and consider as their bitterest enemy the so-called Reformer, Leader, Political Society or an Authority that will lend any support to the passing of such acts which to all intents and purposes are meant to stunt the nation's onward progress by undermining its religious social order. For reasons recorded above, I am desired to register a most vehement protest against the Bills and respectfully submit that it will be for the good of both rulers and ruled that the Bills be rejected before discussion on the floor of the Assembly.

KAMALAKAR DWIVEDI,
VIDYABHUSHAN, RAI BAHADUR
(Rtd. Collector and Magistrate, U. P.)
Chief Secretary.

Mrs. Joyarsi Ghosh, Swarupdham, Burma Bridge
Benares Cantt.

We give our whole support in favour of the above two Bills.

L. S. Misra, Esq., Bar-at-Law, Lucknow.

The main changes which the Bill seeks to introduce in the prevailing Hindu Law of Succession are as follows:—

(1) It provides a codified law of Intestate Succession which may be applicable to whole of British India.

(2) It provides for simultaneous inheritance by certain heirs and allocates to their shares on the death of prepositus.

(3) It provides for inheritance by women of a share in heritable property.

(4) It abolishes the limited estate of Hindu women.

(1) The first of these changes is in my opinion salutary and removes the divergence that prevails in the law of inheritance between Dayanag School on the one hand and the Mitakshara and its subsidiary Schools on the other.

(2) The provision for simultaneous inheritance and allocation of shares to various heirs of the deceased as contemplated by clauses 7 & 21 of the Bill would, in my view, tend to eliminate in time the system of coparcenary. The joint family system is regarded as the normal condition of Hindu Society and has been cherished as characteristic of Hindu life. It is well recognized that apart from the ties of blood the great cohesive force in a coparcenary is the community of interest and unity of possession. This is brought about by the system of devolution of heritable property on son, grand son, or great grand son as a single heritage with a right of survivorship *inter se*. Herein lies the basis of joint family. I apprehend that the devolution of the heritage as tenancy in common and the definition of shares of sons, widows and daughters would be destructive of the theory of single heritage and would destroy the community of interest and unity of possession. It is therefore, in my opinion, advisable to lay down the statutory law of survivorship keeping intact the inception and growth of the system of coparcenary before attempting to legislate upon the law of intestate succession.

(3) I am wholly in favour of providing for inheritance by women of a legitimate interest in the heritable property of the prepositus. One of the guiding factors, however, which prevails in the scheme of Hindu Succession is that the property should as far as possible not pass out of the family of the deceased. In providing for the Hindu women an interest in the inheritance of the deceased, this guiding factor should in my opinion be kept in view at least in the earlier stages of succession. Any scheme for simultaneous inheritance of interest by daughters is in this view likely to result in misarrriage of the property into other families—a result which has been sought to be avoided by traditional law and by tribal and family customs. An anxiety to ameliorate the condition of Hindu Women have recently called forth a certain amount of legislation. Any further provision for women may well be left to the discretion of the owner and to the province of will. I would therefore omit daughter from clause 5 class I and place her at No. 2 in that clause as heretofore. I would join with her daughter-in-law also as a joint tenant. In the presence of heirs in entry I, I would provide unmarried daughters and daughters-in-law with adequate maintenance.

(4) As regards the abolition of Limited estate of Hindu women I regret I am unable to agree. I consider that women in Hindu Society, even amongst propertied classes, are largely illiterate and are seldom possessed of business like instincts. They have even now not gained that wider perspective which is essential for proper discrimination. Taking into account the mass of Hindu population the women legislators, lawyers and ministers form a microscopic minority and constitute exceptions rather than a rule. Their percentage of literacy can scarcely bear a comparison with that of women amongst the Parsi or the Christian communities. It is true Muslim women have full rights in their share of inheritance, but their share shall, as it is often fettered by custom or else is often frittered by misuse. To provide for exceptional cases where educational and other attainments befit a Hindu women for undertaking greater responsibility and enjoying greater power, variations to meet the necessities of the case may well be left to discretion of the individual owner by recourse to wills which are not uncommon amongst the Hindus.

Apart from the objections which I have indicated above I do not consider that the details of the Bill call for any greater comments.

Dr. Mangal Deva Shastri, M.A., D. Phill (Oxon.),
Principal, Govt. Sanskrit College, Benares.

* * I have the honour to state that a perusal of the Statement of Objects and Reasons and other memoranda appended therewith shows that all possible objections that could be raised against them have been considered and dealt with. Where the bills, therefore, depart from the express injunctions of the Dharma-Shastras, they do so deliberately and it is therefore unnecessary to dwell upon them. They will also be doubtless put forward by the representatives of the orthodox public opinion, when the bills come up for discussion in the Legislative Assembly. I would, however, stress one or two points, which orthodox opinion as represented by the Govt. Sanskrit College, Benares, holds particularly objectionable.

(a) All properties acquired by a woman by inheritance or devise etc. have been declared as Stridhan. She has also been given absolute right to alienate the property as she likes. No clause is added that in case of re-marriage, the property in question will revert to the family of her first husband. But the addition of such a clause is rendered necessary in view of the provisions regarding the Civil Marriage of a widow in the second bill. Katayana says that the noness widow, faithful to her husband's bed and living with her elders, shall patiently enjoy (the property) till her death; after her, the heirs shall receive it (Ganganath Jha, Sources of Hindu Law p. 543). So a widow who was not faithful to her husband's bed and whose sons or co-heirs enumerated in at least Classes I and II of Clause 5 are living, should relinquish the property in favour of the latter in case of re-marriage. As an analogy may be mentioned the case of a girl, who marries a husband of her own choice and who has to return the ornaments, etc., presented to her by her parents or brothers before her marriage, otherwise she is to be considered as a thief (*vide* Manu IX, 90-92). As widow-remarriage is not countenanced by the Dharma Shastras and as property devolves wherefrom spiritual benefit is to be expected, an inherited property should not accrue where the above principles of the Dharma Shastras are violated.

As regards the right given to a daughter as an agnate of her father which itself is a deliberate departure from the accepted definition of the term, the natural consequence will be to open flood-gates of litigation between brothers and sisters and no end of vexation to a propertied person, who would be constantly pestered by the sons to write a will, while as constantly importunated by the daughters not to write one. The subsequent litigation for partition becomes a foregone conclusion. So whatever a *prima facie* sense of Justice dictates, a daughter should not be allowed to be introduced as a Simultaneous heir. The same holds in the case of daughter's daughter and so forth.

Dr. R. U. Singh, Dean, Faculty of Law, Lucknow University, Lucknow.

1. The definition of "heritable property" given in Clause 2 (d) as "property which belongs to an intestate in his or her own right and passes by inheritance as distinct from survivorship" appears to be defective. With this definition of "heritable property" there would be room for the argument that the measure excludes from its scope the case of an intestate in Mitakshara jurisdictions who dies leaving male issue and applies only to cases in which an intestate dies leaving no male issue. For, in the text of Yajnavalky which is the basis of the law of inheritance in Mitakshara jurisdictions, inheritance is confined to the estate of one who leaves no male issue and under the Mitakshara when a man dies leaving a son, grand-son and great-grandson, the heritage is unobstructed and they take in all cases by survivorship whether the property is ancestral or the separate property of the father. (See Mayne, 10th Ed., pp. 594-595). To speak of male issue as taking by inheritance may be all right in common parlance but is not quite correct. If the intention is to cover within the scope of "heritable property" the separate property of a Hindu intestate whether he dies leaving male issue or not, it appears desirable to substitute the definition of "heritable property" given in clause 2 (d) by an appropriate definition of the term.

2. The heirs enumerated in class V of Clause 5 comprise the maternal relations of the deceased. The question of giving preference to maternal relations over nearer relations for instance a son's daughter's son or a brother's daughter's son is not free from doubt and deserves very serious consideration. On the basis of nearness of relationship and the strength of the tie of affection relations like a son's daughter's son certainly deserves a place higher than maternal relations in the order of succession.

3. Clause 2 (1) (i) includes in the definition of stridhan all the property which may be acquired by a woman by any means whatever. Thus the property acquired by inheritance, partition etc., becomes her stridhan. Clause 12 gives her full rights over her stridhan—the same that a man would have with respect to a similar property. Clause 13 has laid down a special course of devolution for the stridhan property. This line is almost the same as the Mitakshara line of stridhan heirs—the daughter being preferred to the

an. An exception has been made in the case of property inherited from the husband which is to go to the reversioners. The results of the working of these and other rules in certain cases deserve our serious consideration:—

(a) Suppose a person dies leaving a son, a daughter, a daughter's son and a daughter's daughter. The son and the daughter will succeed to him in shares. The property in the daughter's hands, becomes her stridhan property, and on her death it goes to her daughter in preference to her son. If the son dies and his share also comes to the daughter, the result is that no portion of the property of the original owner descends to his daughter's son who has always been held to be very high in the line of succession and the whole of his property goes to daughter's daughter. The total or partial exclusion of the daughter's son in favour of the daughter's daughter in the matter of succession to the property of the maternal grandfather is a revolutionary rule and is hardly justifiable.

(b) Suppose a person dies leaving a mother, a brother and a sister. Under this bill the preferential heir is the mother. When she succeeds to the property she takes it as her stridhan. On her death the property goes not to the brother but to the sister because she is the daughter of the last holder of the property, namely, the mother. It is very curious that a Hindu should be made to contemplate the possibility that his property in such an event may pass entirely out of the family and his own brother be postponed in favour of the sister.

(c) In clause 5 the daughter has been allowed a share along with the sons and the widow and under clause 13 the daughter is the preferable heir to her mother's stridhan which now comprises all the property however acquired by the mother. This may be considerable and the son does not get any share in it in the presence of the daughter. But the daughter, on the other hand, is given a share in the father's property in the presence of the son. It is true that the daughter has been given half of the son's share but it must not be forgotten that in the Hindu Society dowry is prevalent and is often very heavy. The daughters in addition to the expenses incurred in bringing them up, consume a considerable portion of the patrimony in the shape of dowry paid at the time of the marriage and the son does not get any corresponding benefit at any stage of his life.

(d) By section 3 (2) of Act 18 of 1937, the widow of a coparcener is to have the same interest in the joint-family property which her husband had. She can enforce her rights by means of a partition. If a member of the joint-family dies leaving his widow and sons and a daughter the widow stands in his place on account of the above provision and she can enforce a partition just as he could have done. Suppose she does so and separates from the rest of the family. The share which she is entitled to get is the share which her husband would have got. Does the entire property go by her because her stridhan? What is the position of the sons in regard to the property got by their mother if they did not separate their own share at the time that their mother got the property? Will they have the right to do so in the life time of their mother? Will they be entitled even to their own share on the death of the mother or will the daughter succeed on the death of the mother to the whole property to the exclusion of the sons? The sons would have succeeded to the property after their father's death and in the present case their position is extremely uncertain and unfavourable.

4 Instances have been given in the foregoing paragraph to illustrate the difficulties that are likely to arise on account of provisions of the Bill. It is too late in the day to refuse their proper place to women in the scheme of inheritance but great care should be taken in the definition of stridhan, and the course of the devolution of stridhan. It is obviously unreasonable to widen the scope of stridhan and then to lay down a line of succession with reference to it in which the sons are postponed to the daughters and on the other hand to lay down a line of succession to males in which daughters are given simultaneous shares along with sons. If the definition of Stridhan is to remain as wide as is there in clause 2(1) (i) of the Bill, the only way to remove much of the difficulty appears to be to do away with the preference shown to the female in the matter of succession to stridhan.

Rao Raja Dr. Shyam Bihari Misra, M.A.,

D. Litt., Rai Bahadur, of Misra Bhawan, Golaganj, Lucknow.

1. Preliminary observations.—This Bill seeks generally to enhance the rights of Hindu Women, both as regards succession and Stridhan, to which I extend my whole-hearted support generally subject to the alterations proposed by me herein. But it is to be regretted that the wholesome Jeebe-made law known as the "Woman's Estate" is proposed to be practically abrogated and full rights are sought to be given to the Hindu women, from which I venture to differ entirely.

The present position of women in the Hindu society is unfortunately not very enviable, specially in view of their poor attainments in the vast majority of cases, a position which certainly needs very great amelioration, but in order to achieve success it is not advisable to attempt too much at once, and steady progress can only be made by not trying to run too fast at the initial stages. It is necessary to at least the fairer forward section of our people with us at the present stage, and we can proceed more radically

later on. Luckily things are already improving, and we know hundreds and thousands of Hindu women who have received and are receiving higher education, while the ordinary education of all girls is making rapid strides. But only the fringe of the question of female education has been touched on the whole so far. More drastic reforms will be possible with good prospects of success when satisfactory progress has been made in this direction. It is, therefore, probable that, as it is, most of our females—I should say 999 out of 1000—are at present quite unable to manage their affairs efficiently, and the abrogation of the law known as the "Woman's Estate", would under present conditions entail the passing of the permanent rights in property, proposed to be given to women on succession, into the hands of cheats and swindlers in a vast majority of cases. For these and similar reasons I am quite unable under present conditions to agree with this and some other similar proposals made in this otherwise very commendable Bill. Although I like many such advanced proposals personally, yet I am definitely of the opinion that they are at present very premature.

11. Consideration of specific proposals.—I now proceed to consider specific proposals made in the Bill on their merits.

Stridhan.—(1) I consider it essential that for the present no property inherited by any woman from her parental or husband's families should become her Stridhan as proposed in the Bill. Similarly any property received by her on partition or in lieu of maintenance, or by gift or under a Will should also not be her Stridhan unless the deed creating the right clearly gives her rights of full proprietorship.

(2) The Bill seeks to give adopted and Dwaimushyavan sons full rights of legal natural sons, but fails to mention cases in which a legitimate son is born to an adoptive father after the adoption. The present Hindu Law in such a case gives the adopted son only half the right of an actual legitimate son, which is perfectly reasonable. I consider it necessary that this point should be clarified in the Bill accordingly.

The present law recognises only the Dattaka and the Dwaimushyavan besides the actual legitimate sons, but the Bill needlessly adds a fourth variety (the Kritrima son) which is one of the 14 kinds of sons mentioned in the ancient Hindu Law which has, however, been rightly modified in certain respects by our social customs and the present law which have discarded them all except the *Dattaka* (actual legitimate), the *Dattaka* (adopted) and the *Dwaimushyavan* sons, and there appears no good reason to restore the *Kritrima* son at such late stage. The *Dwaimushyavan* is practically included among the adopted sons at present, and there is no necessity to restore any other variety now, and the proposal for *Kritrima* sons should, I think, be dropped.

(4) An exhaustive description of all heirs is given in sections 5 to 11 of the Bill which seeks to enhance substantially the rights of female relations like the widow, daughters, sons' daughters, sisters, daughters' daughters and the like. I entirely agree with these provisions of the Bill wholeheartedly subject of course to the alterations proposed by me here and there and more fully in Appendix AA added to this note at the end. But I am emphatically opposed to the proposal to give women any rights above those of the "Woman's Estate" in any property inherited by them, for reasons already given in my preliminary observations.

(5) The Bill includes family residential houses in the property to be inherited by female relations, but I consider it very necessary that no females should get any regular share in the deceased's residential house beyond rights they already enjoy under the present law. It is essential to avoid unnecessary complications and probable internal quarrels so far as reasonably possible. The right of personal residence in the family residential house will roughly correspond to their share in other property heritable by the female relations. On the death of such inheriting females the entire property inherited by them under the provisions of the Bill should descend to the heirs of the last male owner as if he had died immediately on the death of the inheriting females, as is the case under the present law. I consider it wholly unfair that the descendants of one's female relations should eventually become owners of his property to the exclusion of his own male lineal descendants in the male line of descent. However, the heirs of such last male owner will of course be determined in accordance with the provisions of the aforesaid sections of the Bill but limited by the proposal that the females must get only an "Woman's Estate" as already detailed by me above, and never an absolute right of full ownership in any case.

(6) I would suggest that the following addition may be made to Section 11 of the Bill:—

"If any male or female Hindu renounces his or her faith and becomes a Christian, Moslem, Zoroastrian, or Judaistic, he or she would be considered to have died immediately after such conversion so far as the benefits of succession, in his or her favour are concerned under sections 5 to 11 of the Bill. He or she will not succeed to any of his or her Hindu relations, but the reverse need not be the case. *viz.*, that his or her Hindu relations may yet inherit his or her property along with his or her new relations in the new faith, as they would have done if he or she had not been so converted. It is obviously desirable that one should not be allowed to get an advantage by his or her conversion to a different religion, while his or her old relations need not be punished by the fact of his or her apostasy."

(7) Section 13 of the Bill seeks to give the rights of heirs to the heirs of a deceased woman's husband in respect of property inherited by her from her predeceased husband or his relations, but does not extend a similar principle in

favour of parental relations in respect of property inherited by her from her father or his relations. Both classes of her relations (i.e., from the husband's as well as parental side) should in all fairness be treated similarly in respect of succession to property received by her from either each side separately, and therefore it should be provided that in cases where a woman has inherited any property from her father or other paternal kinsmen or relations, or from her husband or his relations or kinsmen, then the property shall, on her death, devolve upon those who are entitled to it under the present law as limited by the Bill in its final form.

(8) Also as regards property inherited by a woman from her paternal relations the Bill proposes too many other heirs, but paternal kinsmen are placed so low on the list of possible heirs that their chances of succession would appear to be mere moon-shine and they are not likely to inherit at all in 999 out of 1000 cases. In other words, the Bill considers the daughter a very near heir to her father, but the father and other paternal heirs are left to be almost no heirs to his daughters at all. This is very unfair and improper, and the defect should be remedied.

(9) *Stridhan*.—The succession to *Stridhan* property is so defective and unfair even under the present Hindu Law that our ladies themselves dislike it. Such succession is no doubt

law on paper, but is seldom given effect to in actual practice; it is more honoured in its breach than observance. The Bill makes matters much worse by extending inordinately the scope of *Stridhan* and not at all improving the law as to its succession. The woman's son is a very distant heir under this law and he comes after his deceased mother's daughters, her daughters' daughters and even daughters' sons, for purposes of succession to her *stridhan* property. Absurdity could, I am sure, hardly go further, as if her own son were almost no near relation to a deceased lady for purposes of succession to her *stridhan*.

In my opinion the succession to *Stridhan* property should also be regulated by the same principles of succession as are applicable to males' property under sections 5 to 11 of the Bill, as limited above, except that the husband should come in as if he were the wife of his deceased wife.

(10) The other changes proposed in the Bill appear to be very proper, as modified by me above, and in Appendix AA hereto. The efforts to remove or mitigate the rigours of our caste system, made by the framers of the Bill, are undoubtedly very commendable and in accordance with the changed conditions and views of modern times, and I give them my fullest support.

APPENDIX AA.

Succession as proposed by me.
In my opinion Intestate Succession should be governed as per details noted below:—

I. Classes of beneficiaries or heirs.

- A. Living son or sons to the deceased in equal shares.
- B. Living son or sons of predeceased son or sons of the deceased or such lineal descendants of his predeceased son or sons in the male line of descent.
- C. Widow or widows of the deceased in equal shares.
- D. Daughter or daughters of the deceased in equal shares.
- E. Other heirs according to the Bill.

II. Extent of the share of each class of beneficiaries or heirs.

1. A & B shall get the residential house or houses of the deceased and 50 per cent. of his other property. Heirs of class C shall get 25 per cent. of the deceased's "other property" in equal shares, provided that the share of a widow does not exceed the share of each heir of class A. Heirs of Class D shall get the remaining 25 per cent. of the deceased's "other property" in equal shares, provided that the share of individual daughters does not exceed one-fourth of the share of each heir of class A. Heirs of class E can come in only if the deceased has left no living heir of any of the classes A, B, C and D.

2. The son or sons and other descendants of class B of predeceased son or sons of the deceased shall receive their shares on the basis of the shares of their respective ancestors if they were alive at the demise of the deceased.

3. In the absence of heirs of classes C or D, their share shall go to classes A & B in proportion to the initial share of each individual. In the absence of heirs of classes A and B the entire property shall go to classes C and D half and half, provided that the residential house or houses shall go to class C alone.

4. No heirs of predeceased members of classes C and D shall have any share in the deceased's property.

5. The "other heirs" mentioned in class E are practically no ordinary heirs to the deceased under my scheme of succession.

6. Heirs of classes C and D shall get no regular share in residential house or houses of the deceased, but every one of them shall have right to live in a suitable portion in the residential house or houses of the deceased in accordance with their personal requirements only, so far as accommodation can be made available. If the deceased has left only one widow, suitable accommodation in the deceased's residential house or houses must be allotted to her in accordance with her personal requirements including those of his widowed daughter or daughters—and widowed daughters-in-law (if any) who may be dependent upon her.

7. The balance of the shares appertaining to heirs of classes C and D, left as a result of the provisions under para. 1 above, shall be utilised in increasing the shares of heirs of classes A and B.

8. Widows of predeceased heirs of classes A and B, having no male lineal descendants in the male line of descent, shall be entitled to suitable maintenance and right of personal residence in the residential house or houses of the deceased so far as accommodation can be made available.

9. The shares allotted to all women shall only be "Woman's estate" as discussed in detail in my preliminary observations and elsewhere and shall never constitute absolute or full ownership of such shares.

Hon. Secretary, Womens' Conference Moradabad.

I have much pleasure in forwarding you the enclosed opinions* of the prominent citizens of Moradabad on the two Hindu Code Bills.

I earnestly hope that these two Bills will be passed unanimously.

The District Bar Association, Allahabad.

The first point for consideration is whether the Hindu Law require codification. As the Hindu Law is founded on Customary Law, more or less based on *Smritis*, it would be

*Not printed.

rather hazardous to make a uniform law for the whole of India by codification of the Hindu Law, as it is feared that no codification however elaborate can do full justice to the prevailing customs of different classes of people in India. Moreover there are some terms which according to G. C. Sarkar Shastri and the memorandum attached to the Bills cannot be properly defined. In such cases reference have often to be made to the original texts on Hindu Law. As for example it may be mentioned here that in the Bill relating to Marriage the terms "Pravara" and "Gotra" have been defined to have the same meanings as in the Hindu Law. Therefore we are of opinion that the codification of Hindu Law will rather tend to complicate the matter and increase litigation than to minimise the same.

The next point that we considered is whether the Hindu Law as it exists today calls for any amendment. The subject is rather vast and as we have to consider at present only the Bills relating to marriage and succession we are of opinion that so far as it related to those two branches of Hindu Law no amendment is at present needed. Moreover considering the proclamation of Her Majesty the Queen in 1857 we are of opinion the Legislature has no authority to interfere with the social, religious and personal law of any community.

We shall now consider the Bills, as they stand, clause by clause; but we would like to stress here once again that we are definitely of opinion that no amendment in Hindu Law is necessary, and permissible as it is complete in itself in every respect.

Section 2 (a).—This sub-section also means that even a woman whether married or not will be deemed to belong to the same "Gotra" as her father. The Hindu conception regarding a woman is that upon marriage she is deemed to be re-born in the gotra of the husband. Any deviation from such a conception will be repugnant to the Hindu idea and it is feared that such a revolutionary amendment will not be favourably received by the Hindu public.

Section 2 (c).—In the definition of the word "heir" the expression "male or female" should be deleted.

Section 2 (e).—The definition of the word *Stridhan* does away with the conception of *Stridhan* as defined in the Hindu Law. Under the Hindu Law a woman holds only life estate in property except in certain cases which are said to be her *Stridhan*. But the present Bill purports to create absolute estate in favour of a woman with respect to any property that may come to her, either by succession or by way of gift or acquisition or any other way thereby disrupting the very conception of reversionary rights and endangers a family property to pass into the hands of a third person who would be quite stranger to the family. We are therefore of opinion that the law relating to *Stridhan* and life-estate of a woman should not be touched or amended and sections 12 to 14 of the Bill be deleted, and a separate chapter dealing with *Stridhan* be drafted.

Section 2 (2) (b).—Objection has already been made while dealing with section 2 (a).

Section 3.—Since we are not in favour of creating any absolute right in favour of a woman excepting her *Stridhan* the proviso to section 3 becomes unnecessary and should be deleted.

Sections 4, 5, 6, 7, 8, 9, 10.—Since we are not at all in favour of the present amendment of law of succession we are of opinion that this section be deleted and they be re-drafted on the line of Mulla's Hindu Law provided always that the rules of *Mitakshara* and *Dayabhaga* should not be ignored.

One point we like to stress here is that under the Hindu Women's Right to Property Act XVIII of 1937 section 3, sub-section (1) a widow of a predeceased son is entitled to get an absolute estate in the property of her father-in-law and the present Bill attempts to disqualify her as an heir altogether. We are of opinion that both the Act and the Bill are inequitable. A widow of a predeceased son should get only life-estate in the property of her father-in-law as defined in section 3 (1) of the said Act and the present Bill should include this suggestion.

No. 4—PUNJAB.

From the Home Secretary, to Government, Punjab,
To the Secretary to the Government of India,
Legislative Department, No. 5262-J-42/45866,
Dated Lahore, the 24th/28th August, 1942.

I am directed to forward a copy of a letter from the Registrar of the High Court at Lahore, reporting the views of the Honourable Judges and those of a number of the District and Sessions Judges consulted under their orders. The Punjab Government also invited the views of the High Court Bar Association and the Bar Association at the five divisional headquarters as well as of nine selected non-official organisations believed to be representative of Hindu and Sikh opinion. Only four of them, namely, (1) the Bar Association, Rawalpindi, (2) the Bar Association, Multan, (3) the Sanatan Dharma Pratinidhi Maha Sabha, Rawalpindi, and (4) the Sanatan Dharma Pratinidhi Sabha, Punjab, Lahore, have replied, and copies of their replies are enclosed.

2. The Punjab Government have no objection to the proposed Bills.

3. The Bills, with the accompanying Statements of Objects and Reasons including the Explanatory Notes and in the case of the first Bill the Appendix thereto, were published in the issues of the Punjab Government Gazette, dated the 3rd, 10th and 17th July, 1942.

From the Registrar of the High Court of Judicature
at Lahore.

SUBJECT.—The Hindu Code, Part I (Intestate Succession) and the Hindu Code, Part II (Marriage).

I am directed to forward a copy of the opinion recorded by the Honourable Mr. Justice Bhide and to say that the Honourable the Chief Justice and the other Honourable Judges agree to it.

2. The views of certain District and Sessions Judges, who were selected by the Honourable Judges to express opinion, are also forwarded in original. Sardar Sahib Sardar Sewa Singh, District and Sessions Judge, Ferozepore, and Mr. T. D. Bedi, Additional District and Sessions Judge, Lahore, were also asked to express their opinion. Their views will be sent as soon as received in this Court.

The two Bills purporting to 'amend and codify' Hindu Law in stages which have been sent for opinion appear to be measures of a far reaching character and of great importance. The first Bill deals with 'intestate succession', while the second deals with 'marriage'. It is proposed to have the whole of Hindu Law codified and the Code brought into operation by 1946. But this will, of course, depend upon the support which the Bills receive in the Legislature.

According to the principles accepted by the Government of India the Judges as a body are not required to express any opinion on Bills which are clearly concerned with matters of public policy or involve purely social or political considerations. The proposed Hindu Code embodies certain changes in the law which are no doubt primarily the concern of the Hindu community. But apart from these changes the codification of Hindu Law has by itself importance for the Courts.

In so far as the Bills purport to codify Hindu Law they will certainly be welcomed by the Courts. The Hindu Law, with its various schools obtaining in different parts of India, is a complex system and its administration is fraught with difficulties. Based primarily on the ancient *Smritis* (dating from about 200 B.C. to 200 A.D.) the law has gradually evolved through centuries by assimilation of a variety of customs, suited to differing local conditions and degrees of civilization. These customs were embodied in commentaries on *Dharma-shastra* by learned pandits, which came to be looked upon as authoritative in course of time. The law then possessed a certain amount of elasticity which enabled new customs evolved through the growing needs of the society to be incorporated in it. But since the advent of British rule, this elasticity disappeared. The law has now largely become crystallized through decisions of the Privy Council, but it contains many relics of the ancient system, which are not suited to modern conditions. Nothing short of legislation can, however, now remove such defects. Legislation had to be resorted to accordingly from time to time, but such piecemeal legislation has been found to be unsatisfactory. The drawbacks of unco-ordinated legislation were particularly brought into prominence by the Hindu Women's Rights to Property Act of 1937. This Act purported to remove some of the glaring disabilities of women in the matter of inheritance which, whatever their justification may have been in ancient times, could no longer be defended. But this Act struck at the root of the coparcenary system and created many difficulties as it failed to deal with several other aspects of the law, which were affected by it. As a result, several Bills were proposed to be introduced into the Legislature and a committee (referred to as the Hindu Law Committee) was appointed to examine them. The Committee issued questionnaires to elicit public opinion and after examining the whole subject in the light of the opinions received recommended that the whole of the Hindu Law should be codified in successive stages. This recommendation was accepted by the Central Government and the present Bills are the first two instalments of the proposed Code.

There can be no doubt about the advantages of codification of the Hindu Law. The primary requisites of any law are clarity and certainty and it must be said that Hindu Law lacks both at present, in several respects. The result is a

great deal of waste of time and money—of Courts and Litigants—which will be saved if the proposed codification succeeds. The need for such codification has been felt ever since the time of Lord Macaulay, but the task has not been attempted so far owing to its stupendous character. Mayne, the author of the classic work on Hindu Law, in his preface to the first edition, expressed the view that it would be a miracle if a Code of Hindu Law could be produced to satisfy different sections of the Hindu community all over India. But there has been a growing demand since amongst Hindus themselves for reform and codification of the Hindu Law with a view to simplify and adapt it to modern conditions. The Hindu Law Reform Association of Bombay has been advocating such reform for some years and the opinions received in response to questionnaires issued by the Hindu Law Committee, to which they refer, seem to indicate that the time is now ripe for the step. The passing of an important measure like the Hindu Women's rights to Property Act by the Legislature in 1937 points in the same direction.

In codifying the Hindu Law, the framers of the Bills have not merely attempted to state the existing law in clear and concise language, but have boldly tried to simplify and amend the law wherever necessary or desirable. The main features of the first Bill relating to intestate succession are that—

(i) it lays down a uniform law of succession for Hindus all over India (ii) removes sex disqualification of Hindu women in the matter of inheritance and (iii) abolishes the Hindu Women's limited estate. In proposing a Uniform law of succession, the Committee have tried to amalgamate the Dayabhaga and the Mitakshara law and made their recommendations so as to embody the more important features of both the systems. They have discarded elaborate classifications such as Samanodakas, Atma-bandhus, Pitri-bandhus, Matri-bandhus, etc., removed discrimination in the matter of inheritance between divided and undivided sons, married and unmarried daughters, adopted and after-born sons and so forth. As a result, the Committee has been able to reduce the law of succession to a few simple and easily intelligible rules. They have shown that the proposed rules are in accordance with the main principles of Hindu Law and where they depart from the law, they are equitable or supported by public opinion.

The principle of the removal of sex disqualification in the matter of inheritance has been already accepted in the Hindu Women's Rights to Property Act. As regards the 'limited estate of women' the Committee have pointed out that some eminent scholars have expressed the opinion that it has really no foundation in the ancient *smritis*.

There can be no doubt that the changes introduced in the Hindu Law by these bills are of a far-reaching character. There is bound to be considerable opposition to these changes from the orthodox section of the Hindu community, but there is, I believe, now a strong body of enlightened public opinion amongst Hindus in favour of such reform. The passing of an important measure like the Hindu Women's Right to Property Act by the Legislature recently in the year 1937 also indicates (as pointed out above) that the situation is hopeful. The fate of the bills must depend eventually upon the support they receive in the Legislature. But there can be no doubt that if the proposed Code becomes law, it will greatly facilitate the work of the Courts and will also be a boon to the public inasmuch as it will simplify the law and make it accessible to all in an easily intelligible form.

M. V. BHIDE,
Judge.

Sardar Bahadur Sardar Kartar Singh, P. C. S., District
and Sessions Judge, Jullundur.

I am not in favour of the proposed amendment. A share to daughters and sisters will root out the mutual love and would rather create jealousy. It would further introduce strangers in the family who may prove troublesome and dangerous. Further it would be a source of unnecessary litigation.

Widow's unlimited estate would lead to many evils. Society would not have any check on them and they are likely to bring bad names to the family to which they belong, by leading disreputable and vicious lives.

District and Sessions Judge, Montgomery.

Custom is the prime rule of law in this Province and although there is a presumption that Non-agriculturist Hindus are governed by Hindu Law, cases are rare in which the provisions of strict Hindu Law are applicable. Even in such cases special family customs are found to exist modifying the rules of Hindu Law. Under the circumstances so far as this Province is concerned the codification of Hindu Law is not likely to prove of much practical value, as the new measures proposed to be enacted would not affect the existing customs. Moreover I note that they are not to come into force till the year 1946. This shows that it is recognised that there is no immediate necessity for them. It is not known for how long the war is going to last and even if it ends before 1946, a good deal of reconstruction work will be necessary before we settle down to normal conditions of life and this work is likely to engage the attention of all Government and Public Bodies for a number of years. One cannot at this time foresee the political, economic and social changes that will follow at the close of war and it may be necessary to bring about sweeping changes in all branches of the administration. In these circumstances when owing to the

exigency created by the war all things are in a more or less fluid state and the future is uncertain, any opinion expressed on a measure affecting Hindu Society in the light of present day condition would necessarily be lacking in the element of permanency and will be subject to alteration later as one cannot be sure to have the same views in the post war period. I find no serious defect in the existing Hindu Law of marriage and Intestate Succession which require to be remedied immediately and I am of the opinion that such defects may very well wait to be remedied after the close of the war. Possibly a new generation will evolve after the war with views in social matters wholly different from the views of the present generation who may not be satisfied with the limited scope of the enactments now proposed and would like to bring about more drastic changes in the whole field of Hindu Law. For these reasons I do not propose to discuss the merits of either bill and I suggest that their consideration should be postponed till after the war.

(2) Under modern civilisation certainly a girl expects more than the dowry given to her in marriage. If one share is given to the son certainly a daughter deserves half but care should be taken that she should not get more than half share from that of the son. Supposing she first gets half the share from her father's property and after marriage she goes to a different family. After begetting one or two children she becomes a widow. Under the proposed law she will be again entitled to get one share as a widow of her husband. Why should there be a double inheritance. If a daughter gets half the share then there is no danger of a widow's right being made absolute. Generally there is a tendency on the part of mother to give share of her husband's immovable property in the form of cash by alienating a portion of her husband's property. If the daughter succeeds to her father's property the mother will have no necessity of transferring her husband's property. The difficulty only would arise in a case when the widow is unchaste and she likes to squander money to satisfy her own lust by raising loan. There should be a provision made to check this tendency.

I find myself in entire agreement with the provisions of the two bills and have no further criticism to offer.

Clause 22.—This provides for an escheat to the Crown in certain cases. It would be more in accord with Hindu sentiment to provide for an escheat to *Dharam Arth*, in cases where an intestate has left no heir qualified to succeed to the property. It would of course be necessary to set up a permanent Board of Trustees to administer such *Dharam Arth* properties but the matter should produce no difficulties which would be unsurmountable.

I have the honour to state that my first suggestion is that legislation on the proposed Hindu Code should not be taken up piecemeal. As pointed out in the explanatory note accompanying one of the Bills, different parts of the subject are inter-connected; it would not be advisable, therefore, to codify each part separately. There may be advantage in eliciting views of the public on one aspect of it, as a matter of convenience, before proceeding to other aspects but this could be secured by merely inviting public opinion and not proceeding with the Bills further until the subject had been exhausted in full. The explanatory note on the Bill relating to Marriage tends to suggest that this is the scheme likely to be followed.

2. As far as the Bill relating to intestate succession is concerned I wish to confine my remarks merely to clause 5 of it. The explanatory note to this Bill indicates that under the original plan of the Committee appointed by the Central Government the unmarried daughter was to take one share equally with the son and the widow and the married daughter was to get no share. Under the force of criticism by lawyers of weight, in the Bill as proposed the share of the widow and unmarried daughter has been reduced to 1/2. A similar share has also been awarded to a married daughter. In fact all daughters have been put on the same footing irrespective of the fact whether they are widowed, married or unmarried, rich or poor and with or without issue. I am in agreement with the principle of the Bill that a married daughter should not be totally excluded from a share in the estate of the deceased. At the same time, keeping in view the expense which is involved in a daughter's marriage in India I am of opinion that the share of a married daughter should be less than that of an unmarried daughter. Further distinctions on the basis of number of children and the financial position of the daughters would make the law too complex. It is not even always possible for legislation to provide for all contingencies special or ordinary which might arise. My suggestion, therefore, is that although an unmarried daughter's share should be one half as proposed under sub-clause (1) of Clause 5 the share of the married daughter should be reduced to 1/3, or even 1/4.

I am also inclined to think that a minor son too deserves to be better provided than a major one, on the ground that whereas the former has yet to be educated and fitted for life the latter has already been provided for in this respect by the deceased before his death. On ground of complexity

I have the honour to send herewith a copy of resolution of the Managing Committee, Bar Association, Rawalpindi, with 3 copies of the opinion on the Bill entitled Hindu Code Part I (Intestate Succession) and one copy of opinion on Part II (Marriages).

Resolution

Read opinion recorded by Pandit Lakshmi Narsain Sudan, Advocate on the bill styled "Hindu Code Part I Intestate Succession". The Managing Committee of the Bar Association concurs generally with the reasoning given in the carefully prepared opinion and supports entirely the conclusion arrived at by the learned member of the Association. In the opinion of the Committee the legislation should never be resorted to except to remove some serious evil or to redress some legitimate grievances. In introducing this bill, however the members of the Committee are surprised to see that not only this principle been not kept in view but the introducers of the bill have failed to consider the important point that the bill if passed would instead of removing any evil, introduce untold evils in the Hindu Society and would cut at the root of the whole Hindu social system. The Committee, therefore, strongly opposes the radical and drastic changes proposed to be introduced into Hindu social system.

'I have carefully gone through the Bill proposed to amend and codify the whole of the Hindu Law now in force in British India, called Hindu Code Part I (Intestate Succession), together with the Statement of Objects and Reasons.

together with the statement of 'Objects and Reasons.' It is very difficult to find why the necessity of codifying the whole of the Hindu Law now in force in British India has now arisen. India is a very big country, rather a small continent in itself divided into various Provinces, in which, on account of different classes of people amongst Hindus themselves with a variety of thought influenced by their religion, culture and civilization peculiar to themselves, we find different schools of thought regarding Hindu Law also, which again are influenced by local environment. Under the circumstances it would be a vain attempt to prepare one code of rules applicable uniformly to all the Hindus in matters concerning their religious, socio-religious, or religio-social, unless and until some drastic changes are made which would again seriously affect their religious freedom and cultural beliefs. Being governed by the same set of rules for centuries past, a Hindu knows ordinarily, ordinary rules of Hindu Law by instinct or by tradition; as the sources of Hindu Law are their own religious books, Shruties, Smritis, Puranas, Grihya Sutras and Dharmasastra Sutras, etc. Various books written on Hindu Law by eminent authors like Mr. Mayne, Mr. Mulla and others, have elucidated even very complicated matters of Hindu Law, and Sir Doctor H. S. Gour has written a monumental book on Hindu Law attempting to codify it in the best and honest manner possible, wherein approximation of inaccuracies has again been attempted to be annihilated as much as possible though one may not agree in toto with the various expositions of law made by him.

So even ordinary laymen know, and can in any case know what their laws are and where they stand.

The present attempt to unify principles of different schools of Hindu Law, Mitakshara, Dayabhaga and their sub-divisions into one law, will fail to satisfy the people of one thought of the other. But the proposed measures, e.g., Hindu Code/Part I (Intestate Succession) shows that an attempt has been made not to codify the Hindu Law 'now in force in British India' though it is pressed in so many words that it is to codify the same, none is there as account to merely amend it where it may be necessary on the account of conflicting authorities on the same point under the same school of thought, but the attempts have been made more to repeal the Hindu Law as it now exists and bring about altogether a new law to govern the Hindus in their personal matters. There will be no more personal law of the Hindus if this Bill is enacted into a law. I do not mean to say that there is any deliberate act to bamboozle the Hindus by the use of the words "to codify the Hindu Law now in force in British India", but the natural consequence of making such drastic changes in the law and amalgamating different schools of Hindu Law in one is not to codify the same but to prepare a "kitchen" of the whole of Hindu Law now in force in British India. The Preamble would certainly be misleading. It was rightly said by a friend of mine that the edifice of Hindu Law has been so constructed by the Hindu sages that you cannot take out one stone cut of it, but here the attempt to amend and codify it, will surely result in practically dismantling the whole edifice.

It is curious that this attempt to codify the Hindu Law is not made at the common desire of the Hindu population of India. No resolutions were passed by any Hindu Society worth the name to have the Hindu Law codified.

It would be still more curious to find that the legislature should have been very earnest in taking up this matter of not only codification of the Hindu Law now existing in British India but making such drastic changes in the law which are most revolutionary and repugnant to the Hindu sentiments, at a time when the Country is at War and all thoughts and energies are expected to be busy for the War effort, rather

than to be diverted to consider seriously the far-reaching changes desired to be effected in the most important subject of succession, marriages; etc., these changes may result in a great commotion or perhaps a revolution in the country, which is quite undesirable at this time.

My reading of the proposed bill, and the Objects and Reasons and the history of the previously proposed measures during the last twelve years is that the present proposed bill is actuated as a matter of fact by a desire on the part of certain persons to make a female an heir to the male and give her absolute power of disposal over the property thus acquired by her.

Before Act II of 1929, son's daughter, daughter's daughter, and sister were not recognised as Bandhus even except in Bombay and Madras, but by Act II of 1929, they were not only enumerated as heirs, but in the order of succession they were ranked after father's father and before father's brother. This was a great innovation effected in Hindu Law, which had been made as it seems that the bill was not sufficiently pushed and majority of people did not come to know until it became a law.

Sometime in 1934, Mr. P. C. D. Chari (Barua) made an abortive attempt to introduce a Bill entitled as 'Hindu Women's Inheritance Bill' in the Council of State with the explicit object of making a daughter a member of the coparcenary of which her father was a member, but most probably on account of its most injurious consequences, when brought home to him, he did not consider it proper to push it on.

Then came in 1935 the Hindu Women's Right to Property Bill introduced by the Hon'ble Dr. Deshmukh to give daughter, widow and mother etc., an equal share along with the sons in the property left by an intestate, with absolute powers of disposal, and on account of country wide opposition of the Hindus, after much of chiselling and chomping it was enacted only in the form as is given in Act XVIII of 1937, i.e., only the widow had been given a right equal to that of a son after the death of her husband and was given a right of partition but her power of disposal continued to remain limited. This Act being imperfect and unworkable, difficulties arose and certain amendments were proposed the very next year which formed Act XI of 1938. In the same year another Bill to further amend the Act of 1937 was introduced in the Council of State by the Hon'ble Mr. Akhil Chandra Datta, M.L.A., by which an attempt was made to abrogate not only Hindu Law, but custom also, with a view to give women an absolute power of disposal over all properties acquired by her by inheritance, succession or partition, and in the case of her dying intestate, a special mode of inheritance was provided by which daughters and daughters' sons were particularly selected to be her heirs first and her husband and husband's heirs afterwards.

In 1938, another Bill entitled as The Hindu Women's Rights to Property (further amendment) Bill was introduced by the Hon'ble Mr. G. S. Motilal in the Council of State with the desired object of reproducing to a great extent the effect of the former bills as originally introduced.

In the Statement of Objects and Reasons, it is clearly acknowledged in consequence of certain difficulties of interpretation arising out of the Hindu Women's Right to Property Act 1937, and the Amending Act of 1938, the Central Government appointed in January 1941, a Committee (sometimes referred to as the Hindu Law Committee) to examine these Acts as also certain Bills introduced or proposed to be introduced in the Indian Legislature, to amend them.

This Committee after making detailed examination of the subject made a report unanimously recommending that Hindu Law should be codified in successive stages, beginning with the Law of succession, to be followed by the Law of Marriage.

The above history of the Bills and the enactments clearly shows that the Hindu Law Committee has taken up the work of codifying the Hindu Law without any desire on the part of the people of India, but *suo moto*, and the present amendments are the outcome of the proposed Bills already introduced by these gentlemen who had been continuously and persistently straining every nerve to bring drastic changes in the Hindu Law of succession for giving women a full power of disposal. So the present proposed bills can in no case be called popular Bills which were wanted by the people of the country to be enacted into a Law. These measures may satisfy the desire of a few interested persons, but will surely create a huge discontent and discord amongst the vast majority of the Hindu population of India.

Main features of the proposed Bill as appear from Bill itself, and are shown in the "Explanatory Note" are:—

- (1) that it embodies a common Law of intestate succession for all Hindus in British India;
- (2) that it removes the sex disqualification by which Hindu women in general have been precluded from inheriting property in various parts of India; and
- (3) that it abolishes the Hindu Woman's limited estate.

As regards No. 1, it may be a very commendable desire on the part of the members of the Committee to have a common law not only in respect of intestate succession, but other matters as well throughout the whole of India, but on account of diversity of religious beliefs, sects, sub-sects, denominations and other various classifications and on account of different modes of life influenced by geographical conditions, and environments, it is but natural that there should be variety of rules governing them, India being not a small country. So it is useless to contend or urge that there should be one uniform common law of intestate succession. People governed by Dayabhag of Jimuta Vahana do not want to be governed by Vignaneswara's Mitakshra, though the latter is acknowledged to be a supreme authority throughout India. Mitakshra again being influenced by local commentaries has adopted

different changes with geographical variations. These sets of rules have received a definite shape for different provinces. There are certain common factors also, but the object of the proposed legislation is not to find out the greatest common factor, but to make one common law for the whole of the country, where the diversity is so common that there is not even one common language throughout the country. It is submitted therefore that it is no use to make an attempt to embody one common law of intestate succession. It may be contended that if we have got one Penal Code, one Criminal Procedure Code and one Civil Procedure Code, and one law of Contract, and so on, and so forth, why can we not and why should we not have one common law of intestate succession and one common Hindu Law. The reply is not far away to seek. The law of succession is based on religious scriptures and so is a personal law of the Hindu Community, which again has got other sub-divisions on account of different schools of thought. Penal Code and other Central enactments are meant for all the people of India, Hindus, Muslims, Christians and others. But all have got their different personal laws. Amongst the Mohammadans, there are different schools of thought, and so different rules of succession according to their being Sunnis or Shias. So it is not a matter of surprise for us or for any body else why the Hindus have got different laws of succession. It is often said that the Mohammadans are more united, but they are much wiser in this respect that they never think to create unnecessary differences and dissensions amongst themselves by attempting to propose a similar measure for "embodying one common law of succession for themselves." They know that it is quite unnecessary and unprofitable to do so. They do not like to disturb their freedom of thought and beliefs, nor to disturb their inner equilibrium and solidarity by bringing in contentious matters for discussion which may create dissensions. It is no matter to the Shias why Sunnis are governed by a particular set of rules of succession, nor does it matter to the Sunnis why the Shias are governed by a different set of rules.

So it is submitted that the learned Authors of the proposed measures need not worry over this matter by proposing a measure which they may perhaps consider for the common weal of all the Hindus, which the latter do not like, nor do they want to have for themselves. The law is embodied in their Shruties, Smritis and other religious scriptures and the Courts are daily interpreting them to decide the disputed matters whenever they arise. As a matter of fact it is the duty of legislators not to touch any matters in which the people do not want their help, and particularly when they concern their personal law which is mainly based on religious grounds.

As regards No. 2 regarding the alleged sex disqualification by which Hindu woman in general have been precluded from inheriting property in various parts of India, it is submitted that it is only a wrong view of the matter. There is no question of sex disqualification, amongst the Hindus. It is more a question of perspective from which the things are looked at. Hindus from their tradition and culture have been looking at things from the point of view of "duties" and not "rights". In case of every "duty" there will be a corresponding "right". But they have been looking at things from the point of view of Dharma i.e., a duty. It is the duty of Parents to maintain their children. It is the duty of the husband to maintain his wife. It is the duty of the Karta of the family not to alienate property without necessity. So on and so forth. If a person were to fail in the performance of his duty, he could be dealt with in accordance with the Dharama Shastras.

If Hindu Law be judged by an unprejudiced mind, it will be found that the Hindu Smritikars after considering all the circumstances gave all to a woman that she ought to get. They did not confine their attention to a woman, as widow, or a daughter only. They gave her all rights in property which were necessary to be given in her own interests. The Hindu sages always kept in view the law of nature that a female always requires protection of a male and has to depend on him. When she is born she depends on her parents, when married she depends on her husband, when husbandless she depends upon her son, and when left without her husband and son, she is left alone. Now Hindu Law has made provision for her in all these stages.

So long as she is unmarried daughter, it is the bounden duty of her parents to feed her, to look after her, to educate her, and subsequently when of marriageable age to marry her, and incur all expenses in this connection and to give her as much dowry as they can afford in accordance with the means of the family. I know personally, however, of some poor families even going so far as to incur debts for the sake of spending money on their daughters' marriages and giving them dowry, which their brotherhood are trying to curtail by passing resolution to that effect.

After her marriage she becomes 'Ardhangini' of her husband, an equal half of her husband. In a Joint Hindu family where son's position is not altogether independent, the position of son's wife cannot be supposed to be so. As a wife she enjoys all privileges with her husband in the family. When husband dies leaving a widow and a son, she becomes a mother, her position is supposed to be higher than that of her husband even and this can be easily borne out by the Hindu scriptures. The fact is that she is maintained out of the family funds just like a male. Mr. Deshmukh's Act of 1937, has given her a right equal to that of a son, and she has been given a power to claim a partition from her sons, which she could not do before.

If she is left as a widow of a separate male holder without a son that is when she is left alone, she inherits the whole of her husband's property in preference to her daughter even. The sonless widow enjoys not a part of the property

exigency created by the war all things are in a more or less fluid state and the future is uncertain, any opinion expressed on a measure affecting Hindu Society in the light of present day condition would necessarily be lacking in the element of permanency and will be subject to alteration later as one cannot be sure to have the same views in the post war period. I find no serious defect in the existing Hindu Law of marriage and Intestate Succession which require to be remedied immediately and I am of the opinion that such defects may very well wait to be remedied after the close of the war. Possibly a new generation will evolve after the war with views in social matters wholly different from the views of the present generation who may not be satisfied with the limited scope of the enactments now proposed and would like to bring about more drastic changes in the whole field of Hindu Law. For these reasons I do not propose to discuss the merits of either bill and I suggest that their consideration should be postponed till after the war.

District and Sessions Judge, Ludhiana.

(2) Under modern civilisation certainly a girl expects more than the dowry given to her in marriage. If one share is given to the son certainly a daughter deserves half but care should be taken that she should not get the share double than that of the son. Supposing she first gets half the share from her father's property and after marriage she goes to a different family. After begetting one or two children she becomes a widow. Under the proposed law she will be again entitled to get one share as the widow of her husband. Why should there be a double inheritance. If a daughter gets half the share then there is no danger of a widow's right being made absolute. Generally there is a tendency on the part of mother to give share of her husband's immovable property in the form of cash by alienating a portion of her husband's property. If the daughter succeeds to her father's property the mother will have no necessity of transferring her husband's property. The difficulty only would arise in a case when the widow is unchaste and she likes to squander money to satisfy her own lust by raising loan. There should be a provision made to check this tendency.

District and Sessions Judge, Sialkot.

I find myself in entire agreement with the provisions of the two bills and have no further criticism to offer.

District and Sessions Judge, Mianwali.

Clause 22.—This provides for an escheat to the Crown in certain cases. It would be more in accord with Hindu sentiment to provide for an escheat to *Dharam Arth*, in cases where an intestate has left no heir qualified to succeed to the property. It would of course be necessary to set up a permanent Board of Trustees to administer such *Dharam Arth* properties but the matter should produce no difficulties which would be unsurmountable.

District & Sessions Judge, Delhi.

I have the honour to state that my first suggestion is that legislation on the proposed Hindu Code should not be taken up piecemeal. As pointed out in the explanatory note accompanying one of the Bills, different parts of two subjects are inter-connected; it would not be advisable, therefore, to codify each part separately. There may be advantage in eliciting views of the public on one aspect of it, as a matter of convenience, before proceeding to other aspects but this could be secured by merely inviting public opinion and not proceeding with the Bills further until the subject had been exhausted in full. The explanatory note on the Bill relating to Marriage tends to suggest that this is the scheme likely to be followed.

2. As far as the Bill relating to intestate succession is concerned I wish to confine my remarks merely to clause 5 of it. The explanatory note to this Bill indicates that under the original plan of the Committee appointed by the Central Government the unmarried daughter was to take one share equally with the son and the widow and the married daughter was to get no share. Under the force of criticism by lawyers of weight, in the Bill as proposed the share of the widow and unmarried daughter has been reduced to 1/2. A similar share has also been awarded to a married daughter. In fact all daughters have been put on the same footing irrespective of the fact whether they are widowed, married or unmarried, rich or poor and with or without issue. I am in agreement with the principle of the Bill that a married daughter should not be totally excluded from a share in the estate of the deceased. At the same time, keeping in view the expense which is involved in a daughter's marriage in India I am of opinion that the share of a married daughter should be lesser than that of an unmarried daughter. Further distinctions on the basis of number of children and the financial position of the daughters would make the law too complex. It is not even always possible for legislation to provide for all contingencies special or ordinary which might arise. My suggestion, therefore, is that although an unmarried daughter's share should be one half as proposed under sub-clause (1) of Clause 5 the share of the married daughter should be reduced to 1/3, or even 1/4.

I am also inclined to think that a minor son too deserves to be better provided than a major one, on the ground that whereas the former has yet to be educated and fitted for life the latter has already been provided for in this respect by the deceased before his death. On ground of complexity

the suggestion might not sound practicable but it deserves to be carefully examined.
In all other respects I support the provisions of the Bill relating to Intestate Succession.

Secretary, Bar Association, Rawalpindi.

I have the honour to send herewith a copy of resolution of the Managing Committee, Bar Association, Rawalpindi, with 3 copies of the opinion on the Bill entitled Hindu Code Part I (Intestate Succession) and one copy of opinion on Part II (Marriages).

Resolution.

Read opinion recorded by Pandit Lakshmi Narain Sudan, Advocate on the bill styled "Hindu Code Part I Intestate Succession". The Managing Committee of the Bar Association concurs generally with the reasoning given in the carefully prepared opinion and supports entirely the conclusion arrived at by the learned member of the Association. In the opinion of the Committee the legislation should never be resorted to except to remove some serious evil or to redress some legitimate grievances. In introducing this bill, however the members of the Committee are surprised to see that not only this principle been not kept in view but the introducers of the bill have failed to consider the important point that the bill if passed would instead of removing any evil, introduce untold evils in the Hindu Society and would cut at the root of the whole Hindu social system. The Committee, therefore, strongly opposes the radical and drastic changes proposed to be introduced into Hindu social system.

Opinion of Pandit Lakshmi Narayana Sudan, Advocate, Rawalpindi

I have carefully gone through the Bill proposed to amend and codify the whole of the Hindu Law now in force in British India, called Hindu Code Part I (Intestate Succession), together with the Statement of Objects and Reasons.

It is very difficult to find why the necessity of codifying the whole of the Hindu Law now in force in British India has now arisen. India is a very big country, rather a small continent in itself divided into various Provinces, in which, on account of different classes of people amongst Hindus themselves with a variety of thought influenced by their religion, culture and civilization peculiar to themselves, we find different schools of thought regarding Hindu Law also, which again are influenced by local environment. Under the circumstances it would be a vain attempt to prepare one code of rules applicable uniformly to all the Hindus in matters concerning their religious, socio-religious, or religio-social, unless and until some drastic changes are made which would again seriously affect their religious freedom and cultural beliefs. Being governed by the same set of rules for centuries past, a Hindu knows ordinarily, ordinary rules of Hindu Law by instinct or by tradition; as the sources of Hindu Law are their own religious books, Shruties, Smritis, Puranas, Grihya Suktas and Dharmashastra Suktas, etc. Various books written on Hindu Law by eminent authors like Mr. Mayne, Mr. Mulla and others, have elucidated even very complicated matters of Hindu Law, and Sir Doctor H. S. Gour has written a monumental book on Hindu Law attempting to codify it in the best and honest manner possible, wherein approximation of inaccuracies has again been attempted to be annihilated as much as possible though one may not agree *in toto* with the various expositions of law made by him.

So even ordinary laymen know, and can in any case know what their laws are and where they stand.

The present attempt to unify principles of different schools of Hindu Law, Mitakshara, Dayabhaga and their sub-divisions into one law will fail to satisfy the people of one thought or the other. But the proposed measures, e.g., Hindu Code Part I (Intestate Succession) shows that an attempt has been made not to codify the Hindu Law now in force in British India though it is professed in so many words that it is to codify the same, nor is there an attempt to merely amend it where it may be necessary on account of conflict of authorities on the same point under the same school of thought, but the attempts have been made more to repeal the Hindu Law as it now exists and bring about altogether a new law to govern the Hindus in their personal matters. There will be no more personal law of the Hindus if this Bill is enacted into a law. I do not mean to say that there is any deliberate act to bamboozle the Hindus by the use of the words "to codify the Hindu Law now in force in British India", but the natural consequence of making such drastic changes in the law and amalgamating different schools of Hindu Law in one is not to codify the same but to prepare a "khichri" of the whole of Hindu Law now in force in British India. The Preamble would certainly be misleading. It was rightly said by a friend of mine that the edifice of Hindu Law has been so constructed by the Hindu sages that you cannot take out one stone out of it, but here the attempt to amend and codify it, will surely result in practically dismantling the whole edifice.

It is curious that this attempt to codify the Hindu Law is not made at the common desire of the Hindu population of India. No resolutions were passed by any Hindu Society worth the name to have the Hindu Law codified.

It would be still more curious to find that the legislature should have been very earnest in taking up this matter of not only codification of the Hindu Law now existing in British India but making such drastic changes in the law which are most revolutionary and repugnant to the Hindu sentiments, at a time when the Country is at War and all thoughts and energies are expected to be busy for the War effort, rather

than to be diverted to consider seriously the far-reaching changes desired to be effected in the most important subject of succession, marriages; etc., these changes may result in a great commotion or perhaps a revolution in the country, which is quite undesirable at this time.

My reading of the proposed bill, and the Objects and Reasons and the history of the previously proposed measures during the last twelve years is that the present proposed bill is actuated as a matter of fact by a desire on the part of certain persons to make a female an heir to the male and give her absolute power of disposal over the property thus acquired by her.

Before Act II of 1929, son's daughter, daughter's daughter, and sister were not recognised as Bandhus even except in Bombay and Madras, but by Act II of 1929, they were not only enumerated as heirs, but in the order of succession they were ranked after father's father and before father's brother. This was a great innovation effected in Hindu Law, which had been made as it seems that the bill was not sufficiently published and majority of people did not come to know until it became a law.

Sometime in 1934, Mr. P. C. D. Chari (Burma) made an abortive attempt to introduce a Bill entitled as Hindu Women's Inheritance Bill in the Council of State with the explicit object of making a daughter a member of the coparcenary of which her father was a member, but most probably on account of its most injurious consequences, when brought home to him, he did not consider it proper to push it on.

Then came in 1935 the Hindu Women's Right to Property Bill introduced by the Hon'ble Dr. Deshmukh to give daughter, widow and mother etc., an equal share along with the sons in the property left by an intestate, with absolute powers of disposal, and on account of country wide opposition of the Hindus, after much of chiselling and chomping it was enacted only in the form as is given in Act XVIII of 1937, i.e., only the widow had been given a right equal to that of a son after the death of her husband and was given a right of partition but her power of disposal continued to remain limited. This Act being imperfect and unworkable, difficulties arose and certain amendments were proposed the very next year which formed Act XI of 1938. In the same year another Bill to further amend the Act of 1937 was introduced in the Council of State by the Hon'ble Mr. Akhil Chandra Datta, M.L.A., by which an attempt was made to abrogate not only Hindu Law, but custom also, with a view to give women an absolute power of disposal over all properties acquired by her by inheritance, succession or partition, and in the case of her dying intestate, a special mode of inheritance was provided by which daughters and daughters' sons were particularly selected to be her heirs first and her husband and husband's heirs afterwards.

In 1938, another Bill entitled as The Hindu Women's Rights to Property (further amendment) Bill was introduced by the Hon'ble Mr. G. S. Motilal in the Council of State with the desired object of reproducing to a great extent the effect of the former bills as originally introduced.

In the Statement of Objects and Reasons, it is clearly acknowledged in consequence of certain difficulties of interpretation arising out of the Hindu Women's Right to Property Act 1937, and the Amending Act of 1938, the Central Government appointed in January 1941, a Committee (sometimes referred to as the Hindu Law Committee) to examine these Acts as also certain Bills introduced or proposed to be introduced in the Indian Legislature, to amend them.

This Committee after making detailed examination of the subject made a report unanimously recommending that Hindu Law should be codified in successive stages, beginning with the Law of succession, to be followed by the Law of Marriage.

The above history of the Bills and the enactments clearly shows that the Hindu Law Committee has taken up the work of codifying the Hindu Law without any desire on the part of the people of India, but *suo moto*, and the present amendments are the outcome of the proposed Bills already introduced by these gentlemen who had been continuously and persistently straining every nerve to bring drastic changes in the Hindu Law of succession for giving women a full power of disposal. So the present proposed bills can in no case be called popular Bills which were wanted by the people of the country to be enacted into a Law. These measures may satisfy the desire of a few interested persons, but will surely create a huge discontent and discord amongst the vast majority of the Hindu population of India.

Main features of the proposed Bill as appear from Bill itself, and are shown in the "Explanatory Note" are:—

- (1) that it embodies a common Law of intestate succession for all Hindus in British India;
- (2) that it removes the sex disqualification by which Hindu women in general have been precluded from inheriting property in various parts of India; and
- (3) that it abolishes the Hindu Woman's limited estate.

As regards No. 1, it may be a very commendable desire on the part of the members of the Committee to have a common law not only in respect of intestate succession, but other matters as well throughout the whole of India, but on account of diversity of religious beliefs, sects, sub-sects, denominations and other various classifications and on account of different modes of life influenced by geographical conditions, and environments, it is but natural that there should be variety of rules governing them, India being not a small country. So it is useless to contend or urge that there should be one uniform common law of intestate succession. People governed by Dayabhag of Jimuta Vahana do not want to be governed by Visnueswara's Mitakshra, though the latter is acknowledged to be a supreme authority throughout India. Mitakshra again being influenced by local commentaries has adopted

different changes with geographical variations. These sets of rules have received a definite shape for different provinces. There are certain common factors also, but the object of the proposed legislation is not to find out the greatest common factor, but to make one common law for the whole of the country, where the diversity is so common that there is not even one common language throughout the country. It is submitted therefore that it is no use to make an attempt to embody one common law of intestate succession. It may be contended that if we have got one Penal Code, one Criminal Procedure Code and one Civil Procedure Code, and one law of Contract, and so on, and so forth, why can we not and why should we not have one common law of intestate succession and one common Hindu Law. The reply is not far away to seek. The law of succession is based on religious scriptures and so is a personal law of the Hindu Community, which again has got other sub-divisions on account of different schools of thought. Penal Code and other Central enactments are meant for all the people of India, Hindus, Muslims, Christians and others. But all have got their different personal laws. Amongst the Mohammedans, there are different schools of thought, and so different rules of succession according to their being Sunnis or Shias. So it is not a matter of surprise for us or for any body else why the Hindus have got different laws of succession. It is often said that the Mohammedans are more united, but they are much wiser in this respect that they never think to create unnecessary differences and dissensions amongst themselves by attempting to propose a similar measure for "embodying one common law of succession for themselves." They know that it is quite unnecessary and unprofitable to do so. They do not like to disturb their freedom of thought and beliefs, nor to disturb their inner equilibrium and solidarity by bringing in contentious matters for discussion which may create dissensions. It is no matter to the Shias why Sunnis are governed by a particular set of rules of succession, nor does it matter to the Sunnis why the Shias are governed by a different set of rules.

So it is submitted that the learned Authors of the proposed measures need not worry over this matter by proposing a measure which they may perhaps consider for the common weal of all the Hindus, which the latter do not like, nor do they want to have for themselves. The law is embodied in their Shruties, Smritis and other religious scriptures and the Courts are daily interpreting them to decide the disputed matters whenever they arise. As a matter of fact it is the duty of legislators not to touch any matters in which the people do not want their help, and particularly when they concern their personal law which is mainly based on religious grounds.

As regards No. 2 regarding the alleged sex disqualification by which Hindu woman in general have been precluded from inheriting property in various parts of India, it is submitted that it is only a wrong view of the matter. There is no question of sex disqualification, amongst the Hindus. It is more a question of perspective from which the things are looked at. Hindus from their tradition and culture have been looking at things from the point of view of "duties" and not "rights". In case of every "duty" there will be a corresponding "right". But they have been looking at things from the point of view of Dharma i.e., a duty. It is the duty of Parents to maintain their children. It is the duty of the husband to maintain his wife. It is the duty of the Karta of the family not to alienate property without necessity. So on and so forth. If a person were to fail in the performance of his duty, he could be dealt with in accordance with the Dharama Shastras.

If Hindu Law be judged by an unprejudiced mind, it will be found that the Hindu Smritikars after considering all the circumstances gave all to a woman that she ought to get. They did not confine their attention to a woman, as widow, or a daughter only. They gave her all rights in property which were necessary to be given in her own interests. The Hindu sages always kept in view the law of nature that a female always requires protection of a male and has to depend on him. When she is born she depends on her parents, when married she depends on her husband, when husbandless she depends upon her son, and when left without her husband and son, she is left alone. Now Hindu Law has made provision for her in all these stages.

So long as she is unmarried daughter, it is the bounden duty of her parents to feed her, to look after her, to educate her, and subsequently when of marriageable age to marry her, and incur all expenses in this connection and to give her as much dowry as they can afford in accordance with the means of the family. I know personally, however, of some poor families even going so far as to incur debts for the sake of spending money on their daughters' marriages and giving them dowry, which their brotherhood are trying to curtail by passing resolution to that effect.

After her marriage she becomes 'Ardhangni' of her husband, an equal half of her husband. In a Joint Hindu family where son's position is not altogether independent, the position of son's wife cannot be supposed to be so. As a wife she enjoys all privileges with her husband in the family. When husband dies leaving a widow and a son, she becomes a mother, her position is supposed to be higher than that of her husband even and this can be easily borne out by the Hindu scriptures. The fact is that she is maintained out of the family funds just like a male. Mr. Deshmukh's Act of 1937, has given her a right equal to that of a son, and she has been given a power to claim a partition from her sons, which she could not do before.

If she is left as a widow of a separate male holder without a son that is when she is left alone, she inherits the whole of her husband's property in preference to her daughter even. The sonless widow enjoys not a part of the property

but the whole of the property. She can make permanent alienations if there is a valid necessity. Of course there is no reason why she should alienate the property where there is absolutely no necessity for her to do so. Nor is there any reason for her to squander it. On widow's death, the whole property passes to the daughter and daughter's son. Of course daughter does not inherit it, because she is Gotraja, as she is now desired to be ranked by the proposed legislation for the simple reason that after marriage, her Gotra is changed and she adopts the Gotra of her husband. But she inherits because her son is more competent to offer oblations to her deceased father than any body else. She is to form as if it were a conduit pipe to pass the inheritance to her son. So there is no valid ground for saying that there is a sex disqualification under Hindu Law. The woman does inherit as a widow the whole of the property when she is most in need, being destitute of her husband and son, and after her the daughter inherits the whole, both being enjoined not to waste; so that corpus of the property may go to the offering oblation to the deceased propitius.

By the proposed Bill a drastic change is desired to be made by definition of the word "gotraja" read with Section 2(b) of the Bill. Daughters of all Gotraja Sapindas however high or however low are by the proposed Bill deemed to be Gotraja in spite of the fact that when they are married they have adopted the Gotra of their husbands, and so are not Gotraja etymologically nor according to all schools of Hindu Law. So we are to distort our faculty of understanding and consider that a daughter who though has passed in another Gotra after the marriage, should still be considered retaining the Gotra of her father. Thus a daughter after her marriage will be supposed to have two Gotras at one and the same time, one of her husband, as she has been transferred to that Gotra, and the other of her father which the proposed Bill requires her to retain for purposes of inheritance from her father.

This idea is most repugnant to the religious sentiment of Hindus, and this has been entertained and adopted by the learned movers of the Bill. Simply with a view to make a daughter of every Gotraja an heir to the propitius, even after her marriage in another family. I have already given reasons why a daughter of the propitius has been accepted to be an heir after the son, under Hindu Law on religious grounds. She is not an heir because she would be Gotraja according to the present proposed Bill, but it is because her son is more competent to offer oblations than any other heir. Even the father and father's father are preferred to daughter and daughter's son on this ground. But no daughter of any other Gotraja however high or however low, is competent to inherit on a similar ground. Hence it is that the daughters of Gotrajas are excluded from inheritance but only their sons are heirs as bandhus whether they are Atma Bandhus, Pitri Bandhus or Matri Bandhus. They all were postponed to Samanodaks. The Sakuls would be more competent to offer oblations, than the Samanodaks and the Samanodaks would be more competent before Atma Bandhus and Atma Bandhus more competent than Pitri Bandhus who again are more competent to offer oblations than Matri Bandhus. But daughter or daughter's son are incompetent to offer oblations in presence of sons of the deceased who are the only persons competent to perform Shradh and offer oblations. Hence it is that a daughter cannot inherit any part of her father's property in presence of the sons. So the whole law of inheritance is based on the benefit which an heir is competent to offer by oblations to the deceased and also on the capacity of the person who is more competent to offer that oblation. Thus there is no scope for saying that there is a sex disqualification, as the whole law of inheritance is based on scientific basis as to who can perform a duty towards the deceased better, than the other. The idea of some of the supporters of the Bill or the promoters of the cause of women that such like Bills do not raise any question of religion or of faith is absolutely erroneous. The principle that the right of inheritance according to Hindu Law is wholly regulated with reference to spiritual benefit to be conferred on the deceased proprietor has been laid down on the highest judicial authority as an article of legal creed which is universally true, and which according to some schools of Hindu Law it would be heresy to doubt. According to Hindu Law the principle upon which one person succeeds to another generally depends on his capacity to benefit that person by offering of funeral cakes and oblations. It was remarked by the Highest Judicial authority in 12 M.J.A. 81 at page 96 that "there is in the Hindu Law so close a connection between their religion and their succession to property that the preferential right to perform the *Shradh* is commonly viewed as governing also the preferential right to succession of property and as a general rule they would be expected to be in union."

So the learned authors of the Bill were in no case justified to prepare a list of 'enumerated heirs' in such a manner as was subversive of the acknowledged principles of Hindu Law, whereby daughter was proposed to be made an heir along with the sons, and son's daughter and daughter's daughter were made heirs and given preference even over mother, father, brother, brother's son, brother's son's son, father's mother, and father's father. Daughter's daughter was never an heir except in Bombay and Madras. Sister and sister's son were given by this Bill the same position which they were given by Act II of 1929, though sister was recognised an heir only in Bombay and Madras Presidencies, and sister's son was to come only as a bandhu before Act II of 1929.

Father's sister's son and father's father's sister's son were only Bandhus, *ex parte Paterna*, and were not entitled to come in clause III or clause IV.

Class V is a list of Bandhus *ex parte Materna*, who had no right to come in until Sakuls, Samanodaks, Atma Bandhu, Pitri Bandhu were not exhausted.

Mention of Bandhus in the list of 'enumerated heirs' as given in Section 5 is quite opposed to the principles laid down in Section 4 that the agnates are to exclude the cognates.

Again the Rule of Preference enunciated in Section 9 is quite opposed to the principle laid down in Section 4 that the agnates are to exclude the cognates. Heritable Bandhus according to Hindu Law are males related to the deceased, through a female, and not the females themselves, and again they are limited to 5th degree but not beyond that. According to the proposed Bill there is no limit.

The result is that the proposed order of inheritance is not only opposed to the basic principle of the Hindu Law by which order of preference was based on the higher capacity of the heir to benefit the deceased by offering oblations, but is opposed to the rules of preference interse laid down in Sections 4 and 9. Thus the proposed order is not based on any one set of principles, but one cuts the other. Furthermore no good reasons are given why the proposed order is laid down. This will clearly show that the attempt is not to codify the Hindu Law now existing in British India, but to substitute a fresh law of succession for the Hindus.

Changes in the personal law of a community should in no case be made by the Legislatures particularly when they are based on religious grounds. That would be an interference with the matters of religion of a community or class of persons which is quite inadvisable, inexpedient and undesirable for a thoughts is so large, that from a polytheist to an utter atheist of their capacity to represent any particular religion or thought. Amongst the Hindus themselves variation of thoughts is so large, that from a polytheist to an utter atheist, is a Hindu and a member of Hindu community, but election of the members is not based on such principles as to make them represent a particular creed, religion, sect or sub-sect. So the legislature should abstain altogether from dealing with such matters as may effect the freedom of religious faith of the people, especially when the Legislature is comprised of representatives belonging to various heterogeneous communities with thought diametrically opposite to one another. If once they are started to be made there will be no end of them. India being a vast country any change which is desired to be made for persons in a particular locality or for particular section of community, may be wholly unsuitable to persons living in another part of the country and belonging to another section of the community.

Again drastic changes like the present made every time are likely to unsettle the settled condition of the Society. Today we are considering that we are definitely governed by a particular set of rules of succession, and if next year some other drastic changes are made by legislation, and again in the third year some other changes are desired to be made according to the whims of some other particular members (as we actually find by our experience from the year 1934 to 1938 that it actually went on like that) and if again with a new Assembly which is sure to be constituted out of fresh members of a different type, according to the whims and peculiar notions of some of the new members fresh changes are desired to be made, or this very proposed enactment if now enacted, is desired to be repealed and original Hindu Law restored, there will be no limit to or end of such changes, and it will be extremely difficult for people to mould or control the economic condition of their families. Naturally this state of affairs is bound to seriously undermine the whole fabric of Hindu Society. So it is submitted that personal law should not be altered by legislation.

As regards the manner of distribution there was a very drastic innovation by giving the daughter a share equal to one half of that of a son. The widow originally had no share but only a right of maintenance in the presence of a son, and was to be given a share equal to that of a son when the sons partitioned the property amongst themselves but by Deshmukh's Act of 1937 she was to get a share equal to that of a son. This did not seriously affect the rights of the sons as she had a right to get such share sooner or later at the time of partition, but to give the daughter a share equal to half of that of the son, is nothing short of engrafting a principle of Mohammedan Law by which a daughter gets a Quranic share of one half as a residuary with the son.

The learned authors of the Bill made a vain attempt to base it on Smriti authority. They say that according to Yajnya-Valkya and Manu the sons have to give the daughter a "one-fourth" share. Then Manu's Chapter IX verse 118 is quoted, and the literal translation according to their interpretation is as under:—

"The brothers should severally give to their maiden sisters out of their own shares, each a one-fourth part out of his share, those refusing to give shall be degraded."

It is further added that "on a strict construction of this text it would follow that if there were three sons and one daughter each son would in the first instance take a one-third share and would then have to give one-fourth of that share to the daughter, so that the final result would be that each of the three sons and the daughter would have one-fourth. In this particular case; therefore, the daughter's share would be equal to that of the sons. If there are two sons and one daughter, the distribution would be 3/8th of each son and 1/4th for the daughter, so that the daughter's share would be 2/3rd of the sons, and so on."

The above can in no case be considered to make a daughter an heir of a deceased propitius along with the son on the following grounds:—

- (i) The above verse does not relate to inheritance of a daughter along with the sons.
- (ii) This rather supports that the sons are to get shares; and property is to be inherited by the sons and sons alone, and they are to divide amongst themselves.

(iii) This verse read with the preceding verse No. 117 will show as a matter of fact according to Manu the eldest son is to get 2 shares, the 2nd son to get 1½ shares, and all the rest to get one share each.

(iv) Confining myself to the verse No. 118 above, I think the learned Authors of the Bill have given quite a wrong interpretation of the verse when they say "the brothers should severally give....." each a one-fourth part out of his share..... This mistake will become obvious to them by the following illustrations:—

(a) Supposing a person dies leaving 4 sons and one daughter then according to the above interpretation each son will get 1/4th share, and each will give 1/4th of his share to the daughter, so the result will be that each son will retain $(1/4 - 1/4 \times 1/4) = 3/16$, and the daughter will get $1/16 \times 4/1 = 1/4$ th share. In other words each son will get 3/16 and daughter 1/4. I ask the learned Authors could this be the intention that the daughters should have a larger share than each son?

(b) Suppose a person has seven sons and one daughter, then according to the above interpretation and following the above process, each son will get $(1/7 - 1/28) = 3/28$ th share and the daughter $1/4 = 7/28$, i.e., the daughter will get more than double the share of a son; and so on and so forth.

The daughter's share according to the above interpretation remains constantly 1/4th while the share of the son goes on decreasing, so the interpretation will lead to absurd results and that clearly is a faulty interpretation.

(v) The learned authors of the Bill have themselves acknowledged that "there have been difference of opinion as to how this one-fourth is to be calculated." I have shown that the interpretation of the text of Manu as given by the learned authors of the Bill is incorrect.

(vi) I think that proper interpretation seems to have been given by Vijnaneswara which as stated by the learned authors themselves is "that the daughters should have 1/4th of what she would have got if she had been a son". This is more plausible and does not lead to any absurdities. For example:—

(a) Suppose there are 4 sons and one daughter. Now according to Vijnaneswara if the daughter had been a son, there would have been five sons and so five shares, and so daughter should have 1/4th of what she would have got if she had been a son, i.e., 1/4th of $1/5 \times 4 = 1/5$ th. So each son will get $1/4 \times 19/20 = 19/80$ and they all together will give the daughter 1/20 of the whole.

(b) Suppose there are five sons and three daughters. According to Vijnaneswara, if each daughter is considered a son, there will be 8 shares in all. So each daughter will get $1/4 \times 1/8 = 1/32$ and three daughters will get $3/32$, and each son will get $1/5 \times 23/32 = 23/160$, and each daughter will get 1/160.

(c) Suppose there are seven sons and five daughters. According to Vijnaneswara, there will be 12 shares, each daughter should be given $1/4 \times \frac{1/12}{1/2} = \frac{1/48}{5/48} = \frac{1/43}{43/336}$ and each daughter will get 1/48. = 7/336 and so on and so forth.

(vii) Again it is important to note that it is not at the time of father's death that his property is to be divided amongst the sons and the daughters in the above manner. The brothers are to inherit and subsequently to contribute for their maiden sister, which means that it is to be contributed for her *Vivah Samakar* and this contribution would be utilised for the expense of her marriage and dowry.

(viii) The learned authors can in no case extend the above verse, as something to be given to a "married daughter" after her marriage. These contributions by the brothers are for the purposes of marriage expenses and dowry of a maiden daughter of the deceased.

The learned authors have referred to Sukra Smṛiti, but have not relied upon any particular Chapter and verse. Again the matter referred to shows what a father is to do during his life time. It has got nothing to do with the inheritance, and hence it was that particular reference was rightly considered unnecessary.

In any case absolutely no ground is given why any share of property should be given to married daughter, nor any ground given for inheritance of a daughter in presence of sons.

While giving 1/2 share to a daughter, the learned authors found a difficulty that the widow of a predeceased son or the widow of a son of a predeceased son will bring in difficulties if she is allotted a share equal to that of a son as given in the Deshmukh's Act of 1937, they therefore considered it better to ignore her from inheritance saying that "now that we are providing for her as a daughter in her own father's family, it seems unnecessary to provide for her again in her father-in-law's family." What will happen in the case of such widows who have already got nothing on account of their fathers' having died before the date of Act? Will the Legislature consider to give them maintenance from all the sharers namely the widow, sons, and daughters, etc., and particularly the daughters who have been transferred to other families by marriage? Will it

not be repugnant to the sentiments of the widows of the elder predeceased sons, to even think of getting maintenance from the younger girls of the family who are transferred to the other families? It is for the Authors of the Bill to consider these dire consequences of these obnoxious changes which are cutting at the root of the Hindu culture and civilization.

It would be better to give an illustration:—

Suppose A dies leaving a widow, one son, four daughters, 2 married and 2 unmarried one, a baby and the other three years old child, and a widow of a predeceased eldest son. Suppose that the father of the widow of the predeceased son had died in 1941. Suppose A has left property worth Rs. 12,000. According to Hindu Law as before Deshmukh's Act, son will be the only heir, and the widow and the two unmarried daughters, and the widow of the predeceased son will be maintained out of the property left by the deceased. Expense regarding marriage of the unmarried daughters will be incurred by the son out of the father's estate, and there is no trouble of any kind. After Deshmukh's Act the widow, the son and the widow of the predeceased son will get each 1/3rd share each getting Rs. 4,000.

Now when the proposed Bill becomes law, the property will be divided into 4 shares of Rs. 3,000 each.

The widow will get Rs. 3,000.

The son will get Rs. 3,000.

Two married daughters will get Rs. 3,000 (each getting Rs. 1,500).

Two unmarried daughters will get Rs. 3,000 (each getting Rs. 1,500).

The widow of the predeceased son will not get anything. Suppose her father had died in 1941, she did not inherit then anything from him as a daughter. Will this widow be not left destitute without any body to support her?

Why should the widow, the son, or the daughters maintain her?

Now if the Legislators are pleased to make a provision for her maintenance out of the share of the son and the widow alone. Will it be equitable to create this liability on their shoulders alone and not to ask all the sharers to bear the burden of her maintenance?

Suppose the Legislators consider it equitable that all should bear the burden; then will it not be repugnant to the sentiments of the Hindu widow if she be the widow of the eldest son of the propositus, to get even a pie from the married daughters. According to Hindu sentiments at any rate as prevailing in Punjab, no elderly member of the family, male or female, will drink a cup of water from the married daughter's house. I do not know what are the sentiments of the learned authors of the Bill, but here in our part of the country that is the most prevailing sentiment?

It is for the learned authors of the Bill to consider these dire consequences of these obnoxious changes which are cutting at the root of the Hindu culture and civilization. How to multiply instances of other types can be considered by them. I have been given only a few days to consider this Bill, for which the Committee has taken about 2 years or perhaps more or less to prepare. Time limit for obtaining opinion has been fixed so short that it is impossible to do justice to the most intricate and important subject as is the Intestate Succession under the Hindu Law. As a matter of fact people in general do not know whether there is any such measure before the Legislature as the present Bill, and I would make a request that time limit should be extended further for public opinion, which should not be less than six months at least, if the Bill is still wanted to be enacted into a law and for which there should be extensive circulation in different Vernacular languages.

Again referring to the above illustration, out of the two unmarried daughters one is a baby and the other a three years old child.

The son is not bound to maintain them. The widow mother has to look after them as they are of tender years. Should she now keep and maintain a separate account for them, as an obtaining majority they can demand this account from her if she were to spend their money on them.

As a guardian of these children, she would not pay anything to the widow of the predeceased son. If they are compelled to maintain her by some other legislation then the question will arise what should be contributed out of the share of these children. Will it be a lump sum or a monthly sum out of the interest of their money deposited in the Bank? What interest will this money fetch which should maintain the girls as well as the widow of the predeceased son? The more we consider over these matters the more complications seem to arise. But if such complications are created, the Legislature would be responsible for that and it will have to provide all remedies also in detail. But the fact remains all the same that the Legislature should not interfere with matters concerning religion or those based on religion.

It would be the best course to let the Hindu Law remain as it is, it would be sons' bounden duty to maintain all members dependent on the family under the Hindu Law, as they have been doing for ages long.

Deshmukh's Act has brought in certain other complications which it is not necessary for me to discuss here, but that Act is not so much harmful, as the present Bill will be when it is enacted into a Law.

The result is that there is no question of sex disqualification. By bringing in daughters and other females, it is not only making the law more complicated and trouble-some, but detrimental to the interest of the Hindu Society altogether.

As regards the third feature that the Bill abolishes the Hindu Woman's limited estate, it is submitted that this drastic change is the worst type of a change to say the least. Apart from Stridhan proper as fully known to all Hindu

Jurists, there was never known to the Hindus or the Hindu Dharma Shastras that all property acquired by a female by inheritance or devise or at a partition or in lieu of maintenance should or could ever be contemplated as her Stridhan. From the beginning when Shruties came to be known or even from the time of the Smritis, and other Hindu Scriptures, it has never been thought that the Hindu Women had got anything but a limited estate excepting the Stridhan as defined by them. The Hindu World would be shocked to find that "Stridhan" would include in future property acquired by a woman by inheritance or devise or at a partition or in lieu of maintenance.

This change is most repugnant to the Hindu sentiments. It is bound to revolutionize the whole of the Hindu Law. This was, as a matter of fact, the main effort of some interested persons for the last a few years that the woman should be given full power of disposal; but every time the Bill came before the Assembly, it had been knocked down on that point at least. Their efforts have been thwarted every time. Does that not show that the Country does not want this change? Should there be no finality still? It is submitted that the Government ought not to have given leave for introduction of such Bill on this very ground that neither the people want it, nor has the Assembly ever supported it.

Do the learned Authors of the Bill want to codify the Hindu Law now existing in British India or do they want to eliminate from all books of Hindu Law, one of the most important chapters on Hindu Woman's estate which had always been considered as a special feature of Hindu Law. Such a change will not be tolerated by the Hindus. I cannot believe that any Hindu Society excepting perhaps some Association of Westernised and modernised women has expressed the desirability of such a provoking change as it seriously affects the whole social fabric of Hindu community. The Learned authors of the Bill referring to opinions of certain individuals in their Objects and Reasons, have not quoted one authority from Smritis that the woman had been given a full power of disposal over property inherited by her or got in partition. Why did the learned Authors of the Committee not appreciate the conclusions of Doctor Altkar that "while some Smritis definitely limit a woman's estate, others are merely silent on the point." The fact that some are silent is the best proof of the fact that this feature of Hindu Law was so well known that it was unnecessary to say anything about it. Otherwise they would have opposed it. The learned Authors when stating that the Smriti authority for the doctrine of the Hindu Woman's estate is not unequivocal should have specifically referred to those which were against the Hindu Woman's estate. The Smritis do not give any woman an absolute estate except for her Stridhan. The word "Stridhan" would never have come into existence in the vocabulary of Hindu Law if that had not to be used as a technical term showing peculiarity of a woman in contra-distinction with the property inherited by a woman in which she always had a limited estate.

If limited estate or woman's estate had never existed in times of yore, the learned authors of the Bill would have obtained ample evidence from various histories of India or otherwise that the Hindu woman of India in older times possessed full power of disposal over properties acquired by inheritance. Could the supporters of the Bill not produce one word authority from any history or authoritative book, that apart from Stridhan proper any Particular woman possessed full power of disposal over property acquired by her by inheritance or at the time of partition. Under the circumstances in the absence of any reliable and cogent evidence it would be quite unfair to the Hindus for any body to make a bold statement that a Hindu woman ever possessed full power of disposal over the property "acquired by her by inheritance". Jain Law is no authority for the Hindus to follow. They have got their own law of inheritance and adoption quite peculiar to themselves. We are, however, very much thankful to the learned authors of the Bill, that following the Jain Law, they did not suggest the postponement of the inheritance of the son to that of the widow.

So the definition of the word "Stridhan" to include all properties acquired by a woman by inheritance, devise, at a partition or in lieu of maintenance is quite unwarranted by the Hindu Dharma Shastras. I may, however, concede one thing that a full owner of property is of course competent to give to a woman absolute power of disposal by a will, which, if not specifically mentioned is taken to be a life estate.

The Learned Authors of the Bill have stated on the authority of Bannerjee's Hindu Law that "there are eighty different Smritis treating of Stridhan, only eight are referred to by the Commentators but there is hardly any text of importance, on the subject which has not received different constructions," but it is submitted that there is none which says that there is any property other than Stridhan over which she has got absolute power of disposal. Of course it is a different matter that to the word "Stridhan" some have given a bit extended meaning, but I can say without fear of contradiction that no Smritikar has gone to the length of defining "Stridhan" to include "property acquired by a woman by inheritance or devise, or at a partition or in lieu of maintenance", as is now desired to be defined.

For example according to "Mannu" Stridhan is of six kinds:—

1. Gifts before the nuptial fire.
2. Gifts made at the bride's procession.
3. Gifts made in token of love.
4. Gifts made by father.
5. Gifts made by the mother.
6. Gifts made by a brother.

"Vishnu" has added to the above list:—

1. Gifts made by a husband to his wife on supercession (adhrivedanika).

2. Gifts made subsequent by her husband's and her parents' relations.

3. Sulka or marriage fee.

4. Gifts from sons and relations.

"Katyayana" mentions six kinds of Stridhan as Mannu does, and also mentions "gifts subsequent" and Sulka mentioned by Vishnu, defining the first three kinds given by Mannu in a slightly different manner so as to include gifts by stranger, but makes the latter subject to the control of the husband.

Narada, Apastamba, Vyasa and Devala have given their definitions of Stridhan, with slight changes, which would be unnecessary to enumerate.

Yajnavalkya's definition is very important and as a matter of fact trouble arose on account of wrong interpretation by Vijnaneswar of the definition given by Yajnavalkya. His definition is:—

"what was given to a woman by the father, the mother, the husband, or a brother; or received by her before the nuptial fire or presented to her on her husband's marriage to another wife *etcetra* (*adi*) is denominated Stridhan. So, that which is given by kindred as well as her marriage fee (Sulka) and anything bestowed after marriage."

So it will appear from the above definitions of the word "Stridhan" by these well renowned Smritikars that the one main feature is that they are generally "gifts" of property to a woman.

So none says that property acquired by a woman by inheritance or at a partition or in lieu of maintenance is to be considered or even contemplated that it is her "Stridhan".

All commentators are agreed upon this fact, but Vijnaneswar while writing the well known Commentary of Mitakshra on Hindu Law defined "Stridhan" on the basis of Yajnavalkya (see Chap. II XI 5) as follows:—

"That which was given by the father, by the mother, by the husband, or by a brother, and that which was presented by the maternal uncles and the rest (as paternal uncles, maternal uncles etc.) at the time of the wedding, before the nuptial fire, and a gift on a second marriage, gratuity on account of supercession and also property which she may have acquired by inheritance purchase, partition, seizure or finding are denominated by Mannu and the rest woman's property."

The learned Authors of the Bill now want to take their stand on the commentary of Yajnavalkya by Vijnaneswar saying that since property inherited by a woman by inheritance, partition etc., has been considered as Stridhan, there is no reason why Stridhan should not be defined as such, and thereby woman's power of absolute disposal will naturally extend to all such property.

I have taken pains to give in detail the translations from Mannu, Vishnu, Katyana and Yajnavalkya, so that every body may see for himself that "Stridhan" nowhere includes "property acquired by a woman by inheritance or at a partition or in lieu of maintenance."

Vijnaneswar has clearly committed a great error in extending the definition to include such property. He has taken his stand on the word "*adi*"=*etcetra* used by Yajnavalkya. "*Adi*" would only mean 'ejusdem generis', "or the like", or "of the same nature". It should and could in no case mean or include "property acquired by a woman by inheritance, or at a partition etc."

Vijnaneswar is not a "Smritikar" but undoubtedly is a well-renowned commentator of Hindu Law. To err is human; if he has made a mistake, this does not mean that we should adopt the mistake also.

I have attempted to point out and explain the mistake to the best of my abilities. This error has actually been found by their Lordships of the Privy Council not once, but more than a half a dozen times when the matter went up before the Board and every time Their Lordships rejected this part of the definition of Stridhan laid down in Mitakshra by Vijnaneswar and held in unequivocal terms that the property acquired by a woman by inheritance from a male or female or at a partition is not Stridhan, but only woman's estate.

In 2 M.L.A. 331.—When a case went up to the Privy Council it was held by Their Lordships of the Judicial Committee that "According to Hindu Law, the widow in default of issue is entitled to succeed to the whole of her deceased husband's estate, but her title to such estate is only as tenant for life and she has no power to alienate or devise any portion of her husband's estate which on her death devolves to his legal heirs."

In this case property involved was in the District of Benares, and the opinion was based on the opinion of the Pandits regarding Hindu Law, and it was remarked at page 341 that "there does not appear to be the least reason to doubt that this answer (referring to the opinion of the Pandits) is a true exposition of law."

In 11 M.L.A. 149, it was laid down by Their Lordships of the Judicial Committee:—

"By the Hindu Law as laid down in the Benares or Western schools, although a widow may have power of disposing of moveable property, inherited from her husband, which she has not under the law of Bengal, yet she is by both laws restricted from alienating any immovable property which she has so inherited; and on her death the immovable property and the moveable if she has not otherwise disposed of, will pass to the next heirs of her deceased husband."

Their Lordships had discussed at pages 173, 174 and 175, Chapter II, Section IX and Article 2 of Mitakshra relative to the definition of Stridhan as given by Vijnaneswar with

regard to property inherited by a woman, but that was not followed in view of Sir William Macnaghten's "Principles and Precedents of Hindu Law", Vavda Chantamani, Sir Thomas Stranges' work on Hindu Law, Mitakshara's own approbation of Mannu, Katayana, Narada, and others upon whose dicta the limitation of the widow's enjoyment of her husband's estate and of her power over it, depends, and the previous decision of the Board was also relied on.

In 11 M.L.A. 467, the above view was upheld and Their Lordships' observation placed the property acquired by a widow at Partition on the same footing as inheritance.

Sir William Macnaghten in "Principles and Precedents of Hindu Law", says, "In the Mitakshara whatever a woman may, have acquired whether by inheritance, partition, seizure or adding, is denominated woman's property, but it does not constitute her peculium."

In 4 Cal. 744 P. C. at page 754 Their Lordships of the Privy Council after referring to the previous authorities mentioned above decided that under the law of the Mitakshara a widow's estate inherited from her husband is a limited and restricted estate only. Then Chapter 2 Section 11 para. 1 was referred to and it was pointed out that "It seems that the word in the original text is 'adi' and that the proper translation of the word would be 'or the like' so that the passage ought to be read 'or received by her at the nuptial fire or presented to her on her husband's marriage to another wife or the like'. The interpretation gives a more specific definition and instead of 'or the like' there are given the words which have been so often cited and have given occasion to so much discussion. 'Also property which she may have acquired by inheritance, purchase, partition, seizure or finding are denominated by Mannu and the rest woman's property.' The original text does not afford any foundation for the arguments in favour of the right of the widow and daughter to the entire interest in land acquired by inheritance, the interpretation, no doubt, does

Then Their Lordships applied the same principle to the case of daughter who was held to have qualified estate in property inherited by her.

In 25 A 468 P.C. and 25 A 476 P.C.

Again the matter came up before their Lordships of the Privy Council and the Mitakshara's interpretation of Stridhan was again discussed in view of more than thirty authorities including various books on Hindu Law, and Texts, and previous case law, and Their Lordships came to the conclusion that the property inherited by a female from a female is not her Stridhan so as to pass to her Stridhan heirs after death. In the later authority it was also held that there is no distinction as to the nature of estate taken between property inherited by a woman from a male or property inherited by her from a female.

In 24 A. 284 P.C.—Again the matter came up for discussion on the use of the word "Adi" in Yajñavalkya was discussed and it was found, that it meant, "and the like" or ejusdem generis, and after referring to Texts of Mannu and other subsequent paragraphs of Mitakshara expressed doubts at the instructions of Vinayeswara and rejected it ultimately, holding that there is no substantial difference in principle between woman's property acquired by inheritance and that acquired by partition and thus both were held as limited estate.

In 25 M. 678 at P. 636.—This matter was discussed and it was remarked—

"The law of inheritance in the case of woman" is left in great obscurity by the Mitakshara. The subject is dealt with in Chapter 2 Section 11 and has more than once been considered by the Board. The nature of widow's estate was settled in two cases 11 M.L.A. 139 and 11 M.L.A. 487, and the nature of daughter's estate was considered in 6 I.A. 15. It was decided that under the law of Mitakshara a daughter's estate inherited from her father is limited and restricted estate only and not Stridhan. Upon her death the next heirs of her father succeed thereto. In 3 Mad. 290, same principle was applied to cases in Madras governed by Mitakshara Law."

In 28 M. 521.—Following 19 M. 110 it was held that inherited property is not "Stridhan".....and the maiden daughter so succeeding, takes only a limited estate.

The above are the basic leading authorities. There is list of other authorities on the point, which it is unnecessary to multiply.

They conclusively establish that Mitakshara's interpretation of Stridhan to include property acquired by a woman by inheritance or at partition was clearly erroneous and so their Lordships of the Privy Council and Judges of the High Court refused to follow it.

I do not think that it is only a Judge made law, as the learned Authors of the Bill seem to have been considering being influenced by the opinion of Sir M. Vankatasubba Rao, Retired Judge Madras High Court, who was pleased to remark in the Golden Jubilee number of the M. L. J. that "the doctrine of limited estate is thus a pure creation by judicial decisions unsupported by ancient Shastras."

I have established that various decisions of their Lordships of the Judicial Committee were based on original Texts of Mannu and Yajñavalkya and other Smṛiti writers and of course not on mis-interpretation of Vinayeswara which was rejected after due consideration of Hindu Law on the subject.

So with due deference to the remarks of Sir M. Venkatasubba Rao, I beg to submit that there is no justification for remarking that this string of Judicial discussions of their

Lordships of the Privy Council are unsupported by the ancient Shastras.

The learned Authors while pleading the cause of Hindu women stated that "In India, Muslim women, Christian women, Parsi women and Jain women all take a full estate, it is difficult to maintain that Hindu women alone are incompetent to enjoy full rights. It was further stated that the disability could not be defended at the present day when we have woman legislators, women lawyers and women Ministers." It appears that it is clearly on the basis of such considerations as are given above that a principle of Mohammadan Law that the daughter is to get a Quranic share of 1/2 of the son's share with the son as a residuary is being engrafted on the Hindu Law of Inheritance, so that they may be able to say that they are also now given half share; otherwise I have already discussed that there is no justification for giving half a share on the basis of any Hindu Dharma Shashtra. Interpretation of Mannu's text quoted by the Learned Authors has already been shown to be quite out of point, and untenable. Now as regards the desire to imitate the laws of Mussalmans or Christians and thereby engrafting them on our Hindu Law, I must say that this idea is in the first place most humiliating an subversive to Hindu sentiments. Again as a principle there being a diversity of religious sentiments, cultural beliefs, civilizations, peculiar modes of life, environments and local circumstances, it is natural that there should be difference in rules of succession regarding the woman of different nationalities and denominations. The learned Authors therefore need not refer to the several systems of law in Christian countries and those governing the Muslims.

Hindu Law is a more perfect code in many respects than such rules of personal laws, governing people of other nationalities and communities. Comparison or contrast in this connection can be more visualized than it is necessary for me to mention. I know many big Muslim families, who are carrying on business at a large scale, finding that giving the daughter a share in their business will bring in difficulties marry their daughters after the age of majority after getting deed of release from them with regard to their share in the property, and giving them good dowries in lieu thereof. Having experience of other's difficulties we should retain our Hindu Law which is immune from such defects. There is no good in creating defects in our own law by the help of legislature and then subsequently to remedy them by bequests and releases. I do not want to prolong the subject by dilating upon this point.

Has it been considered by these eminent ladies that many of their brethren male members of Legislative Assemblies, Lawyers and Ministers have a restricted power of alienation with regard to their ancestral properties. All members from the rural areas of the Punjab belonging to agricultural tribes governed by agricultural customs are quite incompetent to alienate their ancestral properties without legal necessity or without the consent of next reversioners. They are not females, they are males, but still have a restricted power of alienation.

Again as regards the Hindu males there will be many members of Legislative Assemblies, lawyers and Ministers who are fathers, or managers of their Joint Hindu families. May I ask them to say whether they can alienate ancestral or Joint Hindu family properties of their own without legal necessity. They have not got full power of disposal. Their rights are as much restricted as those of the females. With due deference to the views of the proposers of the Bill, I fail to understand why they should bring in such considerations for giving Hindu Women a full power to dispose of their properties.

If it be said that a person governed by customary Law or a Hindu father or manager in a Joint Hindu family has got full power to alienate their self-acquired property or separate property, my reply would be that a Hindu woman has got her Stridhan which she can also dispose of in any manner she likes.

I happened to find some wonderful things in the proposed Bill. For example:—

- (1) Suppose after father's death, his heritable property is to devolve on W his widow, S his son and D his daughter and S1 son of a predeceased son. According to Section 5 of the proposed Bill, W will get 2/7, S will get 2/7, D will get 1/7 and S1 will get 2/7. Now according to Hindu Law as now in force in British India, sons' share inherited from his father will be his ancestral property in his hands and his own son will therefore have a vested interest in it by birth and consequently S will have no power to alienate his share without legal necessity, otherwise his son can have the alienation set aside, but the share inherited by W or D will pass to them as their absolute estate, which they can alienate in any manner they like.
- (2) In the above illustration suppose S and S1 are members of Joint Hindu Family with the deceased propounder. After inheriting his heritable property, their shares so inherited will be Joint Hindu family property and so S can alienate only for legal necessity, but S1 being a junior member has no power to alienate it at all unless he separates himself from S. But W and D can dispose of it in any manner they like even if D has a son or a daughter, while D according to the law now in force was only to form a conduit pipe for her son to inherit his maternal grand father's property.

- (3) Again suppose in the same illustration D also dies afterwards, her 1/7th share would not go to her son but to her daughter according to Section 13 of the proposed Bill, but she will have no power to check any alienation of her mother.

According to Mohammedan Law or Indian Succession Act there is only one law of Intestate succession whether the deceased is a male or a female; but even though full power of disposal is now given to Hindu woman also, rules according to the proposed bill relate to Succession to her property are different from those of the males, there being different order of inheritance to females provided under Section 13 from that of inheritance to males provided under Section 5.

Again there is a difference in the rule of Succession to Stridhan according to the property having been inherited by a woman from her husband or from others. This will show how the complications will arise in the law of Succession to Stridhan.

Again in the case of inheritance to a male under Section 5 two females i.e., a widow and daughters are made heirs along with the son, but under Section 13 only a female i.e., a daughter, and after her daughter's daughter is to inherit a female regarding property acquired by her from persons other than her husband.

The result will be that the property of Hindu females will go on increasing and that of Hindu males will go on decreasing, the natural consequence of which will be financial embarrassments and economical difficulties to males, which will thus weaken the Hindu Society as a whole. I will show this by an illustration.

Suppose A has died leaving W a widow, S a son, and D a daughter. Suppose also that A leaves Rs. 12,000.

After A's death W will get	Rs. 4,800
S will get	Rs. 4,800
and D will get	Rs. 2,400
Total	Rs. 12,000

Suppose W dies after that	
S will get	Rs. 3,200
and D will get	Rs. 1,600
Total	Rs. 4,800

The result is that S will have 4,800 plus 3,200 = 8,000 and D will get 2,400 plus 1,600 = 4,000

Now suppose D is married to A1 and A1 dies leaving a son S1 and a daughter D1 and suppose A1 also leaves Rs. 12,000 After A1's death

D will get	Rs. 4,800
S1 will get	Rs. 4,800
D1 will get	Rs. 2,400
Total	Rs. 12,000

Therefore D will have 4,000 plus 4,800 = 8,800.

Suppose D dies after that	
Out of Rs. 4,800 S1 will get	Rs. 3,200
and D1 will get	Rs. 1,600
Total	Rs. 4,800

and the whole of the sum of Rs. 4,000 will go to D. I.

So D1 will have 2,400 plus 1,600 plus 4,000 = 8,000 and S1 will have 4,800 plus 3,200 = 8,000

Now suppose D1 is married to A2 and A2 dies leaving again S2 a son, and D2 a daughter and suppose he also leaves Rs. 12,000.

On A2's death	
D1 will get	Rs. 4,800
S2 will get	Rs. 4,800
D2 will get	Rs. 2,400
Total	Rs. 12,000

So D1 will have 4,800 plus 8,000 = 12,800.

Suppose D1 dies after that	
Out of 4,800 S2 will get	Rs. 3,200
D2 will get	Rs. 1,600
Total	Rs. 4,800

and the whole of Rs. 8,000 will go to D2.

This D2 will have 2,400 plus 1,600 plus 8,000 = 12,000 and S2 will have 4,800 plus 3,200 = 8,000.

Now suppose D2 is married to A3 and A3 dies leaving again S3 a son, and D3 a daughter and suppose he also leaves Rs. 12,000.

On A3's death	
D2 will get	Rs. 4,800
S3 will get	Rs. 4,800
D3 will get	Rs. 2,400
Total	Rs. 12,000

So D2 will have 4,800 plus 12,000 = 16,800.

Suppose D2 dies after that	
Out of 4,800 S3 will get	Rs. 3,200
D3 will get	Rs. 1,600
Total	Rs. 4,800

The whole of Rs. 12,000 will go to D3.

Thus D3 will have Rs. 2,400 plus 1,600 plus 12,000 = 16,000. So the result is that all the estates of A, A1, A2, and A3 amount to Rs. 12,000 x 4 = Rs. 48,000.

Each of S1, S2 and S3 get a constant sum of Rs. 8,000 in all Rs. 32,000 and the last daughter D3 got Rs. 16,000.

Total	Rs. 48,000
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This will show how the female's property goes on increasing.

In the meantime S, S1, S2 and S3 must have been married and their estates after their death must have been inherited ultimately by their widows and daughters, etc.

If I were to carry it on further the result will be that the shares of male individuals will go on decreasing to nothing and females' share will go on increasing.

In the above case if there had been two or more daughters along with the son, the son's share will by contrast be insignificant.

The result is that in the whole of the Hindu Community man's financial position and stability will go on decreasing and woman's increasing, which should never be a desirable thing if we want strong and stable man power to rule and defend the country.

Again with a view to see what sort of complications may arise, I have only already given an illustration that A leaves a cash of Rs. 12,000. Suppose A leaves property and cash both worth Rs. 12,000 W's inheritance will be simple.

But the inheritance of D1, D2 and D3 will be very complicated as the order of inheritance of daughter as regards property inherited from her father and mother would be different from that inherited by her from her husband.

And again if she builds a house partly out of the money inherited from father, partly from the property inherited from the mother and partly from that inherited from her husband and it is not known how much had been spent out of each share, and was rather spent out of one chest in which the whole money had been kept mixed up. Then God knows what difficulties will arise and how much litigation will ensue on the death of each woman, for it will be difficult to prove what proportion had been spent by the deceased female. I have taken pains to show what kind of multifarious difficulties can arise as a result of drastic changes contemplated to be made in Hindu Law.

I shall only request the proposers of the Bill that they should kindly in the names of peace, and economic interests of Hindus, refrain from bringing in unimaginable troubles and difficulties amongst the Hindus and leave the Hindu Law alone. It is no use to create new unimaginable difficulties and troubles by legislation, and then try to find solution for them. I think abstinence is better than prevention while prevention is better than cure. The more the changes are considered the more numerous troubles and difficulties and anomalous results can be visualised.

Our sisters and daughters should know that though they are members of legislative assemblies, lawyers and ministers, Sati and Savitri, Sita and Anasa and such other ladies of highest rank who are worshipped as goddesses have passed away ages ago, but their names are still shining in the Annals of India, but they never claimed any share in their parent's property. Why to go so far back, Rajasthan is full of tales of Ameronian chivalry of Rajput women who fought their own battle single handed. May I know how much they clamoured for "their half" share from their brothers? A Hindu woman's life had always been a life of sacrifice. They should not now lower down their ideals. The Learned Authors of the bill have stated that "the most serious aspect of this disability, that is the woman's limited estate, are (1) that it is one of the most fruitful sources of litigation and (2) that for the sake of protecting the property when the woman is not in real need, it penalises her in a time of real need she requires all the money she can get from the sale of the property."

As to (1) they referred to Doctor Mitter's observations (made in the position of woman in Hindu Law 1913 page 528) that 'the cases relating to the extent and nature of woman's property which came before our courts are more numerous than the other cases on Hindu Law put together—an observation which is perhaps as true to-day as when he wrote.' I had no time to verify the above statement but from the statistics that I got prepared from the case law reported within the last decade, i.e., from 1931 to 1940 I can safely say that out of the total No. of 2,581 reported cases that came before the different High Courts, Chief Courts and Court of Judicial Commissioners; only 275 cases related to Hindu woman's estate (whether the female concerned had been a widow, a daughter, a mother or a sister, etc.), and 118 cases related to maintenance of widow, wife, widowed daughter-in-law and the rest, i.e., 2,188 cases related to other matters connected with Hindu Law. These figures speak for themselves and it is unnecessary for me to criticise the matter any further.

As to (2) a female can mortgage or sell when there is a legal necessity, and there is no doubt that desirable price cannot be obtained from a purchaser both because a needy person will like to sell it at any price, and the purchaser from a limited owner also, is chary to make a bargain when the reversionsers do not give consent, and so he naturally offers less, the reason is obvious, because the widow is in need of money. She would like to accept a low offer, and because the purchaser is afraid of litigation, so he wants to pay less. But such a case is not only in the case of a widow. Such is the case also when even a male owner governed by customary law in the Punjab wants to sell his landed property for legal necessity and again same is the case when father or manager of Joint Hindu family has to sell the Joint Hindu family property for legal necessity. In any case such like considerations do not in any manner justify that Hindu woman should be given an absolute right in the property to be inherited by her from a male or even a female. Will litigation stop if this bill is enacted into a law?

instead of getting the Hindu Law amended, those who are in favour of the Bill can make a bequest in favour of any person they like, and give her absolute right in respect of her property. Thus they can do under the Hindu Law now in force in British India then why to amend the Law of inheritance?

I am sorry to say that this Bill came into my hands in this very month sometime back, and owing to other professional work it was very difficult to give opinion before the 1st of August. Time was really too short for discussion of this important matter. I could not discuss the whole of the Bill otherwise and I cannot expect that other members of the Legislature and the public could be expected to give their opinion in so short a space of time. I would request that the time limit for receiving opinions may be extended for a reasonable period more taking into consideration the importance of the Bill.

In the end I shall request the learned authors of the Bill to refrain from placing such an irreligious and ruinous bill on the Legislative anvil and spare the masses of India from the most deleterious consequences and if on any account they are pleased to insist pushing the Bill on, it is submitted that the Bill and its effect may be strictly confined to those persons who are in favour of this change and who are to declare that they want to be governed by the provisions of this enactment, and the rest of the whole of the Hindu community should be saved from the reckless wreck of the Hindu families and their properties. If the present bill is enacted into a law, it will be considered a permanent statutory nuisance which is to seriously to disturb the peaceful state of Hindu community. Hence I oppose the Bill with all the force at my command.

Secretary Shri Sanatan Dharama Pritinidhi Maha Sabha Punjab, Rawalpindi

I have the honour to submit herewith a copy of the resolution passed by the Shri Sanatan Dharama Pritinidhi Maha Sabha, Punjab, Rawalpindi, on the bill entitled as "Hindu Code, Part I" as desired.

Resolution.

Whereas the whole of Hindu Law now in force in British India (barring a few amendments which have already been made by the Legislature) is mainly based on *Shruti*, *Smritis* and other Hindu scriptures and the law relating to succession is particularly based on the same sacred books, and is thus more or less a matter of religion and custom.

Whereas the principle that the right of inheritance according to Hindu Law is wholly regulated with reference to the spiritual benefit to be conferred on the deceased person, and the principle that the right of one person to succeed another generally depends upon his capacity to benefit that person by offering of funeral cakes and oblations had been laid down on the highest judicial authority which recognising these principles had to remark in one case "There is in the Hindu Law so close a connection between their religion and their succession to property that the preferable right to perform the *Shradh* is commonly viewed as governing also the preferable right to succession of property and as a general rule they would be expected to be in union." 12 M.L.A. 96.

Whereas the words "Spinda", "Gotraja", "Sakulya" and "Samavandana" "Bandhus" &c. used in connection with the rules and order of succession are quite significant and conclusive in themselves to show that inheritance is based mainly on religious efficacy and the capacity to offer oblations.

Whereas by the proposed enactment to amend and codify the Hindu Law relating to intestate succession called "Hindu Code Part I (Intestate Succession)" instead of codifying the Hindu Law of intestate succession now in force in British India as based on *Smritis* and Hindu Scriptures, an effort has been made to bring in drastic changes in the whole law which are not only unshastric and repugnant to the Hindu sentiments but most revolutionary in spirit, and cut at the root of Hindu culture, Hindu religion, Hindu civilisation and Hindu tradition.

Whereas the scope of the words "Gotraja" and "Stridhan" have been extended in quite an unjustified manner by giving definitions unwarranted by the *Shastras* as well as to their technical meanings, and

Whereas the Rule of Mohammadan Law by which Mohammadan's daughter gets a Quranic share of one half with the son as a residuary, has also been extended to the Hindus by making the "daughter" a sharer with the "son", by giving her a share equal to one half of the son's share.

And Whereas the Hindu women's limited estate has been eliminated altogether with regard to all properties inherited by a female on the basis of *Mitaksara's* wrong interpretation of the original texts of *Manu* and *Yagnavalkya*, by *Vijnaneswar* which interpretation has been found to be wrong more than half a dozen times by the Highest Judicial authority whenever the matter went up to their Lordship of the Privy Council.

Whereas the Bill is not only provoking the religious sentiments of the Hindus on account of very drastic changes which are desired to be made by the enactment, but it is directly antagonistic to the economic interest of a Hindu also, whereby man's financial power is to suffer and go on

dwinding down every time resulting in Hindu Society's financial embarrassment.

Whereas the teeming millions of Hindus who profess to be Sanatan Dharmi Hindus, and form a vast majority of Hindu India, who believe in Hindu Law of succession as a matter of religious creed, and are injuriously affected by this proposed enactment, and who never wanted such drastic changes in their succession and who never approached the Legislature for such enactment with a view to make their sacred time honoured and settled law of inheritance which survived thousands of years of attacks of foreign thoughts on account of foreign subjugation and unsettled measure to be chipped and chiselled every times by the future legislature.

Shri Sanatan Dharama Pritinidhi Sabha, Punjab, Rawalpindi is quite opposed to the proposed enactment, and strongly condemns it and considers it most detrimental to its interests. The Maha Sabha requests the Government to extend time for opinion as the time is extremely short for any criticism and appeals to the Government and the members of the Legislative Assembly not to enact such a measure into law.

Secretary, Shri Sanatan Dharm Pritinidhi Sabha, Punjab, Lahore.

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Describing the sons for codifying the Hindu Law it is said in the Statement of Objects and Reasons and the Explanatory notes appended thereto, that—

Firstly, the present day courts felt difficulty in correctly understanding, and interpreting the laws made in their own times and with their opinions on them. It was really no wonder, therefore, that the inspired laws enumerated in the Hindu Dharma *Shastras* were very often wrongly interpreted even by the High Courts as quoted in the accompanying notes.

Secondly, finding that the so called Reformer being unable to lead the people to the Higher goal of Hindu Dharma *Shastras* was trying to drag them down to the level of present circumstances created by the baneful effects of the western materialistic civilisation which was being exposed nakedly in its true colours in these days, and this necessitated to bring the Hindu Law to modern notions.

Coming to the Bills themselves, we take—

Part I—relating to intestate succession.

Be it said to the credit of the members of the Hindu Law Committee that they have tried to understand and interpret the Hindu Law on this point quite faithfully and sympathetically, therefore the Pandits of the *Vidwat Prishad* of this Sabha do not have much to say against the clauses of the Bill in principle save the following:—

In clause (2) (a) a woman is taken to be an agnate of her father and his agnates, though by reason only of her marriage shall not be deemed to be an agnate of her husband or his agnates.

According to Dharma *Shastras* this proposition sounds rather strange, but if it was applied only for the sake of succession and not applied in any other respects, the Sabha had no objection to it. Care be taken to define its limits quite clearly.

Section 3 (a) leaves room for doubt regarding the heritable property of a Hindu dying intestate, which was to be found in Indian States besides one in British India. This point is to be cleared in a proper way.

Section 11 (1), in line 4, word "original" or "previous" be added between words "his" and "property" to make the position clear. Similarly in line 3 of the sub-section (2) same expression as given above be inserted after word "inheritance".

In section 20 provision be made by which those who forsook the Hindu Dharma must be disqualified to inherit any such property.

In section 22 provision is made that leaving no heir qualified to succeed, the property was to go to the Crown. But before it goes to the Crown, the Purohit of the intestate or any religious institution of his faith be also given preference to inherit the same.

Sabha disagrees with Sect. 17 which is incidentally dealt with in Part II.

No. 5.

FROM THE HOME SECT. TO THE GOVT., PUNJAB TO THE SECT. TO THE GOVT. OF INDIA, LEGISLATIVE DEPARTMENT, No. 6429-J-42/54075, DATED LAHORE, THE 7TH OCTOBER 1942.

I am directed to forward the opinions of the Lahore High Court Bar Association on the said Bills, which have just been received.

High Court Bar Association, Lahore

Although my Association agrees with most of the provisions of the Bill, there are certain points on which the Association feels that they might usefully offer their criticisms.

1. In the explanatory note attached to the bill it is made clear that the Bill proposes to abolish the estate known as the Hindu Widow's life estate. Various reasons have been given but this Association regrets that it is unable to agree with them. It is a very distinctive rule of Hindu Law which is practically for the whole of India that a widow takes only a life estate. The analogy of Jain widows is

hardly relevant because the number of Jains particularly in this part of India is comparatively small and therefore they cannot be set as an example for the rest of the Hindu community to follow. Besides this provision in the bill will apply to intestate successions whereas according to Hindu Women's Right to Property Act of 1937 where widows get a share in the co-parcenary, the estate taken by them will be a life estate. There will thus be two kinds of estates held by the same widow which is likely to cause confusion and trouble. This Association further points out that this distinctive feature of Hindu Widows Life estate has been the saving of many families and although it may have led to a large number of litigations, on the whole the check that it has kept on Hindu Society has been a salutary one and far out-weighs the inconvenience of Court litigations. This association feels that no case has been made out for this radical change.

This opinion is shared by the Hindu Law Reforms Society of the Punjab which considered this matter at some length and was unanimously of the opinion that for the amity in Hindu families and for preventing disruption it is necessary that widows should only have life estates. The analogy by Muslim, Christian and Parsee women is hardly any guide, for, conditions prevailing amongst these communities are different. Hindu notions of Society are also different. In order to prevent hardships this Association would recommend that where an alienation by a Hindu widow is challenged the onus for proving want of necessity may be placed on the contesting reversioners.

Clause 5.—In clause 5 the change made is with regard to the inclusion of a daughter and exclusion of the widow of the pre-deceased son. This Association does not favour the inclusion of daughters along with the sons amongst the Hindus.

Class 1 (i).—Whatever may be the view in other societies—daughters have not been heirs among the Hindus and no case is made out for their inclusion amongst the list of heirs in class 1 (i). Bringing in of further heirs would lead to fragmentation of estates. Hindu Society as constituted and its notions as prevailing cast upon the son a duty of maintaining and looking after his parents and brothers and even sisters and the parents and even brothers are by rules of Hindu Society prevented from taking any aid from their daughters or sisters. In such circumstances it seems a little unfair that daughters should be allowed to deprive their brothers of the property of their father when there is no reciprocity. Besides at the time of the marriage a daughter gets a fair amount according to the status of her father in the form of dowry and other presents and should a father so like it is open to him to make a gift of property to his daughter or he can leave it by will. No case is made out therefore for giving a daughter an equal status with the son. Besides, daughters of people having no property to transmit after their death will find it difficult to get married, the greed of sons-in-law is becoming proverbially oppressive. Besides in the case of commercial and trading families outsiders will be introduced which will lead to bickerings and trouble.

This association is not in favour of excluding the widow of a pre-deceased son. What has happened is that you include the daughters and exclude the daughters-in-law. The Association has already given its opinion with regard to the rights of daughters and if that prevails the position of such a widow will be pitiable indeed. Besides the framers of the Bill have taken it for granted that a woman marrying in another family will in all cases have property which will come to her from her father. There may be cases and indeed there are where women marrying in other families inherit nothing from their fathers for the simple reason that the fathers have no property to give. Such cases make it necessary that such a widow should be included in the list of heirs as given in class 1(i). Further more it is only fair that such unfortunate widows should be able to maintain the status which they would have had if their husbands had not pre-deceased their fathers. Giving of maintenance will place such widows at the mercy of their in-laws which may not in all cases be a very desirable thing.

Clause 13.—In clause 13 the order of devolution of property has been maintained as at present. In view of the definition of Stridhan this Association does not see why sons should not inherit equally with the daughters if the daughter is going to inherit along with the son in the case of the father.

Hitherto where a daughter has inherited property from her father she is only a conduit for her sons and the property of maternal grandfather goes to her sons but clause 13 read with clause 2(i) seems to change this order and it appears that these clauses being read together the heirs given in clause 13(b) will take the property of a woman which she has inherited say for instance from her father or mother as the case may be or even brothers. This is a matter which should be looked into and the law made uniform.

Clause 18 (a).—Husband's heirs should have no right in this property. The descendants of the women have already been enumerated in clauses b(i) to b(vi). There does not seem to be any reason why property which a woman has inherited from her parents should go to the other heirs of the husband who have got no affinity with the woman. Sub-clause (3) should therefore be taken out.

Clause 19.—In clause 19 it should be made clear that not only the murderer but also his line will be excluded.

Clause 20.—In clause 20 all disqualifications given under the Hindu Law have been abolished. This association thinks

that congenital lunacy or idiocy should remain a ground for exclusion because such persons are incapable of looking after their property and in their case the property becomes an attraction for impecunious people to marry off their daughters to them with the result that idiocy or lunacy is likely to be perpetuated in the children.

NO. 6—CENTRAL PROVINCES AND BERAR

From the Secretary to the Government, Central Provinces and Berar, Judicial Department, to the Secretary to the Government of India, Legislative Department, New Delhi, No. 2058—1760/XIX, dated 17/28 Sept : 1942.

SUBJECT :—The Hindu Code, Part I (Intestate Succession) and The Hindu Code, Part II (Marriage).

17 officials and 25 non-officials are in favour of the Bill whilst 5 officials and 112 non-officials are against it. Out of 112 non-officials, 80 sent a printed reply which was identical. The Provincial Government is in favour of codifying the Hindu Law and amending it provided the amendments are suitable and universally accepted. Government should, however, leave the matter of amendment to the members of the Legislature, and interfere only in very exceptional circumstances. It is for the Legislature, and particularly the Hindu members of the Legislature, to decide what is good for the Hindus.

2. The opinions received from the following are forwarded as :—

- (1) The Honourable the Chief Justice and other Honourable Judges of the High Court of Judicature at Nagpur.
- (2) The District and Sessions Judge, Nagpur.
- (3) The District and Sessions Judge, Wardha.
- (4) The District and Sessions Judge, Amraoti.
- (5) The Public Prosecutor, Amraoti.
- (6) The Public Prosecutor, Saugor.
- (7) The Bar Association, Jabalpur.
- (8) The District Bar Association, Yeotmal.
- (9) All India Reporter, Limited, Nagpur.
- (10) Mr. P. A. Pandit, Advocate, Bhandara.
- (11) Mr. L. R. Abhyankar, Advocate, Yeotmal.
- (12) Mr. B. L. Seth, Advocate, Saugor.
- (13) Rao Bahadur S. M. Parande.
- (14) Colonel Sir K. V. Kukde.
- (15) The Honorary General Secretary, Association of the All India Women's Conference, South, C.P. Branch, Nagpur.

3. The Bill was published in the Central Provinces and Berar Gazette in English on the 19th June 1942, and in Hindi and Marathi on the 17th and 24th July 1942.

OPINIONS.

The Honourable the Chief Justice and other Honourable Judges of the High Court of Judicature at Nagpur.

Both the measures are intended to introduce reforms in Hindu Law. They are bound to lead to controversy. I generally support the bills.

The bill regarding intestate succession is very revolutionary and it is doubtful if Hindus will accept the reforms contained in it wholesale. The said bill incorporates certain provisions of Mohammedan Law and the Indian Succession Act and makes them applicable to Hindus. Hindu Law ceases to be a distinct entity or it may be that it will exist hereafter as a mixture of pure Hindu Law and other laws. In any case it is a welcome move and in the right direction. The present Hindu Society requires to be reformed in respect of these laws. The extreme provisions of the bills which may be considered as very objectionable may eventually be dropped and the essential ones, if accepted, will still mark an advance. It is in this light that I have stated that the bills are welcome and I support them. I have not commented on every feature of the bill.

W. R. PURANIK—29-6-42.

Judge.

I agree generally with what Puranik J. has said.

As regards succession in classes II, III, IV and V, I doubt whether mothers and grandmothers should be preferred to fathers and grandfathers.

K. G. DIXIT—2-7-42.

Judge.

I regret that I have not time to offer a considered opinion on the bills which seem to me to relate to matters that are mainly for Hindus to decide.

R. E. POLLOCK—3-7-42.

Judge.

The attempt to codify the Hindu Law, though by successive stages, must be welcomed. It is a step in the right direction.

The bill relating to Intestate Succession is likely to be considered revolutionary but I am in full agreement with it. The exclusion of women from inheritance and the restrictions on their rights are relics of the archaic Patriarchal family. The removal of sex disqualification and the abolition of the Hindu Woman's limited estate are calculated to meet the exigencies of the altered conditions of the Hindu Society. I am in entire agreement with the principles underlying the proposed measures.

M. B. NIVOO—8-7-42.

Judge.

I agree generally with the principles of both bills * * *

Uniformity in matters of intestate succession is desirable, but I doubt the acceptability of the ultra-feministic view in clause 5 of the Bill:

F. L. GAZLE—15-8-42,
Chief Justice.

District and Sessions Judge, Nagpur.

3. I am in entire agreement with the general principles of the Bill. Women's rights in property should be more or less identical with those of men. There is a fear that this means a very big break in the existing law and much harm would be caused by the frivolous or irresponsible behaviour of young females who come into possession of large property. If one takes the view, as I do, that no person has any moral right to expect large unearned benefits from the efforts of his or her ancestors or relations, this should not matter at all. From the more usual point of view, the property will either be small or considerable; if it is small, again it does not much matter what happens to it. On the other hand, if it is considerable and the last owner has any particular feelings in respect of it, he will no doubt take the trouble to make a will rather than die intestate. If he does not do so, then I do not see that contingent claimants to the unearned increment can have any cause for grievance—a man is entitled to deal with his own property as he wishes. If a man cares what does happen to his property, then certainly he will make a will, if legal in respect of such property, and the possible effect of dissipation in the event of the property going to a young female would amount to an educative step in the right direction, in that it would lead to a greater appreciation of one's responsibilities.

4. As regards the actual provisions of the Bill, I have only two comments. I think Sections 10 and 11 should be deleted as they have no real modern bearing. Once the very exhaustive list of heirs fails, the property should escheat to the Crown. If a person indeed does renounce the world completely, then, so far as property which would come to him if he had not so renounced the world, he should be treated as civilly dead. This, of course, might lead to complete failure of heirs; but, again, there can be no grievance on the part of anyone if there is escheat to the Crown.

5. My other comment is in respect of Section 18, the proviso to which will in practice nullify the substantive part of the section in a large number of cases. An unchaste wife should certainly be excluded from inheritance, and there is nothing why other heirs should not be entitled to dispute the right of a widow to inherit a share of her husband's property, provided that the burden of proving unchastity lies upon them and also, if the question arises, that the burden lies upon them of proving that the unchastity has not been condoned. It is necessary to safeguard malicious applications and blackmail, which are all too common in respect of females; and since no woman should lightly be deprived of any benefit on account of unchastity, the entire burden should be placed upon those alleging unchastity. Another check upon unfounded allegations in litigation could be afforded on the same principles of Section 14, Hindu Code, Part II (Marriage), by giving the Court power to impose a fine. I would therefore omit the proviso to Section 18 and make the existing substantive part sub-section (1); I would add two sub-sections as follows:—

"(2) The burden of proving that a widow of an intestate is unchaste, shall be upon the person asserting it; and if any question arises of condonation by the husband, the burden will also fall upon him to prove there was no such condonation.

(3) Any Court trying a suit, where the right of a widow to succeed to intestate property is in question on the ground of alleged unchastity, may, if it appears that the allegation of unchastity was not reasonable and bona fide, inflict a fine not exceeding Rs. 5,000 on the person objecting and award it, or any part of it, to the widow."

6. On page 7 of the Explanatory Note there is a reference to the inclusion of great-grand-children in preference to descendants and for the inclusion of brother's daughters and sisters daughters amongst the enumerated heirs. In my opinion there is a strong case in respect of the great-grand-children being included at the bottom of Class I, more especially when provision is to be made for parents; and there is also a good case for grand-nieces being allowed to succeed in Class II immediately after grand-nephews.

District and Sessions Judge, Wardha.

The changes in the personal law of Hindus proposed by the two Bills are so radical in their nature and far-reaching in their consequences that, in my opinion, it is not desirable to introduce them at a time like the present. The entire nation stands confronted with the problem of its own preservation and therefore it is not possible for it to give adequate attention to the question of reforming the personal law governing the vast majority of its people. Moreover, as a result of war Hindu society like the rest of the world will undergo such a transformation that even the proposed changes will be found unsuitable to meet the changed situation. Is it worthwhile to enact a law which may have to be changed even before "the ink dries", after it is placed on the statute book? There is, in my opinion, no urgency at all for effecting any changes in the Hindu Law relating to succession and marriage or to any other branch of it. I also feel that however convenient it may be to the framers codify the law in stages, it is wrong in principle. It is, further, difficult to form an opinion about a

particular set of provisions until it is known what the provisions of the law as regards an allied matter are going to be. The codification of the law is doubtless going to be a long and laborious process and I am not sure whether during the lifetime of the present assembly the whole of the law will be codified. It is possible that the present assembly may be able to deal only with the two bills now before it. If that happens and the complexion of the new legislature that has to deal with the codification of the remaining portion of the law is different from that of the present, it is not unlikely that the Code which ultimately emerges may lack in harmony, contain inconsistencies and anomalies and may in the end bring about greater harm than the evil which it seeks to remove. These are amongst the strongest reasons for postponing till the termination of the war all attempts at codifying or reforming Hindu law. If I remember right (unfortunately I have no books for verifying the facts) a similar attempt made in Britain during the last war for codifying and reforming the Law of real property proved abortive and the law which emerged from Parliament some years after the war ended was widely different from that which was approved of by the Committees of the House of Commons while the War was still on.

Bill regarding Succession.

In my opinion the provisions of Sections 2 (1) i, 3, 5 (Class I, entry 1), 12 and 13 need to be amended.

I do not think that a woman should be given unrestricted power of alienation. Recent legislation has, at places, placed restrictions on the powers of agriculturists to alienate their property. I am of the view that all uneducated persons need to be protected from greedy money-lenders and land-grabbers. The need is still greater in the case of women, who have by reason of their nature and upbringing not the capacity to look after their interests properly.

I also oppose giving a share in the inheritance to the daughter. The reasons are two: First, when she is married the father has already provided her with a handsome dowry according to his means; when she is a maiden the law casts a duty on the brother or other heir to give her maintenance and provide for her marriage. If need be these rights could be secured to her by making specific provisions in this regard. The second reason is, allowing a daughter to inherit along with other heirs would lead to the introduction of a stranger (in the shape of her husband) in the family and will invariably lead to the disruption of the joint family. Until Hindu Society is prepared to discard the system of joint family, it would be most unwise to introduce legislation which will make inroads upon that system.

District and Sessions Judge, Amraoti.

1. This subject is of vital importance to the whole of the Hindu society and it is really unfortunate that the subject should come before the legislature in abnormal times. India is at war with the Axis powers and is fighting for the liberty and freedom by the side of the Allies for the last two years. The attention of the masses is concentrated on war and the Provincial and Central Governments are fully engrossed in making war efforts a success. It is really unfortunate that such hotly contested Bills, affecting almost the life of whole of India, should come before the legislature in such war time. There is still a ray of hope that wisdom will dawn upon the legislative body and the motion for postponement of the Bill for consideration after the war will be moved. This is not at all a piece of emergency legislation and if justice could be administered for over a century without a Code, it will not certainly be hampered by postponing the consideration of the Bill after the war.

2. It appears from the Statement of Objects and Reasons that a Committee was appointed to examine certain Acts, namely, Hindu Women's Right to Property Act and the amending Act and this committee recommended the codification of the entire Hindu Law and the recommendation was accepted by the Central Government. Can it, therefore, be said that this codification is required by the masses? There are three important classes concerned with this codification, namely, the lawyers, the litigants and general masses. Obviously the committee consulted the first class (lawyers) and the opinion of the lawyers cannot be said to be the opinion of the masses. The Hindu Law is based on Shruti and Smriti, which are believed by the Hindu Society to be the precepts of God and the most striking feature is that it is so mingled in the Hindu religion that it cannot be bifurcated and put into compartments. It is true that while administering justice one does not come directly in contact with Smritis and the Courts administer the law as propounded in well known commentaries like Mitakshara and Dayabhaga and by the judicial decisions of High Courts and Privy Council during the last century but at the same time the masses firmly believe that they are following doctrines of Smritis and the Courts are administering the same law in the light of principles of justice, equity and good conscience. The codification will certainly give a death blow to this feeling and sentiment because the law after the codification would be that enacted by the legislative body and enforced upon the people by force of authority. They would thus feel that they were deprived of the divine law and were subjected to law made by a section of the society consisting mostly of the reformers, educated and brought up with western ideals. With utmost respect to the members of the Hindu Law Committee I venture to say that no case has been made out for codification.

3. The possible arguments in favour of codification are (a) uniformity in details for the whole of India, and (b) saving of litigation. Even a casual examination will show that both these arguments do not stand to reason. It is well known to the lawyers and judges how the interpretation of codified law is itself a constant source of litigation. Any branch of codified law, civil or criminal, will satisfy the critics that it has given rise to litigation for decades due to shortcomings of language and fallibility of draftsmanship and ingenuity of lawyers and Judges in construction of words and phrases.

4. As regards uniformity, there is no doubt that there are 2 or 3 schools of Hindu Law prevailing in India and they have gradually developed in course of centuries practically on the same *Smritis*, i.e., Divine Law. India is such a vast country that 2 or 3 schools cannot be said, in any way, destructive to the society. Uniformity in such a case would be artificial and there never has been any grievance by one school against the other. The learned members of the Committee are conscious that each school will have to make some sacrifice for the other, but they think that a "uniform law is well worth the small price". It is not understood why this sacrifice is suggested when other small communities have their own personal law. Uniformity is not to be gained for the sake of beauty or sentiment. Every school presents the development of culture of centuries and there is no clash of interests. It is rather a pity that the learned authors consider the sacrifice of this culture a small price.

5. These two important Bills have had absolutely no publicity in any class of Hindu Society. A casual inquiry by me disclosed that very few of the well educated knew that opinions were freely invited from individuals as well as public bodies. The Central Government suggested publication of the Bills in other Languages but that suggestion does not appear to have been carried out and the masses are, I venture to say, quite ignorant of these Bills.

Really it is impossible to foresee the consequences of these Bills on the Hindu Society. Two months time was inadequate if real circulation was aimed at by the Government. In their anxiety to meet the demands of highly Reformed Section of Hindus, the learned authors have completely trampled under foot the basic principles of inheritance and marriage enjoined by *Shastras*. There should be further extension of time for opinion by six months and Bills should be proclaimed by beat of drum in every village so that the voice may reach every hamlet.

6. I will now briefly touch the evils of codification. The first and foremost of my objections is that this codification will give a death blow to the Hindu culture. The *Shastras* containing Hindu Law will hardly attract the attention of any scholars much less of any Hindu lawyers and Judges and at the most these might remain book of archaic-curiosity fit for preservation in museum like other things of archaic beauty.

7. The second objection is that once the Hindu Law passes in the hands of the legislative body, the society will be completely at the mercy of the legislative body which is likely to mould it from time to time according to its whim. In enacting laws for the society, one has not to think of few decades but of centuries. For instance, this Committee recommends two daughters equal to a son in the matter of intestate succession and, God forbidding, the Legislative body accepts it. The next legislative body may consider both son and daughter equal or there may come a time when the legislature may be inclined to the contrary view that because the sons have enjoyed inheritance for centuries, preference should be now given to the daughters, who should get double the share of the son. All this is possible because there is a codification and once the law is codified it is apt to be amended from time to time with the result that after some time the original principles may be lost in oblivion and the law to be administered would be one made by the society according to its whim and need.

8. It may be urged against this objection that the legislative body has already passed certain acts such as Widows Remarriage Act, and Hindu Women's Right to Property Act, but still there is a world of difference between *voluntary wholesale* codification without demand and necessity and piecemeal legislation of a particular branch over which there is not controversy and acute difference. The former is like pulling down a whole palatial structure simply because in its few corners it is not found quite suitable in the present century. The latter course though also somewhat objectionable, is something like little widening of the narrow passages or opening a few more new outlets to make it little more comfortable but there is yet the satisfaction of enjoying the old structure and leaving it in tact for generations to come.

9. My third objection is that the process of part codification adopted by the Committee is still greater evil than codification of the whole at one sitting. It is like constructing one or two limbs of a creature and if they are approved to construct the rest. In this process one does not know what form the whole hybrid animal the picture will create. For instance, the law of marriage and succession is intimately connected with law of divorce and maintenance. The learned authors propose to legislate on these in separate parts. The masses of the Hindu Society will be taken unawares because they do not know what proposals are coming in the other part which are in embryo.

10. The Hindu Law of Property is so intimately connected with religious sacraments that there can be no comparison between Hindu Law and the Laws of other communities. Yet there is unconscious tendency of the reform section to imitate

the principles of other societies, Christians, Mohammedans and so on. Their laws of succession are entirely different because they have no conception of a coparcenary which is peculiar to Hindu Law in the whole of the world. This codification is meant to give another death blow to coparcenary, some recent legislation relating to Women's right having cut at its root. How is the coparcenary going to survive, when there is going to be fragmentation of property, howsoever small or big, after every person dying intestate?

11. My last objection is that majority of Hindus will be driven to make wills to defeat this legislation introducing repugnant foreign elements, and there will again be a continuous flood of litigation over the wills. It is impossible to see the consequences of this huge attempt to give a death blow to the original text and substitute a codified law. It will indeed be a colossal blunder to attempt any such codification and to force it upon the poor illiterate masses.

12. After having dealt with the general objections, I turn to the criticism of some of the salient features of the two Bills.

Part I.—Intestate Succession.

13. Clause 2 (b)—Definition of a woman as *agnate*.—This artificial definition runs counter to the very fundamental principle of Hindu Law that a woman becomes the *gotraj* of her husband after marriage. This clause says that a woman shall remain *agnate* (*gotraj*) of her father in spite of her marriage. How is she then going to perform and join in the sacraments of the husband's family? The learned authors have tried to explain in the explanatory note that this provision merely embodies the extension of the principle upon which a sister has been given a place among the *gotrojas* of her brother. I humbly submit that sister does not come in as a *gotraj* but as a special *gotraj* mentioned in the *Mayuk*. Moreover, it is one thing to make an exception in favour of a sister due to her affinity and blood relationship with brother and it is quite another to call every married woman as *gotraj* of her father's family and not of the husband. The definition strikes at the very root of the theory that a woman changes *gotra* by marriage and is not acceptable as a general proposition. The sister is already provided for by including her in the list of enumerated heirs (*vide* clause 5) and there is no need to call every woman an *agnate* or *gotraj* of her father.

14. Among the enumerated class of heirs are included widow and daughter as simultaneous heirs and their shares are regulated by clause 7. The widow's estate is abolished and both take as absolute owners. The learned authors are at pains to justify this by illustration that they have done justice between the different schools. This is the most objectionable provision in the whole of the Act, and it goes at the root of the solidarity of the family and encourages fragmentation of property after every person dying intestate.

15. There was no objection to the widow inheriting a share equal to that of a son along with the sons to ensure her maintenance. But the learned authors go one step further and turn widow's estate into absolute property. Both these clauses are blind imitation of Mohammedan and Christian Laws of inheritance which differ fundamentally. I seriously doubt whether the learned authors have given serious thought to the matter of precarious position of the father and sons in their scheme.

16. Under the Hindu Law there is a religious duty upon the father to marry his daughters and it is well known in the society how onerous this duty is. So long the father had to bear only burden of marriage and education of his daughters and whatever was left was exclusively taken by the sons, now when the daughters are going to share along with the sons, the father would be on the horns of a dilemma. Should he spend for the marriage from his own pocket or leave her to her fate after she gets a share? I will take a typical illustration in which a father leaves behind one son, one married daughter, one unmarried daughter and a widow. It cannot be denied that such is usually the moral type of family. The son will get 1/3rd, and 2/3rds will go to the mother and two daughters. On demand of shares, he must leave the family house because he is owner of only 1/3rd share. In this illustration, a married daughter has again a distinct advantage over an unmarried daughter. The share of the unmarried daughter will be spent up in her education, maintenance and marriage, while the married daughter gets it as an extra saving, being already provided for in her husband's family, and she has also a chance to share the mother's share if she dies intestate. The mother in such a case also is likely to part with her share in favour of the daughters or preferably unmarried daughters. Nevertheless the society will condemn the son if he neglects his unmarried sisters and he would also have to shoulder the responsibility of looking after their education and settlement of marriage. I doubt if the learned authors had given a moment's thought to this huge responsibility, before depriving him of his traditional right of exclusive inheritance and rendering his position precarious. The whole picture is shocking and revolting to me and it must be so to any rational and conscientious Hindu.

17. It is far from my mind to suggest that the daughters should be left unprotected and at the mercy of the sons. My objection is only to their competition with the son as simultaneous heirs. Some means can surely be devised to safeguard the interests of the unmarried daughters till they are married. For instance, the mother may be given a

little larger share, say 1/4th, for each daughter to ensure marriage expenses and this should be on the express condition that she would have no right of disposal over it except for maintenance and marriage or both. As pointed out by the committee, even Dr. Ambedkar in his treatise, "Position of women in Hindu Civilization", recommended that a daughter should lose her share upon marriage. The learned authors think this might give rise to an evil such as prior alienation or temptation to avoid marriage and live in sin. But they have created greater evil by their scheme as shown above. It is futile to say that there is some reference in the Smritis to the daughter's right to share the paternal estate. The society is governed by the law and custom prevailing for centuries and if the son is placed in a favourable position it is because he has to shoulder equal responsibilities. A suitable provision can be made to safeguard the rights of the unmarried daughters and to compel the son to look after their interest on the hope that he will be exclusive owner after their marriage.

18. It is wrong to suppose that inheritance is governed by only principles of equity and good conscience. The right of inheritance carries with it the other duties of performing various religious rites and ceremonies and also other family traditions. In the illustration above cited, a son would take upon himself the duty of performing the annual Shradhas of parents, the offering of Pindas at sacred places by pilgrimage and the worship of family Gods and performances of traditional Kulacharas. All this may not strike as essential to the learned authors but the Society is not to be judged by their views. The masses belonging to rich, middle and poor classes visiting the sacred places in thousands are a living example of the true Hindu life. These pilgrimages and duties are not only performed for the selflessness but also as duty enjoined by Shastras towards the parents, and it was quite in the fitness of things that the sons excluded the daughters in the matter of inheritance and also bear the responsibilities of an ideal Hindu family. The more I think of this innovation the more I find it ruinous and destructive of the Hindu culture.

19. *Abolition of widow's estate. Clauses 12 and 13, Stridhan.*—These clauses are meant to abolish a widow's estate and turn it into a Stridhan giving absolute right of ownership to the widow. This is another serious blow to the continuity of the property in the same family. Even a widow with a son would hardly be in a better position. This abolition is sought to be justified on the ground that the limited estate renders the property less valuable and that widow's estate is a constant source of litigation. There is always a greater need of help and support in old age of the parents and if by misfortune the widow mother has disposed of her property, who is going to provide her with maintenance? She would be reduced to a beggar in the street while widow's estate preserves the property for her life, inspires the sons or near relatives to remain dutiful to her. How this absolute right is apt to be mis-used can be judged easily from the experience of transactions with regard to transferable and non-transferable property even in the hands of males.

20. Under the scheme of inheritance Bill, the condition of the widow having issues would, I think, be more precarious than before. In the absence of issues, she would naturally inherit the whole but if she gets a share with the son and daughter and loses it in some way, she would be deprived of her very source of maintenance. Property in the hands of women can never be safe. The learned authors have cited instances of women of other communities but I wish they had in mind picture of the illiterate masses, who have on an average a small holding and a small house and the proposed fragmentation will make the life of all uncomfortable and surely that of the son quite intolerable. No justification is, therefore, made out to abolish the widow's estate.

21. *Stridhan—Clause 15.*—The learned authors have given absolute right of disposal free from all control by the husband but in doing so they have included all the limited estates in the category of Stridhan. If the control of the husband is considered unnecessary in view of the advance of women, the term Stridhan should be necessarily restricted to what it indicated under the Hindu Law. The learned authors have divided Stridhan in two categories from view point of inheritance, which is again an innovation and violent break from the original Hindu Law. The Hindu Law-givers contemplated only one kind of succession to Stridhan. This new artificial mode adopted by the authors would be unnecessary if the women's limited estate is preserved. There is obviously a sound principle underlying these two kinds of property belonging to women; namely, her absolute property and limited property. The rights over the former, i.e., strictly Stridhan, may be enlarged but property with limited interest is essential both in her interest and also in the interest of the reversioner. The other clauses of the Bill relating to full blood and half blood and other matters are not of controversial type and embody general principles. The bill is most objectionable in its main features, namely, including the daughter as a simultaneous heir with the son and abolishing widow's estate or for the matter of that all life estates for women.

22. To sum up my criticism on the Bills, the learned authors have departed from the very fundamental principles without any justification, only to meet the cry of the few so-called educated reformed section of the Hindu commu-

nity. It is hardly necessary to emphasize that the masses are still conservative and orthodox, a fact which has been completely ignored in drafting this Bill. The masses are likely to get unnecessarily prejudiced against the Government with a feeling that they are being deprived of their personal Law so closely connected with their freedom of religion.

30. The Hindu Society has been content with uncodified Law for centuries. In fact the texts of Smritis are in form of Code in Sanskrit. English translations of commentaries and texts became necessary for facility of British Courts in India and that is quite enough to administer the Hindu Law. To prepare an *Ideal Hindu Code*, one must have Hindu mind with true Hindu conceptions of Hindu religion. Because it is not possible to draw a border line showing where religious sphere ends and where Legal sphere begins and in other words where particular act or omission becomes sinful for oneself or the deceased-ancestors' soul.

For the fore-going reasons I would emphatically oppose these two Bills and I would further humbly submit that the very proposal of codification be dropped by the Government.

Public Prosecutor, Amraoti.

(1) *Clause 2 (h)* defines the term 'son' and includes a Krittima and Dwyamushyayana son. The Krittima form of adoption is prevalent in a very small part of India (Mithila Province and round about) while Dwyamushyayana form is to be observed in Malabar amongst Nambudri Brahmins. Of late one seldom hears of such forms of adoption and it is high time that these forms of adoption are not recognized. The form 'son' should therefore include natural son or adopted (Dattak) son.

(2) *Clause 5—Enumerated heirs.*—In class 'I' (simultaneous heirs) are included son's daughter and daughter's daughter who succeed in preference to mother, father, brother and brother's son as they are included in class II. This provision contravenes the long established line of heirs called by Vijnyaneswar as the compact series of heirs. It will mean that son's daughter and daughter's daughter, who are related through females are nearer to the intestate than even the mother, father and the brother who are the agnates of the intestate. Such preference shown to daughter's daughter and son's daughter does not appeal to reason. These heirs should therefore be removed from class I and put in class II before brother's son, son while other father, brother and brother's son should be included in class I after daughter's son. It will be observed that the Hindu law inheritance (Amendment) Act, of 1929 did not disturb the compact series of heirs.

(3) *Clause 7 (d).*—This clause seeks to treat unmarried and married daughters on equal footing. This does not appear reasonable, as married daughters are by reason of their marriage provided for and are supported by their husbands. Moreover in case of married daughters their marriages are as a general rule, presumed to have been performed from out of the income or Corpus of the estate of their fathers. To make no distinction between married and unmarried daughters is to put premium on the former which does not appear sound. I should therefore suggest that unmarried daughters should succeed before married daughters. Widowed daughters may be treated equally with married daughters from point of view of succession.

(4) *Clause 15—Order of succession to Stridhan.*—While clause 2 (i) wisely abolishes various kinds of Stridhan (Technical, Non-technical, etc.). This clause seems to divide Stridhan for purposes of succession into two kinds: (i) property inherited from husband and (ii) all other property. This distinction which is arbitrary should be removed and there should no longer be separate classes of heirs for succession to Stridhan. In sub-clause (b) daughter's daughter who is remoter than the son of the intestate female should naturally find place after the son's son and before the son's daughter, in the time of succession. The preference shown to daughter's daughter by this clause over son and son's son does not appear to be founded on any good basis.

I may note that I agree with the feeling held generally amongst the educated that such a legislation should not be undertaken at a time when the condition of war are prevailing.

Public Prosecutor, Saugor.

The Bill embodies a common law of intestate succession for all Hindus in British India. In view of the fact that the Mitakshara Jurisdictions have already accepted the changes made by the Hindu law. Inheritance Amendment Act of 1929, giving a higher place to the son's daughter, daughter's daughter, sister and sister's son, they should find no difficulty in accepting now a similar promotion to higher rank of paternal aunt's son and the maternal aunts' or uncles' or aunts' son who are included in the Dayabhaga scheme of near succession. A uniformity of law would be secured by the provisions of this Bill if the Dayabhaga Jurisdiction accept the few changes introduced in the Bill which are needed to assimilate the two schools in this matter. The other features of the Bill constitute a very important reform in respect of the Hindu Women's limited estate and removal of sex disqualification in that the Bill abolishes the Hindu Women's limited estate and removes the sex disqualification by which Hindu women in general have hitherto been precluded from inheriting property in various parts of India. I fully support all the provisions of the Bill.

Bar Association, Jubbulpore.

Hindu Law, as has been wrongly supposed, has not all along been unchanged law, but has on the other hand progressed with the progress of the Hindu Society and culture of each particular Society. Change is however, not to be found in the original sources of Hindu law although there have been interpolations in Smritis, but in the interpretation given to the Smritis or to the commentaries on the Smritis by different Schools, which developed in different parts of country such as Bengal, Benares, Maharashtra and the Southern Countries.

Persons brought up under different traditions have followed their own different schools of thought and a codification of the whole of Hindu law or one part at one time and another part at another, will certainly work a very great hardship upon persons of different schools whose ideas are now settled with regard to the law by which they are governed. A legislation by which a Maratha should be asked to follow the Bengali system of inheritance or vice versa would never be liked by any Maratha or a Bengali. Nor there is any national emergency specially this time which could be solved by any attempt of codification of Hindu law. The broad principles of each school of law are now settled and there is no reason why they should be disturbed. We are certain that if an election takes place on the basis of a question whether Hindu Law should or should not be codified not a single member will be sent who advocates a codification of the whole of Hindu law, applicable commonly to any person being in any part of India.

The Bill wants to force upon a society something which is altogether foreign to the main principles of Hindu Society. Some of the definitions, it appears, have been borrowed from Roman law as declaring a woman Agnate of her father which is nowhere found among the Hindus. A Hindu Society should never tolerate disruption of joint Hindu coparcenary by giving a share to the daughter in the case of inheritance received by the sons on the death of their father, whose property was a self acquisition.

Under the present law the self acquired property of a Father becomes coparcenary property of the son on his death with all the coparcenary incidents of the joint ancestral property. By introducing a daughter as one of the sharers, there would be an end to all coparcenary property and in any case there would be disruption of joint family estates when a married daughter or a female claims her share.

In 9 cases out of 10 a married daughter will always act in accordance with the wishes of her husband or his family and no Hindu Society will tolerate interference in the management of estate by third person. There is also no equity as such in favour of daughter except, perhaps in cases in which property left by the father is worth Lakhs. In Hindu middle class (ordinary) family and in all lower classes, the expenses of a daughter's marriage are more than the share which is sought to be given by the Bill or a share which she could have had if she had been a son. On the other hand she is entitled under the present law to inherit property as a widow of her husband, as a mother of her son and as an heir of any of her agnate relation of her husband in case she happens to be a person governed by Bombay School of law. Even by the Bill a daughter is not entitled to any share in cases the estate is ancestral when the family is governed by rule of survivorship. In Bengal she will always inherit and will be a constant source of trouble to her brothers who will like to live in joint estate on their father's death. It appears that Mohammedan idea, of giving half share to the daughter has been influencing the committee. Under the present law the widow of a predeceased son or a grand son is entitled to a share which her husband would have got a partition. This was on the basis that a widow is entitled to maintenance and the maintenance could be fixed to the extent of income which the husband could have had in the family estate if he was living. This change by act of 1937 did not work any hardship as a widow took no more than a widow estate or limited estate and the widows in Hindu Society do not like to live separate from husband's family. A share given to widows by act of 1937 is now taken away by this Bill and this is against the progressive ideas of the Bill.

Stridhan has been wrongly defined as property acquired by woman by inheritance, by partition or in lieu of maintenance and this was never so under Hindu law. The framers of the Bill seem to have a special favour for the daughter by giving her still further the whole of her share of a widow, her mother, which the mother got from her husband. Taking for instance a Hindu dies leaving a widow a son and a daughter. A widow will take 1 share, a son will take 1 share and a daughter will take $\frac{1}{2}$ share. On the death of widow the property, wrongly described by the Bill, as her Stridhan goes to her daughter. The daughter now gets $\frac{1}{2}$ more than the son.

The framers of the bill have drafted some part of the Mitakshara School of Succession on the Dayabhag School so far as distant heirs are concerned. This seems to have been done in accordance with what they thought to be equitable. We do not know whether the general people will agree with them. Instead of correcting present defects of Hindu law as administered by courts, the present law has aggravated the harm done by misinterpreting Hindu Law.

District Bar Association, Yeotmal.

- (1) The Association agrees with the main principle of the Bill about abolishing the Hindu Women's limited estate.
- (2) Daughter should not inherit simultaneously with son and widow but should inherit after them.
- (3) Widowed daughter-in-law should take a share equal to the son as laid down in Hindu Women's Inheritance Act, Sec. 3. This portion of the said Act should not be repealed.
- (4) In view of the above two clauses the enumerated heirs in clause 5 should be amended as follows:—

Class I (i) Widow, son, son of predeceased son, son of a predeceased son's predeceased son and widow of a predeceased son.

(ii) Daughter.

(iii) Daughter's son.

(iv) Son's daughter.

(v) Daughter's daughter.

- (5) Corresponding amendments should be made in other clauses by deleting "daughter" wherever she comes as a simultaneous heir in class I.

(6) In clause 13 of the bill, it is provided that the property inherited by a widow from her husband shall devolve upon her husband.

It is necessary to extend the same principle to the property inherited by a widow from her son, or other male relative of her husband or property received by partition for her husband's or son's share.

This property also should devolve upon the heirs of the last male holder from whom she inherits and not upon her own heirs.

- (7) Due provision should be made for the maintenance and marriage expenses of unmarried daughters.

Mr. P. A. Pandit, Advocate, Bhandara.

1. The Bill is not a codification of the Hindu Law of succession as it entirely changes the Hindu Law of succession fundamentally and it is doubtful if the general public will be ready to accept such a change in the Law.

2. The spirit of the Law is good. But it is likely to split up the property even further as it introduces further sharers. The daughters shares will become their property.

3. The creation of absolute property in women will be a great change in the Law and is likely to take the property out of the hands of the family. The life in the villages is yet much more on the lines of old ideas and the villages being the greater part of the country the majority is still backwards and such a change in the Law giving absolute property to illiterate and ignorant women is likely to upset the whole structure of the Hindoo Law and seems to be not acceptable. Even the men in villages are many times victims of intriguing persons and lose their property. In the case of women it will be worst. This change should therefore not be made. The percentage of bare literacy in villages is practically nil.

4. The bill is a great improvement as regards the rights of women but it is doubtful if it will really be good for the society as a whole. The splitting up a property which is likely to happen, will not be a good thing.

Mr. L. R. Abhyankar, Advocate, Yeotmal.

1. At the outset I may remark that the Bill contemplates almost a revolution against some established notions such as "Limited Estate" "Legal Necessity" and so forth.

2. The bill evidently aims at bringing on a *par sustantia* ingredients of Mohammedan Law and Indian Succession Act with those of Hindu Law and this aspect of the case has to be carefully seen through.

3. I find myself in entire agreement with the abolition of the 'Limited Estate' of the widows or any females in respect of the property in any manner inherited or acquired.

4. I do not agree with non-recognition of inheritance or rights of partition given to widowed daughter-in-law by the Deshmukh Legislation. Reform must be going ahead and not retrograde. It is a fortunate circumstance that owing to Deshmukh Act and the present developed condition of law of adoption that people have begun to look at the widows in the Hindu families with a different angle of vision. The arrangement that a widowed daughter-in-law gets a share in the father's estate under the proposed legislation is sufficient to dispense with her right to inherit in her husband's estate, is altogether faulty. The experience gained shows that a Hindu father however poor tries his level best to give his daughter to a well to do man and it is more than probable that in many instances a widowed daughter-in-law will get nothing by way of inheritance from her father and she will be deprived of inheriting in the husband's family in the new legislation. This position will be quite lamentable. Thus I think that the soul of the husband enters that of his wife on his death should be accepted as a correct idea and she ought to be allowed to inherit in her husband's place if issueless.

5. The bill is halting in as much as it wants to reserve "Survivorship" or "right by birth" the last 2 doctrines unknown in any other jurisprudence and there is no particular reason why this should be allowed to continue here after. Particularly when the influx of Western ideas of separate entity are getting ingrained by a contact of 100 years with British people. The tendency in the Hindu families is to separate at the earliest period and the abolition of survivorship or right by birth would not be deemed a drastic or catastrophic change. Survivorship is a great hindrance to

testamentary right and is an infringement of individual liberty to dispose of one's own property. In the neighbouring province of Bengal which is governed by Dayabag Law, the above two inequalities do not exist and we are not aware if any hardship is being felt. People will get accustomed in course of time to this change. So all property in the hands of a Hindu should be heritable just as in the Dayabag Law.

6. The definition of "Heritable property" is defective as it does not include property in the hands of a sole surviving coparcener, which even at present passes by inheritance and not by survivorship. So the definition of heritable property should include the property in the hands of sole surviving coparcener.

7. The language of section 19 for disqualifying a murderer is loose. Instead of word "Commits" it should read "is convicted for" and instead of 'abates' it should read "for abating".

8. In assigning place for inheriting stridhan a husband is put too low. If a widow can get the nearest place why the widower should not get the nearest place when his turn comes particularly as we are taking away all limited estates; I would place him along with the daughter.

Mr. B. L. Seth, Advocate, Saugor.

1. The proposed Bill makes some very revolutionary changes in the existing Hindu Law and therefore before it is enacted into law it is necessary to give as wide a publicity to it as possible and afford sufficient time to the Hindu Community to digest its provisions and express its considered opinion. It is not desirable to rush it through. The four memoranda that are published as appendix to the proposed Bill did not receive wide publicity and the Bill in question in many material particulars departs from those memoranda, specially in the case of making daughters also heirs along with a man's sons and widow etcetera.

2. The drastic changes are:—

(i) To include daughters in the list of "simultaneous heirs" in column (5) of the proposed Bill.

(ii) To make all female heirs absolute owners of the property inherited and abolish limited estates—(column 12).

(iii) As a consequence of (i) to remove a predeceased son's widow or the widow of a predeceased son of a predeceased son from the list of heirs as provided by Act XVIII of 1937 section 3 (i).

(iv) To regard a woman even after marriage as an agnate of her father and of his agnates and not as an agnate of her husband or her husband's relations.

3. As regards (i) the change is a departure even from the previous memoranda and it appears that the consequences of it in all its aspects have not been considered. It is likely, if given effect to, to lead to economic deterioration besides producing other social repercussions. Take for instance a case of self-made Hindu who has built up an industrial undertaking of modest dimensions dying intestate leaving behind him a son and 6 daughters. The son will get 1/4th share in the undertaking, while the 6 daughters will get 1/4th, and the interest they get will be absolute. They will thus become partners in the business. The 3 daughters may have been married in different parts of the country and may find it difficult to take part in its management and more convenient and profitable to sell off their shares. This will introduce strangers in the business, and the son will not be able to keep them out. On the other hand under conceivable circumstances they might be able to elbow him out of the business. Moreover under clause 13 of the proposed bill the share inherited by the daughter, will devolve as laid down in sub-clause (b), i.e., go again to her daughter or daughter's daughter etcetera. This will lead to very great fragmentation of the property. What this will mean in the case of landed property like villages or a residential house can easily be imagined. The objects and reasons show that it is expected that the provinces will later pass legislation making the same rule of succession applicable to agricultural lands. The consequence of this will be disastrous so far as agricultural holdings are concerned.

Moreover under the proposed legislation a female is placed in a better position than a male. A woman can succeed to her husband and get a share equal to that of a son in his property and also at the same time get a share equal to half of her brother's share in her father's property. The son on the other hand can succeed only to his father. It might be urged that this will be counter-balanced by his wife getting a share in her father's estate, but really speaking this is not so because what his wife gets will be her absolute property and not his. Thus in the anxiety to improve the lot of women males have been placed at a disadvantage as compared with females, and as generally women are not adventurous and do not take to commercial or industrial pursuits the consequence of this change on the economic condition of the Hindu society will be profound.

It may be argued that this can be avoided by making a will. This is true, but the task will be unpleasant and there is hardly any justification for forcing him to such a course.

As a consequence of this change, clause No. (iii) above mentioned has been made, and a predeceased son's widow or the widow of predeceased son's predeceased son, are removed from the list of heirs to their father-in-law or grand father-in-law and in justification of this change it is urged that a father-in-law is more likely to disinherit a daughter-in-law, than a father likely to disinherit his own daughter by making a will. But if it was only with the object of guaranteeing proper maintenance to such widows that the

above changes are proposed, the object could very well be achieved by providing that as a man could not deprive his own widow of her proper maintenance by devising all his property by will, so he could also not deprive the widow of his predeceased son or the widow of predeceased son of the predeceased son or any other such female relations whom it is intended to protect against similar vagaries of the testator, by devising away all his property.

It may be urged that fragmentation of property also takes place under the existing law when the property is inherited by a man's sons only. This is true, but fragmentation in such cases is not as great as it will be under the new proposals. Moreover the male descendants of a man usually reside in the same place and not at different places as the female descendants are in most cases likely to do. Moreover it is not an uncommon thing for such sons to continue to live jointly and manage their property jointly. Under Act XVIII of 1938, no doubt a widow and as already referred to above a predeceased son's widow etcetera have also been introduced as heirs, but unlike daughters they reside usually in the family and therefore there has been no such complication created by the change as is likely to be created by making daughters also heirs along with the sons and the widow. Moreover the widow etcetera under that Act only got a limited Hindu Widow's estate and not an absolute estate and after their death the property would revert to the heirs of their husband and so the change made was not so drastic as it would be under the proposed Act.

For all the above reasons it is not desirable to include daughters also in the list of simultaneous heirs as is proposed to be done in clause 5 of the proposed Bill under class 1. It is better to leave the position as it is at present. It is not even necessary to make an unmarried daughter an heir as was proposed to be done in the second memorandum. There is no need to distinguish between unmarried, married and widowed daughters and there should be no objection to the abolition of this distinction in the proposed Bill.

4. As regards change (ii), the present experience does not justify granting of an absolute estate to the female heirs and abolish limited or restricted estates that the Hindu females enjoy until now. No doubt education is increasing among women, but as yet the number of educated women is infinitesimal. They have shown no business aptitude or capacity for independent judgment even after education that they have received. When widows inherit estates from their husbands usually they fall a prey into the hands of designing and unscrupulous persons and waste away the income from their properties. They are saved from wasting away the property itself because of the prohibition on their rights to do so. It has been urged that in India Muslim, Christian and Jain women enjoy such rights. Among Muslims no doubt law allows daughters also a share but in practice it is seen that in many families they do not get any share. Moreover the rule is not looked with favour generally as it leads to very great fragmentation and consequent economic poverty.

As regards Jains, the widows no doubt have absolute rights in self-acquired property of their husbands if they have no issues living, but in practice it is seen that such rights are usually exercised in giving away the property to temples or lead to the squandering away of the property by the widows who are generally illiterate and inexperienced in the ways of the world and fall easy prey into the hands of cunning and unscrupulous persons. So far as Christians and Parsees are concerned they are very few in this country and therefore their example cannot be taken as a safe guide. Besides even many Christian converts in India in practice follow the Hindu Law rule in such matters.

Thus the existing conditions do not justify conferral of an absolute estate on Hindu female heirs as proposed in the Bill.

5. Change (iii) has already been dealt with while dealing with (i) above.

As regards (iv), this offends against deep rooted Hindu sentiment that after marriage a daughter is reborn in the Gotra of her husband and becomes absolutely one with her husband and his family. This sentiment leads to happiness of the families and it is not desirable to destroy or weaken it in the manner proposed in the Bill.

6. As regards other provisions in the Bill clause (10) seems quite redundant as inheritance of this nature is now quite obsolete.

Clause (11) may be retained.

7. In clause (5) class 1, son's son's daughter, son's daughter's son, the son's daughter's daughter, the daughter's son's son, the daughter's daughter's daughter have not been included. These being direct descendants of a person can very well be included in class 1.

8. If female heirs are not given absolute estate as proposed in the Bill, clause (21) will have to be also changed and the rule of joint tenancy maintained as at present.

Other provisions of the Act seem to be not open to any objection.

Rao Bahadur S. M. Parande, General Secretary,
A. I. V. S. Sangh.

I would submit the main objections why the proposed alterations in the ancient Hindu Law cannot be acceptable to orthodox Hindus.

In the first place it disregards the main principle of Hindu Law that inheritance should be regulated by the rules of spiritual benefit that an heir is able to confer on the deceased. The capacity to confer spiritual benefit depends on Shastric Texts and would not arise from inheriting the property at the sweet will of the Legislators. This object

would be frustrated by some of the alterations proposed by the Bill.

What position females should occupy in society depends upon the general structure of each society. This structure differs according to the ultimate object that a society places before it. Unlike every other society in the World, the Hindu society attaches or is required to attach very great importance to improve spiritual side of its members while engaged in all temporal affairs of life. The position that Hindu Law has assigned to females is for their own benefit and for the benefit of the society. Consequently the reason that their rights to property are not similar to those of members of communities following different religions has no force in its introduction in Hindu society or a perpetual war between two sexes, brought about by undue independence acquired by females in certain societies is by no means desirable, even though such societies boast of being more civilized and enlightened.

Introduction of females as simultaneous heirs would have the effect of breaking up the property into more numerous shares; and substitution of absolute ownership in place of life estate contemplated by the Bill would only augment the evil. Where property is small, receiving a small share of it in place of the legal and moral binding on the male members to support them would be a poor consolation to the widows of the family and a very inadequate provision for life.

The provision in clause 17 of the Bill will have the effect of disintegrating Hindu families and gradually breaking up the Varna arrangement which has been considered the citadel of strength of the system of Hindu Law. The Hindu society, with such racial purity as it has at present is indebted to the Varna arrangement which this Bill will have the effect of undermining.

Hindus consider their law of Divine origin. They cannot tolerate interference with it by any Legislature. More particularly, a mixed Legislature which is unable to conceive the whole plan of the law is not a proper body to codify the law. Though certain things now proposed may look harmless, the attempt to bring the whole law under the jurisdiction of such a Legislature is most offensive to them. Especially at a time when the Government can ill-afford to disregard the wishes of the Sanatani Hindus, introduction of such Bills is most inopportune.

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Colonel Sir K. V. Kulkar, Nagpur.

I consider the main features of the Bill as described on page 53 of the C. P. and Berar Gazette of 19th June 1942 as sound and satisfactory.

I do not feel myself competent to give an opinion on the details of the Bill.

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Honorary General Secretary, Association of the All-India Women's Conference, South, C. P. Branch, Nagpur.

Both the Bills of Hindu Law Committee, were explained to and discussed in our meeting held on 26th July 1942. The opinion of our Branch is given below:—

There can be no two opinions that the codification of the Hindu Law relating to Intestate Succession and Marriage, will be heartily welcomed all over India. The crying need for certain reforms, at last, is going to be satisfied by these measures. The changes that the Committee has introduced are most reasonable and the codified bills are much simpler. We deeply appreciate the following reforms particularly.

1. Women's Absolute Right to property, 2. Daughter's right to share along with the son, 3. Proof of widow's unchastity during husband's lifetime,

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We, now only hope that the remaining Hindu Law will be codified at an early date, so that the whole of the codified Hindu Law will come into force from January 1946, and the Provincial Legislature will follow suit and enact the necessary legislation in respect of Agricultural land.

No. 7.—ASSAM.

From the Secretary to the Government of Assam, Judicial and General Department, to the Secretary to the Government of India, Legislative Department, No. JJD. 160/42/159, dated Shillong, the 15th September 1942.

I am directed to say that in the opinion of this Government the general principles embodying the Bills seem to be sound and to recognise the modern changing of ideals and the Bills will no doubt be welcomed by certain sections of the Hindu community.

Copy of the Advocate General's note dated the 5th September 1942, Government Pleader, Dibrugarh's letter dated the 1st August 1942, opinions of the Secretary, Bar Association, Hailakandi, the Additional Sub-Judge, Assam Valley Districts, the President, Gauhati Lawyers' Association and the Secretary, Nowgong Bar Association, is forwarded herewith for the information of the Government of India. It will be noticed that a variety of opinions have been elicited ranging from the general approval of the Advocate General to the uncompromising opposition of the President, Gauhati Lawyers' Association. Certain opinions have been received from individual influential members of the Bar in

Assam, which will be forwarded if the Government of India so desire.

The Bills were published in English in the Assam Gazette, dated the 17th June 1942.

Advocate General's note.

I support both the Bills. They aim at social practice and will receive the support of the progressive sections among us, they do indeed make some revolutionary changes but that is inevitable. Ideals and ideas have changed and are changing and it is the business of the Legislature to take note of them. Some of the changes even the orthodox Pandits will be prepared to support.

It is unnecessary to criticise the Bills in details. They embody principles which in the face of them appear to be sound. Any scheme worked out on their basis would deserve a trial. The Legislature will undoubtedly watch the reactions and intervene when and where necessary. Social practice can be the only criterion and every system of law must undergo changes as the idea of social practice changes. The Bills are a move towards that ideal.

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The Deputy Commissioner, Lakhimpur District, Dibrugarh.

There has been great improvement in the position of women in the matter of inheritance. The great point is, that the bill to codify Intestate Succession embodies a common law for the whole of British India: It removes sex disqualification by which Hindu women were generally precluded from inheriting property. Still much remains to be done in this matter. It will be easier to effect these improvements in time—if it is once accepted that Hindu Law can be changed without any reference to the ancient texts of the sages who surely laid down law for their times only and not for all time to come.

One great improvement incorporated in the bill for regulating Intestate Succession is that it has abolished Stridhan and converted it into full ownership. The peculiar conception of Stridhan is nowhere prevalent except among the Hindus. There is no reason why the Hindu Women should not exercise full-ownership over property.

The Mitakshara branch of Hindu Law seems to require further changes. Many of the modern ideas of the Dayabhaga School of the Hindu Law might have been incorporated in it.

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Secretary, Bar Association, Hailakandi.

This bill to amend and codify the Hindu Law relating to intestate succession does not apply to agricultural lands. There should be similar and simultaneous endeavours in competent quarters to codify laws to cover cases of devolution in agricultural assets. Unless there is wholesale change in the light of present environments we are not in favour of making things more cumbersome.

The distribution of property though welcome in one way may be a source of economic exhaustion in Hindu society. The salutary principle of the rights of pre-emption in a more decent form that of 'Jumping-up' should therefore be introduced.

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Additional Sub-Judge, Assam Valley Districts.

In Clause 2, Sub-clause (2) (b) it has been laid down that a married woman is to be deemed to be an agnate of her father and his agnates and not an agnate of her husband or his agnates. This is contrary to the prevailing usage in the Hindu Society and against Hindu sentiments. Marriage of a Hindu girl has the effect of severing her from her father's *Gotra* and transplanting her in her husband's *Gotra* in the same way as adoption of a son by a Hindu does. Hindu religious—rites relating to marriage, adoption, *Sradha*, *Arach* etc., are based on the principle that a married woman is an agnate of her husband and not of her father. If the principle of succession sought to be introduced by the Bill cannot be satisfactorily stated unless a Hindu married woman be described as an agnate of her father and his agnates then it is desirable that it should be clearly stated that such a woman is to be treated as an agnate of her father and his agnates for the purposes of this Act only.

In clause 3, it is desirable to provide, I think, that the Act shall not apply where a family or a class of people are governed by special customs in the matter of inheritance. Such special customs are recognized and enforced by the Courts at present unless they be immoral or unreasonable or opposed to public policy.

Clause 5—Class I, entry (1).—Inclusion of daughter in the same entry with son, son's son and son's son's son is an innovation which will be, in my opinion, very distasteful to most of the Hindu mass people who live in joint families and to whom the idea of their properties going out of the family while their male descendants are alive is very repugnant. In my opinion all daughters, married, unmarried and widowed, separate entry after entry (1) and before the entry for marriage expenses ought to be provided for as at present.

Clause 13. Sub-Clause (b).—The order of Succession provided in this sub-clause is likely to be distasteful to the people of this province. In my opinion son, son's son and son's son's son should be put in the first entry and given preference to daughter.

I welcome the abolition of the limited estate of a Hindu woman and giving her full power of disposal over all her properties.

Although there are some other provisions in the Bill which are likely to be controversial, I think that they should be accepted for the sake of uniformity of the law in the whole of India.

I beg, however, to suggest that the introduction of the Bill may be postponed till after the conclusion of the war and reconstitution of the Indian Legislative Assembly.

President, Gauhati Lawyers' Association.

This is a dangerous law which is sought to be introduced in the Hindu Code. All the Hindu text as regards succession and the decision of the Highest Courts 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.

Under the British rules the Hindus have been suffered to be governed by their own law as regards succession, inheritance, marriage, religious institutions and caste-Reg. IV of 1781, S. 15. Hindu law has therefore become the personal law of the Hindus. The Bengal, N. W. and Assam Civil Courts Act XII of 1887, sec. 37, defines the same principle. The last clause of this section "Except in so far as such law is, by legislative enactment, been altered or abolished" is ever intended to authorise such drastic and wholesale changes. The Queen's Proclamation of 1858 also says "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, etc." 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 Courts were first established Pandits versed in Hindu Satras were appointed and the Judges administered justice with their aid in the 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 I—

(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 Dayabhaga, flourished in the 11th century and the author of Mitakshara was anterior to Dayabhaga. Their commentaries of *Tajavalka* are the guiding principles of Hindu law in different parts of India as modified by custom. Daughters do not inherit during the life time of sons and the females-widows, daughters, mothers, etc., all used to have limited estate but this code gives them absolute right like men. The Hindu law and long series of decision of Privy Council recognised 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 1837 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-Women's estate devolve upon his widow along with his legal 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 school 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 women, Jains women all take a full estate and that it is difficult to maintain that Hindu women alone are incompetent to enjoy full rights, when "We have women legislators, women lawyers, and women minister". The analogy of other system of law is hardly applicable. Each system has its own law for the people's 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 should we 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. 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 can not be different law of inheritance for class of people. Among the countless women of the country how many of them are legislators, lawyers, 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 a matter of joke with the framers but millions of people of India do believe in the efficacy of this benefit. In fact our law and inheritance as 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 division from the analogy of the heirs of Muslim law. When a Muslim dies his property is divided among various relation and to prevent this disintegration *wakf* laws (Act 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 connection is religious and permanent so as to subsist in the next world is recognised as heirs. When therefore this position terminates by re-marriage her right to the deceased husband's property ceases (Act 15 of 1856, S. 21 L.R. 19, Calcutta, 239 Matangini v. Ram). The present code has not even taken any notice of this law (Act 15 of 1856) and of the judicial decision.

Daughters.—There seems to be no reason why daughters 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 until marriage and to the expenses of her marriage. There is no reason why daughters married to a 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 people of different countries should be disregarded and all should be brought to the same level.

Other heirs.—The order of succession among other heirs has been changed. In Mitakshara the mother comes first but in Dayabhaga the 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 system from time 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 objection 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 by 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 Kalijuga and this proposition has been accepted by our law courts as valid and binding. (Sesupuri v. Dwarakaprasad 10 A.L.J. 191.) It has been held that a marriage between a Dome Brahmin and a Haree girl is against Hindu law (Melaram Nadial v. Thauram Brahmin 9 W. R. 552) Mitter J. says, "The plaintiff is a Dome Brahmin and the girl is a Haree. It is to be observed that Domes and Harees are two 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 Tipperah 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 later authorities has been accepted by court as settled law on the subject (Ramal Shookol v. Abhay Charan 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 part of India, at the present day a marriage between a Brahmin and a Chhatti is not lawful marriage in this province (Padamkumari v. Surajkamari 1 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 Brahmin girl or between a Brahmin woman and a Sudra. If the marriage is invalid as being against Hindu law as propounded then the offsprings right to property must be disallowed and the doctrine of *factum valet* cannot be brought to their aid.

In Clause 20 the code has disregarded the injunction of Hindu law as regards certain disqualified persons (Manu, Chap. 9, 201 verse) and also both the schools of Hindu law. The principle is quite clear. The disqualified persons are entitled to maintenance but they can not 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.

I have noted a few objections. The whole code infringes almost all the well established principles of Hindu law and it will bring chaos and disorder 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.

Secretary, Bar Association, Nowgong, Assam.

The Association welcomes the Bill as—

- (i) it embodies a common law of intestate succession for all Hindus in British India.
- (ii) it removes the sad disqualification by which Hindu women in general have hitherto been precluded from inheriting property in various parts of India, and
- (iii) it abolishes the Hindu woman's limited estates.

No. 8-NORTH-WEST FRONTIER PROVINCE.
FROM THE HONORABLE SECRETARY TO GOVERNMENT, NORTH-WEST FRONTIER PROVINCE, TO THE SECRETARY TO THE GOVERNMENT OF INDIA, LEGISLATIVE DEPARTMENT, No. 27002-H.J./1/1-H.J.UDC, DATED PESHAWAR, THE 10TH SEPTEMBER, 1942.
SUBJECT—The Hindu Code, Part I (Intestate Succession), and the Hindu Code, Part II (Marriage).

I am directed to say that the Hindu Code, Part I (Intestate Succession) Bill with the Statement of Objects and Reasons was published in English in the "N. W. F. Province Government Gazette", Part V, dated the 17th July 1942.

2. Public opinion in this Province appears to be indifferent whether the Bill is passed or not. The only opinion spontaneously received was from a Muslim Public Prosecutor who also opposes the measure. The Provincial Government has also consulted the Advocate General and the Court of the Judicial Commissioners whose opinions together with those of R. B. Diwan Chand Obhrai, Advocate, Peshawar, B. B. Diwan Mathra Das, Advocate, Kohat, and R. S. Lala Milawa Ram, Peshawar, Bannu, are enclosed. This Provincial Government has nothing to add to their opinions.

3. A separate reply on the Hindu Code, Part II (Marriage) Bill will follow.

The Advocate General, North-West Frontier Province,

These Bills have been sponsored by the Honourable Sir Sultan Ahmed, Law Member of the Government of India. The object of the Bills is to bring the Hindu Law into a line with modern ideas; which are the product of the impact of western social system on the Hindu mind. The Bills were circulated for eliciting public opinion. It is noteworthy that only one Public Prosecutor who is a Muslim, has taken the trouble to communicate his views and he too has condemned the Bills. The public opinion in this Province in regard to such matters has not been voiced at all, which shows that the Hindu public is quite indifferent towards subjects which concern them very deeply. A voice from a far off place, Jagatgunj, Benares Cantonment has been heard and that represents the views of an association called Shri Bharat Dharma Maha-mandal. The association is so deeply interested in the matter that it has submitted eight closely printed pages, wherein the basic principles of Hindu religion, law and usage have been expounded. According to this association a woman has got no independent existence and as such it is irreligious to make an attempt to either make her an heir or touch the law relating to marriage. Succession is based on spiritual benefit, which the dead are likely to obtain from their survivors, who can succeed in accordance with their capacity to transmit spiritual benefit to the dead. The said Mandal considers that the new Code will shake the very foundation of the Hindu Society and that as an interference in religion will be resented.

The apathy of the Hindu public contradicts the view of the Mandal, which seems to be behind time in all respects.

To my mind the Hindu law stands in need of drastic change and the mover of the Code is doing a positive service to the Hindu Society by moving it. I hope that the Central Assembly will take great interest in the discussion and that the Code will come out in the best possible form.

The Code has been scrutinized from the legal point of view and on the face of it, it is not marred by any legal defect nor does it come into conflict with any existing enactment.

The Hon'ble the Judicial Commissioner, North-West Frontier Province,

The Honourable Mr. Justice Khan Mohd. Ibrahim Khan and I are of opinion that the proposed Bill is a desirable legislation and should be passed into law.

Diwan Chand Obhrai, Advocate, Peshawar.

I have carefully perused the Bill to amend and codify the Hindu Law relating to intestate succession.

I agree with the mover of the Bill, that it is "expedient" to amend and codify the whole of Hindu Law now in force in British India; and consider that it is rightly conceived, in the first instance, to amend and codify the general law of intestate succession, to be followed by the connected bill on the Hindu Law of marriage.

The modifications of archaic law are suggested by the force of modern circumstances, and advanced, and cultured Hindu opinion is sure to welcome this sign of a healthy natural growth of rules governing the ancient Hindu Society; and it is hoped to lend its encouragement rather than prejudiced opposition. Personally I am not disposed to object to these legislative interferences on the mere plea that "Hindu Law is a body of rules intimately mixed up with religion". This fact has not hampered its development, and growth, and expansion by the inclusion of general customary practices, or usages; and mainly through the intelligent and sympathetic handling of the jurists and judges of British Courts, including some notable European Scholars, we find Hindu law what it is.

The original law-givers, the authors of *Dharm Shastras*, or religious treatises, never contemplated an inflexible rigidity, as is evident from a number of commentaries and digests, developing Hindu Law as given by the Institutes of Manu, Yajnavalkya, or Narada, under the guise of interpretation, resulting in different schools of law in different parts of the country. The state of society in which the original rules were laid down has undergone a complete change; and the *Dharm*

Shastras, as codes of Hindu law, cannot remain unchanged though the basic religious principles may be left untouched, to avoid a revolutionary change. I consider it as a positive advantage to make good the deficiencies in Hindu law to suit the present day progress of the Hindu Nation through its contact with Muslim and European culture.

From this point of view, without going into any minute details I notice two or three very important features of the proposed Bill, viz.—

(1) "that it embodies a common law of intestate succession for all Hindus in British India";

(2) "that it removes the sex disqualification by which Hindu women (unlike their Muslim or Christian sisters), in general have hitherto been precluded from inheriting property in various parts of India"; and

(3) "that it abolishes the Hindu women's limited estate".

The explanatory note points out that a compromise between two leading systems of Hindu law, namely, the *Mitakshara* School which prevails throughout India, except where the *Dayabhaga* or the Bengal school is current, has been attempted to solve the problems of near and remote successions. The *Dayabhaga* scheme is considered most suitable for near succession, and the *Mitakshara* system is the most appropriate one for distant succession.

Under the *Mitakshara* system rights in family property are acquired by birth and lapse by death. The family is the unit, in which the male members have their rights regulated by survivorship. In Bengal, rights in joint property are acquired by inheritance or devise. This difference in outlook results in the rule as to power of alienation of an undivided share being different in the two systems. But as regards inheritance the *Mitakshara* prefers agnates to cognates generally. The Bengal school loses rights of inheritance upon the amount of religious efficacy which the person claiming is supposed to give by an offering of the *pinda*, to the *manes* of the person whose property is in dispute, or of his ancestor. The *Mahatashtra* school differs from all other schools in conferring rights of inheritance upon certain female relations, and in giving greater power to female owners. This Bill claims to embody a common law of intestate succession for all Hindus in British India; and if its provisions, when examined in detail, by representative leading lawyers from every Governor's Province in India, are found to provide the greatest good of the greatest number, they would deserve the support from every quarter. I don't see any reason why N. W. F. Province, with an important section of Hindus and Sikhs, should not be represented on any legislative committee considering an important measure of amending and codifying Hindu Law for Hindus generally all over British India. At any rate some person who could efficiently and ably represent the Hindus in Punjab and N. W. F. P. should be consulted when the details of the Bill are under careful consideration. It would be too much to say, but I would not be wanting in duty to Hindu Society, and to the Legislature, to do any honorary spadework in this connection, if the idea of expanding the committee dealing with Hindu Law in the Legislature was found acceptable to the authorities.

The sex disqualification is a blot on the Hindu legal system, and the sooner it is removed the better. The Bill proposes to make the law applicable from 1946, a not very distant date considering everything. The Hindu women's limited estate has been the fruitful source of litigation to the ruin of Hindu families for the past many years. No doubt the extent of litigation under this head, which could be ascertained from annual official statements in Reports of civil work in different provinces; would reveal how jealously, or greedily, the male population looks at their rights from a position of vantage as compared with their sisters, mothers, etc., but whether this distinction was based on the *Strutis* or not, the legal position is now very much the result of legal pronouncements of their Lordships of the Privy Council and of the High Courts following that eminent lead, professing to rest upon the interpretation of certain ancient texts, which restricts their powers of alienation of Hindu women enjoying a life estate intervening between the succession by male reversioners. All this requires to be amended, and codified, and hence the value and importance of the proposed legislation dealing with intestate succession, which aims at abolishing the Hindu women's limited estate. The theory of restraining waste by widows in possession of a life estate has been carried much too far, as to practically make the females in Hindu families in a very helpless position certainly not on a par with their sisters of other communities, and this step seemingly drastic is certainly called for on grounds of justice and fairness to the ladies.

I find that some changes in detail scheme of succession proposed under the Bill where it seeks to abolish a well established distinction between married and unmarried daughters, would be necessary but reserving my remarks on the detailed provisions, I have no hesitation in observing that the proposed bill is sure to meet with approval from all quarters, as advancing the rights of Hindu females, and in bringing about a uniformity of rules of succession in various parts of India.

Rai Bahadur Dewan Mathra Das.

I have read the Bill to amend and codify the Hindu Law relating to intestate succession. I suggest the following changes.

That in section 5(1) mother and father should have some share along with widow and descendants simply, for the reason that at a great cost and trouble the parents bring up their sons and in most of the cases they spend away every thing they possess. It will be great pity that they should be ignored at son's death.

In section 13 (B) the property should devolve first upon the husband and in his absence upon unmarried daughter/daughters and then as mentioned in the section, as her husband is the proper person to look after her family after her death. In case the woman is widow, the unmarried daughter/daughters should succeed her to defray their expenses of living and education and marriage.

R. S. Lala Milawa Ram Kalia, Pleader, Bannu.

(1) The Bill to amend and codify the Hindu law relating to intestate succession fulfils the long felt need of the Hindu Community. The codification of Hindu Law was even contemplated by one of the Mughal Emperors and later on Parliament of Great Britain in 1833 appointed a Royal Commission to codify Hindu Law, but for one or other reason both attempts failed and it was considered impossible to codify it.

(2) The desire for its codification was felt at the beginning of this century and the late Sir D. F. Mulla in 1912 and Sir H. S. Gour in 1921 brought out their learned commentaries on Hindu Law in the form of Codes giving sections or paras.

The present attempt by Government to amend and codify Hindu Law relating to intestate succession and codify it relating to Marriage will be welcomed by the Community.

I have gone through the Bill and the 4 memorandums attached to it carefully and agree with it generally. The definition of the Hindu is comprehensive enough. The recognition of the fundamental principle that "no woman should be disqualified for succession by reason merely of her sex", will be welcomed by the Hindu Community and is in accordance with the times and awakening in the Society. In fact old Hindu Society recognised wife as "Ardhangini" half of her husband but later commentators like Buhayana relegated her to the position that she was incompetent to inherit and could enjoy a life estate only.

The clarification of the most difficult subject of Stridhan in 5 sections, viz., sections 12 to 15 is commendable.

I am not in favour of recognition of rights of child in womb though Hindu Law has recognised it for a long time. In practice recognition of this right has brought about unnecessary litigation. How can a purchaser from a smless Hindu ascertain whether there is a child in the womb of his wife who will later on impeach his father's transfer of property on various grounds. Many unhappy cases can be quoted at the Bar in this connection. It is time to amend this principle embodied in section 16.

Section 17 of the Bill introduces reform which was badly needed by the Society.

On the whole the Bill is an attempt by the Legislature to go with the times and should be passed into Law.

No. 9.—SIND.

FROM THE DT. SECTY. TO THE GOVT. OF SIND, HOME DEPT., TO THE SECTY. TO THE GOVT. OF INDIA, LEGISLATIVE DEPARTMENT, NEW DELHI, No. 8-22/20-H/42, DATED KARACHI, THE 17TH OCTOBER, 1942.

SUBJECT:—The Hindu Code, Part I (Intestate Succession) and The Hindu Code, Part II (Marriage).

I am to enclose herewith copies of the minutes recorded by the Honourable the Chief Judge and Judges of the Chief Court and the Ex. Honourable Minister, Local Self-Government, and the letter received from the Vice-President of the Puj Hindu General Panchayat, Shikarpur, and to state that the Government agree with the views of the Honourable the Chief Judge.

2 Both the Hindu Code Bills, with the Statements of Objects and Reasons were published in English and Sindhi in the "Sind Government Gazette", Parts IV and V, dated 25th June 1942, 2nd July 1942 and 30th July 1942 respectively.

The Ex-Honourable Minister, Local Self-Government. It is quite true that the proposed two Bills involve fundamental changes in the Hindu Law of a far reaching nature and as such utmost caution is required in passing them into Acts. Considering the various remarks received from officials and other public bodies, I have come to the conclusion that the observations made by the Puj Hindu General Panchayat of Shikarpur, in respect of the two bills, deserve greatest weight and consideration and I strongly support them. I also agree with the Honourable the Chief Judge's view that it is improper that the widow should get all to the exclusion of other heirs when there are no children, because the Hindu Dharma Shastra allows only limited rights over property for women who as part and parcel of their husbands have no separate ownership of their own. The ownership in the property of her deceased husband therefore, in the absence of any near heirs, rests in the widow for her life time only; thence it reverts to the next in the seed and blood relationship to the last full owner (Deceased male) as, it is the latter who is closer in blood relationship and who is consequently competent to perform the Shraddha sacrament in favour of the deceased last male owner or other ancestors.

The Registrar, Chief Court of Sind.

The undersigned is directed to state that the Honourable the Chief Judge is of the view that if the testamentary

power of a Hindu with respect to his property remains, there can be no objection to the rules which relate to intestacy except that it is improper that the widow should get all to the exclusion of other heirs when there are no children. The Honourable the Judges have no remarks to offer.

No. 10.—AJMER-MERWARA.

FROM THE HONOURABLE THE CHIEF COMMISSIONER, AJMER-MERWARA, TO THE SECTY. TO THE GOVT. OF INDIA, LEGISLATIVE DEPARTMENT, NEW DELHI, No. G/19-1, DATED AJO, THE 15TH SEPTEMBER, 1942.

SUBJECT:—The Hindu Code, Part I (Intestate Succession) and the Hindu Code, Part II (Marriage).

I have the honour to forward herewith the opinions of—

1. District Judge, Ajmer-Merwara.
2. Additional District Judge, Ajmer-Merwara.
3. The Secretary, Bar Association, Ajmer.
4. The City Magistrate, Ajmer.
5. R. B. M. Mithan Lal Bhargava, President, Arya Samaj, Ajmer.
6. D. B. Harbilas Sarda, Ex-M.L.A., Ajmer.

2. I have no further comments to offer.

District Judge, Ajmer-Merwara.

In section 5 among the enumerated heirs the daughter's son precedes the son's daughter. This is in accordance with the present law also. But I feel that from the principle of propinquity and natural affection son's daughter should precede daughter's son. The old order has been maintained in this bill also perhaps because the daughter's son according to the Hindu law is considered to be more efficacious in securing rest for the deceased by offering "pind" than the son's daughter. Otherwise I agree with the order of succession.

If however the object of the framers of the bill was not merely to codify the Hindu law but also to amend it, they might have contented with the heirs in Section 5 only. The heirs mentioned in it are sufficiently numerous and would ordinarily be sufficient for all contingencies. Further provision of agnates and cognates among the heirs was unnecessary. That would have simplified Hindu law considerably. If none of the heirs mentioned in Section 5 existed the property would have devolved upon the Crown by escheat as is provided in Section 22.

Otherwise I agree with the provisions of the bill.

Additional District Judge, Ajmer-Merwara.

The Bill regulates succession to property which belongs to an intestate in his or her own right and passes by inheritance as distinct from survivorship. The main features of the Bill as pointed out in the Explanatory Note of the Bill are:—

- (1) that it embodies a common law of intestate succession for all Hindus in British India;
- (2) that it removes the sex disqualification by which Hindu women in general have hitherto been precluded from inheriting property in various parts of India;
- (3) that it abolishes the Hindu Women's limited estate.

No body can dispute the desirability of having uniformity in law for all Hindus. This object is achieved by adopting some provisions of the Dayabhaga scheme and some of the Mitakshara scheme. The memoranda attached to the Bill go to show that this object is secured by no great violence to either school.

Hitherto women were debarred from inheriting property. The Bill seeks to change the order of succession. It recognizes the daughter's right of inheritance as an agnate to the property of her father. It does away with the distinction between married and unmarried daughters. The daughter is allowed to inherit her father's property simultaneously with the widow, son, son of a predeceased son and son of a predeceased son of a predeceased son. The only difference between the daughter and these heirs will be in the extent of shares. The daughter is allowed half a share of these heirs.

Under Hindu Law a female who succeeds as an heir whether to a male or to a female, takes a limited estate in the property inherited by her. She is not a tenant for life but is owner of the property subject to certain restrictions on the alienation and subject to its devolving upon the next heir of the last full owner upon her death. The Bill proposes to give an absolute right of inheritance to females. She will have the same rights over her Stridhan including the right to dispose of it by transfer inter vivos or by will, as a man has over property acquired by him in the like manner, that is to say a woman's right over her Stridhan shall not be deemed to be restricted in any respect whatsoever by reason only of her sex.

I see no objection to the Bill being passed into law. It is no doubt a distinct step forward. It is a compromise between two divergent views of a conservative and a reformer. It gives protection to widows and will considerably reduce litigation that arises out of a limited right of inheritance by a female. Reversioners will no longer be in a position to challenge her actions.

Secretary, Bar Association, Ajmer.

1. In the opinion of the Ajmer Bar Association it seems desirable to make some changes in the Hindu Law based upon old Shastras.

(b) Recognition of the right of a woman in her Stridhan to be absolute and not limited, Stridhan not to be a woman's estate but a woman's absolute property. (Clause 12, Succession Bill.)

The objectionable features are:—

- (1) The order of succession in the Hindu Intestate Succession Bill is inequitable and unjust,
 - (a) to prefer a daughter's son to the son's daughter,
 - (b) to prefer a mother to father in clause 5, class II, when they should share equally, monogamy being the rule,
 - (c) to disinherit the widow of a predeceased son,
 - (d) to ignore the claims of the daughter of a predeceased son and some other things.

are matters which must be set right before the Bill is passed.

(2) The order of succession to Stridhan is also objectionable. A woman succeeds to her husband's property, but the husband in the Bill is denied succession to his wife's property. This is inequitable. The succession to Stridhan in the present law prefers female to male heirs only because at present a woman does not succeed her husband, but when the Bill gives her such succession, it would be inequitable to debar the husband from succession to his wife.

(3) It is unjust to allow the daughter and her children to succeed and disallow a son and his children to do so, notwithstanding the fact that both the daughter and the son are under the Bill, heirs to their father.

(4) It imposes the Dayabhag law on those who disagree with the principles and who have upto now been governed by the Mitakshara.

It is hoped that the glaring defects of the Bills will be removed before the Legislative Assembly accepts them.

No. 11.—GOORG.

FROM THE CHIEF COMMISSIONER OF GOORG, TO THE SECRETARY TO THE GOVERNMENT OF INDIA, LEGISLATIVE DEPARTMENT, NEW DELHI, No. A-1-2068/42, DATED MARGARA, THE 7TH SEPTEMBER, 1942.

SUBJECT:—The Hindu Code, Part I (Intestate and Succession) and the Hindu Code, Part II (Marriage).

GIPD-I. 2184ED-11.3.43-400.

The Assistant Commissioner has no remarks to offer, while the Munsiffs and the Bar Associations are in favour of the Bills. The Judicial Commissioner remarks as follows:—

"As they are in the nature of social reforms and affect Hindu life and customs in so intimate a manner that it would be better to consider no other opinions than those of Hindus. Hindu Law should not be reformed by persons who will not be affected by the reforms. However excellent such reforms may be in principle, they will lack the sanction of popular support."

The District and Sessions Judge says—

"The codification of Hindu Law on a uniform basis applicable to the whole of India is long overdue. These Bills relating to intestate succession and marriage appear to be a good beginning for the removal of some of the anomalies in Hindu Law such as sex disqualification in the inheritance of property, Hindu woman's limited estate, polygamy, etc., and as such they are progressive in character and are in conformity with the present day ideas of the subject. I therefore give my full support to the Bills."

I have no remarks to offer.

The Bills, together with the Statements of Objects and Reasons and other enclosures, were published in English in the *Codrig Gazette Extraordinary*, dated the 8th July 1942.

No. 12.—PANTH-PIPLODA.

FROM THE CHIEF COMMISSIONER OF PANTH PIPOLODA, TO THE SECRETARY TO THE GOVERNMENT OF INDIA, LEGISLATIVE DEPARTMENT, NEW DELHI, No. 3439-B., DATED, CENTRAL INDIA AGENCY, INDORE, THE 28TH JULY, 1942.

SUBJECT:—The Hindu Code, Part I (Intestate Succession) and the Hindu Code, Part II (Marriage).

I have no comments to offer.

(b) Recognition of the right of a woman in her Stridhan to be absolute and not limited, Stridhan not to be a woman's estate but a woman's absolute property. (Clause 12, Succession Bill.)

The objectionable features are—

(1) The order of succession in the Hindu Intestate Succession Bill is inequitable and unjust,

(a) to prefer a daughter's son to the son's daughter,

(b) to prefer a mother to father in clause 5, class II, when they should share equally, monogamy being the rule,

(c) to disinherit the widow of a predeceased son,

(d) to ignore the claims of the daughter of a predeceased son and some other things,

are matters which must be set right before the Bill is passed.

(2) The order of succession to Stridhan is also objectionable. A woman succeeds to her husband's property, but the husband in the Bill is denied succession to his wife's property. This is inequitable. The succession to Stridhan in the present law prefers female to male heirs only because at present a woman does not succeed her husband, but when the Bill gives her such succession, it would be inequitable to debar the husband from succession to his wife.

(3) It is unjust to allow the daughter and her children to succeed and disallow a son and his children to do so, notwithstanding the fact that both the daughter and the son are under the Bill, heirs to their father.

(4) It imposes the Dayabhag law on those who disagree with the principles and who have upto now been governed by the Mitakshara.

It is hoped that the glaring defects of the Bills will be removed before the Legislative Assembly accepts them.

No. 11.—COORG.

FROM THE CHIEF COMMISSIONER OF COORG, TO THE SECRETARY TO THE GOVERNMENT OF INDIA, LEGISLATIVE DEPARTMENT, NEW DELHI, No. A-1-2068/42, DATED MANGALURU, 7TH SEPTEMBER, 1942.

SUBJECT:—The Hindu Code, Part I (Intestate and Succession), and the Hindu Code, Part II (Marriage).

GIPD—T. 2184LD—11.3.43—400.

The Assistant Commissioner has no remarks to offer, while the Munsiffs and the Bar Associations are in favour of the Bills. The Judicial Commissioner remarks as follows:—

"As they are in the nature of social reforms and affect Hindu life and customs in so intimate a manner that it would be better to consider no other opinions than those of Hindus. Hindu Law should not be reformed by persons who will not be affected by the reforms. However excellent such reforms may be in principle, they will lack the sanction of popular support."

The District and Sessions Judge says—

"The codification of Hindu Law on a uniform basis applicable to the whole of India is long overdue."

These Bills relating to intestate succession and marriage appear to be a good beginning for the removal of some of the anomalies in Hindu Law such as sex disqualification in the inheritance of property, Hindu woman's limited estate, polygamy, etc., and as such they are progressive in character and are in conformity with the present day ideas of the subject. I therefore give my full support to the Bills."

I have no remarks to offer.

The Bills, together with the Statements of Objects and Reasons and other enclosures, were published in English in the Coorg Gazette Extraordinary, dated the 8th July 1942.

No. 12.—PANTH-PIPLODA.

FROM THE CHIEF COMMISSIONER OF PANTH PIPODA, TO THE SECRETARY TO THE GOVERNMENT OF INDIA, LEGISLATIVE DEPARTMENT, NEW DELHI, No. 3439-B., DATED, CENTRAL INDIA AGENCY, INDORE, THE 25TH JULY, 1942.

SUBJECT:—The Hindu Code, Part I (Intestate Succession) and the Hindu Code, Part II (Marriage).

I have no comments to offer.

No. 22.—From the Secretary to the Government of Orissa, Law, Commerce and Labour Department, No. 11910-J. (c), dated the 30th October, 1942, and enclosures

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No. 23.—From the Chief Commissioner, Delhi, No. F-4 (49)/42-General, dated the 19th November, 1942, and enclosures

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No. 24.—From the Chief Commissioner, Delhi, No. F-4 (49)/42-General, dated the 1st December, 1942, and enclosure

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No. 13.—MADRAS

FROM THE JOINT SECY. TO THE GOVT. OF MADRAS, HOME DEPARTMENT, TO THE SECY. TO THE GOVT. OF INDIA, LEGISLATIVE DEPT., NEW DELHI, No. 11861 (O) G-1, DATED MADRAS, THE 4TH NOVEMBER 1942.

SUBJECT:—The Hindu Code, Part I (Intestate succession) and the Hindu Code, Part II (Marriage).

Ref.—My letter Ms. No. 3905, dated 21st October 1942.

In continuation of the letter cited above, I am to forward copies of the opinion of the Bar Council, Madras, on the provisions of the Bills.

FROM THE SECRETARY, BAR COUNCIL, MADRAS.

... is in entire agreement with the opinion expressed by the learned Advocate General.

No. 14.—BOMBAY

FROM THE SECY. TO THE GOVT. OF BOMBAY, HOME DEPARTMENT, TO THE SECY. TO THE GOVT. OF INDIA, LEGISLATIVE ASSEMBLY DEPARTMENT, No. 6039-4-B., DATED, BOMBAY, CASTLE, THE 26TH OCTOBER, 1942.

SUBJECT:—Bills, Hindu Code—(Intestate succession and Marriage).

With reference to your letters Nos. F-227/42-C. and G. (Judicial), dated the 1st June and 1st September 1942, on the subject noted above, I am directed to forward herewith a copy of the papers noted below and to state that the Government of Bombay refrains from commenting on the proposed Bills. The question is mainly for the members of the Hindu Community to decide.

2. The Bills with the Statement of Objects and Reasons including the Explanatory Notes and in the case of the first Bill the Appendix thereto, were published in the Bombay Government Gazette in English on the 25th June 1942. The Statement of Objects and Reasons was published in the Bombay Government Gazette in Marathi and Gujarati on the 3rd September 1942 and in Kannad on the 1st October 1942.

FROM THE SECRETARY, THE HINDU MISSIONARY SOCIETY, BOMBAY, DATED 12TH AUGUST 1942.

"As regards the Bill 'The Hindu Code, Part I (Intestate Succession)' my Society is opposed to a part of it so far as the Section 5 thereof is concerned. My Society does not approve of the idea that the property, in succession to the males in case of intestacy, should devolve upon the widow in preference to the son."

FROM THE HONORARY SECRETARY, BOMBAY INCORPORATED LAW SOCIETY, DATED 8TH AUGUST 1942.

My Committee are in favour of the Bills subject to the following remarks:—

Clause 2 (a) and (b).—Under Cl. 2 (b) a woman by reason of her marriage is not to be deemed to be an agnate of her husband or his agnates and under the circumstances she would not be included in the list of heirs mentioned in Cl. 4(b). My Committee beg to point out that this is not fair. A Hindu woman on her marriage is deemed to be reborn in the gotra of her husband and she should be accordingly treated as an agnate of her husband and his agnates. Under the circumstances my Committee suggest that the original Rule 8 (f) the Rules for all-India should be given effect to in the present Bill.

Clause 5(1).—In the opinion of my Committee, a share should be given to the widow of a predeceased son, along with her issues or issue who have been given a share and in default of any issue the share of the predeceased son should be given to his widow, the share being that which the predeceased son would have got if he were living.

FROM THE PRESIDENT, BOMBAY PRESIDENCY WOMEN'S COUNCIL, TOWN HALL, BOMBAY, DATED 14TH AUGUST 1942.

My Committee is generally in agreement with the provisions of the Bill, but would like to make the following suggestions:—

(1) The codification of the remaining subjects of Hindu Law and legislation with regard to agricultural lands on the lines

GOVERNMENT OF INDIA
LEGISLATIVE DEPARTMENT

PAPER No. II

OPINIONS ON

THE HINDU CODE, PART I (Intestate Succession)

(Published in the Gazette of India, dated the 30th May, 1942, under Rule 18 of the Indian Legislative Rules)

Opinions Nos. 13—24

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No. 13.—MADRAS

JOINT SECY. TO THE GOVT. OF MADRAS, HOME DEPT., TO THE SECY. TO THE GOVT. OF INDIA, HOME DEPT., NEW DELHI, No. 11861 (O) G.-1, MADRAS, THE 4TH NOVEMBER 1942.

The Hindu Code, Part I (Intestate succession) the Hindu Code, Part II (Marriage).

letter Ms. No. 3903, dated 21st October 1942.

In view of the letter cited above, I am to forward the opinion of the Bar Council, Madras, on the proposed Bills.

THE SECRETARY, BAR COUNCIL, MADRAS.

is in entire agreement with the opinion expressed and Advocate General.

No. 14.—BOMBAY

SECY. TO THE GOVT. OF BOMBAY, HOME DEPT. TO THE SECY. TO THE GOVT. OF INDIA, LEGISLATIVE DEPARTMENT, No. 6039-/4-B., DATED, BOMBAY THE 26TH OCTOBER, 1942.

Bills. Hindu Code—(Intestate succession and Marriage).

In view of your letters Nos. F.-227/42-C. and G. dated the 1st June and 1st September 1942, on the subject above, I am directed to forward herewith a copy of the letter noted below and to state that the Government refrains from commenting on the proposed Bills. It is mainly for the members of the Hindu Commission to decide.

Bills with the Statement of Objects and Reasons and Explanatory Notes and in the case of the first appendix thereto, were published in the Bombay Gazette in English on the 25th June 1942. The copy of the Hindu Law relating to marriage, with the Statement of Objects and Reasons was published in the Bombay Gazette in Marathi and Gujarati on the 3rd July 1942 and in Kannada on the 1st October 1942.

FROM THE SECRETARY, THE HINDU MISSIONARY SOCIETY, BOMBAY, DATED 12TH AUGUST 1942.

* * * * *
As regards the Bill "The Hindu Code, Part I (Intestate Succession)" my Society is opposed to a part of it so far as the Section 5 thereof is concerned. My Society does not approve of the idea that the property, in succession to the males in case of intestacy, should devolve upon the widow in preference to the son.
* * * * *

FROM THE HONORARY SECRETARY, BOMBAY INCORPORATED LAW SOCIETY, DATED 8TH AUGUST 1942.

* * * * *
My Committee are in favour of the Bills subject to the following remarks:—

Clause 2 (a) and (b).—Under Cl. 2 (b) a woman by reason of her marriage is not to be deemed to be an agnate of her husband or his agnates and under the circumstances she would not be included in the list of heirs mentioned in Cl.4(b). My Committee beg to point out that this is not fair. A Hindu woman on her marriage is deemed to be reborn in the gotra of her husband and she should be accordingly treated as an agnate of her husband and his agnates. Under the circumstances my Committee suggest that the original Rule 8 of the Rules for all-India should be given effect to in the present Bill.

Clause 5(1).—In the opinion of my Committee, a share should be given to the widow of a predeceased son, along with her issues or issue who have been given a share and in default of any issue the share of the predeceased son should be given to his widow, the share being that which the predeceased son would have got if he were living.
* * * * *

FROM THE PRESIDENT, BOMBAY PRESIDENCY WOMEN'S COUNCIL, TOWN HALL, BOMBAY, DATED 14TH AUGUST 1942.

* * * * *
My Committee is generally in agreement with the provisions of the Bill, but would like to make the following suggestions:—
(1) The codification of the remaining subjects of Hindu Law and legislation with regard to agricultural lands on the lines

proposed in this Bill be expedited.

(2) From Section 2 (d) it seems that this Bill does not apply to Mitakshara joint family properties. Something must be done for them for on our side joint family properties are a great problem; the widows and other females get no absolute share; so that benefits similar to those provided by this Bill, be given to women in respect of joint family properties.

(3) In Section 5 class II the sister should succeed after the Brother's Son and before the brother's Son's son, that is, No. (6) should come after No. (4) and before No. (5).

(4) In Section 5 class I there should be a provision giving the daughter-in-law and her children, if any, the share which the predeceased son would have got, if he were living.

(5) In Section 13, (9) (10) (11) (12) should come before (8) and after (7).

(6) In Section 22: the following words be added, after the word 'Crown' "to be utilised for Hindu charitable purposes."

FROM THE REGISTRAR, HIS MAJESTY'S HIGH COURT OF JUDICATURE (APPELLATE SIDE), BOMBAY, NO. A-2/174, DATED 17TH AUGUST 1942.

I am directed by the Honourable the Chief Justice and Judges to state that, in accordance with their usual practice of expressing no opinion upon matters of social legislation, Their Lordships do not wish to offer their views on these two Bills.

The opinions of the District Judges consulted by Their Lordships accompany.

FROM THE DISTRICT JUDGE, AHMEDABAD.

I am in favour of the principles of the two Bills. I wish, however, to make the following observations regarding the details of those Bills.

2. Intestate Succession Bill.—

(a) Clauses 2 (2)b and 5 I (1).—The former clause has the effect of disinheriting a woman as an agnate in her husband's family. In my opinion, this is a step in the wrong direction. The Committee seek to justify it by saying that she has been given instead a right as a daughter in her father's family. The idea that a woman on marrying becomes an agnate (Dolra) in her husband's family is so deep rooted that this innovation is likely to jar on Hindu sentiment. The existing Law (even as amended by Deshmukh Act) gives such a woman a right to inherit in her husband's family. There is no reason why the fact that she is newly given a right to inherit as an agnate in her father's family should be made a ground to deprive her of her rights in her husband's family. Two relationships come into existence by reason of marriage and a woman should not be deprived of her rights flowing from such double relationship. Merely because she is married, she does not cease to be the daughter of her father and her claim to inherit as a daughter has been rightly recognised. But that should not be made a ground for depriving her, for instance, of her existing right to inherit as a daughter-in-law to her father-in-law.

(b) Clause 13(a).—In my opinion, two different lines of devolution of a woman's Stridhan property should be done away with. Once it is recognised that all the property held by a woman is Stridhan property, there should be one common line of the order of succession to such property.

(b) In my view the order of succession requires radical alteration. If now a son, wife and daughter are made simultaneous heirs to a man's property, there should be a reciprocal arrangement by which a son, daughter and husband should be made heirs to Stridhan property. The old arrangement was perhaps suitable when Stridhan had a limited meaning and could consist of comparatively insignificant part of her estate. But now that all the property coming to her, from her husband and others, is going to be made her Stridhan, the old idea of how it should devolve requires modification in the direction suggested above. The actual shares to be given to each is a matter of detail. This suggestion would also remove any possible objection to the suggestion made above with regard to clause 13(a).

(c) There are some further points to be considered in this connection which have not been touched in the Bill.

(i) The property received by a son is burdened with the obligation of paying the debts of his father which are not illegal or immoral. According to the Bill, the property will be shared now by the wife, son and daughter. It seems fair to lay down that the liability for the payment of debts should be shared in the same proportion.

(ii) The law of intestate succession comes into operation where there has been no testamentary disposition of the property. It is a matter to be considered whether there should not be some limitation on the testamentary disposition of the property to ensure that the testator's family are not left absolutely destitute. A useful comparison may be made with the position as we find in this respect in the Mahomedan Law.

FROM THE HONORARY SECY. BAR ASSOCIATION, AHMEDABAD.
The Council of the Bar Association, Ahmedabad, is of opinion that in respect of succession to the property of males,

the proposed legislation according to the section 5, clause 1, son and daughter inherit simultaneously thus recognizing the rights of the daughter along with the son instead of being postponed to him. In view of the aims sought to be achieved by the Bills, the simultaneous share sought to be given to the daughter in the father's estate is a welcome measure, though the mass opinion will not like a revolutionary provision, which it is feared, will be considered as breaking the family peace by the outside disturbing element being introduced consequent on the daughter's simultaneous right of sharing. However, in respect of succession to female, that is to Stridhan property, which term is widened to include almost all classes of property coming in the hands of females, the daughter precedes the son altogether. This seems in our opinion to be quite unfair to the son. According to Mayukha which is prevalent in the Bombay Presidency son precedes the daughter in Stridhan inheritance. So as a matter of fairness and justice we are of the opinion that the son and daughter should inherit simultaneously in equal shares and consequently we recommend that in Section 13 clause b(1) after the word 'daughter' the words 'son or son's son' should be added as simultaneous heirs and section 13 clause b (4) and (5) be deleted.

FROM THE DISTRICT JUDGE, AHMEDNAGAR.

Generally speaking I am in favour of the legislation proposed in the two Bills.

As regards the first Bill, I agree with the general remark in the explanatory note that the sex disqualification against women inheriting property has few defenders at the present time. Though I am generally in agreement with the proposals embodied in this Bill it seems to me to be open to criticism on three grounds. The first is that the Bill seems to interfere with the rights of coparceners in laying down in section 7(b) that a separated son will also get a share in his father's estate even when the father and some other sons may have continued to be joint.

The second criticism is regarding section 7(d) and is expressed as follows by Mr. S. R. Kaprekar (First Class Subordinate Judge, Ahmednagar). He says "Section 7 (d) of the Bill provides that each daughter will take half a share whether she is married, unmarried or a widow. In practice this may prove unjust to the sons. For instance, if a man has four daughters and one son, the bulk of the estate would go to the daughters and the son will get little. The intention of Hindu Law is that the property of a family should remain in the family as far as possible. On that basis agnates related through males are preferred in the Law of Succession to cognates related through females. The present Bill would militate against this principle, and in many cases the property of a family, or the bulk of it, would pass out to others through the daughters. It is said that there is a biological law by which people of higher classes, who have to do more mental work than physical labour have more daughters than sons. If this is true the Bill in practice would prove disastrous to the Higher Classes. The Bill goes too far in conferring new wide rights of inheritance on daughters alone with sons. In my opinion all the daughters together should get one share. If a man leaves two or more widows they all together take one share. The same rule should apply to daughters". But I do not agree that we should now go back and impose an artificial disqualification on daughters. The rights of inheritance now sought to be conferred on daughters have long since been granted to daughters should have the same rights as sons.

The third criticism has been summarised by Mr. Mohemadali J. Merchant (Joint First Class Subordinate Judge, Ahmednagar), and I agree with his view that a different code of intestate succession should not be forced on those non-Hindus who by custom have been following the present rules of Hindu succession. Safeguards should be provided in the Bill so that it may be left to non-Hindus if they choose to elect to follow the new rules of intestate succession or not. Mr. Merchant writes as follows:—"It is stated in the explanatory note appended to the text of the first Bill that it embodies a common law of intestate succession for all Hindus in British India. It is not meant nor does it appear to have been intended to frame a law of succession for any other community in India. Also in the detail notes on sub-clause (1) (c) of Section 2 it is specifically written that it is not meant to make any change in the existing position as to the application of Hindu Law. But when section 2(1) (c) is read, one will be surprised to find that the legal effect of it will be to enforce an altogether different code of Intestate Succession on all non-Hindus who have been following some provisions of Hindu Law as laid down by the old sages of India like Mann. Non-Hindus followed those provisions as not their own law but only as an old and established custom in them. Therefore they should be allowed to follow their own old and established custom or the law of their own religion. It will be unjust in my opinion that the Legislature should enforce on them altogether a different code which has neither the sanctity of Religious Origin nor the antiquity and force of old custom to the minds of non-Hindus. Therefore at the end of Section 2 (1) (c) the following words should be added "but it does not include Muslims", to which I would add, "and other non-Hindus who by custom have been following the Hindu rules of inheritance and intestate succession".

FROM THE DISTRICT JUDGE, BELGAUM.

I.—CODIFICATION BY THE CENTRAL LEGISLATURE

It seems to have been assumed that it has become necessary for the Central Legislature to codify the entire Hindu Law. I am not quite sure whether such codification will be really practicable and advantageous. It is obvious from the two

Bills before us that certain key terms in Hindu Law are incapable of definition in English. The Bills wisely make no attempt to define terms like *Gotra*, *Pravara*, *Sapinda*, *Stridhan*, *Dattaka*, *Dewyamnashyayana*, *Kritrima*, *Dásiputra*, etc., and provide that these terms shall have the same meaning as in Hindu Law. Similar difficulties will be encountered when other parts of Hindu Law come to be codified. I submit that it would be a poor piece of legislation indeed which cannot define the principal terms in the Code and expects the interpreter to derive their meanings by a reference to uncodified law. It would seem, therefore, that a self-contained Code is not quite practicable. This difficulty arises principally because Hindu Law is sought to be administered through English. If it were administered through the various regional languages no such definitions would at all become necessary; for, the concepts are quite familiar and recourse can be easily had to the original Sanskrit texts. Peculiar problems arise when concepts of Hindu Law are sought to be clothed in English garb. I might refer to only one instance. In deciding the judgment of the Privy Council in the case of *Muhammad Hussain Khan v. Kishwa Nandan Sahai* (64 Indian Appeals 250), Sir Shadi Lal pointed out that the confusion on the subject of property inherited from the maternal grandfather arose, principally because of the use of the word "ancestral" to denote property which had come from a grandparent; ignoring the further refinement which should have followed from the term *Paitāmaha*, that is, "belonging to the paternal grandfather", used by *Vijnaneshwara*. Throughout this sub-continent Hindu Law has been administered for thousands of years without a universal Code applicable to all parts. In that respect it may be compared to the great Common Law of England which still governs principal subjects of everyday life like Contract and Torts. Administration of such uncodified law has not been found to be difficult and uncertain. It has the advantage of being elastic. It allows free scope for new developments in accordance with changed conditions and the growth of public opinion; whereas codified law would naturally be more rigid; and the legislature will have to be approached every time for amendments howsoever slight. A Code by no means brings finality; judicial interpretation may still create new uncertainties. It is of interest to note that the other great community in this country, namely, the Mahomedans, decided to go back to the *Shariat Law* in all important personal matters by the *Shariat Act of 1937* (Act XXVI of 1937). I am not quite convinced, therefore, that codification of the entire Hindu Law is at all necessary, or that it would prove beneficial to its natural development along indigenous and progressive lines. I quite realise that it is necessary to make some changes in the present position of women under the Hindu Law. That can be better done by suitable special legislation rather than by a comprehensive Code embracing the whole domain of Hindu Law. Topics like laws of learning and inheritance have become the subject-matter of special legislation before. When carefully drafted, such special legislation succeeds in introducing new reforms smoothly and harmoniously with the other parts of the law.

In any case, it appears to me that the codification should not be undertaken by the Central legislature. The ideal of one Code applicable to all Hindus in this country is difficult of attainment. Those who live in the Native States will still be governed by their own systems; although it is possible that the legislatures in Native States (if there be any) may re-enact the Statutes passed by the Central legislature in British India. It is, however, pertinent to point out that in certain respects the legislatures in some Native States have already enacted statutes, the provisions of which are not identical with those contained in the Bills, as for example in *Baroda* and *Mysore*. Difficulties may, therefore, arise in practice, as in the case of the various States of the United States of America, leading to conflicts of law in matters of marriage and divorce. Secondly, as the Government of India Act stands today, it is impossible for the Central legislature to legislate with respect to agricultural lands. Parallel legislation will have to be undertaken by the various provincial legislatures; and it is a matter for doubt whether such legislation would ultimately be on identical lines with that passed by the Central legislature. The provincial legislatures may like to introduce modifications to suit the peculiar conditions of their province. For example, a system of inheritance likely to lead to fragmentation of holdings as a result of simultaneous succession by many heirs may not be accepted in a *Rayawari* province like *Bombay*. *Zamindari* provinces may still like to adhere to the rule of primogeniture on the lines of impartible property, so as to preserve big estates intact. It is thus not improbable that the system of inheritance may become confused still further by having two rules, one for agricultural property which forms the wealth of the great majority in this country, and another for non-agricultural property. It has also to be borne in mind that the different provinces have so far developed along different lines; and what appears to be a revolutionary reform for one province has already been recognised as settled law in another. For example, the position of women and particularly that of a daughter in *Bombay* compares very favourably with that in the other provinces, as in *Hidras* or *U. P.* Certain *dysgenic* marriages are tolerated in *Bombay* and *Madras*, like marriages with the daughter of a maternal uncle or of a paternal aunt; but these are definitely prohibited in other parts of India. In deference to the practices prevalent in Southern India the Bill on marriages takes the retrograde step of permitting such *dysgenic* marriages for the rest of India also. I see no reason why provinces which in some matters have already reached a certain state of growth and progressive development should arrest their further growth, and be even made to regress for the sake of uniformity. On the other hand, no complications would arise if we retain different schools of law in this country; because it is a recognised principle that a person governed by one school of law carries that

law with him wherever he goes in India, unless it is shown that he has adopted the law of the place where his family has settled. It is of interest to note in this respect that the Bill on intestate succession before us excludes from its operation persons who are governed by *Marumakkattayam*, *Aliyasantana* or *Nambudri* law of inheritance; and that they do not seek to regulate inheritance to impartible property. It is a matter for consideration whether persons who follow a customary law would be prepared all of a sudden to exchange it for a system based upon Hindu texts and modern uses of equality. As a matter of fact, by clause 6 of their Bill on Marriage the Committee are prepared to recognise marriages according to custom which would leave free scope for endless diversity making uniformity a mere dream. I would, therefore, submit that if at all codification is to be made it should be done by the various provincial legislatures who can certainly legislate even with reference to non-agricultural property, intestacy and succession save as regards agricultural land, having been included in the concurrent legislative list.

Apart from these general considerations, I am not in favour of unconnected Bills like these being passed piecemeal by the Central legislature. In order to appreciate the true import of the provisions in these Bills it is necessary in my opinion to have the entire Code before us. I cannot, for example, conceive how it would be possible to give a considered opinion on questions of forms of marriage, which assume the principle of monogamy, without having any idea as to what provisions are going to be made for dissolution of marriages. We do not know at this stage what legislation is contemplated for inheritance to joint family property; what provision is going to be made for maintenance of the daughter-in-law and other dependents; how the son's duties and pious obligation will be squared with the new system of inheritance; or how the law relating to guardianship is going to be modified. All these questions must necessarily be considered together before we embark upon any legislation relating to intestate succession and marriage. In my detailed criticism on the various clauses of the Bills I shall have occasion to point out more than once that the framers have omitted out of consideration certain serious consequences which are likely to follow from the proposed enactment. That was precisely the defect which made the *Deshmukh* Acts unworkable in practice. It is obviously impossible to consider each individual item of personal law in isolation. The repercussions of reform in one part on the other parts are many and inevitable. A law which has waited for codification for thousands of years can certainly afford to wait for a few years more. I would, therefore, suggest that the Bills should not be introduced in the Assembly and got passed in this piecemeal fashion. The Committee contemplate that the entire Hindu Code will be complete by 1946. I would submit that we should wait till that year. It is only when we will have the draft of the whole Code before us that its provisions can be scrutinised and considered as parts of one complete system. At present we cannot see the wood for the trees.

II.—IDEALS UNDERLYING THE BILLS.

Before I pass on to a detailed criticism of the various clauses of these two bills, I would like to make a few submissions about the ideals which seem to have inspired the Committee in their labours. With the greatest respect I must say that the Committee have proceeded entirely upon doctrinaire considerations, divorced from the realities of present-day Hindu life. *Smriti* writers have invariably recognized that there could be no universal law for all Hindus; because Hindu society contains in its fold different strata of culture and development. Thus, for example, although the *Brahma* form of marriage was approved by the *Smriti* writers, they also tolerated the *Asura* form, where bride-price is paid by the husband and which still obtains among the masses. It has all along been recognized by Hindu legislators that illegitimate children of *Sudras* should have greater right of inheritance as the marital tie among them was not quite so strong. The Committee have paid scant heed to this difference in culture and progress within Hindu society; and I for myself do not think that the majority of the lower classes will easily adopt their idealistic views. The Committee have also tried to put new wine in old bottles. On the one hand they assume the necessity of the joint family so far as its burdens and liabilities are concerned; but the legislation which they have actually framed seeks to disrupt that family by conferring absolute shares on widows and daughters. Thus, the Committee hope to make provision out of an intestate's property for the maintenance of his parents and even of his daughter-in-law which proposal would not be countenanced in any modern country governed by individualistic notions. In their scheme for simultaneous succession, the Committee have taken for granted that a son of a predeceased son and even the son of a predeceased son of a predeceased son should get inheritance. The Committee forget that this practice is based upon a fundamental principle of Hindu Law, as it obtains today, that sons and grandsons and great grandsons have a birth-right in such property which must be preserved for them; and yet the Committee suggest that it should be reduced by absolute shares being given to widows and daughters. I will give one more instance to illustrate my point. The daughter's son in Hindu Law enjoys a specially favoured position; because it was always understood that he will give obligations to his maternal grandfather. His position is thus based upon special texts (See *Mann IX 136*) which assume that a *Shradha* is a necessity of Hindu life and that obligations must be given to the dead. The Committee have now accepted the principle of intercaste marriage. It is, therefore, likely that a Brahmin's daughter may, to take an extreme position, marry an untouchable *Sudra*. I wonder whether the Brahmin grandfather would like obligations to be given to him by a son born of such union; or even whether

there is any provision in Hindu scriptures that oblations can be given by such grandsons. I cannot, therefore, see the Committee's logic in preferring the daughter's son to the son's daughter, and retaining his privileged position in the scheme of inheritance. One of the main criticisms against the Committee's efforts would, therefore, be that they have tried an impossible compromise between established ideas of Hindu jurisprudence and modern ideals of individualism and equality.

III.—CONTROVERSIAL PRINCIPLES ADOPTED IN THE BILLS.

The first question of principle in the Bill on intestate succession about which there is likely to be great controversy is that of the widow's limited estate. The bills abolish this kind of estate and provide that a widow shall inherit absolutely. It is obvious that the same principles will be made applicable to agricultural lands when parallel legislation is enacted by the provinces; otherwise, as I have already remarked, we shall have two systems of inheritance which will make confusion worse confounded. My remarks, therefore, assume that it is proposed that a widow shall inherit agricultural property absolutely as well. The Committee have given us no inkling of their proposals for inheritance to joint family property. They have left intact sub-sections (2) and (3) of section 3 of Act XVIII of 1937 which still retain the rule of limited estate for joint family property. Presumably, the Committee will later extend the principle of absolute estate to such property as well. I very much doubt whether the majority of the Hindu community will be agreeable to this reform. The reasons which the Committee give are not at all impressive. They think (1) that this disability of the widows is one of the most fruitful sources of litigation in our Courts today; and (2) that for the sake of protecting the property when the woman is not really in need it penalises her when in the time of real need she requires all the money she can get from the sale of the property. These two reasons appear to me to be self-contradictory to a certain extent. The very fact that this is a fruitful source of litigation itself shows that creditors are forthcoming to oblige the widows. If the creditors had really paid heed to the warning uttered in Mahomed Ashruff v. Brijassuree Dossee, 1873 (19 Weekly Reporter 426) the Courts would have been spared such suits. It will be acknowledged on all hands that the great majority of Hindu widows today (excepting a few who are educated and live in towns) are incapable of taking proper care of their property. Once they are enabled to dispose of the property without any restriction, I should not be surprised if they find themselves relieved of the property by unscrupulous friends. The rule is therefore absolutely necessary in the interests of the widows themselves. Jain families are mostly engaged in trade and business; and Jain widows naturally get better experience in management of property. Anyway the reason quoted by the Committee for following the Jain model would undoubtedly lead to undesirable mother-fixation. It must be remembered that Hindu Law did not found this rule upon any notions of a woman's inferiority. If that were so, a daughter or other Gotraja Sapinda women in Bombay would not have been given an absolute estate at all. A manager of a Hindu family also suffers from the same disability; for it is well known that he too cannot alienate property except for family necessity or for family benefit. Even a father suffers from restrictions in making gifts and wills of joint family property. In this respect therefore a widow is placed on the same footing as males and there is no scope for any inferiority complex on her part. The basis of the rule is that the property of the family should be conserved for the younger generation. It is this idea of trusteeship of the property which is really responsible for these restrictions. As was pointed out by that eminent Jurist Sir Paul Vinogradoff, the aim and essence of the arrangement was to provide the means of subsistence for the members of the joint family. This peculiar colouring is noticeable especially in the case of members who stand in need of help and protection as the widow and the spinster. These considerations do not apply to property inherited from a father by a daughter or by a sister from her brother; and that is why they are allowed to take absolutely in Bombay, though other provinces still lag behind in this respect. The Committee point out that in India Muslim women, Christian women, Parsee women, and Jain women all take a full estate, and that it is difficult to maintain that Hindu women alone are incompetent to enjoy full rights. This is a fallacious argument based again on the doctrinaire considerations of equality of sexes. The system of Muslim, Christian and Parsee personal law is entirely different, and does not expect a man to look after all sorts of dependents as a member of the joint family is expected to do in Hindu Law. In these systems no legal obligation is laid upon a man to look after his parents, grandparents, to maintain a daughter-in-law to arrange for the marriages of his sisters, and so forth. There is also no question in these systems of sons, grandsons and great-grandsons having a birth-right in the estate. If all these obligations are to be fulfilled, it is necessary that the estate shall be kept intact, and shall not be split up into portions which themselves can be taken away by each heir absolutely. The Committee explain that in their promised chapter on maintenance they intend to make proper provision out of the estate for the maintenance of the parents and widowed daughters-in-law. They do not say whether such provision is going to be made out of the son's share only; or if not, how the burden is going to be distributed over the widow's share also. In the latter case the widow will take the estate absolutely only in name. It cannot be emphasised too strongly that the justification of the rule is not a supposed inferiority of women based on the obsolete text of Boudhayana, but its

rationale is well founded in the current needs of Hindu society. It must be remembered that in this country, unlike England no provision is made for old age pensions, unemployment insurance, sickness insurance, etc.; and yet we find that in the English system of intestate succession a widow does not get an absolute estate. The effect of the English scheme of its distribution is given on page 587 of Volume 10 of Halsbury's Laws of England, Hailsham Edition. It will be found that a surviving spouse takes personal chattel and £1,000 absolutely. Subject to that she gets only one half for life if there are children; and she does not get all for herself absolutely so long as there are parents, brothers or sisters of whole or half blood, grand-parents, or uncles and aunts of the whole and the half blood. I submit that a system of intestate succession which has been found to be quite satisfactory in a progressive country like England would certainly be well suited to the position of Hindu widows today. In this respect I further wish to point out that the limited interest which a Hindu widow gets is far more effective than the interest which an English widow gets as a tenant for life. A Hindu widow has absolute control over income. The accretions and savings can be utilised by her. She is the full owner for all legal purposes. She has a limited power of disposal for necessary and beneficial purposes. There is no obligation upon her to maintain any person of her husband's family or to meet their marriage expenses. It has to be remembered that with the passage of time child widows will become rare. The average expectation of life of an ordinary widow would not be very long. It would be more in the interest of her children if she were to preserve the property for them rather than to fritter it away herself. So long as provision is made for her maintenance and personal comforts out of the property, I do not think that she is at all treated unjustly in not being given an absolute estate. It will be readily seen that to give widows and daughters a share in lands would lead to great fragmentation; and holdings would rapidly cease to be productive economic units. Almost everyone whom I have consulted has expressed himself against an absolute estate for a widow.

In these circumstances, I would suggest that the principle of an absolute estate for a widow adopted in the Bill should be dropped. The widow should be given the same share as a son. She should have the right to get it partitioned if necessary during her lifetime. During her lifetime she will have the limited estate in that share. In addition she should be also allowed the personal chattels of her husband (for which she may have a sentimental value) and also her own ornaments and jewellery. This is quite in conformity with ancient Hindu traditions and the present-day practice of Hindu society. A provision may also be made, as has been done by the Baroda State, following the English model, to give her a lump sum out of the estate absolutely for her personal use. The limits of this sum can be easily determined, but in no case should it exceed Rs. 10,000 for any estate. This expedient has been suggested by Smriti writers before. This should be the scheme in a case where the deceased has left children with whom the widow has to compete as an heir. I entirely agree that if there be no children, nor any immediate blood relations who have to be looked after, the widow should get the estate absolutely; because it will then be a matter of indifference whether she disposes of it herself. That is why a limitation of the number of reversioners is necessary. Here again, the English model can be followed; and only certain persons should be recognised as the reversioners. The limit should not go beyond brothers, parents and paternal grandparents, and paternal uncles of the deceased. In their absence the widow should take absolutely. I personally feel that this compromise will not only satisfy the just claims of the widow but would also meet with universal approval in Hindu society. This scheme will also do away with the evil of litigation by reversioners which the Committee have set their hearts to remedy. What I have said about the widow should be taken to apply *mutatis mutandis* to a widowed daughter-in-law also. The second question of principle concerns the daughter's share. In their memorandum on intestate succession the Committee had decided to omit the married daughter altogether, and had made the suggestion that the unmarried daughter should be included in the simultaneous succession group. In the Bill they have worked out a compromise which is a half-way house between the two. For, they have given all daughters, whether married or unmarried, half share each and have included them in the group of simultaneous heirs. I am afraid public opinion will not be prepared to admit a married daughter to inheritance. Hindu Society has always treated the obligation of getting a daughter married as of a very binding nature; and it is no exaggeration to say that many families have even incurred debts in order to fulfil that obligation. Marriage expenses of an unmarried daughter are to come out of the father's estate. It is, not, therefore, expected that she should also claim inheritance in her father's property after marriage. Smriti writers apparently intended that an unmarried daughter should get as marriage expenses one fourth of what she would get if she were a son. That was a rule which the Parsis followed till recently. In Muslim society also a daughter does not get the same share as a son. The question should not be decided by a reference to texts. Dr. Aftekar, in his book on the Position of women in Hindu Civilisation, expresses the view that the daughter should lose her share upon marriage. The son, it will be remembered, is responsible to pay the father's debts under the principle of pious obligation about which the Committee have not made any remarks. Since the marriage of his sister lots of things might have happened in the joint family. New burdens might have been shouldered; old incumbrances might have

been paid off by the efforts of the brothers; and it would be unfair to them that they should be asked to give the sister a share out of what remains after their father's death. Besides, the daughter is being provided for in her husband's family. Here I may add that the women whom I had the privilege of addressing in Bombay, Dadar and Poona have definitely expressed themselves against the proposal of giving a share to a married daughter. On the other hand, opinion is agreeable to making some sort of provision for the unmarried daughter. I accept the Committee's proposal regarding the quantum of shares. In my opinion, too, it should be one-half of what she would get if she were a son; but the son should have the option of giving it to her by actual partition or its equivalent whichever she chooses; and so long as the brothers give the equivalent at the time of her marriage they should be absolved from further claims. I quite envisage the possibility where a married daughter may become a widow, and may not get a sufficient share out of her husband's property to keep her in comfort. At present there is an obligation on the father to maintain her, but this obligation is not transmitted to the son because it is regarded as a moral obligation. I suggest that a provision should be made whereby this obligation would be turned into a legal obligation upon the brothers as well. I believe that this has been done in the Baroda legislation. I submit that these suggestions will again meet the just claims of the daughters without making serious inroads upon the estate of their father's family. As I have already said before the Committee have accepted the position that a predeceased son of a predeceased son is also an heir, which heirship is based upon the theory of birthright. The result has been that the group of simultaneous heirs has become so big that the son has practically very little prospect of getting anything substantial out of the estate; and yet he will be called upon to pay the debts of the father and to look after the family and its needs. To take a concrete case; if a man dies leaving a widow, one son, four daughters and a minor grandson by a predeceased son with his mother alive,—which is not an unusual case at all—the estate will be divided into five shares of which the son will only get one and still he will be required perhaps to maintain out of his share his widowed sister-in-law and to bring up the minor boy, to pay his father's debts, and otherwise to look after the family. I submit that this is hardly fair to the son; and in our enthusiasm to be just to women we may not swing to the opposite extreme of becoming unjust to men. Besides, it has to be noted that the Committee's proposal to extend the simultaneous group of heirs will split agricultural property literally into bits. Agricultural lands will cease to be economic holdings under this scheme; and the evil of fragmentation which is already prominent in our province will assume impossible proportions. The Committee's proposals on marriage make it possible for a sister to get married to persons of any caste which will again lead to further complications.

One more question which is likely to arouse very keen controversy is that of intercaste marriages. The Bombay High Court has held, Anuloma marriages to be valid. This view, however, is not shared by the Madras High Court. Under the Hindu Law, Pratiloma marriages are definitely prohibited. Even in Anuloma marriages the children of the Union do not get the same share in inheritance. It is true that restrictions of caste are rapidly breaking down. But we should not confuse freedom of marriage with inheritance. Even today any Hindu who wants to go in for a Pratiloma marriage can do so under the Special Marriage Act. There are certain disabilities attaching to him under that Act; and once those disabilities are removed, as the Committee proposes to do in their Bill, no one should have any grievance so far as freedom to marry is concerned. But it is a different thing altogether to insist that even so he shall continue to claim a share in the family property. In effect, we will be allowing him to bring into the family strangers whom the other members of the family may not be able to suffer. No law should be in advance of public opinion. It is even curious to find that the Committee have not paid sufficient attention to the question of marrying outside the Hindu religion. I submit that in fairness to the other members of the family, who may not be so progressive, a provision should be made that an Anuloma marriage or a marriage outside the Hindu religion should automatically operate as a separation from the family; and unless the father wishes to give such son a share he should get nothing after the father's death. I have already made my remarks about a share to a daughter. If it is decided to give her a share, then she should certainly forfeit it in the case of a Pratiloma marriage, unless the family are themselves agreeable to the marriage. As regards the law of succession to be applied to the children of such marriages, I think we should not insist upon the strict Hindu rule as applied by the High Court of Bombay. The ordinary Hindu law of succession should be made applicable to the property left to them by their father.

IV.—REMARKS ON CLAUSES IN DETAIL

I will now pass on to consider the separate clauses of the Bill in greater detail. I will first take up the Bill on Intestate Succession.

Clause 2 (d) defines heritable property to mean property which belongs to an intestate in his or her own right and passes by inheritance as distinct from survivorship. The illustration to the clause does not appear to be complete, and is

likely to give rise to some difficulty in interpreting the definition. For example, it is not made clear as to whether a share which a son gets on partition from his father is to be treated as heritable property. The case of a sole surviving coparcener should also be made clear.

Clause 2 (e) defines a Hindu to include any person who, if this act were not in force, would be governed in matters of intestate succession by the Hindu Law. The Committee propose, in their other Bill, to dispense with the application of the Indian Succession Act to persons who will contract a civil marriage in future. There are a number of persons today who have contracted such marriages under the Special Marriages Act of 1923, because their marriage would perhaps have been declared invalid under the existing Hindu Law, being Sagotra or Pratiloma and so forth. These persons had to put up with the inconvenience of the Indian Succession Act being made applicable to their children. I am certain that a great majority of them would like to be governed by the regular Hindu Law. I would, therefore, suggest that the definition of the word Hindu should be made to include such persons if they make a declaration that the Indian Succession Act should not be made applicable to their cases.

Clause 2 (h).—This clause excludes a *dāsi*putra. The intention, therefore, appears to be that illegitimate children shall not get anything; because ordinarily the words "son" and "daughter" are never taken to include illegitimate sons and daughters. This, in my opinion, is a very unjust proposal, inspired by sheer puritanism. Throughout the ages Hindu Law has made provision for illegitimate children. Among the Savarnas they get maintenance; and among the Sudras they get inheritance as well. It has to be remembered that Vijñaneshwara, the author of the *Mitākshara*, was himself a Yati; and yet he specifically approved of this rule. (See *Mitākshara* Ch. I, section 12, verses 2 and 3). There is real need for making provision for such children particularly in the lower classes, and even in the upper classes; because the usual tendency of men is to shirk such unpleasant burdens. The father is compelled to maintain his illegitimate children during his lifetime. (See section 488 of the Code of Criminal Procedure). If minor illegitimate children are left behind by a man I see no reason why his estate should escape the burden altogether. It is noteworthy that in England some provision has been made now by the Legitimacy Act of 1926. There is one peculiar problem in Hindu Law which will arise in this connection; and that is succession to dancing girls and *naiyans*. Their children are by definition never legitimate. The result would be that their own stridhan property, as defined in the Bill, will never descend to their daughters, or to their sons. I am of opinion that justice requires that the old rule of Hindu Law about illegitimate children should definitely be retained, more especially if we are going to adopt a rule of monogamy; because such rule is bound to lead to illicit connections for the progeny of which a father would be only too glad to disown all responsibility.

Stridhan is defined in clause 2 (i). The definition is no doubt based on the general principles accepted by Vijñaneshwara. I would like to point out that a distinction was made in Hindu Law about property which was received by a woman as a gift from strangers during coverture. The reason was obviously to discourage women from soliciting presents from strangers, perhaps in consideration for illicit intimacy. That distinction was intended to promote marital harmony. I would, therefore, suggest that for the words "after her marriage" the following words should be substituted; "by a gift from a relative after her marriage".

Clause 6, Class I.—I have already made my remarks about the undesirability of having so many heirs in the group of simultaneous heirs. I should be inclined to drop the married daughter altogether for reasons which I have already explained and to admit the unmarried daughter to inheritance as described before. Instead, the widowed daughter-in-law should be provided for, as the Committee originally wanted to do, by giving her a definite share, of course for life. I see no special reason why the daughter's son should now get a preference over a son's daughter. I have already explained before that this preference was due to his special position as a person who could give obligations to his maternal grandfather. Stridhan are rapidly falling out of fashion; and no injustice would be done if the son's daughter, whose claims are really more urgent in her father's family, gets recognition before the daughter's son. It must be remembered that the daughter's son has inheritance besides in his own family; whereas the son's daughter would have no inheritance if she is postponed to the daughter's son. I would also suggest that the paternal grandfather and the paternal great-grandfather should come immediately after the parents. It is absolutely necessary to make provision for old people who may not live long; and we can at the same time enact that inheritance should pass after their death to the next heir, namely, brother.

It is a matter for consideration whether the preference shown at present to sisters (and sisters' sons) should be continued even when they will be permitted to contract Pratiloma marriages. I have already touched upon this point before.

Clause 7 (b).—This clause provides that each son of the intestate shall take one share, whether he was undivided or divided from, or re-united with, the intestate. The Committee explain that "on this point there has been a conflict of judicial decisions and we have adopted the view which leads to the simplest rule". With the greatest respect I must say that the Committee have not paid sufficient attention to the real difficulty in this case. In the first place I do not think that there is any conflict of judicial opinion at all.

worth the name. The subject will be found discussed on pages 33 and 412 of Mulla's Hindu Law. It is made quite clear there that the High Courts of Bombay and Madras accept the view that on the death of a father leaving self-acquired property, an undivided son takes such property to the exclusion of a divided son. This is based upon a decision pronounced by Mr. Justice Ranade, whose views on Hindu Law should certainly be entitled to the greatest respect (See *Fakirappa—V—Yellappa* I. L. R. 22 Bombay 101). *Jardine J.* in that case has given the rationale of the rule as founded in convenience. As against this we have only a decision by a bench of the Chief Court of Oudh consisting of *Stuart C. J.* and *Srivastava J.* (A. I. R. 1930 Audd 77). They themselves relied upon a decision of the Allahabad High Court, namely *Kunwar Bahadur—V—Madho Prasad* (49 Indian Cases 520) which, as has been pointed out in Mulla's Hindu Law at page 33, does not support their view. The New Edition of *Mayne's Hindu Law* accepts the Bombay and Madras view without any comment (See pages 643 and 644). Apart from the authority of texts the reason for the rule is obvious. In the first place if even a divided son is to get a share, there will be no incentive for the sons to live together with the father; and in his old age, the father will be left absolutely uncared for because the sons would know that in any event they are going to get inheritance to his property. Secondly, a son who separates would not ordinarily become responsible for the debts incurred after separation whereas the son who lives in union would be. In these circumstances it will be unfair that the divided son should also claim a share in the property. Hindu Law has always recognised the father's power to effect a separation during his lifetime. I do not think that any one has ever suggested that the present rule is unjust to the divided son; and I see no reason why it should be abrogated.

Clauses 10 and 11.—In my opinion, these clauses should be deleted, excepting sub-clauses (1) and (2) of clause 11. The Committee themselves have no objection to this course. They represent a relic of the past and would not be applicable to any concrete case in present times. So far as the property acquired by hermits is concerned, the ordinary law of religious endowments will be found quite sufficient. Sub-clauses (1) and (2) of clause 11 may however be retained; but in clause 11 the words "by becoming," upto "brahmachari" should be dropped. The remaining words are quite sufficient for the purpose.

Clause 13.—This clause speaks of stridhan in so far as it consists of heritable property. The explanation in this clause which refers to entry (9) in sub-clause (b), namely the mother is not quite clear. It is not made clear how a mother of a woman would be a widow of her husband. There seems to be some confusion. At least I have not been able to grasp this particular provision.

I submit that the distribution of stridhan property is rather faulty. The Committee have given reasons why they prefer a daughter or a daughter's daughter or a daughter's son, to the intestate woman's son. If, however, a daughter is to be admitted to a share, even though it may be half, I see no reason why the son should be postponed so far. If on the other hand, a daughter is not given a share, as I have proposed, then the present distribution may remain. Entries 8, 11 and 12 refer to husband's heirs, father's heirs and mother's heirs. It is absolutely necessary that there should be a limit to these heirs. I do not approve of the view that any heir of the husband, however distant, should get preference over the mother of the intestate woman. As a matter of fact, I am inclined to think that the mother and father should come before the husband's heirs. The old Hindu rule was based upon the distinction of approved and unapproved forms of marriages; and it was supposed that in the case of an approved form of marriage where a woman was presented to the husband her parents should not soil their hands with any of her property as that would savour of bride price. But this rule is only of historical interest; and justice requires that the parents should come before the husband's heirs. That would be more in accordance with the wishes of the deceased woman herself.

It need not be added that the definition of Stridhan may have to be amended if the widow is not to be given an absolute estate. The same remarks would apply to a share given to a wife on partition during her husband's lifetime.

Clause 17.—I have already made my remarks about Anuloma and Pratiloma marriages before.

Clause 18.—With the greatest respect, I must say that this clause appears to me to be very badly drafted. It speaks of an intestate's widow being unchaste during his lifetime and after her marriage. There appears to be no necessity for the words "after her marriage," because unchastity during the husband's lifetime would necessarily be after her marriage, unless of course a reference is intended to her unchastity during her maidenhood, which has no relevance at all. I quite appreciate the Committee's anxiety to protect widows from baseless allegations of unchastity made by unscrupulous revisioners; but I fail to follow clause (a) to the proviso which says that "provided that the right of a widow to inherit her husband shall not be questioned on the ground aforesaid unless the husband has deprived her of any portion of his property on that ground by a valid testamentary disposition subsisting at the date of his death". The Bill seeks to govern intestate succession. There could be no question, therefore, of having

a testamentary disposition unless again a case of partial intestacy is contemplated. I submit that this clause may be re-drafted so as to make it more lucid.

Clause 19.—This clause disqualifies a person who commits murder or abets the commission of murder, in furtherance of his or her succession to any property and provides that inheritance shall pass to the heir who is next in the order of succession. The rule of course is based on sound considerations of public policy, but the drafting has not been very happy. In England the rule is that a man shall not kill his benefactor and thereby claim his bounty. It applies not only to the criminal but also to persons who make title to the property by calling in aid the criminal's title. Besides, the rule extends to all felonious killing and has therefore been made applicable to manslaughter (See the discussion on page 594 of Vol. 10 of *Halsbury's Laws of England*, Hailsham Edition). In *Kenchava—V—Girimalappa* (I. L. R. 48 Bombay 569) it was held by Their Lordships of the Privy Council that the murderer was not to be regarded as the stock for a fresh line of descent, but as not existing when the succession opened. In the case of entries 3, 4, 6 and 7 in Class 2 of clause 5 this difficulty is likely to arise in the case of a brother; also, in the case of entries 3 and 4 in Class 3. Although a brother's son or a sister's son may claim independently under the Hindu Law and not through his parents, still the purpose of the murder would obviously be to accelerate succession. I would, therefore, suggest that the clause should be amended so as to provide for these difficulties. So also, all felonious killing should be included as in the English law and not only murder as defined in the Indian Penal Code.

Clause 20.—It is the object of this clause to remove the present disqualification about disease, idiocy, etc. But the Committee have gone further and have provided that "no person shall be disqualified from succeeding to any property on the ground of on any other ground whatsoever". The only disqualifications they contemplate therefore, are, a man renouncing the world, the unchastity of a widow, and a man committing murder. In my opinion, they have taken no account of certain other disqualifications which are already on the Statute book and certain others which should be put there. For example, section 2 of the Hindu Widows' Remarriage Act of 1865, enacts that all rights and interests which any widow may have in a deceased husband's property by inheritance to her husband shall, upon her remarriage, cease and determine as if she had then died. It is not made clear by the Committee whether this disqualification is to remain or whether the provision in clause 20 is so comprehensive as to abrogate this disqualification. The feeling of the Hindu society would definitely be in favour of retaining this disqualification; because a widow is after all supposed to be a continuation of her husband's personality and on that ground claims inheritance to his estate. I do not think Hindu society will be prepared to allow the widow a share in the estate if she remarries. Of course it is possible to reconcile these provisions by saying that section 2 of the former Act will come into operation after inheritance is vested under clause 20 of the proposed Bill; but then the matter should be made absolutely clear beyond doubt.

But the more important disqualification is that connected with conversion to other religions. It is a recognised rule of Muslim law that no non-Muslim can inherit to a Muslim. No such rule is recognised in Hindu law so far. Under the Caste Disabilities Removal Act a person who renounces his religion does not suffer in inheritance himself. At the same time, if a Hindu becomes a Mahomedan his Hindu collaterals cannot claim by virtue of the Act to succeed under the Hindu Law (see *Mitar Sen Singh—V—Maqbal Hasan Khan*, 57 Indian Appeals 313). It has already been recognised, however, that conversion to another religion automatically effects a separation from the family. I have already pointed out that the Committee wish to eliminate the distinction between divided and undivided brothers so that a person who changes his religion can still claim inheritance in his father's property, even after separation. I feel that Hindu Society will not be agreeable to such a proposal. The position indeed is very anomalous, because it is held in *C. V. N. C. T. Chadambaram Chettyar—V—Ma Nyein Me* (I. L. R. 6 Rangoon 243) that if a married Hindu became a convert to Mahomedanism and married a Muslim wife and had children by her, the persons entitled to his estate on his death are his Mahomedan wife and children and not his Hindu wife. On the consideration of reciprocity and in deference of Hindu sentiment, I feel that a provision should be made that a man who changes his religion, like a widow who remarries, should be regarded as civilly dead, so far as inheritance is concerned. As I have pointed out before, this principle should also be extended to the case of a daughter, whom it is now proposed to give inheritance, by providing that she should forfeit all share in the family property if she marries a person professing another religion. If necessary the Caste Disabilities Removal Act may be suitably amended.

Finally, I wish to make one comment about this Bill on intestate succession. The Committee have not given any indication as to what provision they propose to make for the father's debts. No scheme of intestate succession should be completed without a provision for debts. Usually they come out of the estate; and under the rule of pious obligation the estate in the hands of the son becomes liable. It is a matter for consideration whether the estate in the hands of the widow or daughter to whom it is proposed to give a share should not be equally liable. This position should be made clear

in justice to creditors. Similarly, it is not made clear how provision is going to be made for the maintenance of dependents whom the father was under a legal obligation to maintain.

From the District Judge, Broach and Panch-Mahals, Broach.

I welcome the proposed Act aiming at codifying the Hindu Law of Intestate Succession. It is a wholesome measure and will remove the long standing iniquity from the Hindu Law of inheritance.

The proposed measure is confined to separate property of an Intestate. This narrow scope of legislation will lead to undesirable litigation and harassment to Hindu women for whose benefit the reform is to be made. The modern Hindu Society desires to remove the sex disqualification by which Hindu women in general have hitherto been precluded from inheriting property; if the proposed measure is to be really beneficial to Hindu women, it should apply to all properties, joint or separate and should negative all customs obstructing the reforms.

That the proposed Act will not apply to the agricultural lands will present another difficulty unless it is supplemented by a simultaneous legislation in the Provinces relating to the agricultural lands.

Some provision should be made for non-Hindu Communities governed by Hindu Law of Succession on grounds of custom.

From the District Judge, East Khandesh, Jalgaon

1. At the outset, I would state that it is not convenient for me to express my views on either of the Bills as they form only a part of an exhaustive enactment and some provisions thereof will have to be considered in the light of other parts (which are yet to be introduced) and it will be rather premature to express my views on this piece-meal codification of an important branch of substantial law.

2. From careful perusal of the provisions of the Bill (regarding intestate succession) and the Statement of Objects and Reasons appended thereto it seems that the promoters of the Bill have, in their anxiety to frame a uniform legislation applicable to the whole of India and bestow additional rights on the females, shown considerable disregard to the well established principles of ancient Hindu Law as well as to the trend of rulings of the Privy Council and various High Courts, by effecting radical changes, in the line of succession which was based on practical experience as well as religious sentiments. Some of the defects, vividly apparent in the skeleton of the Bill, are mentioned below:—

(1) Original line of (Dayabhaga) succession is rendered topsy turvy by placing female heirs above the male heirs in classes 2 to 5 and by introducing the daughter as one of the simultaneous heirs in clause 1.

(2) Allotment of a share to divided son (section 7 b) along with other heirs, appears to be unjustifiable.

(3) Allotment of equal shares to all daughters whether married or unmarried, widow, rich or poor, with or without issue, does not seem to be equitable.

(4) Curtailments in the list of disqualifications (Section 20) is not desirable in view of public interest.

(5) Exclusion of a Dasi-putra from succession, even to the estate of a shudra, appears to be unjust.

(6) Inclusion of daughter and other female relations who have gone in other family by marriage in the term of 'Agnate' (Section 2(2b)) does not appear to be warranted.

(7) Right to succeed had a responsive relation with the spiritual efficacy according to ancient Hindu Law. At present the arrangement of heirs does not appear to have been based on the spiritual efficacy which is the test of propriety.

(8) The Bill presupposes enactment of a separate legislation to determine the mode of succession to agricultural lands. If that enactment is not introduced by Government or if the line of succession adopted in such an enactment be not the same as herein proposed, then two different modes of succession in respect of the estate of the same person, will have to be adopted. This would be anomalous.

(9) Some sort of distinction between the rights of an adopted son and those of an afterborn natural son, was necessary to be made. The treatment of the adopted son (either Dattak Dwyamushyan or Kritrim) on the same level

as that of an after-born natural (पुत्र) son is rather obnoxious in this respect and does not conform with the texts of the ancient Hindu Law.

(10) The investment of "absolute right" over the property to a woman contemplated in section 12 is likely to have the effect of depriving permanently the testator's family of the portion of the property allotted to her. This state of thing is certainly undesirable from the point of social dignity of the family. "Limited estate" has been upheld to be a golden medium to meet the requirements of the women and the family.

(11) Section 18 of the Bill relating to the disqualification of a widow on the ground of unchastity during the life-time of her husband is rendered ineffective by the addition of the provision below the same. The mental condition of husband of such woman (who presumably wanted to hide their shame from the public) should have been sympathetically considered, and the condition of testamentary disposal

excluding the widow on the ground of unchastity should have been left to be inferred from the line of conduct adopted by him.

For the reasons discussed above I find myself unable to agree with the Bill in its present form and stage.

With these remarks I would suggest that the Bills may be sent for public opinion once again before final sanction is taken as they affect matters of vital interest of the Hindu community.

From the District Judge, Satara.

2. Before dealing with the various clauses of the two Bills, I should like to offer some general remarks. It appears from the preamble that the whole of the Hindu Law now in force in British India is to be gradually codified, and the Committee has first taken up the codification of the general law of Intestate Succession and the law relating to marriage. In my opinion this piece-meal codification is not desirable in the long run. The whole of the Hindu Law in all its different branches must be codified at one and the same time. Such codification will enable all concerned to have a comprehensive view of the whole legislation. This procedure will avoid any conflict between the different provisions of the various branches as is likely to arise by a piece-meal codification as attempted at present. If we go on codifying piece-meal like this, we may reach a stage at the end when it will become necessary to have extensive amendments and alterations. In any case, the proposed Bills if passed are to come into operation from the year 1946. There being ample time at the disposal of the legislature, I think it would be better to codify the whole law before that date or by some subsequent date.

3. The proposed Bill relating to Intestate Succession only deals with heritable property. The Bill is applicable to every Hindu resident in any part in India. It embodies a common law of Intestate Succession of all Hindus in British India irrespective of the question whether they are governed by the 'Dayabhaga School', the 'Mitakshara School' or by any of the sub-divisions of the Mitakshara School like the 'Mayukha', etc. It removes the sex disqualification by which Hindu women in general have so far been precluded from inheriting property. It has done away with the "limited estate" of Hindu women. The above outstanding features of the proposed Bill are in consonance with the ideas of modern society and as such should be acceptable to all reasonable persons. The provisions of the Bill cannot naturally apply to agricultural lands in view of the ruling of the Federal Court in the matter of Mr. Deshmukh's "Hindu Women's Rights to Property Act". It will also not apply to the undivided property of a coparcenary governed by the 'Mitakshara'. The Committee has left that question to be dealt with when the Mitakshara joint family comes in for the consideration. In my opinion this course does not appear to be proper. The question of the Mitakshara joint family ought to have been considered in this very Bill. The law of succession must provide for every kind of property held by the deceased. Such piece-meal legislation is likely to produce more litigation particularly in provinces like Bombay where the Mitakshara school prevails. The Committee might, therefore, consider the desirability of dealing with the Mitakshara joint family in this very Bill. I might suggest in this connection that the law of succession must be uniform and the same whether the deceased was at the time of his death joint or separate or whether the property left by him is his self acquired or joint family property. This will simplify matters and put a stop to a lot of litigation.

4. The rules of Intestate Succession proposed in the Bill are made as simple as possible. Clause 5 of the Bill, the most important section which enumerates 5 classes of heirs. There are in all 29 heirs in their order of seniority. The list appears to be exhaustive. The order of succession amongst those heirs appears to be quite in consonance with natural affection and can be supported on ground of justice and equity also. Wills are now common amongst the Hindus and anybody who does not like the particular mode of succession laid down by this Act would be at perfect liberty to make a will and regulate the succession according to his or her own wishes. There can thus be no hardship on anybody.

5. The most important change made in this Act relating to the position of the daughter. She is given the same status as the son. The distinction between the married and the unmarried daughter as well as that between a rich and the poor daughter is done away with. All daughters have the same status. This is a reform in the right direction and is absolutely necessary in view of the changed conditions of modern society. There is bound to be some difference of opinion regarding the share to be allotted to the daughter. The Bill proposes to give the daughter a share equal to half that of the son. In my opinion the daughter should be given a share equal to one fourth of that of the son. This will be in accordance with the dictum of Vijayneshwar. In fact the Committee had first proposed to give a one fourth share to the daughter but in deference to certain criticism, they have increased it to one half. The daughter after all leaves the father's house and goes to her husband. She takes with her whatever

share she gets in her father's property. She also gets a share in her husband's property. Taking this into consideration as well as the notions of Hindu society in general, I think the share to be allowed to the daughter should be one-fourth of that of the son.

6. The rules regarding the order of succession between the agnates (Gotrajas) and cognates (Bandhus) other than the enumerated heirs are simple and clear. They have done away with the confusion created by the conflicting decisions of the various High Courts and the Privy Council.

7. Clauses 12 to 14 of the bill deal with Stridhan. The all-pervading Mitakshara definition of Stridhan has been accepted. It is gratifying to note that all distinctions between technical, non-technical and other kinds of Stridhan are done away with. This is certainly a step in the right direction. As the woman takes an absolute estate in any property inherited or possessed by her, it is really unnecessary to define Stridhan. According to the bill there is no distinction of sex so far as inheritance is concerned. It is therefore unnecessary to have two sets of rules for the order of succession to Stridhan as proposed in the bill. The bill provides one set of heirs for property inherited by a woman from her husband and another set of heirs for other property. In my opinion this distinction should be done away with and there should be the same set of heirs for every kind of property held by a woman whether it be inherited from her husband or other relations or acquired otherwise.

8. The provisions of clause 18 dealing with the disqualification of a widow on grounds of unchastity during the husband's lifetime are very important. The stringent provisions are absolutely necessary in order to protect widows from being blackmailed by unscrupulous reversioners. It is said in some quarters that these provisions practically put a premium on unchastity. However, considering the eventual consequences, the provisions as proposed in Clause 18 are salutary and deserve to be retained.

15. I would, therefore, suggest that suitable amendments be made in the two bills as proposed above.

FROM THE COMMISSIONER, CENTRAL DIVISION NO. A. D. M. O/1484, POONA, AUGUST 20TH, 1942.

With reference to Government letter No. 6039/4-B, dated 12th June 1942, I have the honour to submit a copy of the reply from the District Magistrate, Sholapur with whom I agree.

FROM THE DISTRICT MAGISTRATE, SHOLAPUR.

I enclose the opinion of the District Government Pleader, Sholapur, which deals with the main points.

FROM THE DISTRICT GOVERNMENT PLEADER, SHOLAPUR.

In section V, the daughter is classed practically on equal footing with the son though she takes half the share of what a son gets. If daughters are classed with the sons, that would very easily lead to the disruption of a joint Hindu family. The grand idea at the root of a joint Hindu family can only be conceived by those who think over it. Sir Bhupendranath Basu who was a great Bengali lawyer had a great admiration of the system of a joint Hindu family and his ideas are quoted with approval by H. G. Wells in his book "An outline of History of the World". Personally I am a great appreciator of the system of a joint Hindu family because in that system the principle of "Service Above Self" is involved and therefore, on the ground that inclusion of daughter alone with a son would easily lead to the disruption of a joint Hindu family system. I am personally against classing her with the son. In my opinion, a daughter should come under class 2. Excepting the above, I agree generally with the principles involved in the bill.

FROM THE COMMISSIONER, NORTHERN DIVISION, No. M.S. C-118 SHAKTIBAGH, AHMEDABAD, 28TH AUGUST 1942.

After consultation with the District Magistrates of Kaira, Broach and Panch Mahals and Surat I offer my opinion that the two Hindu Code Bills proposed to be introduced in the Central Legislative Assembly are interesting movements in the direction of reform and are likely to be generally supported in most of their provisions by liberal minded persons of the Hindu community.

2. The main features of the Hindu Code (Part I) are (A) that it provides a common law for intestate succession for all Hindus in British India, (B) that it removes the sex disqualification by which Hindu women have hitherto been prevented from inheriting property in various parts of India.

3. It is widely admitted that Hindu Law in its treatment of women in the matter of succession is out of touch with modern Hindu advanced thought. In these days when Hindu women have made such rapid advance in education and in various professional activities, it is no longer possible to justify the exclusion of women in any part of India from the inheritance of property merely on the ground of sex.

FROM THE SECRETARY, BOMBAY, ADVOCATES' ASSOCIATION DATED BOMBAY, 18TH AUGUST 1942.

My Association also feels the necessity of having all the proposed parts of Hindu Law codified so that the Code may

be considered as a whole and not in a piecemeal manner as now proposed.

My Association has also considered the provisions of the Bill relating to intestate succession, the Statement of Objects and Reasons, Explanatory notes and appendices, and while supporting the provisions of this Bill generally, my Association offers the following specific suggestions:—

The term "Hindu" has not been defined. It will have to be defined and my Association hopes that the same will be defined in other parts of the Code.

My Association is also of the opinion that a restriction should be laid down that an heir to be entitled to succeed to the property of a Hindu must be a person professing the Hindu religion at the time of the succession and that non-Hindus should be excluded from succession.

It is proposed in the note annexed to the Bill, that in other parts of the Code provision would be made for the maintenance of mother and father and hence mother and father have been included in Class II of Clause 5 of enumerated heirs on the basis of the usual rule that descendants should be preferred to ancestors and their descendants. My Association feels that injustice is thereby done to parents. Out of his love for his son, father educates him at a great sacrifice and spends a lot out of his income. In case the son is in affluent circumstances, father naturally expects to be helped by his son. Provision of maintenance alone would not be a sufficient compensation. By putting daughter's daughter under entry 4 in Class I of Clause 5 in preference to mother and father, the property would go in a remotely strange family. Daughter's son occupies a privileged position in Hindu Law and hence there can be no complaint of his being included under entry 2. Property should, as far as possible, remain in the family. My Association, therefore, suggests that Class I, Clause 5 should be headed as "Widow, lineal descendants, mother and father" and mother and father should be put down under entries 4 and 5 respectively and daughter's daughter should be provided under entry 6 in the same class.

Consequently Class II, Clause 5, should be headed as "Father's descendants".

In Clause 13 while enumerating order of succession to Stridhan property, my Association feels that injustice has been done to sons by putting them after daughter's issues. This Bill proceeds on the basis of giving rights of succession to daughters in their father's property and doing away with the principle of a limited estate. When a right to succeed to the father's estate is conceded to the daughters jointly with sons, in fairness daughters and sons should succeed jointly to the stridhan property also. The son's share may, however, be half of the daughter's just the reverse of the share allotted in father's property.

FROM THE SECRETARY, HINDU MAHILA SAMAJ, BOMBAY, DATED THE, 24TH JULY 1942.

I am very glad to inform you that the General Meeting of Hind Mahila Samaj was held and the two bills were discussed upon. All the members agreed on every point but one, and that is the property inherited by a wife when her husband dies does not become her absolute property. It is her property only during her life time, as it is stated in the bill. So we want to suggest that such property should become wife's absolute property. The other thing is that the bills should not be delayed till 1946, but they should come into force before that if possible.

Nothing else is to be suggested.

FROM THE COMMISSIONER, SOUTHERN DIVISION, No. M.S.C., DATED BELGAUM, 14TH AUGUST 1942.

The District Magistrates, Bijapur and Belgaum state that the provisions in the Bill regarding intestate succession are suitable; the District Magistrate, Dharwar, states that the provisions which give the daughter a right to inherit her father's property along with the son are not in the interest of the 'Hindu Family' as it will create larger number of sharers and will accentuate family conflicts. I entirely agree with this view and would point out that the provision if embodied in an Act is bound to have very harmful effects and will lead fast to the disintegration of the Hindu social structure. As regards the daughter—

(a) an unmarried daughter should have a right to maintenance according to the status of the family; and

(b) should also be able to claim a reasonable share of her father's estate (preferably in the form of cash assets) as her marriage portion or 'Dowry'. To give a daughter anything more than this would only add to the possible field of family conflicts which are already had enough between brothers.

2. Clause 7 (b) requires to be amended to the effect that the divided son should be given a share, only in the absence of undivided or reunited sons as the present provisions would give him a double share which is not equitable.

FROM THE REMEMBRANCE OF LEGAL AFFAIRS, No. 6479, DATED BOMBAY CASTLE, 10TH AUGUST 1942.

I agree with the principles of the Bills.

FROM THE SECRETARY, BOMBAY WOMEN'S ASSOCIATION,
DATED THE 20th AUGUST 1942.

The Bombay Women's Association supports the General Principles of the two Bills.

We also accept the changes made by the Intestate Succession Act particularly the legal given to Hindu women to own property absolutely.

The suggestions and changes made by the Committee are sent herewith.

We are generally in agreement with the provisions of the Bill.

From Section 2 (d) it seems that this Bill does not apply to Mitakshara Joint family properties. Something must be done for them, for on our side joint family properties are a great problem, the widow and other female heirs get no share as there are male co-parceners, so that all the benefits provided by this bill to the women-folk will be nullified if the bill does not apply to joint family properties.

Section 4 (d) delete the words "Upon the heirs—if any, and add" to charity upon application to the Court as mentioned in section 10.

Section 5, Class II. The sister should succeed after the brother's son and before the brother's son's son.

Also brother's daughter and sister's daughter should be amongst the enumerated heirs.

Section 7 (b) would seem to favour the divided son at the expenses of the undivided. We are of the opinion that the divided son if he wants to succeed to the intestate property should bring his divided share into hot pot, so as to equalize the distribution, otherwise he would be getting a share twice over.

Section 10 to be deleted and substitute instead the following—

"If there is no cognate to succeed under section 4, the property shall on application to the court devolve to schools, hospitals, institutions or such other charities as the Court in its discretion thinks fit."

Whatever may have been the object of these rules in the past there is no basis for them at present.

We are against property escheating to the crown, though we know that a similar provision exists in most systems of law. Instead, we have provided for property going to useful and social charities which are very badly needed in the country.

Delete Section 11.3 (a), (b), (c).

Section 13 (b) we are of the opinion that since the property is the women's property apart from that inherited from her husband, the husband should take $\frac{1}{2}$ and the other half should go to the women's mother, father and heirs in her own family, who are after all her own kith and kin in preference to the husband's heirs, who are utter strangers to her.

After the husband's death without leaving a Will, the half which he intended from his wife should revert to her own family first. In default of any of her own heirs, the husband's heirs should take.

The heirs in Section 13 (9), (10), (11), (12) to come before heirs in section 13 (g).

Delete section 22.

FROM THE SECRETARY, POONA SEVA SADAN SOCIETY, DATED
POONA, 26th AUGUST 1942.

Though we as laymen feel constrained to give a definite opinion on the legal bearings on the provisions of the Bill, I am glad to say that we are in general agreement with the preambles of the Bills and their provisions.

FROM THE SECRETARY, ARYA MAHILA SAMAJ, DATED
BOMBAY-4, 8th SEPTEMBER 1942.

The Arya Mahila Samaj congratulates the Hindu Law Committee on framing the two Bills and is fully in favour of the Bills. The Arya Mahila Samaj, however, desires to make the following suggestions—

3. The widow of a predeceased son should be included as one of the heirs to the property of her father-in-law; and in Section 5 Class I—her place as an heir should come after son of a pre-deceased son.

FROM THE ADVOCATE GENERAL, BOMBAY, No. 12, DATED 26th
AUGUST, 1942.

My views on the Bills are in accordance with the views of the Bombay Bar Association which have been sent to you on behalf of the said Association.

FROM THE PRESIDENT, KOLABA WOMEN'S ASSOCIATION, DATED
ALIBAG, 28th AUGUST, 1942.

We approve of the broad principles of the bills. We humbly suggest that the Government of India should appoint to the Central Legislative Assembly at least one woman member for the purpose of discussion of the two bills.

FROM THE SECRETARY, ALL-INDIA WOMEN'S CONFERENCE,
(AHMEDABAD BRANCH), DATED 5th AUGUST, 1942.

We have the honour to send herewith our suggestions regarding the proposed Bills on Hindu Intestate Succession and Marriage.

1. Section 5, class I; clause (1) enumerates simultaneous heirs. In this we feel that to leave out the deceased son's daughter would be a great injustice. By losing her father she loses everything. Son's daughter is placed third in Class I but really speaking she must be put in clause (1) as

simultaneous heir because if we accept the daughter as an heir and when succession goes up to predeceased son a second generation now can we keep back the claim of the predeceased son's daughter?

2. In para. 13 (b) the order of succession to the Stridhana given in clause (b) puts the son far away. Justice and equity demand that when daughter is given a share in her father's property, a son should also be given as much share in the mother's property, i.e., he should get from his mother's Stridhana half the share of that of the daughter simultaneously with the daughter.

FROM THE SECRETARY, THE BOMBAY PRESIDENCY SOCIAL
REFORM ASSOCIATION, DATED THE 11th SEPTEMBER, 1942.

General.

The Explanatory Note annexed to the Bill states that the main features of the Bill are—

(1) that it embodies a common law of intestate Succession for all Hindus in British India;

(2) 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

(3) that it abolishes the Hindu Women's limited estate. The Association had, in its replies to the questionnaire issued by the Hindu Law Committee, expressed its desire that the diversity that one meets with at present in the law of succession should be soon put an end to and that there should be uniformity in the rules of Succession under Hindu Law throughout India in preference to the maintenance of rules governing particular school of law, as for example, Mitakshara, Mayukh or Mithila Schools of Law. The Association had also pressed for the removal of the restrictions placed on the powers of Hindu widow in respect of property coming to her whether by inheritance or on partition. The Association has all along been against the sex disqualification which precluded Hindu women from inheriting property. It is therefore a matter of satisfaction that these principles have been accepted as the main features of the Bill under consideration. The Association is consequently in favour of the Bill, subject to some points of detail which are mentioned below.

Details.

Clause 2 (1) (a).—This contains the definition of the word 'agnate'. The definition would exclude a female coming into a family by marriage. This seems to have been deliberately done as can be seen from the Explanatory Note. According to Hindu Law a girl upon marriage is deemed to be reborn in the family of her husband and as such becomes a *gotraja* or agnate in that family. It is no doubt true that it is only in Bombay that the enjoys special rights of succession on that basis. The Bombay School of Hindu Law has been known for its sympathies towards the rights of succession by females and much progress has been made in that direction. The Association is not in favour of undoing the good work that has already been done under the Bombay School of Hindu Law.

Clause 2 (b).—The question is whether a female should be an agnate in her father's family. The Association is in favour of the recommendation in the Bill that the Hindu Woman's limited estate should be abolished. Care should be taken to see that necessary and consequential changes are made in all branches of the law. It is however a quite different principle to include a female born in the family in the term 'agnate'. If it is considered that a female born in the family should be included in the term agnate, it is difficult to follow why a female who comes into the family by marriage should not occupy after the death of her husband the position which her husband occupied. In the Bombay Presidency the right of the widow of a Gotraja Sapinda is recognised. The interest however of such a widow is a limited estate. The note on the Bill at page 3 dealing with clause 2 sub-clause (1)-(a) (b) says that according to Hindu ideas a girl on marriage is reborn into the Gotra of her husband. The note however says that the Bombay School might accept the provisions of the Bill and give up the position occupied by a widow of a Gotraja Sapinda for more than half a century. The reasons given in the note are not convincing. The note admits that the authors of the Bill had framed a rule for the succession of the widow of a Gotraja Sapinda in their original proposals (see Rule 8 of the Rules for all India in the third Memorandum at page 19). The reasons given are unconvincing, and the change is inspired by a desire for uniformity and in deference to criticism from some other schools. A valuable right secured to a body of person cannot be frittered away on such grounds of convenience and compromise. It is inexplicable why a female born in the family is given the status of an agnate which is not recognised in any school of law except on the ground of special texts, as in the case of a sister in the Bombay Presidency, and why a widow of a Gotraja Sapinda who comes by marriage into the family should be deprived of her status and position recognised by judicial decisions and custom in the Bombay Presidency. This is not a logical step nor is it a necessary step. The proper course would have been to maintain the law as it is in existence and make an exception if necessary in the case of Bombay so far as the recognition of a female among the agnates of her husband's family is concerned. The whole aspect of the Hindu Law in the Bombay Presidency so far the widow of a Gotraja Sapinda is concerned is changed. The argument that she is less likely to be disinherited by will by a blood relation than by a relation by marriage is not convincing. The widow, the

mother, the step-mother, the paternal grand-mother are all females who come into the family by a marriage and are recognised as heirs by special texts. See section 5 Clause II-(4), Cl. III (1), Cl. IV (1). The Association is therefore in favour of maintaining the right of the widow of a Gotraja Sapinda. The Association no doubt agrees with the framers of the Bill that there should be uniformity of law throughout the whole of India. If it is considered desirable that there should be uniformity on this point throughout India, the right of a widow of Gotraja Sapinda, which is recognised in Bombay should be made applicable to all Hindus in the Country.

Another point which incidentally arises is referred to in the note at page 97 para. 1 of the Government Gazette where heritable property is referred to. It is stated rightly that the interest of an undivided coparcener in a Mitakshara Joint Family is not heritable property as it passes by survivorship to his surviving coparceners. The position is changed by Dr. Deshmukh's Act by which a widow is given a right. It is stated that a question will have to be considered when the question of the Mitakshara Joint Family comes under consideration.

Clause 2 (2) (b).—This clause will have the effect of doing away with the differential treatment meted out to an adopted son in case an *Aurasa* son is born after adoption and consequently it is an advance on the present position under the Hindu Law.

The *kritrim* son is not recognised as a son except under the Mithila School. The Association is not in favour of including the *kritrim* son in the definition of the word 'son'. The provisions 2 (1) (h) and 2 (2) (d) (iii) should therefore be modified and omitted respectively.

Clause 2 (2) (b).—Prior to the Hindu Women's Rights to Property Act, 1937, the widow of a predeceased son was entitled to maintenance, out of the joint family property and then too the maximum amount allowable to her on that account could not exceed the amount of the income that would have fallen to her husband's share if he were alive. As against the separate property of her father-in-law the predeceased son's widow could lay no claim. Justice was therefore for the first time done to the predeceased son's widow when she came to be recognised as an heir to her father-in-law under the provisions of the Hindu Women's Rights to Property Act, 1937. The Association sees no reason why that position should now be altered.

In the Explanatory Note an attempt has been made to show that the proposed change would not affect her much as she would under the Bill be getting a right of inheritance in the property of her father. The hypothetical case taken there appears a good one on the face of it. The question really is whether the ideal conditions assumed in the given illustration would be found to exist in actual practice. It is not rare that a girl from poor family goes into a rich family by marriage. We may assume that the husband dies at an early age before he could acquire any separate or self-acquired property. What then would be the position of such a girl if she were not to get any share in the property of her father-in-law? Since marriage she would naturally adopt a mode of life befitting the status of her husband's family and after the death of her husband, under conditions mentioned above, her lot would be nothing but miserable. The Association cannot therefore accept the view supported by the Explanatory Note as being just and equitable. After the position of the predeceased son's widow had been set right by the Hindu Women's Rights to Property Act, 1937, the change proposed in the Bill is retrograde and unjust.

Undue importance is given in the Explanatory Note to the possibility of predeceased son's widow being disinherited by her father-in-law by alienation or will. That risk is open to all the heirs.

The Association is in favour of the scheme outlined in Rule 1 of the Second Memorandum of the Hindu Law Committee. That rule, it may be mentioned, is the logical result of Brihaspati's dictum that a widow is the surviving half of her deceased husband.

Clause 12.—By clause 2 (1) (i) which defines, 'Stridhan', property which a woman acquires by inheritance, devise or at partition etc., is brought under the term stridhan. Clause 12 deals with the right of women over 'Stridhan' as defined in Clause 2 (1) (i). This clause gives to a woman the same powers to dispose of her 'Stridhan' by transfer *inter vivos* as by will as a man has over his property. Thus the result of this provision would be to do away with the disqualification to which she was so long subjected under Hindu Law. The Association is in full agreement with the provisions of this clause.

Clause 13.—This clause deals with the order of succession to Stridhan of a woman who has died intestate, that is without making a will. This is a considerable improvement on the proposals contained in the Fourth Memorandum of the Hindu Law Committee. The line of devolution proposed does not depart much from the one followed so long and consequently there can be no opposition to it. The Association would however suggest that mother and father who have respectively been given places Nos. (9) and (10), that is after the husband's heirs should be given places Nos. (6) and (9) and husband's heirs should be given place No. (10).

General Provisions.

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 right of succession on the ground of the caste of the parties to the marriage and that where there was a valid marriage the rights of succession should be irrespective of any restriction based on caste. The Association is glad to notice that the said view is embodied in this clause and consequently wholeheartedly supports the same.

Clause 18.—In its replies to the questionnaire issued by the Hindu Law Committee, the Association had advocated that unchastity should not be considered a disqualification in the case of women in matters of succession. The Hindu Law Committee had in the course of its Report observed that that was a subject on which Hindu opinion was extremely sensitive and suggested a compromise. The provisions contained in this clause embody the compromise suggested by the Hindu Law Committee. Realising that it is a great advance on the present position under Hindu Law and that it would serve as an adequate safeguard against blackmail by unscrupulous reversioners the Association would accept the provisions contained in this clause.

Clause 20.—The Hindu Inheritance (Removal of Disabilities) Act, 1928, had already made a change in the Hindu Law by restricting the disqualification on the ground of disease, deformity or physical or mental defect, to congenital lunacy or idiocy. The application of that Act was not extended to any person governed by the Dayabhag School of Hindu Law. The Original disqualification worked a great hardship and inequity and it is encouraging to find that the disqualification is wholly removed by this clause. The Association is entirely in favour of the proposed change.

Clause 21.—The provision contained in sub-clause (b) is the natural result of the absolute power of disposal given to Hindu female heirs under clause 12. There can therefore be no objection to it. In the case of other heirs who inherit simultaneously the rule is a simple and just one.

Opinion of the Sanatan Vaidic Dharma Sabha, Surat.

The Sanatan Vaidic Dharma Sabha of Surat is opposed to the above Bill on the following grounds.

(1) In drafting the above Bill, the members of the Hindu Law Committee seem to have entirely ignored the principle of religious efficacy in connection with the right of heirship and treated the subject only from a secular point of view, accepting propinquity as the only criterion of heirship. It appears from earlier Smritis that succession to the estate also carried with it the obligation to perform the Shraddha and the obsequies and rites which are needed for the repose of the deceased just as it entailed the duties of discharging the debts. But this point of view of the ancient law givers seems to have been entirely ignored in the Bill. Thus, amongst the heirs enumerated in Class I, Daughter's daughter is preferred as an heir to brother or brother's son, although she is not an agnate, and is incompetent to confer any spiritual benefit to the soul of the deceased like the latter.

(2) Manifest injustice is done to the son by including the widow and daughter as sharers along with the son sharing in the property of the deceased, thus considerably lowering the share of the son although the son has to discharge exclusively the legal and religious duties of the family *viz.* to provide for the maintenance and education of the minor members, maintenance of the widows, marriage of his sisters, the performance of the Shraddha and obsequial rites of the father and other elders of the family while a daughter is totally free from all these liabilities.

(3) The daughter after she is married belongs to her husband and his Gotra and she would be an heir to her husband in the event of there being no son to the latter. There should therefore be no justification to give a share to the daughter along with the son and widow and especially after she is married. If at all it is the object to provide for some portion being given to the daughter from the estate of the father it would be carried out by giving a nominal amount by way of solatium say one anna in the rupee.

(4) The members of the Committee in seeking to abolish totally the Hindu woman's limited estate would be revolutionizing the whole of Hindu law and setting at naught a long-standing usage and tradition. My Sabha apprehends that the above reform would not be conducive to the best interests of the Hindu community but it would lead to discontent and unrest in families resulting in a total disruption of joint Hindu families and affecting adversely the solidarity and integrity of the Hindu Community. Hindu women are enjoined by Manu and other law givers to remain under the protection of men and never remain destitute of such protection at any time. As regards widows too, they are enjoined to lead a simple, holy meritorious life dedicated to the service of the family, the society and God. It is therefore against the Hindu ideal of life to argue that because "In India Muslim women, Christian women, Parsi and Jain women all take a full estate, it is difficult to maintain that Hindu women alone are incompetent to enjoy full rights"—Sanatani Hindus cannot be persuaded to accept principles governing the mode of life of women following other alien faiths as they were never meant for any other persons except for the followers of those faiths and they could not conduce to the good and happiness of the Hindu Community which has faith only in its own laws and precepts based on *Smritis*, *Smritis* and ancient traditions as conducive to the good and welfare of its members in all respects. It is therefore submitted that the proposed reform of abolishing altogether Hindu woman's limited estate and giving widows absolute rights in their husband's property would not be conducive to the best interests of the Hindu Community.

Opinion of the Bhagini Samaj, Bombay.

The Bhagini Samaj congratulates the Rau Committee for the recommendations which constitute a definite advance along right lines in the matters vital to women's status. So long as equality and equal status in the matter of inheritance and property rights are not concerned, so long will women remain the under-dog of man.

As regards the Bill relating to Intestate Succession, the Bhagini Samaj congratulates the Rau Committee for—
(1) framing a common Law for all Hindu in British India,
(2) removing the sex disqualification by which Hindu women in general have hitherto been precluded from inheriting property in various parts of India,
(3) abolishing the Hindu Woman's limited estate.

Clause 18 of the bill is very important as it will provide a safeguard against blackmail and useless litigation which are so common to-day.

The Bhagini Samaj would like to point out that there is some inconsistency in the explanatory note in regard to **SHRUDHAN**. The order of succession has not been changed with the consequent result that after the intestate's death, even in regard to property derived from her father the husband's heirs come in before her own mother, sister, or brothers. This seems unjust and we hope that this order will be amended before the bill becomes law.

This is a distinctly progressive bill and it has been drawn up so comprehensively and clearly that it will be a great help towards reducing unnecessary litigation.

Observations by K. B. Gajendragadkar, B.A., LL.B.
Pleader, Satara.

The Hindu Law Committee in their Report has stated at the end "The recommendation which we like to stress most strongly is that relating to the preparation in gradual stages of a complete Code of Hindu Law". The Government of India accepted this recommendation.

The Bill on the Hindu Law of Intestate Succession can be said to be the first part of the contemplated Hindu Code. In the law relating to intestate succession has been amended and codified. In the first place, it must be remembered that the rules given in this Bill are meant only to apply in cases of intestacy so that any one who has property to leave, and wishes to depart from the rules, can conveniently do so by making a will. The notion of a will does not at all exist in the ancient legal literature of the Hindus and the right to make a will did not form a part of their customary Law. Wills were unknown to the Hindu Jurisprudence, and in fact, they appear to be opposed to the spirit of the laws of Hindus. The reason appears to be that the Law of Succession and inheritance being believed by Hindus to be founded on divine ordinance it would be irreligious to disturb the divine rule of devolution of property by disposing of it in a different manner. Further it must be noted that the Law of Inheritance can by no means be so framed as to suit the feelings of all persons of a community. It is therefore always supplemented in every civilized country by the Law of testamentary succession. Those therefore who think that the Law of Inheritance is unaltered to their feelings are no longer fettered by its rules. For this purpose the law of wills must be universally made known.

The main features of the new Bill of the law of inheritance are—(1) That it embodies a common law of intestate succession for all Hindus in British India irrespective of the fact that he is governed by the Dayabhag or Mitakshara or any subdivision of the Mitakshara like the Mayukha. This is certainly praiseworthy. It will, no doubt, give impetus to the idea of nationality amongst the Hindus. In these rules a laudable attempt is made of a compromise between the Dayabhag and Mitakshara Schools. (2) That it removes the sex disqualification by which Hindu women in general have hitherto been precluded from inheriting property in various parts of India. The sex disqualification against women inheriting property will have really few defenders in these enlightened days of the equality of sexes. Nevertheless over a large part of India women with few exceptions are still debarred from inheriting the property. In Bengal, for instance, a sister cannot inherit to her brother even if there are no other heirs. (3) That it abolishes the Hindu Women's limited estate. In the explanatory note attached to the Bill as well as in the Fourth memorandum prepared by the Committee strong and convincing grounds are given why it is necessary to make the woman's estate absolute and to do away altogether with the limited or otherwise known as widow's estate. It is not far from truth to say that as far as Smriti authority goes there is very little of it to support the theory of the limited estate of women in inherited property. This doctrine seems to be a pure creation by judicial decisions supported by ancient Smastha. In India Muslim, Christian, Parsi, Jain women—in fact, women of all the communities but the Hindu take a full estate. It is difficult to maintain that the Hindu women alone are incompetent to enjoy full rights. 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 even women ministers.

The Act is intended to apply to other heritable property excepting the agricultural land. This is deemed necessary in view of the finding of the Federal Court that the Central Legislature is not competent to make acts pertaining to agricultural lands. This Bill is not intended to apply to impartible estates also. The subject of impartible estate constitutes a separate Branch of Hindu Law and will have to be dealt with

separately. This Act is intended to come into force on 1st January 1946.

It is necessary to give sufficient time for the community to adjust itself to the proposed changes to give sufficient opportunity to Governor's Provinces to pass legislation in respect of agricultural land and further to give the Central Legislature sufficient time to codify other branches of Hindu Law so that there may be an entire Code from January 1946.

This Act is concerned with the heritable property which includes all property governed by the Dayabhag School, and the self-acquired property of the Hindus governed by the Mitakshara School. The interest of an undivided co-parcener is not heritable property since it passes not to his heirs but to his surviving co-parceners. The position seems to have been somewhat changed by this Deshmukh Act but this question is not discussed in this Bill. This will be dealt with when the Mitakshara Joint Family comes into consideration. In our opinion, this is not proper. The question of the Mitakshara Joint Family should be considered in this very Bill; and just as the rules of succession are made applicable to all Hindus throughout British India there should be uniform Daybhag Joint Family throughout British India. The Mitakshara Joint Family should be abolished and the Dayabhag Joint Family must be substituted for it. The Deshmukh Act has to a certain extent made women the co-parcener in the Mitakshara Joint Family. So practically it has adopted the principle of Dayabhag system. The law of succession must then be the same whether the deceased was at the time of the death joint, separate or whether the property left by him is self-acquired or joint family property. In other words, succession by survivorship must be abolished altogether. Further the right by birth theory must also be abolished. The father must be the absolute owner of all the property, ancestral or self-acquired. At the most, the right of bequeathing or alienating ancestral property should be limited. The root cause of the whole evil in the joint family Law is the right by birth in the Mitakshara Joint Family.

The distinction between an adopted son and a natural born son (born after the adoption) is altogether abolished. At present when a son is actually born after the adoption, i.e., the after-born son, usually gets the larger share of the father's property, the relative shares of the two sons being different under the different schools of Law. Under this new Act both the sons would get equal shares. It must be remembered that an adopted son loses all his future rights in the family of the birth as a consequence of the adoption and it seems hardly fair that he should ever count as anything less than the natural born son in the family of the adoption. In this Bill the rules of intestate succession are made as simple as possible. As remarked above, variations to meet individual cases may well be left to the individual owner to make by will. When as in ancient law wills were unknown, it might have been necessary to insist upon every shade of difference between one sort of heir and another. But now the wills have become a recognized part of Hindu Law it is possible to simplify the rules of intestate succession without hardship to anybody.

Clause 5 of the Bill is the most important section in the whole Act. In that section heirs are enumerated under 5 classes. They are—
Class I.—Simultaneous heirs:
(1) Widow, son, daughter, son of a pre-deceased son, and son of a pre-deceased son of a pre-deceased son.
(2) Daughter's son.
(3) Son's daughter.
(4) Daughter's daughter.

Class II.—Mother, father and his descendants:
(1) Mother.
(2) Father.
(3) Brother.
(4) Brother's son.
(5) Brother's son's son.
(6) Sister.
(7) Sister's son.

Class III.—Father's mother, father's father and his descendants:
Class IV.—Father's father's mother, father's father's father and his descendants.
Class V.—Mother's mother, mother's father and his descendants.

In all 29 heirs in order of seniority are given. The list appears to be quite exhaustive.

The most important change made is that the daughter is made the heir along with the son and the widow. By the Deshmukh Act the widow is already made the heir along with son. Now, the daughter is given the same status. Only the share of the daughter is made half, of the son. The distinction between married and unmarried daughters or between rich and poor is altogether done away with. On the whole the enumeration appears to be quite in consonance with the natural affection and reason and can well be supported on the grounds of equity and justice also. Marriage is no longer a necessity in the life of every woman. The class of educated women is coming into existence who owing to desire of social service or through the force of circumstances do not get married. Such women be it noted used to get a share in the family property of the father in Vedic times. The Smriti authority is also definite in favour of giving a share to the daughter though it is not quite clear on the point of the extent of the share that is to be given to the daughters. It will certainly not be against the Hindu sentiment and the Aryan culture if this right of the daughter is revived in these enlightened times when there is a demand by the women for the equality of the status along with men. This recommendation in the Bill must therefore find support of all.

It will be remembered that the widowed daughter-in-law under the Doshmukh Act gets a share equally with the son and the widow. In this Bill the provision is now made for her in her father's family. Obviously it seems unnecessary to provide for her in the family of her father-in-law. She will of course continue to take share in the husband's property as his widow.

The rules regarding the order of succession between Gotrajas or agnates and Bandhus or cognates, other than enumerated heirs are simple and clear. Even the layman, it is hoped, unfamiliar with technicalities of law would be able to find out where he can be by applying these rules. Best efforts are indeed made to clarify the meaning of these rules by giving appropriate and clear illustrations. In this respect the present law is not quite clear and definite. Even the Privy Council decisions are not quite consistent and unanimous. All this confusion is now satisfactorily removed in this Bill by giving very clear and definite rules of succession amongst agnates and cognates.

In clause 17 of the Bill by round about way anuloma marriages are recognized as valid. Such marriages are put on the same footing with ordinary legal marriages. If the marriage is legally valid then it should entail no legal disabilities either to the parties or to the children. Merely because the parents have entered into an anuloma union it is hardly just to punish their children by depriving them of their ordinary rights of inheritance.

Clause 18 deals with the unchastity qualifications of the widows. Broadly speaking the clause asserts that the chastity of a Hindu woman during her husband's life time shall not be questioned after his death, except in certain special circumstances. Those are (1) the existence of a will by the husband disinheriting the wife on the ground of unchastity and (2) the existence of a finding of unchastity by a Court, in a proceeding to which both husband and wife are parties and in which the question of her chastity was in issue. This is necessary as the Bill says for the purpose of preventing widows being blackmailed by unscrupulous reversioners. This is not fair, it is submitted. It is practically putting premium on unchastity. This clause must be totally amended and it be enacted that unchastity would be a good ground for exclusion from inheritance in the case of widows.

The Stridhan is very competently and beautifully dealt with in the Bill. Clauses 12 to 14 deal with it. The all pervading Mitakshara definition of Stridhan has been accepted, and all sorts of distinctions like the technical and non-technical or Soudayik and non-Soudayik or under different Smritis is dispensed with. It is certainly a step in the right direction. So also the Mitakshara order of devolution is almost accepted with very slight variation. There also it is suggested that there should be a uniform rule of succession to all kinds of Stridhan, and not two sets of rules—one for Stridhan inherited by a woman from her husband and one for all other kinds of Stridhan. This appears to be cumbersome and there would be two sets of heirs to the property of one deceased woman. Further, it is a matter of very serious consideration also whether there should be at all a different set of rules for the heirs of the Stridhan. When a woman gets a share in the property of the father and when she further gets a share in the property of her husband as his widow and when her estate is considered as an absolute estate it is not known why there should be different sets of rules for the Stridhan of women from that for the property of the male. It is embodied in the Bill that there should be no distinction due to sex. Therefore, it is humbly suggested that the heirs should be one and the same for the Stridhan of the woman as well as property of the male.

It will thus be seen that this part of the Hindu 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 approval of all.

The enactment of these two Bills of Hindu Law will release Hindu society from the gravest hindrances its moral, social and economical progress. It will greatly facilitate the political evolution of the community. A retrograde social system that is a system in which one half of its members are discriminated against cannot sustain free institutions. The equalising of the status of the sexes is an indispensable step in the establishment and successful working of democracy.

Opinion of the Government Pleader, High Court, Bombay.

1. Codification of Hindu Law was overdue and the Government are to be congratulated for initiating this piece of legislation which will have the effect of bringing about uniformity in the personal law of Hindus in all the Provinces throughout India and will put an effective end to several and divergent interpretations of the same texts by different Courts in India.

2. The authors of the Bill have adopted two principles in putting forward this Bill. They make provision for common law of intestate succession and, secondly, they enfranchise Hindu women by putting an end to what is known as woman's estate.

3. I am generally in favour of both the propositions. The rules of succession in some cases appeared to be quite arbitrary, and it was high time they were regulated by framing them on some intelligible and just principle. The framers of the Bill have introduced a revolution in the law of succession by proposing that some enumerated heirs should succeed simultaneously. I think it is a reform in the right direction and it is in conformity with laws of succession

relating to other communities in and outside India. With regard to the second principle, it is well that what is known as woman's estate, is abolished. It has been a fruitful source of litigation. If women in India outside the Hindu community are capable of holding property, there is no reason why Hindu women should not.

4. I have to offer only a few suggestions with regard to the details.

Heritable property should include the undivided interest of a Hindu coparcener in the joint Hindu family governed by the law of Mitakshara.

Father and mother should have been included in the list of simultaneous heirs and it should not have been confined to the widow and the descendants. Though I accept the general principle that descendants should be preferred to ascendants, still the parents are an exception to the rule.

Clause 10 may be left out altogether.

The distinction in the line of succession with regard to two kinds of stridhan as embodied in clause 13, is just and proper.

So far as clause 20 is concerned, idiots might safely be excluded from inheritance, due provision being made for their maintenance.

Opinion of the Sanatan Vedic Dharma Sabha, Ahmedabad.

This Sabha strongly objects to the two Bills inasmuch as they are subterranean and mischievous efforts by Hindu dissenters to change the established Hindu Law, customs and traditions under the plea of Codification.

The Hindu Community as a whole respects the Hindu Law as modified by Local Customs and Traditions, based as it is on the injunctions of the Divine Law giver Manu and other divines; they regard it as sacred and unalterable by changing human hands; they regard it to be in accordance with the needs, welfare, peace and security of mankind; and having found it to be so for thousands of generations they regard it as their most precious possession and guarantee of their social constitution and national solidarity. The inroads made on it from time to time have served to disorganise and denationalise the Hindu Society on the one hand and to spread the spirit of revolt and disorder on the other.

If any protestants or dissenters from Hindu religion want to have a different Law or Code for themselves they should be required to be enrolled as such and the needful may be done. The name Hindu Code as applied to such transformations is a misnomer and verbal deception. Thus the Sabha is against the very principle of the Bills and against its very introduction in the Legislature.

Opinion of the All-India Varnasram Swarajya Sangh, Bombay.

1. The All-India Varnasram Swarajya Sangh, Bombay, is opposed to the above Bill on principle as the Hindu Law Committee which has drafted the above Bill did not include a single Shastri exclusively devoted to the Sacred lore and the Hindu Dharma Shastras and as representing the view point of the orthodox Hindus. Besides in drafting the above Bill the said committee has in several cases entirely overlooked the principle of religious efficacy in determining the order of succession of heirs and preferred cognates to agnates in several cases so as to do great injustice to the latter. Thus under the code a daughter's daughter is preferred to a brother and brother's son simply on the ground of descent though she is incapable of conferring any spiritual benefit on the soul of the deceased. The attempted codification of the Hindu law of inheritance for different schools prevailing in different parts of India is without any definite and uniform principle but is a jumble of divergent principles. The Sangha is therefore of the opinion that the said code can never be the final word nor constitute a compact law for the Hindus for years to come and it will thus defeat its own purpose.

2. Without prejudice to the above contention the Sangha objects to the above Bill on the following amongst other grounds.

3. The Bill seeks to make certain revolutionary changes in the Hindu law of succession opposed to traditions based on Smriti and immemorial custom and for which there is no warrant or justification nor is a proper case made out for such revolutionary changes in the existing law. Thus the Bill seeks to abolish altogether the Hindu Women's limited estate by giving a full share to a widow along with a son and a daughter.

4. It is no sound logic to argue that because Muslim, Christian and Parsi women all take a full estate, Hindu women too must have a full estate. The Hindus are governed by personal laws of their own framed for their guidance and welfare by their ancient law givers like Manu, Yajnavalkya and others of revered memory and which are based on a social and religious view of life entirely different from that held by persons belonging to other races and religions. The Sangha is of the opinion that no changes made in the existing Hindu law merely by imitating the laws of alien races and religions would conduce to the good of the Hindus, unless they are based on some sound principle conducive to their good.

5. Regarding the further argument, "whatever may have been the case in the past, a general disability of the kind can hardly be defended at the present day when we have

women legislators, women lawyers and women ministers", it may be pointed out that an infinitesimally small number of Hindu women hardly amounting to even 2 per cent. of the total Hindu population, is educated and a still smaller fraction thereof has the good fortune of securing a good status and distinction in fields of legislation, law and ministering. It is therefore submitted that it would not be justifiable to make revolutionary changes in the Hindu law only to please an infinitesimally small section of the Hindu community and suit their liking, when the said changes are opposed by an overwhelming majority of the Hindus.

6. Majority of the Hindu women being illiterate, those inheriting properties of large value would fall an easy prey to the temptations of evil designing persons surrounding them and who would induce them to use the said properties for a luxurious life, or in rash and hazardous speculations and to alienate them in an improper way and even against their own interest. There being no check on the power of disposal of property by widows the Sangha feels apprehensive that the family would soon be deprived of all property worth the name.

7. The Sangha further apprehends that by converting the limited estate inherited by Hindu widows and women into absolute estate in all cases, it would stir up and encourage litigation all over the country which would involve poor families owning properties of small value and whose number far exceeds that of rich families, into heavy expenses and ultimately lead to the ruin not only of the family but also the widow and women seeking a separate share.

8. The Sangha further begs to point out that the proposed change giving absolute right to Hindu women inheriting a share in the estate left by the deceased is in conflict with and directly opposed to the vital interests of the son who on the death of his father stands in his shoes and steps in as the *patria potestas* and head of the family in place of his father and as such has to shoulder the whole burden of the family and its responsibilities and obligations such as carrying out the family rites and traditions, fulfilling the religious and social obligations, carrying on family trade or profession, maintaining and looking after all minors and the infirm, the aged, the incapacitated, etc. The proposed change is also against the Hindu view of life of widows enjoining them to lead a simple life and against the basic principles of the Sacred laws and traditions of the Hindus giving Hindu widows a right to maintenance only except in Bombay where women born in the family of the deceased are given an absolute right to inheritance on the ground of custom.

9. Hindu woman's right to property is inseparable from her status as a joint owner along with males and not independent of the latter. A right of joint ownership of the whole property is therefore allowed to a Hindu wife which she could enjoy with her husband during his lifetime but never separately from or independent of him. On the death of the husband the widow could enjoy the right along with her sons or male reversioners. The idea of a Hindu wife's right to absolute ownership independent of her husband and sons except in regard to her *stridhana* is entirely alien to the notion of a Hindu woman's status as to property. The idea is an imitation of the Western ideal only and will not conduct to the true good and happiness of the Hindu community.

10. The normal state of a Hindu family being joint comprising therein not only male coparceners with their wives but also unmarried girls and widows of deceased coparceners, all of them could live together as members of a joint and undivided Hindu family and also maintain themselves comfortably out of the income of the joint property even of moderate value but which would be insufficient even to provide for the maintenance of the members themselves if the property is divided and separate shares are given to widows, daughters, sons, son's son, son's son's son and so forth inheriting the said property. It is therefore submitted that the proposed reform giving to Hindu widows absolute right to inheritance would frustrate the very purpose of making the proposed change in the law and it would cause a hardship not only to the male coparceners by reducing their legitimate shares but also to the widows getting a share in the inheritance in the case of properties of small value.

11. Though professing to give greater rights of property to Hindus than those enjoyed by them at present the members of the Hindu Law Committee who are responsible for drafting the present Bill have done manifest injustice to widows by depriving them altogether of the right to inheritance (as widows of *gotraja* Sapindas) in place of their husbands as enjoyed by them at present in Bombay Province (and which right is even recognized by the Privy Council) and preferring even coparceners or Bandhus and distant kindred to widows of *Gotraja* Sapindas. This is a revolutionary change and it denies to Hindu widows a valuable right already enjoyed by them since considerable past.

12. The Bill further proposes another revolutionary change in the existing Hindu law by giving a share to a daughter whether married, or unmarried along with a widow, son, or a predeceased son and son of a predeceased grandson of the deceased as Enumerated heirs. It may be pointed out that a daughter as soon as she is married loses her father's *gotra* (family) and assumes the *gotra* of her husband and she will be the heir of the latter on his death. There is therefore no justification for giving her an additional share in her father's family along with a son in addition to the one which she gets in her husband's family as a

heir as such a course would amount to 'showing favour' to a daughter and manifest injustice to the son who is the legitimate heir of his father's property. Besides rights and responsibilities always go together. Thus a Hindu son inheriting his father's property has to discharge several responsibilities viz., to perform the obsequial and *Sradha* ceremonies of his father and other ancestors, maintain younger brothers and sisters, marry and educate his unmarried sisters and maintain and look after the widows and other members of the family while a widow or a daughter owes no such responsibilities.

13. How great injustice would be done to the son by the proposed change in the existing law may be illustrated by the following examples. Suppose a person dies leaving one son and four daughters; then according to the provisions of the intended Legislation the son getting a share double of that given to a daughter would get 1/3rd share while each daughter would get 1/6th share in addition to a share which she may get as the heir of her husband. The total amount thus obtained by all the daughters is double of that obtained by the son. Now suppose the property left by the deceased and available for distribution among his heirs is of small value and the daughters are all married to persons who are quite well off. In this case the share given to the daughters would be an additional surplus to them as they would be recipients of a large fortune as heirs of their husbands while the son would be deprived of a large share of his father's property which ought legitimately to fall to him. This is clearly against all principles of justice and equity.

14. It may be further pointed out that if absolute right of ownership is given to Hindu women inheriting an estate left by male as widows and daughters, it would encourage them to divide their shares by a partition of the joint family property which would lead to a destruction of the joint family and the compactness, solidarity, union and strength of the family. It would also encourage a spirit of opposition, selfishness and hostility on the part of the husbands or daughters to whom a share is given under the new Legislation as heirs of their fathers and involve the parties to costly litigation.

15. In the case of the married daughter, after marriage she is, it may be stated, severed from the *gotra* of her father and she adopts the *gotra* name of her husband. She stays with her husband in a new house quite separate from that of her father. Under the influence of her husband she would adopt a hostile attitude towards her brothers having a conflicting interest and family quarrels and disputes would often arise out of difference as regards the distribution of property left by the deceased.

16. Although the present Code excludes from its operation agricultural land, it is intended to enact similar legislation after Governors' Provinces enact legislation in respect of agricultural land on lines similar to the changes of law relating to succession in respect of non-agricultural lands as suggested by the present Code. This would it is apprehended bring about in the ultimate future a fragmentation into small pieces of agricultural lands and properties at present held and enjoyed in common by a number of persons belonging to a joint and undivided Hindu family and tilted by their combined labour. This would also give rise to costly litigation amongst agriculturists and add to the poverty already suffered by them at present in our country which is mainly agricultural and of which majority of the total population derive their livelihood mainly from agriculture.

Opinion of the All-India Women's Conference.

We wholeheartedly support the main principles of both these Bills. So far as the Succession Bill is concerned, the chief features, as stated in the Explanatory Note annexed to the Bill, are (1) that it embodies a common law of intestate succession for all Hindus in British India; (2) that it removes the sex disqualification by which Hindu women have hitherto been precluded from inheriting property in various parts of India; and (3) that it abolishes the Hindu woman's limited estate. We welcome all three, and, in particular, from the point of view of women, the last two of these principles.

We are glad to note that these Bills are intended only to be the beginning of a reformed Hindu Code, and we are therefore anxious that the rest of the work should be done as early as possible. Although these Bills are welcome as far as they go, they are by no means complete, as their authors themselves recognise. For example the question of maintenance, particularly in connection with the obligation of a father-in-law to maintain his widowed daughter-in-law has not been dealt with.

Then again, the important subject to addition, the law upon which is still in an unsatisfactory state, remains to be put on a firm statutory foundation. The mere beginnings of reform in the Hindu Code are of little use unless the entire structure is remodelled. We would therefore strongly press for the completion of the work as soon as possible. We also earnestly request the Government of India to see that when the Bills are in the Legislature there should be at least one member specially appointed to represent the point of view of Hindu women. Such a member is required in order that she may put forward the woman's point of view not only on the main

principles of these Bills, but also on their detailed provisions. We suggest for this purpose the following panel of names—

Ram Lakshminarayan Rajwade, Gwalior, C. P.
 Chirumatti Rameshwari Nehru, Srinagar, Kashmir.
 Mrs. Kenuka Day Kookhayan, Simla.

Views of the Seva Sadan Society, Gamdevi.

The Council of the Seva Sadan Society heartily supports Hindu Code Parts I & II. It is a reform long overdue and in the right direction. The Council is in general agreement with the provisions of the Bills.

The Council however would like to make the following suggestions:

2. Part I. To delete Section 4 (d) and substitute "the property shall be given to Schools, Colleges, Hospitals and such other Charitable Institutions as the Court may think fit in its discretion."

In Section 5 Class II "Sister" to be in the fifth place before Brother's son's son.

In Section 13 (b) the following order of heirs would be preferred:—

1 Daughter, 2 Son, 3 Daughter's daughter, 4 Daughter's son, 5 Son's son, 6 Son's daughter, 7 Husband, 8 Father and mother to divide the property equally between them.

Section 22 to be deleted and to substitute.
 "Schools, Colleges, Hospitals and other Charitable Institutions as the Court may think fit in its discretion."

Opinion of the Bombay Bar Association.

We are in entire agreement with the main features of the Bill, viz., to have a uniform Law of Intestate Succession throughout British India, to recognise women as heirs and to advance the Hindu Woman's Estate.

We however feel that so long as Legislation as to "agricultural lands" is a Provincial subject only and beyond the scope of the Central Legislature the suggested changes in the rules of Succession will not bring about uniformity in the Law of Succession to properties both agricultural and non-agricultural, and the difficulties similar to those created by the Hindu Women's Right to Property Act, 1937, will not only continue to exist but will be aggravated. It is therefore suggested that the Central Legislature must first acquire the necessary powers to legislate for agricultural lands as well, by obtaining the necessary amendment of the Government of India Act 1935, and then introduce a comprehensive Bill relating to succession to both agricultural and non-agricultural lands having regard to the local conditions of various provinces in this behalf. We feel that this only brings about uniformity in the Law of Succession for the whole of India.

With these preliminary observations we offer the following comments on the provisions of the Bill:—

Clause 2 (d).—The definition of "heritable property" should be so amended as to make it clear that the rights of persons who may have rights of maintenance therein are duly secured. We suggest therefore that after the word "survivorship", the following words should be added:—"Subject to the rights of maintenance of persons therein, if any".

Clause 2 (k).—A Hindu Code should be self-contained and no words should be so defined as to require a reference to the present Hindu Law.

Clause 5, Class I (f).—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 recognised in Hindu Law. It should be provided that the share which a son would have taken if alive when the succession opens should go to his heirs as if he had died intestate in respect thereof.

Clauses 11 to V.—No case is made out for preferring the mother to the father. We suggest that these should be simultaneous heirs. The same applies to mothers and fathers higher up in the ancestral line.

Clause 10.—We are opposed to the retention of this provision of the Hindu Law. If there is no coparcenary entitled to succeed, we do not see why the property should not escheat to the crown.

Clause 17.—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 inquiry by a Court of Law whether the renunciation in question is one to which this clause applies or not.

Stridhana.—We are opposed to the provisions made in the Bill regarding succession to Stridhana. They follow in the main the present rules of succession which, generally speaking, prefer female to male heirs. These rules were made at a time when women were debarred from inheritance; but now that their right to succession is recognised there is no reason why the rules of succession to males should be any different from the rules of succession to females. For example, there can be no reason or justice in depriving the husband of the same rights in the property of his wife as she has in his property. We, therefore, suggest that in respect of succession to Stridhana, the husband and the children should be simultaneous heirs, a female taking half the share of a male.

Clause 18 proviso.—While recognising the necessity of protecting widows from blackmailing by unscrupulous reversioners, we fear that the effect of the proviso will be to negative the substantive clause. We believe that sufficient protection would be granted to the widow by investing the Court with power to demand sufficient security for costs from any one who alleges that a widow has been unchaste.

Opinion of the Advocates Association of Western India.

This Bill by its very definition of "heritable property" as given in clause 2 (d) excludes from its operation the joint family property. We are promised that the rules governing the joint family property will be formulated at a later stage and until these are published it is very difficult for us to form any comprehensive opinion as regards the effect; beneficial or otherwise, of the present Bill which is very restricted in its operation. For the joint family is the normal condition of Hindu Society and it is especially in the joint family property that the woman's rights call for a large measure of liberal reform. We have, therefore, to withhold our detailed opinion on the Bill until the whole picture is complete.

The Hindu Law Committee indeed deserves our congratulations for enlarging the scope of the Hindu Women's property by accepting the definition of Stridhan as given by Vijnaneshwara. The order of devolution, however, regarding property other than that inherited by a woman from her husband calls for some comment. The Committee has placed mother and father after the husband's heirs; but in our opinion they should come before the husband's heirs and after the husband.

In our opinion the Committee has done injustice to the widows of Gotraja Sapindas by not including them among the heirs as is being done in the Bombay School of Hindu Law.

Opinion of the Bhatia Sri Mandal.

The Bill proposes to give absolute proprietary rights to women irrespective of whether she has entered the family by marriage or whether she is born in the family. The Women's right to property or share which they inherit by way of succession or obtain by way of partition should be restricted to women's limited estate as at present so that a woman shall have only a life interest in the immovables or in the corpus and shall have no right to dispose of the same by will. On the death of the woman concerned, this estate which she had inherited by way of succession or obtained on partition should revert to the family and devolve upon the heirs of the last male holder as in the present law. As regards the movables, the present law is satisfactory as it gives a woman absolute right over the immovables.

In Section 5, Enumerated Heirs, the Bill proposes to postpone the mother and father of a deceased Hindu to class 2 and wants to introduce the son's daughter and the daughter's daughter as preferential heirs being Nos. 3 and 4 in class 1. This is very unsatisfactory and unfair. For illustration, let us imagine a case of a daughter's daughter inheriting the estate of a deceased Hindu in preference to the mother or father of the deceased. If the daughter's daughter is of the age of 18, we can readily visualise the age of the mother or the father of the deceased to be not less than about 70. The proposed bill would give the whole of the estate absolutely to the daughter's daughter who is 18 in our example and would leave the aged mother and father who would be 70 years old or over to be maintained by that daughter's daughter. This would be a most ridiculous proposition.

No. 15.

FROM THE SECT. TO THE GOVT. OF BOMBAY, HOME DEPARTMENT, TO THE SECT. TO THE GOVT. OF INDIA LEGISLATIVE ASSEMBLY DEPARTMENT NO. 6039/4-B., DATED THE 17TH NOVEMBER 1942.

SUBJECT:—Bills/Hindu Code—(Intestate Succession and Marriage).

I am directed to forward herewith the report from the Jain Association of India, Bombay, on the Bills in question.

Report from the Jain Association of India.

1. We welcome the scheme of codification of the Hindu Law; and for that matter the above two Bills one relating to the Hindu Marriage and the other to the Hindu Succession. We also welcome the principles of these two Bills introducing many far-reaching but long-felt and much-needed reforms in the present system of the law on the subjects. We are glad to have only one scheme for the law of Succession and Marriage among the Hindus throughout the whole of India which will increase the sense of unity among the Hindus of all the different provinces of India and which will develop cohesion and common citizenship of India. By removing the Sex discrimination, and the limited ownership of the widow, we believe, the long standing injustice to which the Hindu woman was subjected is now sought to be rectified. But while associating the principles and changes introduced in the present law, we think we may be permitted to state, that the authors of the Bills in their zeal (which we all share) to remove inequities on woman have consciously or unconsciously introduced certain inequities with respect to men. For instance, in the order of succession the parents, the father and the mother, have been unduly postponed to the son's

daughter and the daughter's daughter who under the present law take after them. . . . We also approve of the important change in the share allotted to the adopted son ~~viewing~~ the after-born natural son, placing him on par with the natural son.

2. The 'Agricultural Land' is excluded from the purview of the Bill, as under the Government of India Act, 1935, it is an exclusive Provincial subject and the Central Legislature have no power to legislate on it. The difficulty was discovered in a case under the Hindu Women's Rights to Property Act, 1937. A hope is expressed in the Statement of Objects and Reasons that the Provincial Legislatures will pass a complementary uniform legislation in this respect. There is nothing in the Government of India Act, 1935, which would make it obligatory upon the Provincial Legislatures to pass a uniform complementary legislation on this subject. They may; they may not. Even if they are persuaded to pass such a law now, there may be some changes introduced in the future by them. We are afraid, uniformity in this matter, will not be maintained. In this predominantly agricultural country, where bulk of the estate of a very great majority of the people is agricultural land, it would be better in the interests of unity and cohesion of the people that the law relating both to the agricultural land and other immovable and moveable property. We are, therefore, of opinion that the 'Agricultural Land' in its relation to the matters of succession should be made an exclusive Central Subject; and the necessary amendment should be made in the Government of India Act, 1935, in order that uniformity may be maintained.

3. We learn from the Statement of the Objects and Reasons that these Bills are not going to come into force alone as independent legislations, but only as integral parts of the whole Code. We believe, in the course of time other branches of the law will be codified and the whole Code will come into force at a time in near future. We entirely agree with this view of the Government. Otherwise there may arise many unforeseen complications giving rise to many avoidable litigious matters. However, if the other branches can not be conveniently dealt with within a reasonably near future, this law, of Intestate Succession, we suggest, may be brought into force without much delay, after making suitable provisions for saving the present rights of maintenance of those persons who do not get any share under this Bill and other things.

4. Now coming to Clause 5 of the Bill, we do not find the widow of a predeceased son and the widow of a predeceased son of a predeceased son as simultaneous heirs with the widow and the son under the present law, under the Hindu Women's Rights to Property Act, 1937. We do not understand why they should be deprived of their well secured rights. An explanation is given in the Statement of Objects and Reasons that as the daughter is now introduced as a simultaneous heir in her father's estate, they will be sufficiently compensated. Further it is stated therein that sufficient provision will be made for their maintenance out of their father-in-law's estate. It is also said in defence of their exclusion that they will get absolute property in their husband's estate. We are afraid the authors have not completely known the Hindu Mind. On marriage a girl passes out of her father's family. The father also treats her as such very often. The father may not retain the same attachment for his girls as for his sons; and by a will may alter and reduce her share or deprive her of it altogether in the usual belief that she will take out that portion of the property out of the family. It is not; under the circumstances, advisable to provide at least a half share in her father-in-law's estate in lieu of maintenance. Even determination of the proper amount of maintenance may be a fruitful source of litigation. Certainly a provision may be made, that they may not take the share in the estate, if their son is living and takes his share in the estate.

5. As mentioned above, we think, some injustice is done to the parents in placing them in class 2 of the said Clause 5. Why should they be postponed to the son's daughter and the daughter's daughter or even to the daughter's son. The daughter is now made a simultaneous heir and is bracketed in entry I with the widow and the son. Her son will certainly be benefited. Of course under the present law the daughter's son comes in first. We submit under the revised law, the parents should be preferred to him also as they have better claim to the benefit of their son's estate to which they may have directly or indirectly contributed. We suggest that the parents may be placed prior to the daughter's son or at least they may be bracketed with him as simultaneous heirs. The daughter's son, the son's daughter and the daughter's daughter are descendants and logically to the rules or principles laid down, are preferred, we believe the parents have a better claim than they. We also suggest that they be at least placed with the son's daughter or the daughter's daughter. We, further, are of opinion that whatever the place is accorded to them in their son's estate both the parents should be made simultaneous heirs.

6. Similarly we suggest that in the subsequent class the grand-parents should be made simultaneous heirs and placed together.

7. In class 3 of clause 5, the father's sister's son is made an heir. He is an heir even now in the Bombay Province. We appreciate the higher position accorded to him. But we fail to understand why his mother, the father's sister, who is a nearer relation of the intestate is not included as an heir at all in the enumerated heirs. She is an heir even now as a cognate. Why should she not come before her son. It was alright under the old scheme when the woman was not entrusted with any property. But, we are afraid it is not logical now. We suggest that the father's sister should find a place prior to her son.

8. Similarly in class 4 of clause 5, the Father's Father's Sister should also find a place prior to her son.

9. We also agree with the view expressed in the Statement of Objects and Reasons that the Brother's Daughter and the Sister's Daughter should also find their place in the enumerated heirs.

10. Clause 18 of the Bill provides for disqualifying an unchaste woman as an heir under certain well defined circumstances stated therein. We agree with the same. But we fail to find any provision for her maintenance or even bare maintenance for her. Under the present orthodox old law, if she mends her ways, she becomes entitled to a bare maintenance at least. Why should, under the new scheme which is predominantly undertaken to ameliorate the woman's position, she not be given even a bare maintenance. How can you reclaim her from the life of sin? How can she be retrieved? There is no inducement for her to make amends and give up the life of sin. Apart from inducement she finds nothing to fall back upon. She sees a blind alley. Should she be thrown on the street? If no provision is made for her even for bare maintenance, she may be perpetuated in the life in which she may have fallen for which she may not be so guilty as to deserve this punishment. We suggest that some share—a reduced share of course or some provision for bare maintenance at least should be made for her.

11. Now, in case of devolution of Sridhan, we think the daughter is unduly and unjustly preferred to the son. There may be or rather say, there was some justification under the old law for her preference to the son in the mother's estate when she had no share in the father's estate. But now that she gets a share in the father's estate why should she be preferred? An excuse is made in the Statement of Objects and Reasons that in the Sridhan property which is inherited by the mother from her husband, the son will get the double share of the daughter as that property will devolve upon the heirs of the husband. Yes that is so; but she will get a share—half share though it may be. She also gets a share in the father's property. We submit this is unfair preference, and suggest that the son should be placed with the daughter as simultaneous heirs with the daughter in their mother's property. In the present state of the Hindu society where a male is the sole bread winner of the family, at least in the higher classes of the Society, some better provision should be made for the son who shoulders the burden. Similarly we feel that the daughter's daughter and the daughter's son, the son's son and the son's daughter all should be placed together in one entry as simultaneous heirs. If daughters are not to be postponed, they should not get undue preference over sons.

NO. 16.

FROM THE SECY. TO THE GOVT. OF BOMBAY, HOME DEPARTMENT, TO THE SECY. TO THE GOVT. OF INDIA, LEGISLATIVE ASSEMBLY DEPARTMENT, NO. 6039/4-B, DATED THE 25TH NOVEMBER 1942.

I am directed to state that the Marathi translation of the Bill to amend and codify the Hindu Law, relating to intestate succession, with the Statement of Objects and Reasons, has been published in the Bombay Government Gazette on the 19th November 1942.

NO. 17.

FROM THE SECY. TO THE GOVT. OF BOMBAY, HOME DEPARTMENT, TO THE SECY. TO THE GOVT. OF INDIA, LEGISLATIVE ASSEMBLY DEPARTMENT, NO. 6039/4-B, DATED THE 1ST DECEMBER 1942.

I am directed to state that the Gujarathi translation of the Bill to amend and codify the Hindu Law, relating to intestate succession, with the Statement of Objects and Reasons, has been published in the Bombay Government Gazette on the 26th November 1942.

NO. 18.—BENGAL.

FROM THE JUDICIAL SECY. TO THE GOVT. OF BENGAL, TO THE SECY. TO THE GOVT. OF INDIA, LEGISLATIVE DEPARTMENT, NO. 6125-J, DATED THE 19TH/24TH NOVEMBER 1942.

SUBJECT:—The Hindu Code, Part I (Intestate Succession) and the Hindu Code, Part II (Marriage).

In view of the controversial nature of the proposed legislation and the intricate questions of law and customs which are involved the Government of Bengal are of opinion that the consideration of the Bills may be postponed till after the war. Copies of the opinions of the High Court, Calcutta, the District Judges of Dacca and Bakargani, the Bar Associations of Mymensingh and Khulna, the Mymensingh Landholders' Association, the Serampore Subdivisional Hindu Mahasabha, the All-India Women's Conference (West Bengal Branch) and the Bangiya Varnashram Swamiya Sanzha are enclosed. The Bills were published in English in the Calcutta Gazette of the 18th June 1942 but they were not translated into any other language.

OPINIONS.

From the District Judge of Dacca.

Section 13.—As to order of succession to Sridhan, I am of opinion that part of the Sridhan which was inherited by a woman from a male owner, should devolve upon his heirs in the order in which they would have succeeded to his property. At any rate, son and daughter should inherit simultaneously, and should be preferred to daughter's daughter and daughter's son.

Section 20.—Persons who have been converted to another religion should be disqualified from inheriting the property of a Hindu.

From the Registrar of the High Court of Judicature at Fort William in Bengal, Appellate Side, Calcutta.

As the Bills involve questions which are questions of policy the Court has no opinion to offer on their provisions.

From the Serampore Sub-Divisional, Hindu Mahasabha, Serampore.

1. If Hindu law requires codification, it is desirable that it is done after careful consideration of the Vedas, Smritis, Upanishads, immemorial customs, usages, community rules and conventions, etc., by persons competent to do full justice to those subjects and also by the persons affected by such codification. In view of the disturbed state of the country and its people, the present time is quite unfit for such consideration. Passing of civil and adjective laws which affect the majority of the populace, at a time when the country is disturbed by visions of war, is perhaps a rare example in the annals of the world. Considering all these facts we are of opinion that the proposed legislation is postponed to a time when the Government, legislatures and the people would, in undisturbed state of mind, be able to think and consider over the subject. Moreover, the proposed Bill has not been well circulated in the country by the Government, either through the press or through any other agency, save and except its publication in the *Calcutta Gazette*, and the time that has been allowed for submitting opinion on the Bill can be regarded as very short for the purpose. If at the present time, it is deemed that the passing of the Bill cannot be postponed, we recommend that the contents of the Bill be circulated, in the different languages of the country, and the time for submitting opinion be extended for a further period of three months.

2. We differ in the preamble of the Bill wherein it is stated "whereas it is expedient to amend and codify (a) in successive stages, (b) the whole of Hindu Law now in force in (c) British India." We differ on points marked (a) (b) (c).

(a) Explanatory notes appended to the Bill, does not stand to reason. Opinion can not and should not properly be given on piecemeal legislation and it is liable to give rise to various difficulties and misapprehensions. Laws of testamentary and intestate succession, the celebration of marriage, and its consequent marital rights and duties, separate residence, maintenance and adoption, etc., are all interdependent.

Unless one can ascertain whether his or her testamentary rights and the right of adoption have been restricted or not, it would not be possible to give any comprehensive opinion or suggestion on intestate succession.

(b) The whole of the Hindu Law denotes religious, social and territorial laws. Hindus, specially the orthodox class, regard their Religion as "Sanatan" i.e., eternal and unchangeable. If Hindu Law at all requires modification, it should be so made that the sentiment of any community or class whether of orthodox or of Reformists, are not wounded. In the Vedas, Smritis, Puranas, etc., very liberal provisions have been made, to meet the tastes and requirements of all classes almost on every topic. In codification, it should be seen that the basic principles of the Hindu Dharma is not disregarded e.g., marriage sacrament in which the most important and essential element in the shape of giving and accepting, as enjoined by Manu and other commentators is omitted in the Bill. If the equitable and humanitarian aspects of the law are codified without, in any way, affecting the basic principles, the existing defects may be remedied.

(c) The basic principles of the laws of the Hindus on succession and marriage are almost the same in all the provinces and the states of India. Grooms and brides of British India can marry brides and grooms of the states and vice-versa. If there exist separate laws of marriage and succession, very great obstacles will arise which will have the way to breaking Hindu solidarity throughout India. Opinion on some of the sections are given below. Our reasoning and grounds, if permitted, by an extension of the period, will be sent afterwards.

Hindu Code, Part I.

Section 2 (2) (d).—Mitakshara and Dayabhag distinction remains. Except Bengal, ancestral property remains untouched. It is not equitable.

Section 2 (1) (h).—"Dasiputra" should have been included.

Section 2 (1) (c).—"Stridhan" does not arise as much as "Pundhone".

Section 2 (2) (b).—"Woman shall not be agnate of her husband." Principle is against Hindu shashtra and sentiment.

Section 3.—"This Act shall not apply to agricultural land." So long provinces make no modification of law, on the point, it would be futile to enact the proposed law. In India about 75 p.c. of the population are agriculturists and agricultural lands are their main property. Again about one-fourth of the said population are state subjects. Hence the proposed Bill will affect only a very small number of the Hindus. It is not desirable that there should be different laws for different classes of the people of the country and for different kinds of property and for different parts of the country. Homestead land, if it appertains to agricultural

holding, is outside the purview of the Act. It will apply to agricultural produce. Thus great confusion and disorder will prevail at the death of a person. Litigation will increase.

Section 5.—Daughter should not be simultaneous heir. Widow of predeceased son should get a share. Daughters should have been classed at the end of class II. Kamas has been given preference to males which is against the basic principles of the existing system.

Section 7 (d).—The question and position after the death of parents of unmarried daughters, specially of the poor, have not been considered and also of the poor widowed daughters.

Section 13.—Given below.

Section 18.—Given below.

Section 11 (2).—Ks. hermits etc. and person who commits or abets the commission of murder in furtherance of succession.

Section 19.—"The inheritance" shall pass to the heir who is next in the order of succession. The heir's (hermits etc. and one who commits such murder) wife and children are excluded. There is no provision about the female hermits etc.

Section 15.—Re. Stridhan heirs: In equity, husband, sons and daughters should have been made simultaneous heirs. To follow the trend of the proposed enactment, there should not have been different laws for males and females.

Section 18.—Unchastity has practically been ignored. According to the shastras, unchaste women are debarred from inheritance. She can get bare maintenance only. Various grounds can be given to justify the principle.

Opinion of the Khulna Bar Association.

In every system of Jurisprudence, *Lex loci* plays an important part. Law is a progressive and mobile subject, and must adopt itself or be adapted to suit existing circumstances. So a change in the law of intestate succession should not be a bugbear to orthodox people and every proposal for change or modification should not be unceremoniously thrown away, but be examined from every rational point of view.

The attempt to codify and provide a uniform set of laws applicable to all sects and communities is very laudable, and everyone should wish for its success.

Attempt has been made in this memo, to point out a few most objectionable features of the Bill with a view to their rejection.

(i) The proposal to make the daughter an heir when co-existing with a son.

(ii) The proposal to disinherit a widowed daughter-in-law from succeeding to her father-in-law's property a privilege which has very lately been conferred on her.

(iii) The proposal to make certain female descendants heirs under the category of "unmarried heirs".

In this memo, the doctrine of "Religious propinquity" or "Religious merit" will not be so much relied on as practical experience in the Hindu system and in other systems of succession.

Clause 5, class I (1) proposes to make a daughter a "simultaneous heir" along with a son, i.e., sons and daughters are to succeed simultaneously. It is claimed that one of the main features of the Bill is that it removes the sex disqualifications by which Hindu women have been precluded from inheriting.

In every civilised country, in every form of marriage, a woman, after marriage, adopts the surname of her husband. The Committee are aware (p. 96 of the Bill) (Cl. 2, sub. cl. 1a & 1b) that according to Hindu ideas, a girl, upon marriage, is deemed to be re-born in the gotra of her husband. Is this an idea peculiar to Hindus only? Or, is it universal? Whether everywhere a female upon marriage does not leave the roof of her parents, does not severly abandon the surname of her father's family, does not sever nearly all sorts of connection with her father's family and relations, and home, does not 'make new relations and associations and so on and so forth? This exclusion of the daughter, when co-existing with a son, is a rule of succession that may be peculiar to the Hindus, but it can't be said that it has created any mischief at any time. The tendency everywhere is to keep the heritable property as intact one so far as possible, and to keep it immune from cleavage or breakage or fragmentation. The laws of primogeniture, the Peerage laws, and also other anti-fragmentation laws are clear evidence that so far as immovable property is concerned the object everywhere is to prevent fragmentation of property. Even in Europe the existence of the Salic Law produced revolutions in the matter of succession to kingdoms. In Bengal we find on the Statute Book "the Bengal Settled Estates Act" intended to confine property in a family and to prevent its fragmentation. Women are born destined to leave their parental roof, and so for them to desire a portion of their parental property is neither justifiable nor equitable. They should not attempt a double set of advantages and privileges. Wherever there is simultaneous heirship there is the attempt against fragmentation by marriage amongst the family members, by which a first cousin may become a husband or a wife. The teaching of science is that marriage should be amongst persons not in any way related by blood, and preferably unknown to each other previously (as in China). The results of such marriages

with very near agnates and cognates are in many cases disastrous, and such marriages should be discouraged as much as possible. The Hindu law of marriage does not permit marriages in one's gotra or amongst sapindas—so the contrivance against fragmentation of property and its passing away out of the family will not be available to the Hindus.

This objection against simultaneous succession is not based on sex disqualification. Its aim is to prevent fragmentation of property. Under the present law of succession, in the absence of a son or the widow the property of a Hindu passes on to the daughter having or likely to have male issues. And this has been the law from time immemorial. The grandson by the daughter or a sister's son is also amongst heirs entitled to succession, in particular instances.

No one should be allowed under ordinary circumstances, to be "agnates" of two different gotras. That is a contradiction in terms. Sons adopted in other families cease to have all connections with the family of their progenitor fathers. Even they do not observe "Ashauha" (ceremonial uncleanness) in case of any birth or death in the family of their putative fathers. The inclusion of a daughter as a simultaneous successor with a son will revolutionise the whole system of succession for which the society is not prepared. It is not incompetence in intelligence or any other incapacity upon which this exclusion of a female is based. It is for the protection of property against fragmentation. After marriage the female goes straight away to her husband's family, and removes to other places; and it is seldom that a married female is able to be present at the time of the death of her parents. Upon receipt of the news of her parent's death, she would come to her brothers' places and there begin to quarrel with them as to the quantum of property left for division. This would invariably be the case. Quarrels, litigations and other sorts of violence would be the invariable result. These females are not enjoined or would be bound to defray the expenses of the search of the deceased, and the sons would find them in great difficulties to meet the exigencies of the situation.

Under the Hindu Law, the son is liable to repay the not immoral debts of the father—the daughter has no such obligation. It is absurd to suppose that the daughter will share in the patrimony, but will not share in the liabilities. In such cases a conflict is sure to arise between brothers and sisters—the latter repudiating the debt as immoral and accusing the brother to have been in conspiracy with the creditor demanding repayment of the loan.

Nor is this all. The daughter succeeding to her father's estate will invariably be like an absentee landlord. After marriage in 90 cases out of a hundred she may be far away from her husband, and the prospect of her actual contact with her father's tenants would be very remote. Intrigue-mongers will be active and try to effect a transfer of the daughter's share on nominal terms. For sometime after the death of the father the sister may be willing to leave the management of the inherited property in the hands of the brothers. But dissensions are sure to crop up. A lessee of a house property is seldom seen not to be quarrelling with his lessor—the owner of the house. Small matters irritate the lessee and no lessee can adapt himself with equanimity to the conditions laid down by the lessor. So, the sister although she may be willing to allow the brother to manage her share of the property would be prone to pick up loopholes and complain about the income and receipts which can never come up cent per cent to the rent roll. Litigations would abound, and the sister ultimately would attempt to buy peace by a transfer of her share to enemies of her brother's family.

The reasons for excluding the widowed daughter-in-law are contained in para. 3 of P. 99 of the Bill. These reasons are absolutely unconvincing, and are uncharitable. The observation "that a father-in-law" is more likely to disinherite a daughter-in-law than a father his daughter" is hardly borne out by facts and is very cruel and uncharitable to the father-in-law.

If the proposal of simultaneous inheritance of sons and of daughters is rejected the restoration of the widowed daughter-in-law as a successor to her father-in-law is bound to follow as a natural sequence. The position of the widowed daughter-in-law should not be left precarious and uncertain. The observation contained in the last three lines in p. 99 is opposite to facts.

Hindus generally prefer the daughter-in-law to the daughter, if not for any other reasons but from motives of selfishness. The services rendered to the family by a widowed female are far greater in quality and quantity than those given by the daughter, especially if she is married.

That a daughter's daughter should inherit is repugnant to Hindu ideas. The daughter after marriage leaves the parental roof; and her daughter also leaves her mother's house after her marriage. In common parlance she is styled a hen's or a duck's excreta. In cl. 5, class II "mother" should also mean a "step mother" if the mother is non-existent at the time when the succession opens. Except in matters of succession, there is no distinction made in the shastras between a "mother" and a "step mother".

Very grave objections must be taken if the son of a deceased woman is relegated to a very low position with regard to his mother's stridhan property. If males and females are entitled to the same rights and privileges why

should a son occupy the 4th place [see p. 92 sub-cl. (b) of cl. 13 of the Bill] and be deferred to the children of a daughter? What are his demerits and defects that he should not be allowed to succeed along with his sister? Is it because that a son maintains and nurses his mother that he should be excluded from succession to his mother's stridhan? The rules of succession should be as simple as possible as has been justly observed in the Bill. Therefore the same set of rules should govern the succession in all these cases. No reason has been assigned as to why any difference should be made in case of succession as to property not inherited from the husband. So in cl. 13 (a) after the word "husband" in line 1 should be added the words "or acquired in any other way"; and sub-cl. (b) should be deleted. No reason has been advanced except the one in para. 4 in p. 101 which only needs to be read to be rejected.

The proposal to make the "sister" and heir to her brother is very just and equitable. It is to be wondered that sisters cannot inherit even in the present day in Bengal. The removal of this disqualification is very welcome.

We shall cite one concrete example to illustrate this point.

One Lalit Raha, a well-to-do man in Khulna district lost his wife and married a second time. He had a son and a daughter by his first wife. At the time of his death he left these two children and his second wife and a daughter by her. As usual the only son succeeded to him. Unfortunately the son died unmarried a few months later on. Neither his full sister or the half-sister nor the step-mother could succeed according to the Hindu Law and so the property passed to some distant agnates who drove the widow and the daughter away from the house and the property leaving them severely to their sad lots.

Therefore we have suggested that sisters and step-mothers should succeed normally.

OPINION OF THE WEST BENGAL BRANCH OF THE ALL-INDIA WOMEN'S CONFERENCE.

The Bills were circulated to the various women's organisations in this district, and were also laid before the members of this Association. All are unanimously in favour of the broad principles of the two Bills, and consider that the Bills should be passed into law at an early date.

This Branch suggested that the Government of India should appoint at least one woman to the Central Legislative Assembly for the purpose of discussing these two Bills.

FROM THE SECRETARY, MYMENSINGH LANDHOLDERS' ASSOCIATION, MYMENSINGH.

On behalf of our Association we beg to make the following observations regarding *A Bill to amend and codify the Hindu law regarding intestate succession*, which was published in the Gazette of India on the 30th May, 1942 and re-published in the Calcutta Gazette of June, 18, 1942 and for which the opinion of the public has been sought.

We appreciate that the Hindu Law has been for years in a state of flux. An attempt, therefore, to codify it by one or more legislative enactments has an utility which we do not deny. But the procedure which has been adopted in this connection is unacceptable to us. The Hindu Law Committee which was appointed in 1941 to advise the Government of India, regarding certain bills introduced by private members in the Central Legislature and regarding certain other ancillary matters had not, in our opinion, a sufficient standing to offer an authoritative opinion on such a vital subject as the law of succession. We have nothing to say personally against any one of the four members who constituted this Committee. The Chairman, Sir B. N. Rau, is a respected member of the Bench of the highest Court in this province. Dr. Dwarka Nath Mitter is another distinguished ex-member of the same Bench. But while we have no reason to doubt the capacity and the honesty of motive of the individual members of the Committee which was appointed by the Government of India, we do not think that such a small Committee of four members representing only a particular point of view regarding this complex problem of the Hindu law could be well fitted to advise the Government as to the changes which should be brought about in our laws of succession. We believe that if comprehensive changes were to be introduced in these laws and if on that basis the Hindu law was to be codified it was essential that a larger and a more representative body should have been constituted.

We should also emphasise the point that if a new law regarding our succession rights is to be enacted, this responsibility should be entrusted to a legislature having a definite mandate in respect of it from the electorate. The present Central Legislature was elected on certain issues in 1935 for a period of three years. But because of the exigencies of circumstances, its life had to be extended from time to time and to-day it has outlived its term by more than four years. In view of this fact, this Legislature cannot only be said to have no mandate from the electorate in respect of the question before us, but it has otherwise also become unrepresentative of the people. It will be the height of injustice to the Hindu population of the country if such an effete body is allowed to enact on such a vital subject a new law, inconsistent with the basic principles of the existing Hindu social organisation. We may suggest that if the present bill is to be enacted into law at all, it should be so enacted not by the existing Central Legislature but by a new Legislature returned in a general election in which the problem of the Hindu law should be one of the issues.

The present bill is concerned with succession to non-agricultural property. Succession to agricultural property, being a provincial subject, will have to be dealt with by the provincial legislature. In some circles it is taken for granted that the system of succession, which is being provided by the present bill in respect of non-agricultural property, will be provided in a provincial enactment in respect of agricultural property as well. If such an arrangement can be brought about, no complexity may arise. But is there any guarantee that the law of succession in respect of agricultural property, enacted by a provincial legislature, will be on all fours with the central law regarding succession to non-agricultural property? There is no reason to believe that the provincial legislature will see eye to eye with the Central Legislature regarding the system of a succession. In case the two laws differ in essential principles, succession to agricultural property will be regulated in one way and succession to non-agricultural property will be regulated in another way. This inconsistency will lead to many difficulties and complications. Not only there will be two systems of succession, but what is more, as the line of demarcation between agricultural and non-agricultural property is not clear, disputes and litigation will endlessly arise. We are, therefore, definite on this that such a contingency should be avoided, particularly at the present time which is otherwise so uncertain.

We believe that the Hindu law of succession is a matter for the Hindus only to determine. But neither the Central nor the Provincial Legislature is an exclusively Hindu body. In the Bengal Provincial Legislature which is to enact the Hindu Law of Succession regarding agricultural property, the Hindus are actually in a definite minority. In view of this we are doubtful if, until a procedure, satisfactory to the different communities, is chalked out for enacting such social legislations, no legislature in India should undertake to enact such a law as is contemplated by the bill before us.

The prime object of the present bill is to remove the sex disqualification from which Hindu women are supposed to have suffered so far in regard to succession. But the provisions which have been incorporated in the bill in this connection are at absolute variance with the existing system which has been handed down from generation to generation in this country. In view of this if the changes contemplated are to be introduced at all, they should be so done only after mature consideration by the people themselves. We do not admit that they have been given any opportunity so far for such consideration of the issue. There is also another aspect of the question which has not attracted as much attention as it should. The bill, if enacted into law, will involve greater and more minute fragmentation of property in the country. Such fragmentation has already created an acute economic problem in this province and if the changes in our law of succession, contemplated in the bill, are made effective, this acute problem will be made acuter still. We, therefore, repeat that before any step is taken in this direction, the question should have the opportunity of being one of the specific issues in a general election and as such of being discussed more widely and more minutely than it has been so far.

On the grounds we have explained above, we recommend that the bill be shelved until more propitious times arrive in the country.

FROM THE SECRETARY, BAR ASSOCIATION, MYMENSINGH.

Our Association is of opinion that the Bill, particularly that relating to intestate succession is of a revolutionary character. The Bill, if passed into law will not only strike at the susceptibilities of the Hindus but is also calculated to bring about total disruption in Hindu Society. Hindu widows have already been given ample privilege by Act II of 1937.

Females are likely to derive double advantage by the provision of the Bill under consideration. They will inherit from their husbands and from their fathers as well, besides having absolute right in property.

Clauses 5 and 13 of the Bill are in some respects unjustifiable. There is no reason to bring in daughter's daughter as in clause 5 and to deprive the son altogether as in clause 13.

Our Association is of opinion that much of the mischief of the Bill will be removed if the females get limited interest instead of absolute right as it obtains at present. The Bill was thoroughly discussed at a special meeting of our Association and the opinion here in above was carried by overwhelming majority.

Opinion of the District Judge, Bakarganj.

As regards codification and amendment of the Hindu Law relating to intestate succession, personally I do not see any necessity for the same. It has been stated that there has been a crop of litigation on account of the uncertainty of the laws. But I do not think, even if the law be codified and amended as proposed, there will be less litigation. In the case of Mahomedans the law is more definite and we find innumerable cases as a result thereof. Probably there are not so many big suits and cases which go up to the Higher Courts; but in the districts, where more than half the civil work consists of suits and cases between landlords and

tenants, fragmentation of properties amongst all conceivable heirs—male and female—gives rise to a lot of litigation.

Assuming the necessity for and the benefit of codification and amendment as proposed, the legislation unduly favours females. It is a fact that jurists and courts have consistently limited female rights. As regards jurists, they have their proper position in the scheme of the Hindu Law. It is not only the Sastras by which, I suppose, is meant the *Smritis*—which are to be followed, but the *Smritis* also are. I suppose by *Smriti* is meant not only the *Samhita* but also the works of the modern jurists and commentators. The scheme of Hindu Law recognises the authority of all these sources and duly attaches relative weight to them. The Courts of Law again have laboured not merely to find out what the texts of the jurists say but also to apply the principles of equity and reason thereto.

The present law pretends to give females what they have not been enjoying, viz., their due shares according to natural justice, but I do not see that to be a fact for, according to section 13, clause (b) the shares proposed to be allotted to females are unconscionably more favourable than to males. I do not see why in section 13, clause (b), (1), (2) and (3), instead of daughter, daughter's daughter and daughter's son, (1) daughter and son, (2) daughter's daughter and son's daughter; and (3) daughter's son and son's son, should not be substituted. I do not see any reason why a daughter should have a preferential claim to her mother's property any more than a son, especially as the results of the proposed legislation will be that the female should succeed to a male's property equally with the male. The subject is a vast one and full of intricate details and it is not possible for me to go into the details.

FROM THE SECRETARY, BANJIA VARNASRAM SWAROYA SANGHA, CALCUTTA.

The initial objection to such a Bill 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 affair. It is directly concerned with *Pinda* ("Dadyat-Pindam Haret Dhanam"; *Manu* IX-136). *Yajnavalkya* also says—"Pindadomsaharacpaisham"—II-135. One who confers spiritual benefit on the departed soul is entitled to inherit the property of the latter. This spiritual side of the question has been entirely ignored by the Committee. It should always be borne in mind that succession of Properties of a Hindu is a religious affair. The religion of the Hindus stand 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, p. 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, 1933) 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 sub-ordinately 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.

It is not that the reformers in India do not realise that by their training, habits and conduct they are specially unfit to interfere with religious matters, but the fact is that they feel special pleasure in polluting the sacred laws and wounding the feelings of the innocent and Shastra-abiding Hindus. It is a pity that they are often supported now-a-days by Government votes in this respect.

We refrain from making any personal reference to the esteemed gentleman who formed the Committee to sit in judgment on the vast Hindu community and on whose recommendations the present Bill is based.

The Sangha, specially disapproves the procedure followed because in the matter of such momentous interest to the Hindu population as a whole which in the minimum calculation represents more than 75 per cent. of the people of this country the Government should have followed a procedure for eliciting public opinion which betrays a state of inefficiency and lack of capacity for proper perspective which in any modern state today would deserve strongest criticism. The Bill has not been circulated to the Sabhas, Committees, and organisations, no mention of this was made in any Government communique, no summary of it was given to any of the numerous journals

of the country. The bill was published only in the Gazette to which outside public has little access. The Sabha feels that this is not the surest and best way of eliciting public opinion specially about the matters which go to the roots of the social organism of what is known as the Hindu Civilisation.

It disapproves the procedure secondly because the time selected for the consideration of matters of such importance is highly inopportune. A world war is now on and is passing through its most critical stage. Everyone is disturbed and worried because of the uncertainties of almost everything that matters. Manu, Yajñavalkya, and the other great Rishis who propounded these laws from the Vedas did so thousands of years ago. Jñanavahana, the commentator, whose interpretation governs the Hindus of Bengal, did so at least nine hundred years ago. During all this period the Ganges was not on fire. A quiet mind, and a calm atmosphere are conditions essential to the discussion and execution of principles which disturb the status quo of centuries. The Sabha considers that at least a decennium must pass after the world is released from the grip of this devastating war before this community could perhaps be called upon—properly or improperly—to examine the immutable laws that had governed the society for hundreds of years.

The Sabha's third reason for protest is that in matters involving change in the Hindu institutions other methods must be evolved if general approval of the people for whom the change is intended is to be expected. The Government is aware that Hindu Civilisation is based on socio-economic and socio-religious concepts which are widely at variance with what exists in much of the other parts of the world and that this structure has its ramifications in most spheres of life. A pull at one point has repercussions on the entire structure not of the aggregate group-life alone but of individual life as well. To devise a change one must have a thorough and complete knowledge of the inter-relationships of those forces that have balanced life in the aggregate and in the unit for hundreds of years.

To come to the concrete proposals we beg to submit the following. In the very beginning the definition of Stridhana is too wide and therefore open to objection.

The order of succession suggested in the Bill follows neither the Dayabhaga nor the Mitakshara school of interpretation and has been a hybrid resultant and full of contradictions and anomalies without any consistent principle. The Sabha submits that the two schools have been working satisfactorily in different areas each of which has held fast, by its own school with a religious fervour and has made the necessary adjustments during hundreds of years past. Those adjustments have grown too tight to be disturbed without creating costly confusions and hopeless complications in many cases. The Bill is objectionable from start to finish. We discuss some of the points below.

A widow or daughter has no claim to inheritance while there is a son to the departed person. Yajñavalkya's text is: *Putni Duhitaraschaiba pitaraa bhratrastha* *Swarayantasya hyasputrasya* etc., i.e. The widow or daughter comes in when there is no son. So also Vishnu, who says:—

Aputradhanam patnyabhi-gami, tadabhavē dūhitragami, it has been enjoined that one who does not maintain the widows and other dependants legally left to one's care commits a sin (adharma). Similarly one who does not meet out of one's own share the marriage expenses of one's sister falls in virtue.

In both cases they certainly have their legal remedies. The sages and their commentators have fully discussed these cases.

When there is a partition the widow gets equal share with the son but only half share if there is already some stridhan in her favour (But this right is not absolute). Yajñavalkya II. 115, 123 and 148.

As to the marriage expenses of maiden sister there is some little difference of opinion between the commentators as to the quantum, but the provision is recognised by all. See Manu IX. 118 and Yajñavalkya II. 124.

The cases of neglect of the above duties have arisen amongst the earning educated people by the avoidance of duties of maintenance of almost all kindred females according to Manu and by the introduction of individualism amongst the females. According to strict Hindu law, the partition is forbidden during the life time of parents, the duties of fathers to maintain daughters-in-law was never meant to be avoidable, and the moral obligation to marry daughters was so strong that the British Courts had to recognise it as a legal duty of the family. To these duties every Hindu has his own remedy according to circumstances, but above all the ties and obligations of Dharma have to be respected which cannot be enforced by legislation. To give absolute right of inheritance to females as daughter, as wife and as mother, is to introduce claims for disruption of family life, to guard which the Moslems are taking recourse to Wākf. If the proposer of this law wants to punish individualism as such, this proposed distribution will accentuate the progress towards ideals of no property. But if marriage and property which are still held by all civilised sociology to hold the key of culture and cohesion are to be respected then the proposals cannot bear the scrutiny of any Hindu thinker.

It has to be pointed out to the proposer of this law that in 1853, Prof. Seymour Vesey Fitzgerald in his article on Hindu law in the Encyclopaedia of Social Science was, for the first time in Europe, pointed out that the Hindu Rishis are more akin to men of science and that Hindu law is a distinct jurisprudence on a distinct philosophy of Manu.

As to absolute right of women, the Sabha submits that—"A woman can have no absolute right to a property unless it is stridhan. Jñanavahana, 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 guruashrita Bhunjitamaranat kshanta dayadu urdhvamapnuyah.

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. Jñanavahana quotes also the following from Mahabharata (Dana dharmā):—

Strinam Swapatidayastu upabhagaphalaha smritan Naphatam striyah kuryuh patidayat kathanchannah.

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 intended 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 srutih*. 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. Dwarkanath Mitter committed himself in his research work of his youthful days, viz., that the *Sruti* refers to a share of some juice only and not to shares in general. It may be added in this connection that Manu also characterises women as *Nirindriya* (IX 18) 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.

One of the grounds for this drastic change is given as the high status of some of the women of the present day. But in ancient days; too there were learned ladies such as Gargi, Maitreyi, etc. But the laws of inheritance was all the same. The law is made in accordance with the needs of the majority and not of a microscopic minority.

Widows being inheritors according to Md. law, the widows of departed brothers are often found to be married by the surviving brother or brothers, so that no foreigner can come in and create complications. In avoiding complications they invite abject poverty by procreation as a natural consequence.

To avoid too many shares—widows, daughters, etc., the dying Md. owner is often to have recourse to Wākf or a deed of gift from the sharers. The evils which the Mds. try to avoid (for which there are provisions in their law) are being invited for the Hindus.

There may be some difference regarding the interpretation of the exact shares for an unmarried girl to meet her marriage expense as noted in the Explanation appended to the bill. But how that can be made a ground for extending that share to married girls also passes our comprehension.

Again why should the law of the majority be replaced by the law of the minority? It should also be noted that those classes of Mussalmans among whom inheritance was so long being regulated by the Hindu law are now gradually coming under the Koranic law, while the inheritance among the entire Hindu community is now being made to conform to Koran by seceding from the tenets of their own scriptures. Thus, while the Mds. are integrating the Hindus are being made to disintegrate. Why? The reason is not far to seek. It is the reformer's hatred for everything foreign (including their manners and customs). Some of the western Jurists of great repute (e.g., Dicey) highly admire the Hindu law as a regular science, but some of our own men are out to kill it. Whenever a change is felt necessary according to their sweet will, they swear by such catchy expressions as 'general trend of opinion', 'the time has now arrived' and the like. But where is the evidence therefor? No reply. What is the proportion of the reformers' number to non-reformers? Only a very small fraction. Then who are they to dictate? Is it not a case of oppression by the minority upon the majority?

Clause 17 introduces a revolutionary innovation in a rather surreptitious manner to avoid detection. They have introduced the same change in a similar manner even in the sacramental marriage of the Hindus? (i) Inter-caste-marriage and (ii) Sagotra or Samana pravara marriage are not valid.

(i) As to inter caste marriage, the line of their argument is as follows:—

True that the Anuloma marriage is forbidden in Kaliuga by some of the Puranas and the invalidity of such marriage is accepted in certain parts of India, but such (Anuloma) marriage is valid in some parts, e.g., Bombay. Therefore both Anuloma marriage and Pratiloma marriage should be regarded as valid in all parts of India. (Note that Pratiloma marriage is not a marriage at all but a lustful combination).

Why the Sastra-abiding provinces forming a majority should be made to follow the example of Sastra disobeying provinces forming a minority and not the opposite, is not clear. The reformers should bear in mind that the laws of Manu, Gautama, etc., are meant not for Kaliuga only but for all Yugas. Therefore, they naturally contain some matters such as Anuloma marriage, Kshetrina putra; etc., which are meant for other Yugas than Kali. The explanations also. That matters must naturally occur in their commentaries also. That does not indicate the existence of the customs during their own time. It should be mentioned in this connection that

even in other Jugal Anuloma marriage was valid when performed after having taken a wife of the persons own caste.

(2) As to Sagotra or Samana-pravara marriage:—
Such a marriage is a misnomer. 'Bharyatwameva nasyat' (Mitakshara). The issue born of such marriage are regarded as Chandalas and are ineligible for inheritance Katyayana says—

Akarmodha-sutacharia sagotrad yasau jayate.
Pravriya: vasitachariva na rikthama teshu charhali
Issue born of marriage performed in violation of due order (viz., irregular Anuloma and Pratiloma) and of Sagotra marriage and one has reverted to the life of a Grihi from the life of a recluse are not eligible for inheritance. For a detailed discussion of this point, please see our note on this point in the opinion given on the Bill relating to Hindu marriage. With regard to provisions in Clause 18 of the proposed Bill the Sabha considers that a wife should be divested of the property inherited from her husband if she goes astray. She is rendered unfit to render the spiritual obligations of her husband and thus unfit to inherit his property. In this view the Sabha is supported by the author of the Dayabhaga. See Manu IX Clause 20 is directly against the Shastras. See Manu IX 201. We do not pose to be more wise and kind-hearted than our ancient sages.

It is pertinent to investigate how far interference contemplated under the proposed Hindu Inheritance and Marriage laws, are within the competence of the present law-making powers enacted under the Constitution Act of 1935. A mere look at the new inheritors proposed to be made heirs under the Hindu law, will convince all fair-minded and unbiased persons that the doctrine of pinda or spiritual benefit has been thrown to the winds. It has been assumed that the right of inheritance is only a secular concern of the Hindus. It is certainly highly improper either for the Committee or for the Hon'ble the Law member to airily and summarily brush aside the spiritual side of law affecting so many millions of Hindus.

Certainly, the constitution Act empowers legislation regarding inheritance and marriage but to prejudicially affect by disingenuous circumvention, the religious rights of Hindu Sadhna and sacrament of a marriage and thus to reduce Hindu religion to individual personal affair, is not within the competence of the legislature constituted as it is, leaving open the question whether it can ever be within the competence of any secular body to legislate about spiritual life of any association.

No Judiciary worth the name can question the propriety of the observations of the Earl of Halsbury regarding 'articles of the faith' made and endorsed in his judgment in (1904) A.C. 515. We gratefully acknowledge that rightly does Kumaraswami J. remind us of those observations in 53 Mad. 137. Apart from principles laid down by the Noble Earl, there are other obvious facts. By Sec. 85 of the Charter of 1853, the Governor-General in Council was enjoined to protect "By law and regulations" the natives 'from insult and outrage in their persons, religions or opinions'. This law remained in force till 1930. The power given by the constitution Act of 1861 requiring the previous sanction of the Governor-General to the introduction of laws affecting religions and religious rites in face of the existence of the said Section 85, was obviously made for the responsibility of the Governor General laid on him by the said 85th section. This provision of previous sanction continued in the law of British India upto the repeal of all previous constitution Act by the Act of 1935. "Religions and religious rites" which are much familiar subjects from 1861 are not in the lists of the Act of 1935 although the subjects of Marriage and Inheritance are there. The natural interpretation will be that the Legislatures are empowered to legislate on Marriage and Inheritance without prejudicially affecting the 'religions and religious rites' involved in them. Thus, they may be competent to interfere with Civil marriage and Inheritance regulated by Indian Succession Act but not with sacramental marriage and Hindu law of Inheritance.

It is true that by Sec. 301 of the Act of 1935 the guarantee of respect for Shastras and Koran has been taken away. But that does not amount to giving any positive power to legislate on Shastric and Koranic matters. The position is this—

Before 1935 the Legislatures were empowered to legislate on religions and religious rites but the guarantee for protection was retained by the permanent power. Now that the legislatures are no longer empowered to legislate on religions and religious rites the guarantee for protection is taken away perhaps as being superfluous. In other words, now that there is no possibility of mischief the question of guarantee does not arise at all. Hence it has been taken away.

It may also be added that the memorable Proclamation of the gracious Queen Victoria, confirmed by subsequent Royal announcements, is looked upon by the Sanatani Hindus (in spite of modern opportunist, interpretations to the contrary) as the Magna Charta of their Religious Liberty.

In this connection the Sabha submits most emphatically that whether there is guarantee or no guarantee, no power on earth, however great, should have any power to interfere with the Religions and religious rites which are based on Revelation.

In the light of the above facts and arguments it will be sufficiently clear that the recommendations made in the Bill for which a Md. gentleman, the Hon'ble the Law Member, has been made a scape goat cannot stand and must be thrown out. It will be the duty of Government not to introduce the Bill at all.

In conclusion, in protesting against this Bill the Sabha is not to be understood to approve in any way all the provisions of the Act of 1937. It has serious objections and the Sabha suggests that immediate steps should be taken for amending the objectionable provisions contained therein.

No. 19.

FROM THE JUDICIAL SECRETARY TO THE GOVERNMENT OF BENGAL,
TO THE SECRETARY TO THE GOVERNMENT OF INDIA, LEGISLATIVE DEPARTMENT, No. 5243-J., DATED, CALCUTTA, THE 20th NOVEMBER, 1942.

SUBJECT:—The Hindu Code, Part I (Intestate Succession) and the Hindu Code, Part II (Marriage).

Two copies of the opinion of the Bengal Provincial Hindu Mahasabha are forwarded herewith in continuation.

From The Secretary, Bengal Provincial Hindu Mahasabha, I beg to enclose herewith the views of the Bengal Provincial Hindu Mahasabha on the draft Bills.

A brochure dealing with these topics more thoroughly is being prepared and will be forwarded as explaining and supplementing these views.

OPINION.

We submit that consideration of the Draft Bills being L. A. 26 and 27 of 1942 should be postponed for a time and further representation should be called for from different provinces for *inter-alia* the following reasons:

1. Since agricultural lands are not affected the diversity among provinces on the points covered by the Bills will remain.
2. The views of different provinces ought to have been more fully consulted. From the tabular form in which the Committee has dealt with such views the reasons thereof cannot be found and without setting out of the reasons for and against the views consideration of the views is mechanical.

3. As Committee itself has suggested there should not be piecemeal legislation on Hindu Law topics but on Hindu Law as a whole. Therefore these Bills on Intestate Succession and Marriage are premature, the more so as they affect other cognate topics e.g., maintenance, endowment etc., which are yet left out.

4. Many Provincial Legislatures are not functioning at present. Hence it may be difficult to ascertain Provincial views fully. This Legislation should therefore be introduced only when times are fairly normal.

We agree generally with the representations made on behalf of the Bar Association, Calcutta High Court for the postponement of the consideration of the Bills.

While on this we venture to draw the attention of the Committee to the following observation in the Committee's Report, p. 12 para. 18 with which we are in entire agreement and to which we refer to reinforce our representations for postponement aforesaid.

"To the impatient reformer we would commend the example of Switzerland in evolving the present Swiss Civil Code. Until 1874, Swiss Civil Law was in the hands of the Cantons of which the federation is composed. By the Federal Constitution Act of that year, power was given to the centre to enact legislation on certain branches of Civil Law; but with the exception of these branches, Civil Law remained with the Cantonal authorities. It varied greatly in different parts of the country; French Law predominated in certain Cantons; Austrian Law in certain other Cantons; German Law in yet other; and in the rest Customary Law modified by occasional Statutes. The inconvenience resulting from this want of uniformity became more and more acutely felt as inter-Cantonal relations developed. Accordingly in 1898 the Constitution was amended so as to authorise the Central Legislature to unify the whole of the Civil Law in Switzerland. In the meantime, a great jurist was commissioned to prepare a preliminary draft which occupied him from 1893 to 1899. The draft was published, and another Commission was appointed to consider the criticisms received and to revise the draft. This Commission consisted not only of jurists, but also representatives of all sections of thought in Switzerland. Sub-Committee being formed to consider certain parts of the Code. Not until 1904 was the final draft submitted to Parliament. The debates in Parliament continued for three years. Finally, in 1907 the Code was passed by a unanimous vote in both Houses. But it did not come into force until January 1912. (Ivy Williams, "The Sources of Law in the Swiss Civil Code", 1923,—Introduction, pp. 13—16.)

In the short time at our disposal it has not been possible for us to go into the question in greater detail. A brochure dealing with these points extensively is being prepared and will be forwarded to the proper quarters as soon as the same is ready.

Subject to the above observations we set out our suggested amendments on the Bills themselves as detailed below.

1. Incidents of the Widow's estate should be retained as they are at present and should apply to cases of all woman's property except her absolute Stridhana property. This necessarily will affect provisions re.—Widow, Daughter and Sister, and thereby will affect the entire scheme of Intestate Succession as detailed in the Bill.

Our objection to changing the nature of Woman's estate is mainly based on the fact that the policy of Hindu Law favours a Succession by a female only when she is the means of conferring spiritual benefit on the propitiatus e.g., Daughter succeeds because her son would confer spiritual benefit on the propitiatus. The Scheme of Intestate Succession as detailed in the Bill runs counter to this cardinal doctrine. According

to that scheme, for example, the person taking after the daughter is not the daughter's son but daughter's daughter who confers no spiritual benefit herself nor is a means of conferring any on the propitius. It will be idle to explain away the importance of this doctrine of spiritual benefit as essentially a Dayabhaga doctrine. The Judicial Committee of the Privy Council has repeatedly recognized its application also to Mitakshara cases. [e.g. *Jatindra vs. Nagendra* (1932) 58 I. A. 372].

No. 20.—PUNJAB.

FROM THE HOME SECRETARY TO GOVERNMENT, PUNJAB, TO THE SECRETARY TO THE GOVERNMENT OF INDIA LEGISLATIVE DEPARTMENT, No. 7200-J-42/61067, DATED LARORE, THE 5TH NOVEMBER, 1942.

SUBJECT:—*The Hindu Code, Part I (Intestate Succession) and the Hindu Code, Part II (Marriage).*

I am directed to forward the opinion of the District and Sessions Judge, Ferozepore, on the Bills, which has just been received.

from the District and Sessions Judge, Ferozepore.

Under the scheme of the Bill, the widow, the son and the daughter are all simultaneous heirs, the daughter getting half the share of the widow or the son. The widowed daughter-in-law of the intestate is deprived of inheritance. The widow's limited estate is made absolute. These proposals are likely to prove very controversial. According to the general notion of Hindu society, the daughter after marriage is deemed to be re-born in the *gotra* of her husband. She is, therefore, a *gotraja* of her father until marriage and of her husband after marriage. If the daughter gets a share before marriage and that share goes with her even after marriage, her position becomes better than the son. According to general custom, her brother would incur the expenses of her marriage and would also part with the share which would go to her. It would be rather difficult for the brother to ask his sister to pay for the expenses of her own marriage. Even after the marriage there are certain ceremonial occasions when it becomes necessary for the brother to incur expenses for the benefit of his sister. In the presence of the sons, the daughters should not get any share in the estate of their father, though the expenses of their marriage should be a charge on their father's estate, but they should not get a share, whether married or unmarried.

With the abolition of the limited estate of the widow and her getting a share after the death of her husband with the son, the position of the widow is very much improved. This drastic change should not be introduced all at once. The sons and grandsons especially should be able to challenge her alienations if not made for legal and justifiable necessity. The brothers of the husband should also have this right. If no such restrictions were imposed, the position of the daughter would become better than the son, as the mother would give her share of the property to the daughter rather than to the son with whom she would fall out in many cases on account of her daughter-in-law.

The other provisions of the Bill relate to matters of detail which require no comment.

No. 21.—ASSAM.

FROM THE JUDICIAL SECRETARY TO THE GOVERNMENT OF ASSAM, TO THE SECRETARY TO THE GOVERNMENT OF INDIA, LEGISLATIVE DEPARTMENT, No. J. J. D.-150/42/178, DATED SHILLONG, THE 5TH NOVEMBER, 1942.

SUBJECT:—*The Hindu Code, Part I and the Hindu Code, Part II.*

I am directed to forward herewith the opinions of the following gentlemen as desired by the Government of India:—

1. Secretary Dibrugarh Bar Association;
2. Babu Dharani Ranjan Pal;
3. Babu Brojendra Narayan Choudhuri;
4. Babu Dharma Das Datta.

OPINIONS.

From the Secretary, the Dibrugarh Bar Association.

The bills are opposed on the following grounds:—

Hindu Law requires no codification except on the points of differences of the old authors. Hindu Law is very elastic—thus meeting conveniently the demands of all kinds.

The bill to amend and codify the Hindu Law relating to intestate Succession—gives the provision of definite shares to widows and daughters along with sons, besides the other points. We also have no objection to give definite shares to such persons, but the pious obligations of offering *pindas*, paying debts, the maintenance of the widow and daughters, their marriage and educational expenses when the funds of the allotted shares are not sufficient to meet them, will cease to operate. Unless there are abrupt changes in social and economic matters, the old law stands good.

From Babu Dharani Ranjan Pal, B.L., Pleader, District Court, Sylhet.

Social legislations which only concern the Hindu society should be passed by a legislature composed entirely of Hindus only and not by Houses composed of cosmopolitan legislators who suffer nothing perhaps hope to gain some-

thing if the Hindu Society is weakened; and who moreover are not acquainted with the Hindu traditions and customs and cannot enter into the depth of Hindu spiritualism. If that is not possible under the present constitution—only the Hindu Members of the Legislatures may proceed to codify the Hindu Law on the recommendation of a Committee composed of Hindu Lawyers of British Courts as well as the well known Pandits of Smriti. Three years ago Mohanohadpadya Pandit Pramatha Nath Tarkabhusan of Benares appealed to those reformists who wanted reform of Hindu Laws and customs in conformity with the cardinal principles of the Smritis to meet and discuss, but in vain.

From Babu Brojendra Narayan Choudhuri, M.A., B.L. Principal, Women College, Sylhet.

SUCCESSION TO THE PROPERTY OF A MALE HINDU.

Clause 2 (2) (b); Clause 5.

The Bill is a monstrous Hybrid of two contradictory ideals viz., the individual and the family. We have to decide once for all whether the units composing the state should be individuals or families. If we decide for the former no laws of succession or of marriage are necessary. The owner will dispose of his property as he will. In case he has left no will, his property will go to the state as undisposed of property. Duration and condition of marriage will be determined by the contracting parties as they please subject to restrictions imposed by public policy only. In the present case I will assume that it is agreed that the family should continue as the unit. The family consists of husband, wife, children and other blood-relations. One person and one only must represent the group of persons called the 'family' in relation to the state and in relation to other family units. The male has hitherto been the head (*Karta*) or representative of the family in Hindu Society. The same is the case in Christian Europe but the female's coverture has been gradually loosened to a large extent. The logical conclusion of this movement is demanded for equality of status of the sexes which necessarily implies negation of the Family's idea. By clause 2(2) (b) a woman is an agnate of her father; why not of her mother? In either case marriage is no union but a precarious chummyery.

The succession to the male according to Hindu law follows the 'pinda'. The heir who offers the 'Pinda' satisfies the soul of the departed owner, by perpetuating the family by issues of his blood and enhancing the reputation of the family by following the family's own distinctive culture. Here I am quoting almost verbatim from Sanskrit and vernacular sayings till current among the vast majority of Hindus. The terms *Bangsa-rakshar*, *Bangsa-gaurava* are in every Hindu's mouth. The 'Sadh' is not intended to bestow 'Mukti' (Salvation) to the deceased; on the other hand it is 'Shargakamar, Priyarthna' intended to give satisfaction to the departed soul. After death the soul carries with it all controlling desires it had in the embodied form on this earth. The best satisfaction to the soul comes from continuity of work of expanding the family, its culture and reputation towards which and the departed dedicated its life on this earth. This is the ideal of Hindu householders life, subscribed to by the Hindus in accordance with tradition and the teaching of 'Sastras'. Logically therefore the duty to offer 'pinda' and property held by the deceased which are the instruments to expand and enhance the prestige of the family for the satisfaction of the departed souls falls to the person best able to undertake these duties. Hindu biology is adamant in its belief on heredity although environments also are given their proper limited value. It will I hope, be generally agreed that the male nearest in blood to the deceased is the best selection for these duties unless disabled like King 'Pandit' of the Kuravas, even now in nine hundred ninety-nine cases in a thousand women's progress in economic and political spheres not withstanding. The state cannot look to the convenience of one neglecting the nine hundred ninety-nine in framing its laws. The initial mistake lies in forgetting that there is no 'ownership' in the Smritis; holders of property are trustees. Therefore there was no power to Will. It is not devolution of property but Dayabhaga i.e., devolution of duties. In my estimate half of the town-dwellers die virtually bankrupt, leaving no substantial property to be bequeathed. Of the other half by far the larger proportion can leave property which are quite insufficient for the maintenance of the children, owing to higher style of living although the nominal value of the property may be counted in four figures. Daughters of the urban population excepting a handful of very rich who will be prys to wife-hunting husbands will not benefit by the new legislation. The plight of the unmarried daughter in middle class families of limited means will be pitiable. Probably the father leaves property worth Rs. 2,000 only to be shared among five children. Only rupees four hundred falls to the share of the daughter which is an amount quite insufficient to defray her marriage expenses. In such cases the brothers as the sole disburers of the family property owe and discharge the duty of marrying the sister if necessary by spending the entire two thousand or even more out of their own pockets. Now the fact that the daughter will be an owner will wipe away this sense of legal and moral duty of the brother. Every villager who has a homestead and cultivation will also be adversely affected by alike measure, of Provincial Legislature. The land he bequeaths is assured living for his sons. The daughters who now get an equal share in the land are most probably married elsewhere and

cannot possibly cultivate their shares of the patrimony but would try to sell them off. In most cases the brothers would not be able to raise ready cash to retain the patrimony in the family. The soul of the poor deceased cultivator who carefully tended the lands with the toil of his brow will witness the lands to really fly into fragments and his fondly cherished tradition of which he is proud and his dreams of glories of his children on this field of action, (Karmakshar) of his ancestors of himself and his sons fly away too. It must not be forgotten that the cultivator, poor though he be in luxuries is not poorer in necessities or in culture than the 'enlightened'.

A good deal of litigation comes before our courts arising out of succession of daughters in modern law. Succession cases amongst Hindus are very very rare at least under the 'Dayabhag' school. The rare cases sometimes arise out of doubt as to who is the legal successor in case of very remote heirs. A few cases of succession litigation of Hindus are in contest of wills and 'Dattakaputra'. The fact that Hindu wills are very very rare proves that the intestates at least are satisfied with the existing law. The argument has been advanced that because there is the freedom to will, any law of intestate succession is not really compulsory but only permissive in spirit. This argument may with equal propriety be used against this bill. Probably with more propriety because it is good argument to say that 'Status quo' shall not be disturbed unless there is an urgent necessity. It may be a fact that fear of litigation arising out of the tendency of lawyers to advise contesting any will and of greedy clients to be their dupes, and the fear of displeasure of near relatives in the family in helpless old age, deter some persons from making a will. These factors will also operate in the case of the proposed amended law as in the case of the old.

SUCCESSION TO THE PROPERTY OF A HINDU FEMALE.

Clause 13 (b).—We cannot see the consistency of having a different law of succession in case of the property of a female than in the case of the property of the male. The 'Shiballeth' of equality of men and women on which the provisions for the succession to males are based is here given the go by. This is 'Heads I win and tails you lose'. The status of the two sexes can by no means be called equal unless women give up the right to maintenance and to maternity relief. Women cling to maintenance which is based on the division of family duties which throws the onerous struggle for earning a living upon the men, leaving the women to be mistresses of the domestic household. Grihniग्रह उच्यते. There is no sense in claiming equality and at the same time fighting shy of the struggle of life. 'The new women' know that women's right to maintenance is the foundation of the family and that without maintenance the family institution would vanish. Women by their very nature are more attached to the family institution than men. This is proved by Striachar in Hindu marriages. They profess to have captured the rogue elephant. Here their excellence or weakness whichever way it be viewed, is revealed although the new women do not know of it.

We can consider an extreme actual case where a childless Hindu wife has been turned out by the husband. With the assistance of her father she has been educated and has earned money with which she has purchased some property. According to the present law her property would devolve upon her husband's son by a co-wife, which she considers to be atrocious. She has no love for the husband or the husband's family whose oppressions have compelled her to lead a solitary life and brave the struggle of the world for a livelihood and that she may grow to full womanhood. The answer to her question is simple. She is quite free to will away her property upon her brother's son whom she loves. I have mentioned this actual case in order to bring out the vital necessity of allowing divorce in case of sacramental Hindu marriage. Desertion of a wife has never been countenanced by Manusmrities. The Committee is anxious to restore the purity of the ancient laws of Manu in marital relations. Manu enjoins that a wife who has gone astray should not be deserted but reformed by penances 'Kricehas' and that she regains her purity in course of time. This is more liberal to the weaker sex than any other system of law in the world. In a case where the wife does not and really feels that she cannot consider herself to be a member of the husband's family—she is already divorced in spirit. If the law is to be sincere by the Bhabasudhi principle of Mimamsa there ought to be a divorce in a case like the one referred to above. Divorce will be discussed more fully in connection with the bill against 'Polygamy'. The explanatory note:—"Sex disqualification has few defenders at the present time". This is loose vocabulary of the politician agitator and not weighted pronouncement of law-makers. I would challenge a plebiscite.

"Women's limited estate has no real basis in the Smritis"—Nari no Satantram arbihi is the principle of the Smritis. As such widow is under the coverture of her husband's relations and therefore her estate is limited by their consent.

"In India Muslim, Christian, Parsi, Jain women take a full estate; it is difficult to differentiate Hindu women. The disability can hardly be defended when we have women legislators, women lawyers and women ministers". The British Government like Moslem rulers recognised the rights of religious communities to their own personal laws. India is still under British rule. We have not got Swaraj yet. There have always been some women pandits versed in Kaluya and Shastras and able women soldiers and administrators in Hindu and Moslem periods even in the British period.

amongst the Zemindars of Bengal like Rai Baghini, (the title conferred by Akbar) Rani Bhabani, Maharani Swarnamoyee etc., no less able than the "One Swallow" of the Congress Ministries. The law should have been changed long long ago!!

"Limited estate is fruitful source of litigation"—the suggestion to take permission of the court before alienation should not be expensive or take long time. Dilatoriness and its inevitable consequence, the expenses are the vices of Judicial maladministration which apply to every case of court permission to numerous in our laws. The Smritis in the absence of near relatives expressly put the woman under guardianship of the State. The woman with the limited estate is in bad plight because British courts would not perform the duty faithfully.

"The authorities quoted in support in the explanatory notes are the discussions of the Smritis in treatises in English by law-graduates and schools of modern universities. Most of these authors have studied their Smritis through English translations and of the few who have thoroughly studied them in original hardly any have the grounding in Naya and Mimamsa Darshan which is absolutely essential to understand Smriti correctly. As such little reliance can be placed on these views.

Clause 5.—Since the Smriti system is based on duty 'Dayabhag' Manu's texts (IX 118) is assignment in lieu of maintenance for maiden sisters. It means one-fourth the total estate is assigned to the maiden sisters. Manu's text should be confirmed by legislation. When the brothers give the maiden sisters in marriage, they transfer the obligation or Daya of maintenance to the family of the husband. Therefore the share reverts to the brother. To argue that the maiden daughter because she may lose her portion will avoid marriage and be living in sin is defamatory to Hindu Culture. That every healthy man and woman youth should marry is the law and tradition of the Hindus. The danger mentioned may come from those who are westernized in ideas. The only remedy is to return to the old moorings if, contrary to the Smriti law of maintenance in father's and husband's family, new women all demand share why are they so modest to claim only half of a brother and not full. This is the woman's way; or do their conscience prick in claiming share from one family and maintenance from the other simultaneously. Their condition would be pitiable if they lose maintenance. They do not get paternal property before parents' death. The inheritance of most will not suffice to maintain them.

"A father-in-law is more likely to disinherite his daughter-in-law than a father his daughters"—this is again defamatory to dearly cherished Hindu ideals. I have fully discharged my duties towards my daughter, the moment I have given her to a suitable husband. The daughter-in-law is my Putrabadhi and the future mistress of my household. I have parted with the daughter for good but the daughter-in-law is nearest and dearest to me. She will be first in my thought when I make a will should the calamity contemplated arise. Yes, the moral obligation to maintain widowed daughter-in-law should be converted into a legal obligation as the Smritis intended.

Clause 12-13.—The strictly limited Stridhan of the woman has always been a small amount never intended for maintenance but only as pocket-money and therefore to be bestowed as affection dictates. Therefore daughters and daughter's issues get preference. If all daughters are to be allotted shares as in clause 5 and women's full estate is to be recognised over all property she holds there is no need to distinguish any portion as her Stridhan because all her Dhan now becomes as good and secure as property belonging to the male.

Clause 17.—"to punish their children by depriving them all rights of inheritance"—again I protest inheritance is Dayabhag no rights, no punishment are involved.

Clause 20.—There are various provisions in the law at present for the appointment of a competent manager or guardian I would apply the argument in support of suggestion of application to court on behalf of women's limited estate before alienation (discussed in the general observation in explanatory notes), that if those provisions be salutary similar provisions should be salutary in this case too.

From Babu Dharmadas Datta, Government Pleader, Sgllct.

This Bill will receive a considerable amount of public support. Its principal feature is that it seeks to remove the disqualification to which, under the Hindu Law, women have been subject, as regards inheritance and right of property. The inclusion of the daughter among the enumerated heirs of class I is a reform which has been advocated for a long time. The adjustment of relations consequent of this reform will take time, and the intervening period will be a period when testamentary dispositions will find favour. But the adjustment will come and the Hindu society will live up to the reform. There will be many to think that the widow of a pre-deceased son and one or two other female relations should find a place among the enumerated heirs. It may be hoped that these details will receive attention during the passage of the Bill through the legislature.

The abolition of the theory of limited estate will benefit the public generally. It is a fact that Hindu Law cases mostly arise out of transfer by the limited owners, and this reform will have the effect of considerably reducing litigation.

I have no observations to make on the provisions relating to stridhan.

* * * It appears from the replies of those consulted that opinion is very much divided and on the whole non-official opinion as well as a fair volume of official opinion is against the proposed legislation. In view of the mixed popular reaction the Provincial Government are not in favour of the legislation. They would also agree with the view expressed in several quarters that piecemeal alteration of the Hindu Code is undesirable.

2. The Bills with the Statements of Objects and Reasons including the explanatory notes and in the case of the first Bill the appendix thereto were published in part VI of the Orissa Gazette, dated the 24th July 1942 in English.

OPINIONS.

From the Secretary Oriya People's Association, Cuttack.

In the opinion of the Association an enactment as proposed by the Bill, excepting the provisions relating to Dasiputra of a Sudra and removal of distinction between adopted son and Auras son, does not appear to be necessary. Enactments passed in recent times relating to Hindu Law of Inheritance and Hindu Women's rights have considerably improved the status of Hindu Women.

It is stated in Objects and Reasons that "the best solution seems to be to put Hindu women on a par with other women in India who get full rights and to abolish the limited estate". By way of illustration the author of the Bill has given some instances to show how the interest of a woman will suffer if her limited interest in the inherited property is continued. But instances are not rare where Hindu women on account of their secluded life have fallen victim to the intrigues of unscrupulous people and Hindu ladies inheriting substantial properties have been reduced to abject penury. So in these circumstances there is no sufficient justification to change the law as proposed in the Bill. If any Hindu gentleman considers it necessary that he should leave some property to his wife or daughter or any other female relation absolutely, he can do so by way of gift or devise.

It is, of course, often found that widowed females are not well-treated in the family after the death of their husbands and it is desirable to ameliorate their condition. But that can be best done by the provision of Hindu Women's Right to Property Act which may be made applicable to both agricultural and non-agricultural lands.

Further the idea of legislation is confined only to a small minority of the Hindus whose ideas in this respect have been changed by their western education and change in social conditions. If any of them consider it necessary to give their female relations better rights than they have at present, then they can do it by gift and devise instead of by a law which is not suitable to the vast majority of the people.

Clause (B) of sub-clause (2) of clause 2, where it is laid down that "a woman shall be deemed to be an agnate of her father and his agnates and shall not only by reasons of her marriage be deemed to be an agnate, of her husband and his agnates", offends against the fundamental principle of Hindu marriage. The Association, therefore, is not in favour of any such drastic change.

The Bill has such points here and there which may be acceptable to the Hindu public. But the very policy of the Bill to make drastic changes with regard to the status of females is very unsuitable to social and economic conditions of Hindu Society. Women belonging to other communities may have rights superior to those of Hindu women, but that is the outcome of other conditions to which they have become accustomed for centuries. It will not be proper to look at the inheritable right of Non-Hindu women apart from their other social and religious surroundings, transplant the rights of women belonging to other communities in Hindu community. So in the opinion of the Association the Bill as framed should not be passed into Law.

From the Honorary Secretary, High Court Bar Association,
Cuttack.

We emphatically oppose the idea of codification of the kind to affect the personal laws of the Hindus. It is against the declared British Policy not to interfere with the personal laws of British subjects. The Hindus have their different schools of law in different provinces in India; by introduction of the Legislative measures of the kind, it seriously affects their personal law and traditional culture.

This will have the effect of breaking the solidarity of Hindu Society. The fundamental idea of co-parcenary property, so well of co-parcenary property, so well established in Mitakshara School will be seriously affected; in Dayabhag School also there will be gradually serious changes. The properties will be gradually broken into small pieces and legislation of the kind will open doors for litigations and will also seriously affect the cordial relationship between

near and dear relations; this has already been experienced by the measures already passed giving rights to woman. The changes are quite unnecessary and should not be introduced at all to bring about changes in the established mode of succession.

From the District Officer, Ballanore.

It recognises that the daughter, son and widow will inherit together. It is not clear whether they inherit jointly or hold separate shares.

I have no other comments to offer on this part of the Code. It would certainly cause a great social upheaval as it makes radical changes in the system of inheritance women. I consider it however to be for their good. The local opinion, however, is against this change.

From the Advocate-General, Orissa.

1. This Bill does not touch the rule of succession under the Hindu Law relating to agricultural lands on account of the incompetency of the Central Legislature to touch that subject and, therefore, if this Bill is passed into law it will introduce two different rules of succession amongst the Hindus and this is not desirable.

2. This Bill would work disintegration in the family system of the Hindus by importing heirs from outside into the family group. Any other system of law having such rule of succession as to place, for example, sons and daughters as simultaneous heirs, has a marriage system which prevents such disintegration taking place. Amongst the Mohammedans, for example, marriage between two first cousins and between step brother and step sister are permissible and this prevents such disintegration. With the law of prohibited degrees in relation to Hindu marriages in force, it would be introducing foreigners into the family by giving a right of inheritance to the daughters simultaneously with the sons. In the absence of male issues the daughter has a right of succession and that is quite harmless. The only innovation that can be tolerated is if the right is given to unmarried daughters or sisters with a condition that it ceases to continue as soon as the girl is married unless she is very indigent. Mitakshar system of law does recognise preferential consideration based upon indigence and wealth amongst the daughters.

3. Dasi Putra indigence and wealth amongst our daughters.
4. Dasi Putra is excluded from the category of a son and, this would be a revolting thing to the whole system. Though amongst the three twice-born classes Dasi Putra is not an heir to take simultaneously with legitimate sons, he has certain rights which are very valuable. Amongst the Sudras, Dasi Putra is a simultaneous heir with the legitimate son, though with a lesser share. To exclude Dasi Putra from the category of son can have absolutely no justification in natural justice. To force it as law would also affect the Hindus politically for reasons which I have discussed in my opinion with regard to Bill to amend and codify the Hindu Law relating to marriage.

4. There is an ambiguity in Clause 5, Class I of enumerated heirs. The entries are (i) son, (ii) son of a predeceased son and (iii) son of a predeceased son of a predeceased son as heirs to take simultaneously. The fundamental principle of Hindu Law is that once the separate or self-acquired property of a father descends to anyone or more of his sons, grandsons or great-grandsons, it becomes ancestral in the habits of the successor and, therefore, the moment it so descends it becomes the property of not only the sons but also of the grandsons and great-grandsons, if any; they all become jointly interested. Therefore, in that case, the deceased father's heir is not a son but the son's male issues upto the three generations, if alive. The Bill in defining "heritable property" leaves survivorship intact, and therefore, this enumeration is repugnant to the theory of coparcenary according to which any son or grandson or great-grandson, by his birth, acquires an interest in any ancestral property held by the father or the grand father. This seems to be anomalous.

5. To place son's daughter and daughter's daughter before father, mother and brother is not desirable.

6. The Explanation to Clause 13 (a) is ambiguous particularly on account of the words "another widow of the husband". It is difficult to understand how "another widow of the husband" would include item No. 9 of sub-clause (b) and if it includes, it would be wrong to say that when the mother inherits any property from the son, the said property after death would go to the heirs of her husband and not to that of her son from whom she inherited.

7. With regard to Clause 14, there ought to be some verbal changes. In order to make it clear that this rule of taking per stirpes applies only in those cases in which daughters' daughters, daughters' sons, and sons' daughters must be by different sons or daughters and it should be made clear that when there is a number of daughters' daughters or daughters' sons or sons' sons or sons' daughters by the same son or daughter, they will take per capita. Further, the clause fails to consider the case of the son by a son who though not predeceased is otherwise disqualified from inheriting, on account of idiocy or lunacy or another ground. The clause only providing that son of a predeceased son is an heir by necessary implication excludes all sons of living sons while the latter are disqualified from inheritance.

8. Clause 18, requires much modification. The substantive portion of the clause is practically negated by the proviso. According to the proviso the only disqualification of a widow from inheriting her husband's property is either a testamentary disposition disinheriting her or her declared unchastity within the meaning of clause (b) of the proviso. In that case, clauses (a) and (b) should form the main section. Again, clause (a) of the proviso is unnecessary; because if there is testamentary disposition, the property does not become heritable property within the meaning of the Act for the purpose of intestate succession, and therefore, it is redundant and superfluous. Therefore, the clause should only be reduced to that where any widow has been declared unchaste in a litigation to which she and her husband were parties, she will be disqualified from inheriting her husband's property unless the same has been condoned. It has to be noticed where the husband by testamentary disposition deprives such a declared unchaste wife or a part of the property and does not do so in respect of the rest, it will be held that with regard to the rest she has been condoned. There should be section more precise in language and concise in form incorporating the above suggestions.

9. Similarly is the case with regard to the son of a son who has been unheard of for a great length of time about whom it cannot be predicated either that he is alive, or that he is dead. There may be a son who has renounced the world after leaving a son behind. His case also is not covered by the Clause 5 (1). I, therefore, suggest that there must be something to show that sons of such sons or grandsons are civilly dead or disqualified from inheriting even though alive are to be considered as heirs.

In short my view is that the legislation of Hindu Law incorporating reforms should not be taken up piecemeal. The entire Hindu Law system is so interconnected that piecemeal legislation would simply introduce anomalies, inconsistencies and incongruities. The whole Code must be drafted at one and the same time and the parts that are to be passed by the Provincial Legislatures should be accepted by all Provinces after deliberations by Inter-Provincial Committees.

NO. 23—DELHI.

FROM THE CHIEF COMMISSIONER, DELHI, TO THE SECRETARY TO THE GOVERNMENT OF INDIA, LEGISLATIVE DEPARTMENT, NO. F.4(49)/42-GENERAL, DATED DELHI, THE 19th NOVEMBER 1942.

SUBJECT.—*The Hindu Code, Part I (Intestate Succession)*
The Hindu Code, Part II (Marriage).

“I have the honour to forward the following papers containing the views expressed on the above noted Bills, namely:—

1. Endorsement No. 1177, dated the 27th July 1942, from the District and Sessions Judge, Delhi.
2. Letter No. 1287, dated the 20th August 1942, from the All-India Digamber Jain Mahasabha, Delhi.
3. Letter from the Secretary, Arya Samaj, Delhi, dated the 2nd September 1942.
4. Opinion of the Sarvadeshik Arya Pratinidhi Sabha, Delhi, dated the 31st August 1942.

I have no comments to offer.

OPINIONS.

From the District and Sessions Judge, Delhi.

My first suggestion is that legislation on the proposed Hindu Code should not be taken up piecemeal. As pointed out in the explanatory note accompanying one of the bills, different parts of the subject are inter-connected. It would not be advisable, therefore, to codify each part separately. There may be advantage in eliciting views of the public on one aspect of it, as a matter of convenience, before proceeding to other aspects but this could be secured by merely inviting public opinion and not proceeding with the Bills further until the subject had been exhausted in full. The explanatory note on the Bill relating to Marriage tends to suggest that this is the scheme likely to be followed.

2. As far as the Bill relating to intestate succession is concerned, I wish to confuse my remarks merely to clause 5 of it. The explanatory note to this Bill indicates that under the original plan of the Committee appointed by the Central Government the unmarried daughter was to take one share equally with the son and the widow and the married daughter was to get no share. Under the force of criticism by lawyers of weight, in the Bill as proposed the share of the widow and unmarried daughter has been reduced to 1/2. A similar share has also been awarded to a married daughter. In fact all daughters have been put on the same footing irrespective of the fact whether they are widowed, married or unmarried, rich or poor and with or without issue. I am in agreement with the principle of the Bill that a married daughter should not be totally excluded from a share in the estate of the deceased. At the same time, keeping in view the expense which is involved in a daughter's marriage in India I am of opinion that the share of a married daughter should be lesser than that of an unmarried daughter. Further distinctions on the basis of number of children and the financial position of the daughters would make the law too complex. It is not even always possible for legislation to provide for all contingencies special or ordinary which might arise. My suggestion, therefore, is that although an unmarried daughter's share should be one half as proposed under sub-clause (1) of Clause 5 the share of the married daughter should be reduced to 1/3, or even 1/4.

GPD—L2184 LD—12-3-43—400.

I am also inclined to think that a minor son too deserves to be better provided than a major one, on the ground that whereas the former has yet to be educated and fitted for life the latter has already been provided for in this respect by the deceased before his death. On ground of complexity the suggestion might not sound practicable but it deserves to be carefully examined.

In all other respects I support the provisions of the Bill relating to Intestate Succession.

From the General Secy. All-India Digamber Jain Mahasabha, Delhi.

The All-India Digamber Jain Mahasabha is opposed, as a principle, to any legislation regarding matters that are purely social and religious. The two pieces of legislation sought are barely social and religious in character and the Mahasabha sees no reason to depart from its principle in giving its consent to any such legislation. The Mahasabha has, however, pondered over the general principles and aspects of the two Bills and while not disagreeing with the broad principles underlying the proposed legislations it desires to make it known that the Jains, as a community are generally governed by their own Jain Law in various social and religious matters. It is desirable that the Jains should be exempted from the operation of the world-be-legislation and left to be governed by their own usage and customs.

From the Secy. Arya Samaj, Delhi.

The proposed Bill is a great improvement on the existing law of inheritance amongst Hindus, and its main features have been well summarised in the explanatory note. The uniformity of law of succession amongst Hindus is in itself a great advantage and the proposed Bill attempts to secure it by a compromise between the two schools of Hindu Law viz. Mitakshra and Dayabhag, and the claim, that the compromise does no great violence to either of them, may well be considered to be justified.

There also can be no two opinions that the Bill seeks to raise the present status of Hindu women. Such a change in law has been long overdue, and the proposed legislation only seeks in a measure to make it more in accordance with ancient Vedic conception of rights of women than those of later commentators and judge-made law. The limited estate of Hindu Woman has been purely a creation of judicial decisions, and finds no support from ancient Vedic texts or Smritis. It is gratifying to note that this has been done away with and the rights of women have been recognised and placed on an equal footing with those of men. It is further gratifying to observe that several near relations who are at present excluded from inheritance have been included amongst the list of heirs, like the son of a paternal aunt and the maternal uncle or aunt's son.

One criticism that we would like to offer with regard to the provisions of this Bill is the question of simultaneous succession by a daughter with a son or sons. This may not be objectionable from a purely religious point of view, or Shastric texts, but considering the present state of Hindu society and the practical difficulties and social evils that the provision may lead to, we are inclined to the view that this may well be dropped. While it is perfectly legitimate that a Hindu daughter should have absolute estate, in the absence of a son, grandson or a great grandson, to make her an heir along with the son, will be to introduce an element in Hindu society which is likely to lead to undesirable results practical difficulties, particularly in case of persons possessing only small means. It will also be hard on commercial concerns as by introducing the daughters or their husbands as partners, the continuity of established firms is likely to be prejudicially affected.

It will complicate matters, by producing disharmony in the family and sisters who are till now looked upon in ordinary Hindu society with respect and affection, will come to be looked upon with dread as being rival claimants to the father's estate. It will lead to useless litigation between brothers and sisters, as so often happens in the case of Muhammadan families. It will also act as an incentive to Hindu fathers and brothers to marry their daughters and sisters with very close relations or persons of limited means who will remain subservient to their wishes. We visualise such other difficulties of a similar nature cropping up; if this provision is retained, and are of opinion that it may well be dropped.

From the President, Sarvadeshik Arya Pratinidhi Sabha, Delhi.

[Not printed—same as the opinion of the Arya Samaj, Delhi.]

NO. 24.

FROM THE CHIEF COMMISSIONER, DELHI, TO THE SECY. TO THE GOVERNMENT OF INDIA, LEGISLATIVE DEPARTMENT, NO. F.4 (49)/42-GENERAL, DATED DELHI, THE 1st DECEMBER 1942.

SUBJECT.—*The Hindu Code Part I (Intestate Succession)*
The Hindu Code Part II (Marriage).

In continuation of my letter No. F.4(49)/42-General, dated the 19th November 1942, I have the honour to forward a copy of a letter, dated the 23rd November 1942, from the Arya Samaj, New Delhi, together with copies of its enclosures in duplicate.

[OPINIONS.—Not printed—same as the opinions of the Sarvadeshik Arya Pratinidhi Sabha, Delhi.]

GOVERNMENT OF INDIA
LEGISLATIVE DEPARTMENT

PAPER No. III

OPINIONS ON

THE HINDU CODE, PART I (Intestate Succession)

(Published in the Gazette of India, dated the 30th May, 1942, under Rule 18 of the Indian Legislative Rules)

Opinions Nos. 25-26.

	BOMBAY	PAGES.
No. 25.—From the Secretary to the Government of Bombay, Home Department, No. 6039/4-B, dated the 23rd December 1942		
	DELHI	71—22
No. 26.—From the Chief Commissioner, Delhi, No. F. 4 (49)/42-General, dated the 21st December 1942.		72

No. 25.—BOMBAY.

From the Secretary to the Government of Bombay, Home Department, to the Secretary to the Government of India, Legislative Assembly Department, No. 6039/4-B, dated the 23rd December, 1942.

I am directed to forward herewith a copy of the letter dated the 12th December 1942, from the General Secretary, "All-India Hindu Mahila Sabha, Poona".

From the General Secretary, All-India Hindu Mahila Sabha, Poona, dated the 12th December, 1942.

I am giving below further suggestions and amendments from the A. I. Hindu Mahila Sabha to the Rao Committee's Bill to amend and codify the Hindu Law relating to intestate succession.

Rao Committee has introduced a Bill to amend and codify the Hindu Law relating to intestate succession. They say that broadly speaking the provisions of this Bill were based on the rules for All India published in 3rd memorandum and the Stridhan Rules in 4th memorandum published in July 1941. According to this the main features of the Bill are (1) that it embodies a common law of intestate succession for all India in British India, (2) that it removes the sex discrimination by which Hindu woman in general has hitherto been precluded from inheriting property in various parts of India, (3) and that it abolishes the Hindu Woman's limited estate. But the main feature which the Bill as drafted has introduced has not been stated in these principle features. The law of inheritance according to Hindu texts does not allow simultaneous succession of more than one heir at the same time except in the case of "Issue" where the word *Putra* has been understood to include *Putra* (पुत्र) *Praputra* (प्रपुत्र) and there also the *Putra* and *Praputra* represent their respective fathers, except in this case it can be said without any contradiction that it favours inheritance of one heir the nearest in succession by blood and on him the responsibility of maintaining the house-hold gods, the maintenance of decrepits and payment of debt of deceased and offering funeral oblation is placed. The Committee have without explaining accepted the principle of simultaneous succession in the case of four "enumerated" heirs, namely, widow, son, son of predeceased son and son of predeceased son of predeceased son and they have bracketed all these together and opposite the bracket they have put in remarks in bracket that all succeeding simultaneously and with equal rights. Why do they accept? Do they give any reason for it? They give no reason for it either in their 3rd memorandum as also in the present explanatory note.

Upto 1937 there was no thought of allowing a simultaneous succession to more than one heir, all the amendments made in the law of succession were based on the principle of single heir succession and it is only in the Hindu women's right to property Act that simultaneous rights are given to these four. It may be said in justification of that remedial Bill which was solely intended to remove certain disabilities in the case of certain widows that this principle was accepted but there is no justification for adopting it in a proposal Bill which deals with the law of succession as a whole. If the principles of Hindu Law are to be kept in tact as principles this departure is not justified. This is economically unsound with respect to immovable property especially to agricultural land and this also introduces further complications. This point has not been considered by the Committee apparently they seem to have taken the cue from the Mohamedan Law. But without going the length of proposing a new scheme, they could have proposed that the personal law should be abolished so far the Hindus are concerned, and Indian Succession Act made applicable.

The Hindu Mahila Sabha for this reason opposes the principle of the Bill of simultaneous succession of several heirs as being opposed to the Hindu Law.

Taking the main features of the Bill as described in the explanatory note the Hindu Mahila Sabha wishes to point out that the Committee should have taken into consideration that the Law of Succession should be one for all Hindus whether in British India or Indian India. It would not be proper for there being one law of succession with respect to

British India and different law for Indian India. It is bound to introduce some international complications in future. In order therefore, to have one common law the Bill should proceed on principles occurring in the text of Hindu Law which are common to all provinces.

If it was thought necessary to give relief to certain women whose lots become unbearable owing to the conditions of the society it could have been done by other methods. One of which is suggested below:—

The cases of difficulties and deplorable condition arose only with respect to widows and son's widows in joint Hindu Family. All other women who enter the husband's gotra by marriage, namely, mother or grandmother or collateral widows would cover practically all cases. The case of mother is easy because even in a joint Hindu family she has a right to a share equal to that of a son along with the sons the only incapacity she had was that she could not claim her share until sons separated and in the case of only son she had no right. A section in law giving her that right could have sufficed that purpose. The same would be the case of grandmother. Therefore the only cases to be considered would be widow and son's widow in a joint Hindu family. If the Dayabhag interpretation were accepted and the meaning of *Daya* as proposed by *Jimutvahan* were taken as the basis the difficulty would disappear. Every male whether in a joint or separated family would be full owner and would have a right to will away his property including his share in a joint Hindu Family. He could be left very well to make a provision for these unfortunate women but that is not done and in order to make provision for these women the whole basis have been changed, that the Hindu Mahila Sabha does not approve.

The further objection this Sabha has to clause 2 (b), namely, "a woman shall be deemed to be agnate of her father and her agnates and shall not by reason only of her marriage be deemed to be an agnate of her husband or his agnates." One fails to see the reason for introducing these words, namely, "by reason of her marriage" because there is no other circumstance except marriage that changes the gotra.

This change according to the opinion of the Hindu Mahila Sabha is most pernicious. The thought which occupies the mind of every woman that on marriage she has only to look to the husband's family as her family would disappear then and she would be in her husband's house as brought there only to continue the family and inherit to her husband or her sons if there is any property otherwise she would be looking to her father's family only. This would be destructive of the family unity.

The Committee has done this with a view to pacify the demand raised by the woman for the daughter's rights. The Committee has sought to justify this introduction at page 120 of their explanatory note and the Committee has there tried to point out that the position of the poor daughter-in-law would not be worse in her father's family by reference to a concrete illustration. Concrete illustration on the other side also can be cited and such hypothetical cases cannot solve the question.

The Hindu Mahila Sabha would suggest a provision for a daughter to be made when the daughter remains unmarried. She has no status according to Hindu Law she should therefore be given one-fourth share of a son till her life without power of alienation and this would suffice for her purposes.

In the succession proposed for the Stridhan property on page 113 clause 13 (b) the son is given the fourth rank. This the Hindu Mahila Sabha does not approve. In property coming from husband the son should be given a preference over daughter. Even to the property acquired by her other than the property from her husband the son should be given preference or atleast equal rights with daughter.

In respect to the third feature of the Bill, namely, that it abolishes the Hindu Woman's limited estate, this Sabha opposes the suggestion, it does not go the whole length as the Committee has gone. At the most she should be given an absolute right after the series of enumerated heirs upto paternal grandfather's line is exhausted and not before. After all the widow's rights are recognised as being surviving half of her husband and there is no reason why the property of the half of the husband should go outside the family.

One further suggestion this Hindu Mahila Sabha insists is that a provision should be made that the estate of a person

dying without heirs should go to the Crown as trustee of the Hindu Community and it should be obligatory on the Crown to apply it for the benefit of that community alone.

With respect to the other details of the Bill the Hindu Mahila Sabha would send such further recommendation and suggestions as would occur to them after full consideration of the Bill.

No. 28.—DELHI.

From the Chief Commissioner, Delhi, to the Secretary to the Government of India, Legislative Department, No. F. 4 (49)/42-General, dated the 21st December, 1942.

I have the honour to forward a copy of a letter from the All-India Sharda-nand Dalitodhar Sabha, Delhi, No. 10100, dated the 8th December 1942, together with a copy of its enclosure.

Copy of a letter No. 10100, dated the 8th December 1942, from the General Secretary, All-India Sharda-nand Dalitodhar Sabha, Delhi, to the Registrar to the Chief Commissioner, Delhi.

* * I herewith enclose the unanimous opinions of my Sabha in connection with the Bills that you had very kindly sent to us for my Sabha's opinion. * * *

The proposed Bill is great improvement on the existing law of inheritance amongst Hindus; and its main features have been well summarised in the explanatory note. The uniformity of law of succession amongst Hindus is in itself a great advantage and the proposed Bill attempts to secure it by a compromise between the two schools of Hindu Law, viz., Mitakshara and Dayabhaga, and the claim, that the compromise does no great violence to either of them, may well be considered to be justified.

There also can be no two opinions that the Bill seeks to raise the present status of Hindu Women. Such a change in law has been long overdue, and the proposed Legislation

only seeks in a measure to make it more in accordance with ancient Vedic conception of rights of women than those of later commentators and judge-made law. The limited estate of Hindu Woman has been purely a creation of judicial decisions, and finds no support from ancient Vedic texts or Smritis. It is gratifying to note that this has been done away with and the rights of women have been recognised and placed on an equal footing with those of men. It is further gratifying to observe that several near relations who are at present excluded from inheritance have been included amongst the list of heirs, like the son of a paternal aunt and the maternal uncle or aunt's son.

One criticism that we would like to offer with regard to the provisions of this Bill is the question of simultaneous succession by a daughter with a son or sons. This may not be objectionable from a purely religious point of view or shastric texts, but considering the present state of Hindu society and the practical difficulties and social evils that the provision may lead to, we are inclined to the view that this may well be dropped. While it is perfectly legitimate that a Hindu daughter should have absolute estate, in the absence of a son, grandson or a great grandson, to make her heir along with the son, will be to introduce an element in Hindu Society which is likely to lead to undesirable results and create practical difficulties, particularly in case of persons possessing only small means. It will also be hard on commercial concerns as by introducing the daughters or their husbands as partners, the continuity of established firms is likely to be prejudicially affected.

It will complicate matters by producing disharmony in the family and sisters, who are till now looked upon in ordinary Hindu society with respect and affection, will come to be looked upon with dread as being rival claimants to the father's estate. It will lead to useless litigation between brothers and sisters, as so often happens in the case of Muhammadan families. It will also act as an incentive to Hindu fathers and brothers to marry their daughters and sisters with very close relations or persons of limited means who will remain subservient to their wishes. We visualise such and other difficulties of a similar nature cropping up, if this provision is retained, and are of opinion that it may well be dropped.

GOVERNMENT OF INDIA
LEGISLATIVE DEPARTMENT

PAPER No. I

OPINIONS

ON

THE HINDU CODE, PART II (Marriage)

(Published in the Gazette of India on the 30th May, 1942, under rule 18 of the Indian Legislative Rules.)

Opinions Nos. 1—13

MADRAS

1. 1.—From the Joint Secretary to the Government of Madras, Home Department, No. 3903, dated the 21st October 1942, and enclosures. 1—5

BIHAR

1. 2.—From the Judicial Secretary to the Government of Bihar, No. 2132/A-35/42-J., dated the 20th October, 1942, and enclosures. 5—10

UNITED PROVINCES

1. 3.—From the Secretary to the Government of the United Provinces, Judicial (Civil) Department, No. 1995/VIII-334-1942, dated the 15th October, 1942, and enclosures. 10—19

PUNJAB

1. 4.—From the Home Secretary to the Government of the Punjab, No. 5262-J.,-42/45866, dated the 24th August, 1942, and enclosures. 19—23
1. 5.—From the Home Secretary to the Government, of the Punjab, No. 6429-J.-42/54075, dated the 7th October, 1942, and enclosures. 23—24

CENTRAL PROVINCES AND BERAR

1. 6.—From the Secretary to the Government of the Central Provinces and Berar, Judicial Department, No. 2088-1760/XIX, Dated the 17th September, 1942, and enclosures. 24—30

ASSAM

1. 7.—From the Secretary to the Government of Assam, Judicial and General Department, No. JJD. 160/42/159, dated the 15th September, 1942, and enclosures. 30—31

NORTH-WEST FRONTIER PROVINCE

1. 8.—From the Home Secretary to the Government of N.-W. F. P., No. 27002-H.J./1/1, dated the 25th September, 1942, and enclosures. 31—32
1. 9.—From the Home Secretary to the Government of N.-W. F. P., No. 27152-H. Judi./1/16, dated the 25th September, 1942, and enclosures. 32

SIND

1. 10.—From the Dy. Secretary to the Government of Sind, Home Department, No. S-22/20-H/42, dated the 17th October, 1942, and enclosures. 32—33

AJMER-MERWARA

1. 11.—From the Hon'ble the Chief Commissioner, Ajmer-Merwara, No. G/19-1, dated the 15th September, 1942, and enclosures. 33—34

COORG

1. 12.—From the Chief Commissioner of Coorg, No. A-1-2068/42, dated the 7th September, 1942. 34—35

PANTH PIPLODA

1. 13.—From the Chief Commissioner, Panth Piploa, No. 3439-B., dated the 28th July, 1942. 35

No. 1.—MADRAS

From the Joint Secretary to Government, Home Department, to the Secretary to the Government of India, Legislative Department, New Delhi, Ms. No. 3903, dated Madras, the 21st October 1942.

SUBJECT:—Bills—Central—Hindu Code, Part II (Marriage)—Amendment—Opinion.

I am directed to forward in duplicate copies of opinions of the Hon'ble the judges of the High Court, selected officers, and other persons and associations who were consulted on the provisions of the Bills, and to say that the Government of Madras support the Bills and agree with the views expressed by the Hon'ble the judges of the High Court on the provisions of the Bills.

2. The Bills, with the Statements of Objects and Reasons, were published in the *Fort St. George Gazette* in the following languages, on the dates noted against each.

English 23-6-1942
Tamil, Telugu, Malayalam and Kannada. 4-8-1942

OPINIONS.

The Advocates Association, Madras.

The Bill has introduced radical changes in the Hindu Law of Marriage. Monogamy is made obligatory and bigamy is made punishable. The prohibition against taking a second wife during the life time of the first is sure to cause hardship in certain cases but undeniably there will be as much hardship if not more, say in the

case of a woman tied down to an undesirable husband. It should be a matter for consideration therefore whether the rule as to monogamy should not be relaxed in some cases. The division of marriage into Sacramental and Civil, with no provision for divorce in the one case and with a provision for it in the other is likely to satisfy both conservative as well as reformist lines of thought. The rules relating to Civil Marriages are more or less on the lines of the Special Marriage Act. The anomaly in the present law that if two Hindus marry as such under the Special Marriage Act, they would be governed for purposes of succession not by the Hindu Law but by the Indian Succession Act, is removed. Sagotra marriages can also take place in the Civil form as only prohibited degrees of relationship are to be avoided. As to the statement in the Notes on clauses that it should be a matter for consideration whether the provisions of sections 22 to 26 of the Special Marriage Act should be reproduced in the Bill, there seems to be no sound reason for their incorporation and the proposal if any the other way would be unacceptable.

The sections dealing with Sacramental marriages are open to criticism in many respects. A sacramental marriage postulates conformity to religious prescriptions which require sameness in caste and difference in Gotra and Pravara between the parties. While Section 4 enjoins that these elements should be present as conditions of a Sacramental marriage, S. 7 lays down that the marriage if completed, shall not be void merely because one or all of these conditions are or are violated. The provision is virtually subversive of S. 4. It is difficult to see how much a marriage can be a sacramental marriage. If on the other hand identity of caste or difference in Gotra is to be immaterial there is no necessity for sub-sections (b) and (c) of S. 4. Persons desirous of marrying outside the caste or inside the Gotra can as well resort to a Civil Marriage and no hardship is involved. Where by mistake or carelessness or recklessness a sacramental marriage has taken place between members of the same Gotra or of different castes the parties may be given liberty to resort afresh to a Civil marriage. The sacramental marriage may be permitted to remain in reality sacramental.

Though monogamy is made the rule provision for its relaxation in some cases is desirable. In the case, for instance, of wife suffering from venereal and loathsome disease the husband cannot take a second wife even if the first wife is willing where the marriage is sacramental. In the case of a Civil marriage, equally there will be no way out unless through the tortuous path of divorce which neither of the parties may desire and which will be only for causes mentioned in the Divorce Act and which if sought would leave the wife adrift without any obligation on the part of the husband to provide for her maintenance. It should therefore be a matter for consideration whether the rule as to monogamy should remain altogether rigid.

Uncle and niece are for purposes of marriage declared by S. 2 (d) to be within prohibited degrees. Section 6 saves custom only subject to the rule as to prohibited degrees being kept inviolate. We take it that the validity of marriages between uncle and niece that have already taken place is not intended to be in any way affected and that the prohibition is only for the future.

In the case of marriages outside the caste a more strict rule as to the consent of guardians may be insisted upon both with reference to sacramental as well as Civil marriages. If the bride is below 21, in such cases the consent of the guardian may be made a condition precedent.

Sir P. S. Sivaswamy Aiyer, Bangalore.

Clause 4 (c) of the bill embodies the existing prohibition of marriage between persons belonging to the same gotra or having a common pravara. It is sufficient to prohibit marriage within the prohibited degrees of relationship enacted in Clause 2 (d) of the bill. The prohibition of marriage of persons having the same pravara or belonging to the same gotra serves no purpose at the present time and under the existing condition of society. I have discussed this question at length in an article in the "Indian Review" 3 or 4 years ago. There is no rational basis for the prohibition of marriage between two persons belonging

to the same gotra, e.g., or one residing in South India and another in Northern India, having no other connection or relationship with each other and speaking different tongues. I would therefore delete Clause 4 (c).

2. The object of Clause 4 (a) is to enforce the principle of monogamy. While I am generally in favour of the principle, I am of opinion that the unqualified introduction of this principle is neither in accordance with the Hindu Law nor expedient in the interests of society. Under the Hindu law, polygamy was allowed in cases where the wife was barren, diseased or vicious, or was a consenting party to a supercession. Take the case of a wife afflicted with an incurable, infectious, or loathsome and contagious disease, like leprosy, syphilis, etc. It may be said that there may be a difficulty in determining whether a disease is really incurable, contagious or infectious, and that the advance of medical science may render the disease amenable to treatment. The enforcement of a rule of monogamy in these cases will not be conducive to mortality, or the happiness of married life or social welfare.

3. The object of marriage under the Hindu Law was the procreation of off spring. Where a marriage has been infructuous for a period, say, of 15 years after consummation, the parties may be allowed to contract a second marriage. I have known cases in which the wife is a consenting party to a second marriage by the husband where she herself has borne no children. There is no reason why her consent should not be held to justify a second marriage.

4. It is not easy to define viciousness in the wife. It is probably desirable to provide for a case like this by a suitable law of divorce.

5. It may be said that if these grounds justify a departure from the principle of monogamy, it should be applied in favour of both sexes. I have no objection to equality of treatment.

6. Clause 7 (a). The principle of *factum valet* is proposed to be applied where a sacramental marriage has been solemnised between persons who do not belong to the same caste. Under clause 4, identity of caste is a condition under sub-clause (b). I have heard of cases in which minor girls have been kidnapped or decoyed from British India and married to persons of a different caste, as defined in this bill. Is it reasonable to apply the principle of *factum valet* where the girls have been deceived or abducted? No sacramental marriage should be upheld where fraud or force has been employed.

7. Clause 8 (2) permits a civil marriage where a woman has completed her fourteenth year. This is no doubt in accordance with the existing law under the Special Marriage Act. Would it not be reasonable to raise the age and impose the same requirement as in the case of men, viz., the completion of the eighteenth year?

The Chairman, Advisory Board of Supervision,
Madras Seva Sadan.

* * the women members of the staff are of the opinion that the provisions in the bill relating to women are satisfactory and they have, therefore, no suggestion to make either to amend or alter any of the said provisions

Sir V. Ramesam.

I agree to the provisions of the bill generally, but there is one point relating to drafting about which I have misgivings. In s 4 (d) it is provided that the parties to a marriage should not be Sapindas to each other. So far as agnate Sapindas are concerned this is all right. This is the rule all over India, but as to Cognate Sapindas this is not the case in Southern India. In my opinion, in South India a man can marry any cognate Sapinda except mother's sister's daughter and sister's daughter. As to sister's daughter I have heard one or two instances among Telugu Brahmins; but among the Reddis in Nellore 90 per cent. of marriages are of sister's daughter. I am mentioning this merely as a fact. I want the prohibition to stand as provided for in 2 (d). But beyond these two cases, all marriages with Cognate Sapindas are valid. It is true that the bill provides in s. 6 that according to

local custom they may be held to be valid. But this imposes a burden upon the parties to the marriage and there issue to prove a custom which has been going on for many centuries. Many marriages are between Cognate cousins. In my opinion the proper thing is to provide in S. 4 (d) as an exception that marriages of Cognate Sapindas (except mother's sister's daughter and sister's daughter) are valid in Southern India and in any other province where a similar state of things prevails. I do not know outside Southern India. I hear that, in Bengal, they are invalid.

The Women's Indian Association, Madras.

The Women's Indian Association have very great pleasure in supporting * * * the Hindu Marriage Bill * * *. While supporting whole-heartedly * * * the Bill, we welcome the prohibition of Polygamy in sacramental marriages, which by enforcing Monogamy abolishes the evils of Polygamy, the desertion of wives, multiplicity of wives and such other 'injustices' done to womanhood. We hope there will be scope for nullity and divorce also in sacramental marriages, as per explanatory note in the Bill.

The "Prohibitive degrees" of relationship is a very necessary provision in the Bill. It has become a matter of every day affair that nieces are given in marriage to uncles. In South India custom and usage had been allowing sacramental marriages between a girl and her own uncle, i.e. mother's brother, as also between the daughter's son and son's daughter or *vice versa*. The five degrees of Sapinda as per clause 2 (c) is prohibited here. By prohibiting Sagotra and Sapravara marriages and also barring the 5 degrees Sapinda, it will limit the marriage field to a very great extent. On the basis of eugenics, however, the near blood relationship should and ought to be prohibited, and the clause 2 (d) of "Prohibitive relationship" will put an end to incestuous marriages. In consequence, we feel Sagotra rule may be waived, but since it has proved a touchy point with Orthodox opinion, we support the Bill as it is, with clause 6 allowing exception to the Sapinda alliance if sanctioned by custom and usage.

We appreciate the introduction of a Civil Hindu Marriage thus doing away with the disabilities of the special marriage Act.

In conclusion, we hope all the other Bills will follow in quick succession and thus enable the codification to be complete in a few years.

Sri K. Kuttikrishna Menon, Government Pleader,
Madras.

* * * * *

One of the objects of the proposed bill is to make all Hindu marriages monogamous. This is certainly a desirable reform which will meet with the approval of all thinking persons. In most cases the reasons given for a second marriage are that the wife is afflicted with an incurable disease, or that she has not borne a child even after several years of married life. This has received statutory recognition in Madras. In section 11 of the Madras Nambudri Act (XXI of 1932) which applies to the orthodox Brahmins of Malabar, it is enacted that a second marriage can be had in the following cases:—

- (a) where a wife is afflicted with an incurable disease for more than five years,
- (b) where the wife has not borne him any child within ten years of her marriage,
- (c) where the wife has become an outcaste.

If there is great opposition to abolish polygamy altogether, I think it would be advisable to adopt the half-way measure above referred to. In the event of allowing a second marriage under special circumstances, provision will have to be made in the bill for separate residence and maintenance for the superseded wife.

Section 7 of the bill declares that a sacramental marriage solemnized after the commencement of this Act shall not be invalid by reason of the parties belonging to different castes or to the same *gotra* or a common *pravara*. The proposal in the bill is to extend the doctrine of *factum valet* to such marriages. If such a marriage be

held invalid, the wife, in despair, may take to a life of shame and misery. I am therefore strongly in favour of this provision in the bill.

In this connection, I would refer to my opinion No. 29, dated 7th July 1941 regarding the Hindu Marriages Disabilities Removal Bill of Mr. Govind V. Deshmukh. Therein I suggested that a more comprehensive measure might be introduced for declaring marriages between different castes valid.

The Servants of India Society, Royapettah, Madras.

In the explanatory note, it is stated that other topics relating to marriage would be dealt with later if it is known that the principles embodied in the present Bill are acceptable. While there may be some reason for putting off consideration of other topics, it is necessary to recognise that the acceptance of the very departure from the traditional law involved in the ideal of monogamy may be dependent in the case of many on the satisfactory provisions formulated in respect of those topics whose consideration has been postponed for the present. So the Bill or the Bills dealing with all the chapters of a comprehensive law of marriage would have received more dispassionate consideration.

The present Bill seeks to recognise two forms of the Hindu marriage, viz., (a) sacramental marriage (b) civil marriage. Even now they are recognised. The only radical change contemplated in respect of the sacramental marriage is insistence on monogamy. Whether the traditional law recognised polygamy or not, monogamy is in accordance with enlightened public opinion. Even if it is contended that polygamy is permitted by the Hindu religion, there is no denying the fact that the community does not look upon it with favour and that in practice the Hindus are monogamists. Therefore, legal prohibition of polygamy is a step in the right direction.

One of the conditions governing the sacramental marriage is that the parties must not belong to different castes. Nor should they belong to the same *gotra* or have a common *pravara*. The parties should not be *sapindas* of each other. The latter prohibitions become operative only when the marriages are between parties belonging to the same caste. Moreover, clause 7 validates marriages even when they violate the condition regarding *gotra* or *pravara*. As far as intercaste marriages are concerned, it is not known why they should be prohibited and cease to be sacramental marriages even though the two ceremonies prescribed are gone through. But it is some consolation even they will become valid if they once take place and if at all, they can be prevented by injunction before they take place. It is, therefore, gratifying the doctrine of *factum valet* is applicable in respect of such marriages as also those performed in accordance with local custom or special usage. But these provisions are likely to encourage surreptitious marriages where the parties are likely to violate one or more of the conditions governing sacramental marriages which are sought to be condoned under clauses 6 & 7 and the validity of such marriages once they happen are not to be questioned. It is far better to remove all galling restrictions and permit free marriages. Their sacramental character need not be lost simply because the parties belong to different castes within the Hindu fold or belong to same *gotra* or have the same *pravara*. The only condition which may be imposed in respect of both the forms of marriage if the parties violate one or the other of the conditions laid down in clause 4 is that both the parties thereto should have attained the age of eighteen years. There should be no scope for preventing such marriages even by injunction as suggested in the explanatory note. It is not known why marriages violating the condition relating to *Sapindas* are not sought to be validated by clause 7. The observance of that condition is much more difficult as it involves knowledge of law. It is enough such regulation of relationship is left to custom which in India has as much force, if not more, as any law. It is also safe to introduce a proviso at the end of clause 7 emphasising condition (a) of clause 4. Therefore clause 7 may be altered as follows:—

"No sacramental marriage solemnized after the commencement of this Act shall be deemed to be, or even to have been invalid if the parties thereto have attained the

age of majority, merely by reason of one or more of the following causes, namely:—

- (1) that the parties to the marriage do not, or did not belong to the same caste;
- (2) that the parties belong to the same *gotra* or have common *pravara*;
- (3) that the parties are *Sapindas* of each other.

Provided that the condition specified in clause (a) of Section 4 is fulfilled."

It may be argued why there should be so much anxiety to give a sacramental character to marriages between parties who do not satisfy the conditions laid down in clause 4. The fact of the matter is that there are many who would like to go through ceremonies prescribed by the Hindu religion and may have some sentimental objection to have them registered. Registration may be optional as a measure of abundant caution especially when the parties are violating the conditions laid down in Clause 4. To make the fact of marriage certain and not open to doubtful testimony should the fact happen to be questioned subsequently, registration is advisable; but it need not be made compulsory.

The conditions relating to age in civil marriages need alteration. Under sub-clause (a) of clause 4, completion of sixteen years for the bride is enough for the sacramental marriage without the consent of the guardian. But twenty-one years is fixed as the age limit for both the parties for contracting a civil marriage. I think the age of majority i.e., eighteen years may be enough for both the parties to contract civil marriage without consent of the guardian. So in sub-clause (3) of clause 8, 'eighteenth' may be substituted for 'twenty-first'.

As regards the changes proposed in respect of civil marriages the Bill seeks to do justice to Hindus contracting civil marriages by omitting section 24 of the Special Marriage Act. By enacting Act XXI of 1850 "all laws and usages, as inflicted on a person forfeiture of rights or property or affected his or her rights of inheritance by reason of his or her renouncing any religion or being deprived of caste" have ceased to operate. It is but right that the Hindus contracting civil marriages should be governed at least by the same laws which operate in the case of those coming under Act XXI of 1850 and of the Brahmins under the Special Marriage Act who are still governed by the Hindu Law in the matter of succession. Then again the omission of sections 22—26 of the Special Marriage Act is eminently reasonable. What purpose is served by 'deeming to effect his severance' from the family as soon as a member of an undivided family contracts a civil marriage? He commits no heinous crime. Nor does he bring discredit to the family by his action. However, it is just possible after marriage the parties may not fit into the life of the joint family. Perhaps it would be far better for them to live separately. In the report of the Select Committee on what is known as the Patel's Intercaste Marriage Bill, the following observation occurs which if deemed necessary may be incorporated in the Bill in place of Section 22.

"But most of us are agreed that in the case of a marriage legalised under the Act there should be an unrestricted right of partition in every member of the joint family, and that pending actual partition the rights of a member who has entered into a marriage to be legalised by this Bill should be confined to separate maintenance on the scale ordinarily applicable to the family."

As regards Section 23 of the Special Marriage Act, again the following observations of the Select Committee on Patel's Bill may be read with interest:

"Some of us are of opinion that the rights of all children by a wife of a lower caste should be left to be governed by the ancient provisions of Hindu Law; but the majority of us feel that there should be no differentiation in this respect and that all children whatever the caste of the mother may have been, should share equally both upon partition and upon intestate succession."

So omission of section 23 is necessary removing the restrictions now imposed on succession in certain cases.

It is not understood why persons contracting marriages under the Special Marriage Act should be deprived of the right of adoption. As long as they remain Hindus they should be entitled to all the privileges of the community and should not be penalised in any manner for contracting a civil marriage. Hence the omission of section 25 is just and reasonable.

I have the following remarks to offer on the Bill relating to marriages:—

The effect of clause 7 is practically to remove the bar based upon caste and the bar based upon *gotra* or a common *pravara* enunciated in clause 4. The only way to give effect to the prohibition in clause 4 under the Bill as stands is by the interested parties taking appropriate proceedings for the prevention of the marriage by injunction or similar proceeding. I would prefer the bar being moved altogether instead of the restriction being retained and the marriage being rendered valid by the doctrine *factum valet*. If on the other hand it is felt that the Hindu community is not prepared for such a far reaching step there is no point in laying down the restriction in clause 4 and getting over the prohibition by having recourse to the doctrine of *factum valet*.

The Hindu community might not be prepared in general for intercaste marriages. But it is considered that the offspring of civil marriages under the proposed measure should have full rights of succession not merely to the parents but also to collaterals, etc., there is no point in retaining the restriction as to caste, *gotra* or *pravara* in the case of sacramental marriage alone. In view of the fact that the general tendency of the Hindu community is in favour of strengthening the ties of marriage and continuing the cherished traditions of marriage being in the nature of a sacrament, I would very much prefer the restriction as to caste being abolished—as the Bill in effect does—in regard to sacramental marriage as distinguishing from civil marriage, if only to promote the idea of sacramental marriage among the radical and advanced section of the community.

The retention of the ancient rule of Hindu law that the parties to the marriage are not to be related to *sapindas* to each other is the next point to be considered. Unlike the other restrictions imposed by clause 4 this restriction is not cured by clause 6 by any doctrine of *factum valet* though any proved custom to the contrary sanctioning the marriage between *sapindas* in any particular locality or tribe is saved by clause 6. While I recognise that conservative elements and orthodox sentiment would be against such a course, I would prefer a general restriction as *sapindas* marrying each other being removed while widening the class of persons coming under the degree of relations prohibited by the Bill. There is no object served by imposing an absolute bar in one clause while permitting the marriage under another clause by the recognition of a custom to the contrary. The reason for the prohibition of *sapinda* marriages according to the ancient ideas is two-fold, (1) eugenics and (2) living together of persons connected by *sapinda* relationship (at any rate agnate *sapindas*) under a common roof and the necessity felt of preventing promiscuous intercourse by prohibiting the idea of marriage altogether between relations so living together. The first reason at any rate in the case of distant relations does not rest on any tangible ground. The second reason does not hold good as it is by no means common for distant agnates to live under a common roof.

I notice that the Bill prohibits absolutely the marriage of a maternal uncle with his niece though usage permits the union of a man with his own sister's daughter in this province, while the Bombay High Court has held that such a union is incestuous. I am in favour of this restriction being made absolute throughout India as this Bill does while saving the present unions. As regards the marriage between first cousins, such as marriage with a mother's brother's daughter, or father's sister's daughter, such a marriage is common in South India and has been approved by commentators from very early times. I would prefer an express clause saving such marriages in South India instead of leaving it to the custom being proved in each locality or community.

If the rule as to monogamy is to be strictly introduced with a view to bring about parity of rights between the sexes, then, the Legislature must of necessity recognise the right of divorce in certain specified cases in spite of the fact that it might offend certain orthodox sections of the Hindu community.

Public Prosecutor, Madras.

The recognition of civil marriage as a valid Hindu marriage is a step in the right direction. But it is necessary that the distinct characteristic of a Hindu sacramental marriage should be preserved and the Bill confined strictly to codification rather than modification of the law of sacramental marriage. Instead of engrafting exceptions to the valid requisites of a sacramental marriage and making the marriage sacramental in name only, a clear-cut distinction should be maintained in the Bill between two kinds of marriages, making the sacramental marriage strictly conforming to the injunctions prescribed by the *Sastras* and the present law. The Hindu community in general is not prepared for the far-reaching steps to allow inter-caste marriages, marriages of *Sapindas* and *Sagotras* and call such marriages as a Hindu sacramental marriage. Of course the advanced section of the community can choose the civil marriages as sought to be modified, with all rights of succession as a Hindu, and a sacramental marriage in such cases would be a misnomer.

2. *Clause 4*.—Abolishing polygamy is consistent with ancient Hindu Law provided it is not recognised as a stepping stone to statutory divorce. A Hindu sacramental marriage does not recognise or contemplate a widow or a divorce marrying. I would prefer the addition of a sub-clause to clause 4 requiring that the bride should be unmarried. Even after the *Widow's Remarriage Act* was placed in the Statute Book several decades back, widow remarriages are significantly few among the *Dwijas*. It would be consistent with the sentiment and practice of the majority of Hindus that a widow or divorcee should not be married under sacramental form.

3. *Clauses 6 and 7*.—I am of opinion that both the clauses ought to be deleted. Having provided, the requisites for a valid sacramental marriage in clause 4, it is meaningless to do away with the requisites by recognising local usage or custom under clause 6 and recognising the doctrine of *factum valet* in clause 7. The proof of custom and usage will lead to troublesome and expensive litigation, and perjury in courts thereby defeating the purpose of codification. Under clause 6 the only exception that has to be considered is the validity of marriages of a maternal uncle with his niece and marriages with a mother's brother's daughter and father's sister's daughter. Such marriages are very common among all castes in South India and latter marriages have been approved by commentators from early times. In South India by custom a maternal uncle has a preferential right to marry the niece. In so far as the Bill absolutely prohibits the marriage of a maternal uncle with his niece, modification is required. I would prefer an express clause saving such marriages in South India at least instead of requiring custom being proved in each locality or community.

4. As regards clauses 7 (a) and (b) instead of having recourse to the camouflage of doctrine of *factum valet* to cases of flagrant and knowing violation of the two well recognised requirements to valid sacramental marriage, the legislature can provide for real cases of hardship, where *sagotra* and inter-caste marriages have been performed according to sacrament ignorantly or by mistake, by making suitable provision to enable the parties to such void marriage, to validate their marriage by entering to civil marriage subsequently. The persons who want inter-caste marriages and *sagotra* marriages have always the option to marrying in the civil form. The retention of clause 7 is unnecessary and is destructive of the sentiment and value attached to sacramental marriage.

Registrar, High Court, Madras.

I am directed to forward herewith (1) the views of the Hindu Judges of the Madras High Court who sat in Committee and considered the provisions of the Bills and (2) a minute by the Hon'ble Mr. Justice Kunhi Raman. I am to add that all the other Hon'ble Judges concur in the recommendations of the Committee and that all the Hon'ble Judges including the Hindu Judges support the recommendation contained in the last sentence of the minute of the Hon'ble Mr. Justice Kunhi Raman.

Views of the Committee of Judges on the Bill relating to Marriage.

Section 2, Clause (a).—"Caste" should be comprehensively defined so as to include all persons in the Hindu fold and not merely the four primary *varnas*.

Section 4 (a).—It is desirable that there should be some provision to enable a second marriage for the husband or the wife in extreme cases such as insanity, affliction of incurable illness etc., the party desirous of marrying again obtaining the permission of a competent court before doing so.

Section 4, sub-clause (d).—The word 'agnate' should be introduced before the word 'sapindas' to make it clear that there is no prohibition against cognate *sapindas* marrying, which is common in this part of the country.

Section 6.—It should be enough if the solemnisation is in accordance with the customs or usages of any locality or community to which either party belongs, or the rules of any school of personal law which either of them follows. It is not always the case that even in the same caste or sub-caste, both the parties have or follow the same set of customs or usages or rules.

Section 23 (1) (b).—The maternal grandfather and the maternal uncle who are (6) and (7) should come before "any other agnate male relation" (No. 3). So they will be Nos. (5) and (6) respectively. No. (5) will become (No. 7), the word 'other' being dropped.

Minute of the Honourable Mr. Justice Kunhi Raman.

Malabar Law of Marriage and Divorce and of Intestate Succession applicable to *Marumakkattayis* is different from the law prevailing in other parts of India. Hindu Law does not apply to such persons although they are Hindus by religion.

In the Bill to amend and codify Hindu Law relating to Intestate Succession, section 3 very properly lays down that the Act "regulates succession to the heritable property of a Hindu other than one governed by the *Marumakkattayam* *Alyasantana* or *Nambudiri* law of inheritance dying intestate * * *".

There is however no such saving clause in the Bill to codify the Hindu Law relating to marriage.

The Madras *Marumakkattayam* Act, 22 of 1933 is a codification of the law relating to marriage, guardianship, intestate succession, family management and partition applicable to persons governed by the *marumakkattayam* law of inheritance. Chapter II of this Act deals with Marriage and its dissolution. The provisions of this chapter are far in advance of the proposed legislation.

The new Bill when it is passed, will impliedly repeal the provisions of Chapter II of the Madras *Marumakkattayam* Act, since Marriage and Divorce are included in the concurrent legislative list by section 100 (2) of the Government of India Act, 1935. This will lead to hardship and injustice to the inhabitants of Malabar. It is therefore necessary that in the new Bill a provision should be incorporated to the effect that "nothing contained in this Act shall affect the operation of the Madras *Marumakkattayam* Act 22 of 1933."

No. 2.—BIHAR.

From the Judicial Secretary to the Government of Bihar, to the Secretary to the Government of India, Legislative Department, Simla, No. 2132/A-35-42/J., dated Patna, the 20th. October 1942.

SUBJECT:—The Hindu Code, Part I (Intestate Succession) and the Hindu Code, Part II (Marriage).

I am directed to * * * communicate the following observations of the Provincial Government:—

The Bills solely concern the Hindu community and while they embody some very desirable reforms, the opinions received by the Provincial Government show that they are in advance of Hindu public opinion in Bihar. The present seems to be an inopportune moment for the introduction of legislation involving such radical changes as the Bills seek to introduce. It would be advisable to postpone such legislation till normal conditions are restored, when the

Central Legislature would be in a better position to consider the desirability of introducing such far-reaching changes in Hindu law and custom.

2. I am also to enclose copies of the minutes recorded by the Hon'ble Judges of the Patna High Court on the provisions of the above-mentioned Bills together with copies of representative opinions received both from official and non-official sources.

3. The Bill was republished in English in the Bihar Gazette, dated the 1st July 1942.

Minutes recorded by the Honourable Judges.

I do not think the Bill requires any comment from the Judicial point of view.

Personally I am in favour of the Bill. Its most pronounced departure from the Hindu Law as understood at present lies in the provision that in a "sacramental marriage" the bridegroom must not have a wife living at the time. The number of men who would marry a second wife in the life time of a first solely for the religious purpose of discharging the debt due to their manes must in these days be inconsiderable, and they have the alternative of adopting a son. Considerations of caste, sub-caste, gotra, pravara, etc., have been losing their hold on Hindu Society, so much so that marriage under the Special Marriage Act as amended in 1923 are beginning to take the place of sacramental marriages in the more advanced sections. Clause 7 of the Bill rightly recognizes this by extending to sacramental marriages the *factum valet* doctrine so well-known in Hindu Law. The omission of sections 22-6 of the Special Marriage Act as amended in 1923 saves the joint Hindu family from disruption merely by reason of such a marriage, and will not be unwelcome to those who are prepared to face the responsibilities (together with the benefits) of jointness.

S. B. DHAVLE.

I agree with the Hon'ble Mr. Justice S. B. Dhavle that the Bill does not require any comment from the Judicial point of view.

Personally, however, I am not in favour of the Bill.

S. C. CHATTERJI.

There are two Bills for our opinion. They are both of purely Hindu concern and I am not in a position to express any opinion beyond that generally speaking I am in favour of the codification of Hindu Law.

H. R. MEREDITH.

I am of the same opinion as the Hon'ble Mr. Justice H. R. Meredith.

FAZL ALI.

I agree with the Hon'ble Mr. Justice S. B. Dhavle.

C. M. AGARWALA.

I agree with the Hon'ble Mr. Justice S. B. Dhavle.

F. G. ROWLAND.

I am in favour of the Bill.

MANOHAR LALL.

I agree with the Hon'ble Mr. Justice S. B. Dhavle.

S. P. VARMA.

I agree with the Hon'ble Mr. Justice S. B. Dhavle.

J. G. SHEARER.

I prefer to offer no opinion.

A. T. HARRIES.

The District Judge, Muzaffarpur.

I have the honour to state as follows:—

The proposed Bill to codify the Hindu Law relating to marriage requires some modification in so far as it relates to sacramental marriages. The proposed enactment contemplates that even such marriages must be monogamous but in my opinion some exceptions should be provided for by the Act.

A man or woman should be permitted to remarry in the following circumstances:—

(1) If the husband or wife is suffering from an incurable disease.

(2) If the wife is declared by competent medical authority to be barren.

(3) If the husband is habitually cruel and is incapable of maintaining his wife.

(4) If the wife leaves the protection of the husband and is unchaste.

(5) If the husband abandons his wife for three years more.

It may be noted in this connection that the Indian Divorce Act is not applicable to sacramental marriages.

In the matter of disposal of objections to civil marriage the procedure suggested seems to be lengthy and protracted. I think that the Registrar should be authorised to dispose of the objections and if it is proposed to give the aggrieved party any right of appeal the District Judge may be vested with jurisdiction to hear and dispose of such appeals speedily as possible. In case the Registrar disallows objection the marriage should not be allowed to be contracted till the disposal of the appeal if there be any appeal preferred, and in all cases till the expiry of the period of appeal which should be a short one.

The Secretary, Bar Association, Muzaffarpur.

Clause 4 (a).—No party having a husband or wife living at the time of marriage can enter into a sacramental marriage. This seems to be very stringent particularly when there is no scope for divorce in a sacramental marriage. There may be reasons which might compel a party to take another spouse, e.g., idioecy, insanity, leprosy, barrenness and the like. There should be a proviso attached to the section that in certain cases (which may be inserted in another clause) a party may marry again. Clause 23—General provisions.—The enumeration of guardians and the order given in the clause are neither exhaustive nor satisfactory. There may be other relations who may have preferential rights and there may be other cases in which the guardians laid down in the order are inclined to harass the interest of the minor, then in such cases there should be a provision to allow such relations to assert their rights in Civil Court for the benefit of the minor. Clause 24—This provides that a marriage is void if either party had a husband or wife living besides there is provision for Criminal prosecution. This clause is given under general provision and so will govern both kinds of marriages, namely, Sacramental and Civil. So far as Sacramental marriage is concerned it cannot be held to be 'void'. Particularly when there is no provision nor there can be any provision for divorce, to declare a marriage void seems to be absurd. There is also a chance of good deal of agitation on this question in case of marriage in such castes where Sagai is prevailing. The provision for criminal prosecution may be retained but the complaint must be on behalf of the person injured and not otherwise.

The District Judge, Purnea.

in my opinion no objection can logically or equitably be raised to the provisions of the Bills, the introduction of which is indeed overdue and is essential if the women of India are to attain the status which is conferred by law as well as by custom on the women of all other civilised societies. Indeed the attainment of these privileges, which elsewhere are enjoyed as of right, is an inevitable social development, which cannot be long delayed. At the same time in this country, the legal and social position of women, and in particular the institution of matrimony, are bound up with religious beliefs and superstitions, which it can hardly be doubted, still command the unquestioning allegiance of the illiterate masses and even of a large proportion of the educated classes. Hence I apprehend that there will be considerable popular opposition to the introduction of these Bills (even although they are not to come into operation until 1946) and in these abnormal times the propriety of courting such agitation is open to grave question. The introduction of compulsory monogamy, for example, conflicts with the deeply rooted belief that a sonless Hindu cannot attain paradise, and from this point of view it may be necessary to make provision for the case of a sonless man who is unable to find a suitable adoptive son. The opinion of the local Bar Association is also enclosed. The delay in submitting the opinion was due to the fact

that the opinion of the Bar Association was not received by me until 30th July 1942.

The District Judge of Manbhum-Singbhum.

* * * I have the honour to enclose herewith the opinion of the local Bar Association and to report as follows:—

The proposed Bill is doubtless highly commendable for abolishing polygamy but there is no provision for divorce as regards sacramental marriages. Divorce seems to be a necessary corollary to monogamy and I doubt if it will be wise to insist on monogamy even as regards sacramental marriages and yet deny the right of either spouse to remedy if the partner becomes insane or an idiot or contracts incurable diseases like leprosy. The primary object of a sacramental marriage as defined by Hindu Law-givers is the procreation of children and if this becomes an impossibility the rigid rule of monogamy will have to be relaxed or else provisions should be made for divorce.

The District Judge of Saran.

* * * I have the honour to say that in my opinion it is expedient to amend and codify the Hindu Law relating to intestate succession and marriage but I propose the following amendments in the Bills:—

In section 4 of Part II (Marriage) the following proviso be added to clause (a):—

"Provided the wife has not been declared by a competent medical authority, not below the rank of a Civil Surgeon, incapable of begetting children in the case where she has not already begotten to her husband a child surviving."

2. The opinion of the local Bar Association is enclosed.

The Judicial Commissioner, of Chota Nagpur Ranchi.

* * * I have the honour to say that whether the Hindu Law requires codification and amendment is a matter which primarily concerns the Hindus. I enclose copies of the opinions of two Hindu Officers the Munsif and the Additional Subordinate Judge, Hazaribagh, dealing with this point.

Regarding the other Bill, I would suggest that it might be considered whether a definition of the term Hindu is necessary.

A copy of the opinion of the Hazaribagh Bar Association is enclosed.

Hazaribagh Bar Association.

Our opinion is that they may be passed into Law.

The Munsif of Hazaribagh.

* * * I have the honour to submit herewith the opinion of the Bar Association, Hazaribagh.

So far as my humble opinion is concerned while fully realising the necessity of many changes in the Hindu Law as at present administered I think this is the most inopportune moment when such changes that concern the vital interests of the Hindu Community should be introduced. The attention of the majority of the Hindus due to the international situation arising out of the war is so diverted towards it in one way or the other that it is difficult at present to concentrate upon any changes in the legal structure of the Society that has been coming on since time immemorial and has got behind it the sanction of antiquity and the legal customs. Every Hindu even to the remote villagers is aware of the prevailing law that has been coming from generation to generation and he willingly concedes to whatever is embodied in it without ever thinking of putting any obstruction to the marriage or inheritance of a Hindu. The enactment of the laws as suggested would not only disturb the age-long tranquillity of the Society which forms the major population of India but would also, on account of a misunderstanding between those who believe in the moral sanction of the law as it now exists and those aware of the new enactments be disturbed with the result

that recourse will have to be taken to the law Courts in every case of a person dying intestate. This would naturally result in disaster on account of its costly nature to poverty stricken people.

It appears these two bills in question are sought to be introduced in pursuance of a policy of codifying the entire Hindu law in all its branches. Not only is piecemeal legislation in absence of urgent necessity not a thing desirable by itself but also no definite opinion can be given upon such piecemeal legislation because they act and counteract on other branches not even contemplated at present. No opinion can therefore, be given about one branch of the Hindu law such as marriage or inheritance without having definite suggestions of corresponding changes in other branches. If the laws applicable to the Hindus be a compact body.

Further, it appears the bills are sought to be introduced by certain legislators without reference to the learned Pandits well versed in the original texts constituting the laws of the Hindus from time immemorial. Extracts from translations which are at best only a reflection of the translator's mind upon the original text cannot be sufficient to justify a change in the laws of one entire community based upon their religious tenets coming on since time immemorial from generation to generation and imbibed by its members with the very breath they take from their very birth. Unless, therefore, the learned Pandits are fully consulted and the texts giving the laws to the Hindus explored such legislations as are desired to be introduced should not be hurried through.

I, therefore, would prefer a postponement of such bills that have far reaching effect on the life of millions of people till after the cessation of hostilities. Thereafter if thought desirable bills embodying all phases of Hindu society may be introduced after obtaining sanctions from those individuals or bodies who are well versed in the old scriptures of the Hindus and are aware of their drawbacks or their implications thus competent to give opinion. In my humble opinion, therefore, these should not now be introduced in the legislature for enactment.

The Additional Subordinate Judge, Hazaribagh

I have the honour to forward herewith the opinion of the Local Bar Association. The two bills in question have been drafted in pursuance of a scheme to codify the whole Hindu Law. As appears from the documents annexed to the bills it is contemplated to make radical changes in the existing law. One drawback to proper consideration of the bills is that unless the bills relating to other branches of Hindu Law are published no body can have a clear picture of the scheme the committee have in view. As appears from the trend of the present bills it is perhaps contemplated to make far reaching changes in all branches of Hindu Law. If these bills and other bills which may follow in their wake are enacted into law, Hindu society will have to pass through a revolution the like of which it has not witnessed for two thousand years or more. Such revolutionary changes cannot be justified unless the vast majority of Hindus are in favour of them or there is necessity to remedy evils which are shocking to the natural sense of justice or are eating into the vitals of Hindu Society. I regret I have not had time to study in all their implications the different provisions of the bills but I have no hesitation in saying that the present time is not suitable for enactment of such bills into law. The present war fills so much space in the thoughts of the people that it is not possible for the Hindu community to give the bills such careful consideration as their importance demands. Moreover, many of the proposed changes are sought to be made in response to the views of certain ardent reformers. The legislature, as it is constituted, has no mandate from the electorate, for supporting or passing laws which will have the effect of changing the economic structure of Hindu Society. Changes are not to be made merely because they embody lofty ideals. They should be made only when they are desired by those for whose benefit they are intended. Laws made in advance of the sentiments of those affected thereby bring in their train more evils than they seek to remedy. In view of the fact that the bills involve questions of vital importance to Hindu Society it is eminently desirable that their consideration should be postponed till after the end

of the war and should be taken up by Legislatures armed with a special mandate from the Hindu community for supporting such changes.

The proposals have their roots in ideas which are alien to the very spirit of Hindu Law. No good can be done to any community by tearing it away from the moorings of its old ideals and culture. * * *

The second bill which relates to marriage is equally open to grave exception. Section 7 of the proposed bill provides that no sacramental marriage solemnised after the commencement of the Act shall be deemed to be invalid merely because the parties do not nor did not belong to the same caste or because they belong to the same Gotra or had a common "Pravara". This section, if adopted, will nullify the effect of section 4 which lays down the requisites of a sacramental marriage. What can be the utility of prescribing the requisites of a sacramental marriage when a breach of the conditions is not to affect its validity? In their explanatory note the authors suggest that their intention is to provide for cases in which persons belonging to different castes or persons belonging to the same Gotra marry believing that they belong to the same caste and do not belong to the same Gotra. The right method of providing for such cases will be to insert provisions making it obligatory on such persons to have the marriage declared valid after proving to the satisfaction of a court that after making the best efforts possible they had come to believe that they belonged to the same caste and that their Gotra and "Pravara" were not identical. In the form in which Section 7 has been drafted complete license has been granted to those who may choose to defy the injunctions of the Shastras. In the case of Civil Marriage it is proposed to make the provisions of the Indian Divorce Act applicable. In this matter extreme caution is needed. Divorce is not permissible even at the present day among Roman Catholics in any country of the world. Hindus need not be ashamed if their custom does not differ from that of the Roman Catholics in this respect. What one gathers from a perusal of the reports of proceedings of Divorce Courts does not lead one to believe that divorce is an unmixed blessing. If marriage between persons professing the Hindu, Buddhist, Sikh or Jain religion are to be recognised as valid under the Hindu Law that is a step in the right direction but there is no reason why the privilege of obtaining a divorce should be thrust down the throats of such people.

Before parting with the subject I would like to add that the evils likely to result from the passing of these bills will be mitigated to some extent if a provision is inserted in both of them to the effect that the Act will be binding only on those who declare in writing before a Sub-Registrar that they and their children will be governed by them. To safeguard the interest of the vast bulk of the Hindu community it is absolutely necessary that some such provision should be made.

The Collector of Champaran, Motihari.

1. According to the Hindu Shastras a marriage is more religious than secular and is meant for the continuation of the line of paternal ancestors and for the spiritual benefit of the ancestors. Hence provisions should be made for marrying a second time when the first wife happens to be vicious or to be suffering from insanity or sterility; otherwise, a family may be extinct to stop which adoption is allowed by Hindu law. Among the lower classes of people "Sagai" marriage is prevalent. When either the husband dies or when the wife is deserted by the husband by mutual consent, the wife is allowed to take another husband. Such marriages have been held to be valid on account of customs. Therefore some provisions should be made to regularise them.

I agree generally with these views.

The Secretary, Bar Association, Patna.

The positive laws of the Rishis is mostly contained in Vyavahara Khanda, but the same is inseparably bound up with the Achara Khanda. The Dwijas or the twice-born have selfimposed restrictions which the Sudras have not. Divorce and widow remarriage in the most unfettered manner prevailed among the sudras long before Acts were

passed by the British Legislatures, and inspite of legislations the orthodox Dwijas have looked with disfavour the legal rights thrust on them by the legislatures.

The Arsha laws should not be replaced by the Anglicis Code.

The Privy Council has slowly changed much of Hindu Law but not supplanted the whole of it. The mover the bills intends to abolish (not to amend) and codify successive stages the whole of the Hindu Law now in force in British India.

The opinions have been invited from people whose whole outlook is surcharged with un-Hindu ideas and most of whom never cared to understand the Hindu view point. If the Bill were circulated in Indian languages the Association is sure that it would have aroused around and vehement opposition.

A trap has been laid in the Bill relating to marriage. Section 4 Cl. (a) lays down that neither party must have husband or wife living at the time of marriage. The corollary to this implies a sanction for introduction of divorce. If not, how can a man who discovers after marriage that he cannot have a child by the wife, marry a second wife? No reciprocity can be demanded by the wife according to the Hindu ideas. But so far as monogamy is concerned that is the rule and exceptions are mostly due to special circumstances. Hindu Law has provided for Adhivedanik property (property of the superseded wife). It is for court to enforce it or the legislature may make it compulsory but to make the rule unchangeable is becoming blind to the necessities of the society.

Then again the twice-born would and should always prefer marriage in the approved form and the civil marriage is nothing but Gandharva Vivaha (unapproved) and the consequences must follow according to the law.

The Bill is un-Hindu and is an attempt to change the Hindu religion and society altogether, and therefore should be thrown out.

The Secretary Bar Association, Ranchi.

This Association is in favour of the proposed legislation.

The Government Pleader, Ranchi.

The Bill to amend and codify the law of marriage of Hindus has three main objects, namely:—

1. To remove the anomalies of the present law under the special marriage Act.
2. To validate intercaste marriage or marriages within the same gotra.
3. To introduce monogamy.

At present there are two kinds of marriages besides the customary marriages namely:—

- (i) Religious or sacramental—marriage is that performed according to shastric rites; and
- (ii) Civil marriage under the Special marriage Act.

There can be intercaste marriage or marriage in same gotra in the second form, i.e., civil marriage where Divorce is also allowed. In Civil Marriage the bridegroom cannot marry again. There is thus available for those who want it the form of civil marriage which meets with all the demands and difficulties and there is no necessity for interfering with the Religious or sacramental form of marriage at all. There is a decided class of public opinion which is in favour of continuance of the sacramental form of marriage where polygamy is permissible.

It has to be taken into consideration that the vast majority of Hindu population is still not advanced enough to want full freedom of marriage and divorce and I am of opinion that while providing for a form of Civil Marriage with incidents of monogamy divorce, intercaste and same gotra marriages the sacramental form of marriage with liberty of the groom to form polygamous and confined to some caste with prohibition against same gotra marriage should be continued.

The anomalies in the present law should of course be removed.

The Secretary, Bar Association, Gaya.

The proposed legislation is against the basic principle Hindu Law.

The Secretary, Bar Association, Chupra.

We have carefully considered the Bills and we beg to propose that the following changes are necessary in the Bills:—

(B) Bill dealing with marriage.
1. The following sentence be added in Section 4, clause after the word marriages:—

"Provided the wife has not been declared unfit and not likely to beget children or that she is suffering from a wasteful and dangerous type of disease, by a competent Medical Officer not below the rank of a Civil Surgeon."

2. The following clause be added in Section 4 as clause (f):—

"that the bridegroom is not above the age of fifty".
In Section 23 after No. 4 the following order be put

- "(5) the maternal grandfather (mother's father).
- (6) the maternal grand mother (mother's mother).
- (7) the maternal uncle (mother's brother).
- (8) the mother's sister.
- (9) any other agnate male relation"

the whole we are of opinion, that the Bills are commendable and the main provisions are in keeping with the rule of time although it will more seriously disrupt the sad decaying joint, family system.

President, Bar Association, Purulia.

Considering the unanimous opinion of the Hindu Law Committee (consisting of eminent and experienced lawyers) of its favourable reception by the Central Government I think that the Hindu Law should be codified but in my humble opinion there are objections to some of the clauses of the Bill.

Clause 7 of the Bill seems to be objectionable. This clause really does away with the provisions of clause (4). Stances are not uncommon where sacramental marriages have been secretly solemnized between parties contrary to one or other of the provisions of clause (4) without the knowledge and consent of their guardians and there is no reason why such marriages should be deemed valid. If however sufficient time elapses from the date of the marriage the principle of *factum valet* may be applied if the marriages are not solemnized in contravention of mandatory texts of Hindu Law.

The language of clause 7 (b) is not very happy.

The Bar Association, Shahabad.

2. (a) We would suggest the prohibited degrees of relationship for the purpose of marriage to be the same as are present existing under Mitakshra Law.

4. We suggest addition of a sub-clause. We suggest sub-clause (e) to read as follows:—

The man must have completed his eighteenth year and a woman her fourteenth year, according to the Gregorian calendar.

There is no reason to go back upon *Sharda Act*. If age limit is removed, it will be putting premium on child marriage and the result will be that child marriage will become rampant in ever so increasing a degree. We have therefore suggested addition of a sub-clause on the marriageable ages of the bride and the bridegroom. A penal clause could be inserted in the Penal Code or in this Act to punish an infraction of the rule. A penal clause provided in the *Sharda Act* and the *Sharda Act* should be repealed in far as it concerns the Hindus.

We would suggest addition of clause 5 with respect to marriage of virgin and sonless young widows. The fate of a young widow in Hindu Society is most tragic and pathetic. Non-prevalence of remarriage of young widow corroding Hindu Society and is in fact eating into the very vitals of it. It was neither known to ancient nor is it

known to any other community or nation in the world. The alarming and fearfully mounting figure of such widows is a proposition that challenges Hindu Society. No legislator can codify Hindu Law without making adequate provisions for meeting this menace. No doubt there is already on the statute book Hindu Widows' Remarriage Act but it has become, in practice, a dead letter and an obsolete legislation. The reason why this piece of legislation has fallen into desuetude is that the Hindu Society has lost all vitality and initiative and become lethargic. It cannot be roused into consciousness of its duty by its widows unless there is some sort of coercive legislation. We therefore suggest clause 5 to read as follows:—

All virgin, or young sonless widows must remarry unless they give sufficient grounds for exemption. We would further suggest insertion of a penal clause either in the Indian Penal Code or in this Act to punish infraction of it.

Clause 5.—This will read as clause 6 and so on and so forth.

Clause 22.—We would suggest deletion of this clause. Some of the marriages under the head "civil marriage" would fall under unapproved forms of marriage. Once they were contracted, they are on the same footing as sacramental marriages. If the Indian Divorce Act will not apply to sacramental marriages, there is no reason why it should apply to a civil marriage which is nothing less than marriage between two Hindus.

23. Sub-clause (3) should read as follows:—

Where there are two or more persons equally entitled to guardianship under the foregoing provisions any of them may act as guardian.

The Bar Association, Monghyr.

So far as the proposal to abolish polygamy is concerned, suitable exceptions in case of barrenness, disease, etc., must be provided. We agree with the other provisions of the Bill.

Secretary, Bar Association, Laheria Sarai (Darbhanga).

1. We are of opinion that the codification of the Hindu Law is a retrograde step, as it will make the law rigid, whereas the Hindu Law has ever remained elastic and has never failed to adapt itself to the changing circumstances.

2. We are further of opinion, that it is not possible to consider the amendments and codification piecemeal and in parts, on merits. We must have the whole picture before us.

3. We, therefore, oppose the Bills.

The Secretary, Bar Association, Purnea.

This Association is strongly against the introduction of any Bill relating to marriage amongst the Hindus, especially the sacramental form of marriage. To the Hindu marriage is purely a matter of religion and the legislature should on no account encroach upon matters religious. The religious Reformers have been successfully working slowly but surely to introduce monogamy in the society and no legislation is at all necessary in these matters.

The Assistant Secretary, Maithil Mahasabha, Darbhanga.

The Mahasabha is opposed to the Bills being passed into law. The Mahasabha opposes these amendments to the present Hindu Code.

The Secretary, Sanatan Dharm Sabha, Arrah (Shahabad).

Opinion regarding Codification of Hindu Law.

1. "The Sanatan Dharma Sabha of Arrah" expresses its deep sense of dissatisfaction and resentment at the introduction of the two Bills, one amending and codifying the Hindu Law relating to "Intestate Succession" and the other codifying the Hindu Law relating to Marriage, as being repugnant to all sense of Hindu religion, Society and all that is Hindu like.

2. Before introducing any change in Hindu Law it should be kept in mind that the Shastras dealing with the rules of Hindu Society lay great stress on the principles of a

very high order of spiritual and religious thoughts and ideas; besides Hindus have a deep rooted socio-religious life based on the Shastric injunctions followed and respected with implicit faith in spite of reforms attempted more than once by very capable and influential leaders of the country. Having this fact in view Queen Victoria in Her Majesty's memorable proclamation of 1858 announced that there would be no interference in the religious and customs of this country.

8. These Bills seek to introduce rigid rules of statute which will revolutionise the entire Hindu civilization and create serious confusion and chaos leading to disruption of the affectionate ties of very near and dear blood relations so natural in human societies.

6. It is said that the new law would give greater privilege to the woman folk quite equal to males. It assumes that in Hindu Society women are neglected. This is an indirect insult to the oldest civilization based on liberal and beneficial ideals.

7. The Hindu Society is based on most considered rules of the Shastras. Hindus as a rule have the greatest respect for the weaker sex in the world. They have been always anxious to place her person and honour under the shield of her father, brother, husband, son and other near male relations. They fully realise their natural weakness.

The Bill introduced to codify the law of marriage will have an effect of changing the whole Hindu religion. The Legislature should always be scrupulous to avoid interference in a religious matter. Hindu marriage is a Sanskar—Sacred and religious purification. Hindu marriage beyond the Shastric rules is no marriage. A marriage performed in any other form as contemplated by the Bill is no marriage to a Hindu.

Part II—Marriage.

(1) Marriage according to Hindus is a sacred tie and not a contract.

(2) The proposed codification that neither party must have a husband or a wife living at the time of marriage puts a full stop to all ideas of polygamy even in cases of sheer necessity. If a Hindu male possesses a wife, barren, totally diseased, mad, idiotic, suffering from leprosy, incapable of taking care of health and home, he must rest content with her. A wife is meant for giving progeny for ministering to the wants and personal comforts of the husband and to offer salutary pieces of advice, in fact she is linked in all weal and woe with the husband being his better half but the legislature would shut the doors to it with the rigidity of the codification proposed. This is one part of the case. So far as a wife taking to a second husband during the life time of the first one is concerned the matter stands on a different footing. This never takes place among the Hindus and it is an idea quite foreign to Hindu civilization.

The General Secretary, Champaran District Hindu Sabha, Bettiah.

The present amendment suggested in the Hindu Law broadly defined have got 3 aims in view:—

I. Marriage.

1—Marriage.

The main objection against polygamy is family trouble. This evil is suggested to be remedied by section 4 by providing that no Hindu would be entitled to marry more than one wife.

It has overlooked the case of barren or diseased or vicious wife.

Moreover such legislation is bound to give impetus to prostitution.

Polygamy is not common in the Hindu Society rather it is only exceptional. This will go against the very spirit of the Hindu Shastras which are in favour of it for having sons who can offer "Pinda".

No. 3.—UNITED PROVINCES.

From the Secretary to the Government, United Provinces, Judicial (Civil) Department, to the Secretary to the Government of India, Legislative Department, New Delhi, No. 1995-V/384—1942, dated Lucknow, October 15, 1942.

* * * I am directed to forward the opinions of High Court and Chief Court and other associations of persons * *

2. His Excellency the Governor would prefer to express no opinion in the matter which His Excellency considers the Hindu community should decide for itself.

3. The Bills were published in Part VII of the *United Provinces Gazette*, dated June 27 and July 18, 1942, English and Hindi, respectively.

From the Registrar, High Court of Judicature, Allahabad.

* * * I am directed to say that the Hon'ble Chief Justice, Hon'ble Mr. Justice H. J. Collister, Hon'ble Mr. Justice J. J. W. Allsop, Hon'ble Mr. Justice U. B. Bajpai, Hon'ble Mr. Justice Mohammad Ismail, Hon'ble Mr. Justice Kamala Kanta Varma, Hon'ble Mr. Justice A. H. deB. Hamilton, Hon'ble Mr. Justice R. L. Yodanis and Hon'ble Mr. Justice P. P. M. C. Plowden have an opinion to offer.

Hon'ble Mr. Justice S. K. Dar, Hon'ble Mr. Justice G. P. Mathur and Hon'ble Mr. Justice T. N. Mulla have recorded the following opinions:—

Hon'ble Mr. Justice S. K. Dar—* * *

Hon'ble Mr. Justice G. P. Mathur—* * *

I have no objection to the proposed Bill relating to marriages.

Hon'ble Mr. Justice T. N. Mulla—* * *

2. The opinions of the District Judges of Moradabad, Agra, Meerut, Allahabad, Benares and Gorakhpur were invited on the Bills and their opinions are sent herewith.

The District Judge, Moradabad.

For the reasons given in the 'Statement of Objects and Reasons', I am in favour of both the Bills which meet the requirements of the present time.

The District Judge, Agra.

Clause 2 (d).—The definition of "the degree of relationship prohibited by this Act" is not quite clear.

For example A is married to B's father's sister C. C dies. Can A marry B? A is uncle (Phupa) of B. Does sub-clause (d) prohibit this? It may be said to prohibit this, though I know that such marriages have taken place.

Take another example. B is married to A's mother's brother C. C dies. Can A marry B? B is A's aunt (Mami). Does sub-clause (d) prohibit this?

Further the words "if they are related by blood to each other lineally" may also give rise to disputes in cases where Hindu Civil marriage is performed.

For example.—A and B are brothers. Can A's daughter marry B's son under clause 8 through a Hindu Civil marriage? These words would permit such Hindu Civil marriages. Is it the intention of the Act to permit them? I would, therefore, suggest that this sub-clause requires to be redrafted more clearly.

Clause (4) (c).—This should be omitted. Hindus of the same gotra and pravar should be allowed to have a sacramental marriage, if the other conditions are satisfied.

Clause (4) (c).—In this sub-clause I would prefer "twenty first" to be substituted for "Sixteenth" just as it is in clause 8 (3).

I should add another sub-clause to clause 4 as follows: "The bride was not married before".

My idea is that sacramental marriage should be kept for the marriage of *kanyas* (virgins) as now and widows should take to Hindu Civil marriage.

Clause 7 (a).—I don't see the necessity for this sub-clause. If sacramental marriage has to be retained, I don't see why people of two different caste should be allowed to perform it. They should take to Hindu Civil marriage. This should be deleted.

Clause 7 (b).—This is unnecessary as I have recommended deletion of (4) (c).
 Clause 7 (c).—This should be retained.

The District Judge, Meerut.

Every student of sociology realises that a change in the marriage laws of a people vitally affects the social well-being and future construction of the society. The need for a change in the marriage laws of the Hindus has been felt for some time. The progressive opinion among the Hindus has been in favour of a secular and monogamous marriage. The law, however, would not be applicable merely to such Hindus. Millions of Hindus, however, regard marriage as a sacrament and not a mere secular institution. The committee has made provision for a secular marriage which they have called *Civil Marriage*.

So far as the sacramental marriage is concerned the conception of Hindu marriage has been entirely mutilated and though in clause 4 it has been laid down that the parties to the marriage must not belong to the same caste and they must not belong to the same *gotra* or have a common *pravara* and they must not be *sapindas* of each other.

The provisions of clause 7 do away with the restrictions regarding caste, *gotra* and *pravara*. It seems to me that the requisites of caste, etc., have been laid down in clause 4 merely to tickle the fancy of orthodox Hindus and the legislature is asked to recognise some restrictions the breach of which is not to be penalized. It would be more proper to delete clause 4 (b) and (c) rather to make them nugatory by clause 7 (a) and (b). If there is no sympathy with the ingrained notions of a large number of Hindus regarding prohibited relationship for marriage it would be better to say so directly rather than to lay down recommendatory and not mandatory rules on the subject.

In my opinion clause 7 (a) & (b) be deleted and a sacramental marriage should be solemnized on the same conditions as exist at present regarding prohibited relationship. No hardship can thereby be caused as Hindus who want to marry otherwise within prohibited degrees of *sapinda* relationship outside the case within the *gotra* and the same *pravara* can do so by contracting a civil marriage but the law should not cloak its real intentions of making changes in sacramental marriage by restrictions which are immediately made nugatory.

In clause 23 (b) (5) any agnate male relation is preferred as a guardian for marriage over the maternal grandfather and the maternal uncle. The law should not tie itself too rigidly to the past where agnate relationship was an effective tie. Considering the flow of human affections it would give preference to the maternal grandfather and the maternal uncle after the paternal uncle.

Clause 24 intends a revolutionary change in Hindu marriage law. The idea of sacramental marriage is allied to the notions of Hindus regarding spiritual benefit in life hereafter. Unless we are prepared to say that time has come in Hindu society when all its religious notions and social institution based on them should be sabotaged and the Hindu Society should be re-constructed on an entirely secular basis, I cannot see how we can provide for a strictly monogamous sacramental marriage. In early Hindu Law second marriage could be validly contracted on certain well defined contingencies. In my opinion polygamy among Hindus should be restricted to similar contingencies. A practice the Hindus are not polygamous. Restricted polygamy of the nature contemplated by early Hindu Law is not injustice to the mothers of the race.

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.

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 could 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.

District Judge, Gorakhpur.

As regards Hindu Code Part II (Marriage), I consider that all the provisions of this Bill are excellent and this Bill should be passed into Law. A very important feature introduced by it is that of monogamy and I consider that the times are now quite ripe to introduce it.

Additional District and Sessions Judge, Gorakhpur.

The only suggestion I have to make with respect to this Bill is that the Indian Divorce Act should be made applicable to sacramental as well as Civil marriages. This reform is rendered doubly necessary by the fact that under the provisions of the Bill all Hindu marriages are to be monogamous.

The District Judge, Benares.

The definition of "caste" appears to be defective inasmuch as it is confounded with 'varna' which is something different from caste. There are in fact several castes in India, and it is almost impossible to say as to what varnas they belong to. Sec. 2(a) should accordingly be re-drafted as below:

"Caste" means the different recognised castes into which Hindus are divided and also includes its different sub-castes.

Sec. 2(b) is unnecessary, and should be altogether deleted.

Sec. 4 should be re-drafted as below:—

A sacramental marriage may be solemnized between any two Hindus or between a Hindu and a Jain upon the following conditions, namely—

(a) Neither party must have a husband or wife living at the time of marriage;

(b) both the parties must belong to the same caste and should not be *sapindas* of each other;

(c) if the bride has not attained the age of majority in accordance with the Indian Majority Act, her guardian in marriage must consent to the marriage.

Sacramental marriages are common between Hindus and Jains, and so there is no reason as to why such marriages should now be not recognised. Sacramental marriages between persons of same *gotras* and also between persons of same *pravaras* are also common, and so there is no reason as to why such marriages should now be not recognised. A girl attains the age of majority on completing her 18th year and in cases where a guardian has been appointed on completing her 21st year, and there appears to be no reason as to why a girl undergoing a sacramental marriage should be put on a better footing than one undergoing civil marriage.

Sec. 7 should be re-drafted as below:

No sacramental marriage solemnized before or after the commencement of this Act shall, be deemed to be, or ever to have been, invalid merely by reason of the following causes, namely—

(a) that the parties to the marriage did not belong to the same caste or are *sapindas* of each other provided they are not within the degrees of relationship prohibited by the Act; or

(b) that the consent of the bride's guardian in marriage had not been obtained unless there was force or fraud.

Provided that the validity of a marriage solemnized contrary to the provisions laid down in Secs. 4, 5 and 6 may be challenged in a court of law within a year of the marriage or within a year after the commencement of the Act, whichever is later.

To do away with unnecessary controversies on the subject the provisions of Secs. 4, 5 and 6 have been made applicable also to the sacramental marriages performed before the commencement of the Act. Provision has been made not to recognise marriages between parties who are within the degrees of relationship prohibited by the Act. Provision has also been made for the parties to undergo a civil

marriage in case the validity of their sacramental marriage has been challenged and decreed. To stop vexatious litigation period of limitation has been prescribed.

Monogamy being recognised, it is very necessary that some provision regarding dissolution of sacramental marriages should as well be made in the Act. The provisions of the Indian Divorce Act should be made applicable to all such marriages. The husband should further be given a right to seek divorce in case he has lived with his wife for over 7 years and no issue has been born of the wedlock.

Secs. 6—26: no modification appears to be called for.

From the Registrar, Chief Court of Oudh.

I am directed to send herewith copy of opinions of the Hon'ble Chief Judge and other Hon'ble Judges of this Court as well as of the District Judges of Lucknow, Hardoi, Gonda, Fyzabad and Sitapur on the bills to amend and codify the Hindu Law relating to intestate Succession and Marriage.

OPINIONS.

The Hon'ble Chief Judge and other Hon'ble Judges of the Hon'ble Chief Court of Oudh.

The proposed enactment deals a matter of paramount importance to every society. Some of the ancient rules governing family relations have not been able to stand the strain of the pressure of the circumstances of modern life.

Section 1. No comments are necessary.

Section 2. Definitions of the terms would have been preferable.

Sections 3 and 4. No comments are necessary.

Section 5. Specification of ceremonies essential to a valid sacramental marriage lays down the essential requirements of a sacramental marriage in contradistinction to unnecessary formalities.

Sections 6 and 7. No comments are necessary.

Sections 8 to 22. These are in substance repetition of the provisions of the Special Marriage Act.

W. Y. MADELEY.

4th August 1942.

Section 2. The words "pravara" should be defined.

Section 4(a). The husband should be allowed to take another wife in the presence of a living wife under some circumstances such as when the wife is barren.

Section 4(c) and (d). The provision should not go so far. One should not be allowed to marry within five degrees.

Section 6 (1). I would allow a husband to take another wife in the presence of a living wife under special circumstances.

P. C. AGARWAL,

Judge.

12th August 1942.

I am in general agreement with the provisions of the proposed bill relating to Marriage among Hindus. The bill introduces the strict rule of monogamy both in the case of sacramental marriage and civil marriage and aims at the abolition of polygamy. It makes no provision for dissolution of marriage on any ground whatsoever in the case of sacramental marriage, though this right is recognised in the case of a civil marriage by the application of the Indian Divorce Act under clause 21 of the proposed bill. I am not unconscious of the fact that a sacramental marriage predicates the existence of an indissoluble union according to the strict rules of the Hindu Law, but as the bill provides for the dissolution of marriage in the case of a civil marriage in accordance with the provisions of the Indian Divorce Act, it seems reasonable that a similar provision should be made in the case of sacramental marriage, however, limited and restricted the grounds of dissolution of marriage may be. If this is not done, the result will be that sacramental marriages in course of time will become out of date and will be the exception rather than the rule. With the progress of modern ideas parties will be far more ready and willing to enter into a civil marriage than into a sacramental marriage. If the institution of sacramental marriage is to be retained, I think some provision for dissolution of marriage should be made, though the grounds

may be extremely limited. I am also of the opinion if the right of dissolution of marriage should not be one-sided and should be available to both the husband and the wife under a sacramental marriage in just the same way as available under the Indian Divorce Act.

GHULAM HASAN,

Judge.

17th August 1942.

The question of marriage is one which should obviously be decided by Hindus themselves, but the proposal seems to be sound. It aims at the abolition of polygamy. I agree with the opinion expressed by Justice Ghulam Hasan.

G. H. THOMAS,

Chief Judge.

22nd August 1942.

The District Judge, Lucknow.

I feel very great difficulty in expressing any opinion on the bill as the question of marriage is one which should obviously be decided by Hindus themselves, but the proposals seem to be quite sound inasmuch as they abolish polygamy which practice is not in consonance with modern ideas of morality. Both the Hindu Civil Judges have expressed their approval of the proposals, and I am content to leave the matter at that.

The District Judge, Hardoi.

I am not in agreement with some of the important provisions of the Bills and am thus unable to view the Bill with favour.

District Judge, Gonda.

I fully agree to the proposed amendment.

The District Judge, Fyzabad.

I welcome this Bill as well which tends to abolish polygamy among the Hindus.

Section 8 clause (3) applies to widows as well. Section 15 and section 28 do not contemplate a widow's obtaining the consent of any guardian in marriage. I, therefore, propose, to clarify the point, that the words "except widow" be added after the word "party" in section 8 clause (3).

District Judge, Sitapur.

The provisions as embodied in the two bills appear to be satisfactory, but there appears the necessity of making provision for the following in the Hindu Code bill, part II.

After a marriage, not otherwise objectionable, has been solemnised and entered into good faith by the parties as provided in section 5 of the bill, it should not be challenged by any party on the ground that there has been any error in the performance of the ceremonies or rituals as laid down in Section 5.

Though I am aware that in some countries, there is a legal provision to obtain the consent of the guardian when the age of the parties to the marriage is less than 21. I do not think it necessary to enforce this in the present state of Hindu Society. I am of opinion that if this provision (vide clause 8 sub-clause 3) is retained, it is likely to strengthen the hands of less progressive elements in Hindu Society and to hamper the free exercise of choice by persons intending to marry. I think a minimum of 18 years in the case of a male and of 14 years in the case of the female will meet the necessities of the case.

The Advocate General, United Provinces, Allahabad.

I am in agreement with the Bill to codify the Hindu Law relating to marriage. The provisions made are mostly in accordance with the prevalent forms of Hindu marriage except that the marriage among the Hindus has been now made monogamous. I entirely appreciate the modern feeling against polygamy and I congratulate the Committee upon the courage which they have shown in

prescribing against polygamy. I support the Bill as I think that polygamy is an evil which should be put down by legislation. Numerous cases have been observed where a previously married wife has been abandoned or neglected and another taken into marriage. These are very sad cases, and should not be allowed to recur.

In clause (7) of this Bill I will go further and seek remedy by applying the protection contemplated in that clause to all sacramental marriages solemnized even before the commencement of this Act. So that clause (7) may be read 'No sacramental marriage solemnized before or after the commencement of this Act shall be deemed to be, or ever to have been, invalid.....'. I am glad that the provision about the disruption of a joint Hindu family and the application of the Indian Succession Act to the parties of civil marriages have been abrogated as these provisions were great hindrances to the celebration of civil marriages among the Hindus. I support this Bill in its entirety.

I may here point out that the Committee has not considered at all the evil so widely prevalent among the Hindus of stipulating dowries at the time of marriage. This evil is so rampant in the Hindu society and its results so disastrous that attempts have been made from time to time to get rid of this practice by social reform but have proved useless. Nearly in all the higher classes of the Hindus the father of the bridegroom stipulates beforehand what sum of money, what amount of ornaments and other things will be given at the time of marriage. Many families have been ruined because they had to marry their daughters under these stipulations and many a girl has remained unmarried owing to the incapacity of the father to pay the stipulated amount. Thousands of such pitiable cases are to be seen in the Hindu society. I am, therefore, of opinion that advantage should be taken of marriage legislation to prevent this evil. The most effective way in which this can be done is to make stipulations at the time of marriage a criminal offence punishable in the first instance by a heavy fine and, if repeated by the same person, by imprisonment. Safeguard will have to be provided to save innocent persons from harassment, but the evil must be prevented at any cost.

Mr. Thakur Prasad, Munsif, Bijnor.

The Public has now before it in the form of two Bills the concrete proposed enactments which vitally affect the entire Hindu population of India. If we carefully analyse the Bills we find that the authors had only one definite aim and purpose to accomplish and that is to put into actual practice the slogan of Independence for Women. There is nothing else of any practical utility in these Bills. Had it been a mere question of codification of Hindu Law much controversy would not have arisen for there the Legislature's business would only have been to marshal the rules of Hindu Law from out of the Smritis and Nibandhas and from case laws far established by the High Tribunals of the land. The Bills attempt to amend the Law and amend it not on the fundamental principles of Hindu Law but in violation of the same. While making this statement I am not unmindful of the attempt made by the Drafters of the Bill to put up a strong show that their proposed amendments are in keeping with the texts of Hindu Law. But so weak is their case on that score that they have had to confess at places in their notes that they have departed from the letter and spirit of the Hindu Law and that to serve one purpose and one purpose alone which is to put the women folk on the level of absolute equality with man. They have attempted to quote scriptures but stray rules of scriptures can be quoted by any to prove anything, for so vast is our literature on the subject. My humble attempt in this short note is (1) to show that the Bills are against the whole structure of Hindu Law and Hindu Civilization and Culture and against the whole fabric of Hindu Social Life, (2) to show that it is inopportune and untimely or at any rate far ahead of the notions and the expectations of Society as they obtain among the vast mass of humanity living in the rural areas whose lives, properties and religion are to be so vitally affected by these Bills and (3) lastly to show that there is no necessity for any such enactments.

I shall start with the last two points first. The framers of the Bills seem to be satisfied that their propo-

sals have been received favourably by the public at large. I am of opinion that they have not directed their attention to one very important aspect of the matter. India is Rural India. The city population is a mere drop in the ocean, a hopeless minority and of an infinitesimal proportion. I may confess that these Bills may work well with the populations living in towns and with families having modern education, provided it be assumed that such a part of Hindu population has lost all beliefs in that part of Hindu religion which is affected by these amendments. An Indian Legislature must have before its mind's eyes the condition of the rural population, their beliefs, their religions, their sentiments, their modes of life, their attitude towards their females and the like factors. They must know that these Bills sweep away by a stroke of pen their cherished traditions of centuries. Every student of Hindu Jurisprudence knows the simple fundamental principle of our Great and Glorious system that our Laws are not man made. They are divine in origin. I will quote a very high authority on this point—Dr. Ganga Nana Jha, a great modern Indian Orientalist and a great scholar of Sanskrit and Hindu Religion and Ethics. He says, "The Law of the Hindus like everything else conducive to the welfare of man has its source in the revealed word of the Veda. The Hindu will not admit of any other source for his Dharma. Jaimini long before the 19th century B.C. formulated in his Shrutis the three propositions that (a) what is good for man can be learned from the Vedas (b) it can be learned from the Vedas only and (c) whatever the Vedas say must be true. This supreme authority of the Veda is based upon its own eternal and immutable character. (according to the Purva-Mimamsa and Vedanta and upon the fact of its being the work of the omniscient God (according to Nyaya)). If we trace the growth and evolution of Hindu Law from the time immemorial down to the commencement of the British Rule in India we shall find that the evolution took place at the hands of our Rishis in the first instance who framed their Smritis on the principles of the rules of the Vedas incorporating such rules or amendments of their own to suit the changed conditions of time but they did it not in violation of the divine law but in conformity with the same. At any rate it has to be admitted that they never professed to lay down any new rule of law for they worked on the same fundamental rule that Hindu Law was Divine Law. Later Commentators (Nyandhakars) who digested and commented followed the same process and the Hindu Law was evolved and had its growth under such a process right up to the establishment of the rule of East India Company. The King under the Scheme of Hindu Polity is not a legislature. He is subservient to Law as much as the meanest of his subjects. He has to administer the Divine Law. The present Legislature has therefore no powers to legislate. In the whole course of the long and hoary history of the growth of Hindu Law such a bold digression has never occurred. The most modern and the most learned and authoritative of our commentators, namely Vijnaneshwar and Jimutvahan, could not go to the length of laying down or of saying even indirectly that they were laying down any new rule of law. The present piece of enactment is an open violation of that fundamental principle of Hindu Jurisprudence. If a referendum were to be made to the entire Hindu population even the most enthusiastic of the reformers will not doubt the defeat by a vote of 99 per cent. Can we believe that Hindu India of over 95 per cent. of the village population will tolerate such open mutilations of their Law? Will even the orthodox residents of towns tolerate them? The function of a Legislature is not to impose its convictions by enactments upon the people. Its right function is to legislate only on subjects that already exist, in the notions of the people. They give legislative sanctions to rules already accepted by the masses. Sir William Jones than whom there have been very few others who had made a more critical study of our Dharma Shastras, observes in his preface to his book Institutes of Hindu Law as follows: "It is a maxim in the science of Legislation and Government that 'Laws are of no avail without manners', or to explain the sentence more fully that the best intended legislative provision would have no beneficial effect even at first, and none at all in a short course of time unless they were congenial to the disposition and habits, to the religious prejudices,

and approved immemorial usages of the people for whom they were enacted specially of that people universally and sincerely believed that all their ancient usages and established rules of conduct had the sanction of an actual revelation from heaven". It was in compliance with this maxim, says he, that the Legislature of Britain allowed the Hindus to be governed by their own Laws. Hence in matters religious such rules of conduct must scrupulously be followed. I admit that if a law is passed quietly unknown to the people and is enforced and the people have no opportunity to analyse the law and find out its true imports and have thereafter to accept it, perforce it cannot be said that the people at large have given consent to the same.

So far our laws were shaped by our Rishis or by Commentators who were great Pandits, people highly learned in all our Shastras who could have a comparative knowledge of all the Smritis and of the customs and manners of our people at the first hand and above all who had implicit faith in the truth of our great religion and culture. They were thus the best persons to say what the law should be for even where they might intend to lay down new rule it will be a mere superstructure on the Vedic or Shastric foundations. Meaning no disrespect to our present day Legislature we will not be far from the truth if we say that there are very few such members who possess that requisite merit which our Commentators at least possessed. Can the framers in all conscience say that the new law is in conformity with our Hindu Law?

As to the belief that there is a considerable response from the public for the passing of such a law I beg to differ most respectfully. The point is whose response is sought, is it the response of a handful of English educated men or of the vast mass of the Hindu public that lives in villages or at any rate of those of the Sanskrit knowing Pandits who know the Shastras and who in some measure lead the masses in matters of Dharma? I am of opinion that the latter two classes have not yet known if there is even such a proposal before the Legislature. The Bills were published in the Gazette and some lawyers and judges gave their comments. It is a point to be noted in particular as to how many of those persons who read these gazettes, and cared to offer suggestions could be said to represent the two classes of men mentioned above who of all the rest are the only persons whose opinion should count on such a subject for they constitute over 95 per cent. and are really affected. I hope to be pardoned if I say that a very small percentage, a negligible percentage of our present day lawyers and judges and students of law have had time or inclination to know much or ever a bit of the Hindu Law or Jurisprudence. What value can and should be attached to the opinion of those who know so little of the Hindu Law? By Hindu Law I do not mean the Hindu Law as commonly understood namely the rules of Hindu Law laid down in the case law, for a knowledge of the latter will not be of much value for the legislation like the present one. The best course ought to have been to get the Bills translated into Hindi and Sanskrit and to have submitted them to the examination of learned Pandits of Benares, Shantipur, Nadia and the like and got them advertised in the village side on an extensive scale and authoritative opinion of Pandits sought for the same. We should not think that there are not very large number of such men in the country with liberal views who could have best been consulted.

I will by way of digression quote some very high authorities on the merits of these ancient law givers and on that of Hindu Law. I am compelled to make the digression as I find there is a deep rooted contempt even among the Indian students themselves about the merits of our ancient law and I hope to be pardoned if I say that the Bills are the practical results of such notions. Mr. Mayne by no means a very sympathetic writer and though of very high authority observes "Hindu Law has the oldest pedigree of any known system of Jurisprudence and even now it shows no signs of decrepitude. At this day it governs races of men extending from Kashmir to Cape Comorin who agree in nothing else except their submission to it." While describing the merits of Hindu Law Sir Rash Behari Ghose observed "Hindu Law will at no distant date render the same services to Jurisprudence which Sanskrit

has already rendered to the sister science of Phylology". Dr. Priyanath Sen, one of the greatest Hindu Law Scholars of his times, says that any one who has had the patience to follow the course of Hindu Jurisprudence will be convinced that much of the hostile aspersions that has been cast against the Hindu Law by some able but ill-informed critics is the result of ignorance and prejudice acting and reacting upon each other".

The Codification process in Hindu Law should have been a mere digesting of the Hindu Law as settled so far and as being the rules of that Law evolved through the Comments of Authoritative Commentators. It should never have been to change and introduce provisions that strike at the very fundamentals of the Law and the Dharma. I emphasise these Comments of authority not with any idea of suggesting any demerits of our modern lawyers as lawyers. My point is that only those who have studied our entire system of Law the Dharama Shastras, the Philosophy, the Log., the Smritis, their Nibandhas, the Purans and Itihasas at their sources are only properly qualified to undertake such a business of overhauling the Law for the rules framed by them will be inconsonance with the Entire Basic whole even where they would suggest changes. Such changes will not shatter the fabric and the foundations upon which our civilization and culture rests. Besides such personalities shall have the confidence of the masses and the orthodox classes. This has the process of evolution in the past. The Muslim Rulers were very wise in permitting Hindu Law to be left to its own votaries. The East India Company saw the wisdom of the Muslim Kings and continued the same policy and so did the British Government. The result of this policy was that the Hindu Jurists of the eminence of Vijnaneshwar, Jimutvahan, Raghunandan, Nanda Pandit, Mitra Misir, Madhava, Nilkantha Bhatta and a board of others grew up and compiled books that may stand comparisons with any legal exposition of even the most advanced of the Modern Western Jurists. This is not a mere idle brag. Eminent Orientalists and scholars of the types of Sir William Jones, Dr. Jolly, Mr. Colebrooke Macregarten and other German and English students of our Jurisprudence have showered profuse praises on them and confessed recognition of our system of law as being of very high order. There are scores of such personages in India who can accomplish such a task. Before rushing up to the Legislature it would have been highly expedient on the part of those responsible for the Bill to have summoned an assembly of such Pandits and scholars and asked them to discuss and evolve a scheme for the codification and amendment of Hindu Law. Such persons would have also been called to sit on the select committee and draft a Bill. To my humble mind the answer to questioners issued and made are all valueless for the reasons suggested above. What can a Lawyer however eminent contribute towards that subject if he is supremely ignorant of our Law and Jurisprudence? And particularly so when in addition to his ignorance he has a feeling of abhorrence for all our Laws and Sharamas. The whole Bill itself though attempted to be couched in the language of Shastras betrays that contempt. I shall close after saying a few words to those of the supporters of such revolutionary changes and particularly to those of them "who go into raptures at the bare mention of the Twelve Table but shake their heads at the mention of the name of Manu and talk about our 'feeble civilization' and 'cruel absurdities' without feeling the absurdity of criticising upon a subject which they had no opportunity to study." I think it is highly undeserving when we with some hit of modern education being to feel that we are necessarily wiser and that our Rishis and Law givers were antiquated in their views. Let such men read some of the commentors I have mentioned above and let them fathom the depth of their Juristic learning and abilities. Sir Francis Macnaghten said while speaking of the Hindus. "The merit of having been the founders of their own Jurisprudence cannot be denied to this people, and those who are at all conversant with the decisions of our courts will acknowledge the analogy which exists between some of their doctrines and some of the texts which I have cited from the Hindu Law. Where this is not to be found a comparison may in several instances be made

about disadvantage to the Hindus." This is a comment of a foreigner about the merits of our law as a very scientific system as good and even better than the laws of the west. The irony is that while that of the west which has had opportunities of studying some bit of our law and civilization have been promoting our greatness, our own men who have had some of English education have been insisting that our law is a relic of absurdities and our laws are all meant for pastoral and nomadic stage of human civilization. A greater irony is that such educated men do not know a bit of our glorious heritage. They do not even know there is any such thing as Hindu Law or Jurisprudence apart from what Anglo Indian Courts have laid down in their decisions. They do not know even the names of Smritis or Shastras or even of the most modern commentators. Yet with all that they propound with that superior air of ignorant knowledge which is specially their own that our laws are not worth the paper on which they are written. Such men should know that there is a vast literature a most sublime and scientific system of our law jurisprudence which even a life time may not be sufficient to master which inspite of the Havoc of History and time are yet available as a glorious heritage for an deserving generation.

I would appeal to the framers of the Bill and to the legislature not to attach any weight to the mass of the answers and opinions received from such quarters. The action of the legislature is not that of a body of Reformers. Theirs is to legislate on the basis of the well recognised canons of jurisprudence for enacting statutes.

The Laws of the Hindus is a complex affair and the legislature would be undertaking a dangerous risk in changing the same on the basis of conceptions and notions foreign secularisms. The enactment proposed will test the fates, religion, the life here and the life hereafter of millions of the Hindus of the present as well as of the successive generations. The gravity of the move must all be realized before the Statute Book is signed.

Honorary Secretary, Bar Association, Fyzabad.

In regard to the *Marriage Bill* we have made certain amendments. We have also changed the order of relations who should become guardians of the minor under section 23. This change in the order is based on experience. We have added a new section at the end i.e., section 27 by which we have left untouched the marriages performed under other Acts such as Arya Validating Act, etc.

Amendments in Bill II.

4 (e).—Instead of "16th" add "eighteenth".

Section 8 (2).—Instead of "eighteenth" add "twenty-one" in case of men and instead of "fourteen" add "eighteen" in case of women.

(3) Omit and add:—

"The woman must, if she had not completed her 21st year, have obtained the consent of her guardian in marriage, to the marriage".

Section (15).—Omit "either party and his" add "woman" to read, as "if the woman has not completed her 21st year the declaration shall also be signed by her guardian".

Section 23 (a).—Omit "Sixteenth" and add "eighteenth".

Omit "Sixteenth" and add "eighteenth".

In 23 the order of guardianship should be as follows:—

- (1) the father.
- (2) the paternal grandfather.
- (3) the brother.
- (4) the mother.
- (5) the mother's father.
- (6) the mother's brother.
- (7) the father's brother.
- (8) Any other male agnatic relation.

Add section 27.—Nothing contained in the act shall affect the validity of a marriage solemnized under any other enactment for the time being in force.

General Secretary, Oudh Provincial Hindu Sabha, Lucknow.

Section 4.—Add cl. (f) as below:—

Sacramental marriages between Hindus, Buddhists, Sikhs and Jains are permissible.

(Note.—This is already the case under present law which may be doubtful only about Buddhists.)

Section 8, cl. (3).—This clause should be deleted and clause (4) made clause (3).

Sections 10, 11, 12 and 13.—All restrictions requiring notice to Registrar and postponement of marriage in case of objection or suit as also that concerning 14 years' residence within the Registrar's jurisdiction, should be removed. Some suits take even three or four years for decision in their original and appellate stages and to postpone marriage till then is practically to deny its taking place. If a civil marriage be illegal, it can be declared to be such, but its postponement is improper, for which rich relatives may file frivolous suits only to defeat such marriages. Even illegal sacramental marriages can already be declared void under certain cases by courts.

Section 21.—Divorce may be permitted even in cases of sacramental marriages, only in cases of congenital impotency of the husband.

Section (23), clause (3).—The person concerned should decide first in case he or she is above 14 years old and the court should decide only when he or she refers the question to the Court, but not at the instance of an intervenor.

Shri Bharat Dharma Mahamandal, Benares.

The enclosed representation contains the opinion of the Mahamandal on these Bills.

A kind and thorough perusal of the representation will show to your goodself the extent of mischief which the Bills if passed into Acts are likely to make in the time-honoured religious sociology of the Sanatani Hindu.

JAGATGANJ, BENARES CANTT.

Dated August 11, 1942.

In connection with the two bills named Hindu Code Part I (Intestate Succession) and Hindu Code Part II (Marriage) received from various Provincial Governments for submission of opinion of Shri Bharat Dharma Mahamandal thereon, I am desired by the Council of this All India Representative Association of (Sanatanists) Hindus believing in Vedas and other Hindu Scriptures, to register their strong protest against the bills and to request you to kindly submit this protest before His Excellency for favourable consideration and necessary orders.

2. In order to place before those participating in the passage of these two bills it appears very necessary to give rather a detailed though brief description of the time-honoured Dharma (religion) and Creed (Belief) of the Sanatanist Hindus according to their Dharma-Shastras (Scriptures) because it is a misfortune that they are innocently doing something they know not due to their lack of perfect knowledge of the principles of the hoary Dharma and culture of the Hindus.

3. For the sake of convenience Hindu Code Part II relating to marriage will be taken up first as it aims at a direct hit at the very root of the religious and scientific sociology of Sanatanist Hindus and their Religion. The other bill, i.e., Hindu Code Part I (Intestate Succession) affects the after-life of Hindus—the safeguarding of which is one of the most important objects of the religious sacraments and the very life of Hindus.

4. 'Dharma' according to their ideology is that Divine Might of the Almighty which holds the universe and helps it—both microcosm and macrocosm, and the individuals or nations to make an ordered progress in this as well as in the next world and to reach the realm of Heaven. Every rule of Hindu Dharma-Shastra and mode of conduct prescribed by the same has this main object in view. It is universally accepted that the Hindus are in fact the pre-historic Spiritual Race of humanity and have always regarded their Dharma-Shastra to have been revealed from Above to the Sages of yore and not as 'man made law' subject to changes by human agencies and

secular powers. They regard their Dharma to be Sanatan (Eternal) which cannot be subjected to modifications by human agencies or secular authorities.

5. The Vedas and Shastras generally make two divisions of human Dharma—one ordinary, Sadharan Dharma and the other special, Vishesh Dharma. The Sadharan Dharma means the general or universal Dharma which helps equally all human beings, all creeds, all nations and all communities through its different aspects. For examples, acts of Dana-Dharma, i.e., charity, Tapo-Dharma, i.e., austerity, Yajna-Dharma, i.e., sacrifices, Yog-Sadhana, i.e., devotional practices, Jnana-Sadhana, i.e., acquiring knowledge of self, and other pious actions of body and mind and inner feelings, such as truth, justice, mercy, love, unpretendedness, rectitude, self-control, ten kinds of Ahimsa, absence of egoism, dispassion towards objects of the senses, paying reverence to the seven classes of elders, service to the Guru, purity of mind and the body and Bhakti, i.e., devotion of God; all these come under the category of Sadharan Dharma.

6. Vishesh Dharma (Special Dharma) means a particular Dharma which is applicable to sex (men and women), caste (such as the Brahmans, the Sudras, etc.) stage of life (such as Sannyas, Garbhashtya, etc.), and sub-creeds (such as Shaiva Dharma, Shakta Dharma, Vaishnava Dharma, etc., of the believers of Vedas (i.e., Vaidic Dharma). The Special Dharma of the non-believers of Vedas (i.e., Avidic Dharma) also will come in the category of Vishesh Dharma, they are such as Jaina Dharma, Buddha Dharma, Christian Dharma, etc.

7. As for the Vishesh Dharma of the Hindus which is the oldest Religion of the world, it consists of the following:—They believe in (1) Varnashram order of their own particular sociology well protected by the four impregnable forts as mentioned below, (2) Vedas and other Scriptures i.e., Smriti Purana, etc., as direct revelation from the Occult world, (3) Existence of the mighty Occult world, its government and Occult office-bearers such as Rishis, Devas, Pitris, etc., (4) Divine Law of Karma, i.e., actions and reactions of material body, Mana (mind) and Budhi (consciousness-faculty) as well as Sanskara, i.e., seed of Karma, (5) Rebirth and the importance of Shraddha and other ceremonies as Tarpana, etc., in order to help the departed soul, (6) Theory of Avatars, i.e., incarnations of the Almighty and His Occult Governors, (7) Upasana; Yoga and their devotional practices, (8) Murti Puja, i.e., Image worship and the scientific theory of Peetha, i.e., mystic circle linking it with the Occult organisation (9) Science of Sudha-Asuddha-Viveka (touchability and untouchability) in the interest of the purification of the five sheaths (Pancha Kosha) which give cover to the Atma the soul, (10) Several classes of Yajnas and Mahayajnas, i.e., Vaidik, Pauranic and Tantrik ceremonies for the individual and collective good, (11) Saguna and Nirguna Ishwar-tatva i.e., realisation of the Almighty God without attributes through self-knowledge and with attributes through mediation.

8. The Hindu religious sociology called Varnashram Dharma is perfectly guarded and fully protected on all sides by the steel walls of the four impregnable forts of (i) Achar-Vichara Dharma, i.e., the rules of conduct relating to mental and physical purity and inner spiritual culture, (ii) Varna Dharma, i.e., the birth right of the caste system, (iii) Ashram Dharma, the rules of conduct relating to the four progressive religious stages of life and (iv) Satitwa Dharma, chastity of womanhood of an extreme nature. It stands on the granite rock of the marriage ceremony-rituals and life-long religious conduct of the married couple. No king, no Government and no outward or inward force has hitherto been able to overpower it since Satyayuga, the beginning of the first cycle of the Yugas. Even in the Buddhist period when Emperors of India like the Great Ashoka and the Mighty Sudhanwa embraced Buddhism, even then, the most scientific sociology of the Hindus, based on the unchallenged Vaidic philosophy, remained unaffected. When, however, Buddhism tried to interfere with the authority of the social order of the Hindus it was banished from its motherland. Even for centuries during the autocratic rule of the Mohammedan conquerors, the Mohammedan kings failed to cause any palpable harm to this socio-religious organisation. The pre-historic Jainism which is altogether a separate creed and has no faith in the Vedas accepted the social order and became a part and parcel of

Hinduism. But in the present British period of Godless education-social disruption, moral degradation and spiritual downfall, some revolutionary spirit has sprung up within the Hindu fold itself as a result of the influence of western thought and has led to the bringing forth of a reformist group.

9. The four forts of the religious social order are inter-dependent and closely related to one another, but the second one—VARNA DHARMA—or caste-system is the backbone and deserves a careful study. One of the chief objects of the caste system is to preserve the pre-historic race of humanity and to safeguard its gradual progress. The Dharma-Shastras lay down that just as for a good crop it is essential to have good seed and good soil, similarly for the gradual advancement of the Hindus it is essential to observe the purity of Raja and Virya (blood and seed) through the caste-system. The religious Sociology of the Hindus and its ingredients, viz., the caste-system etc., all stand on the granite rock of unchallenged principles of the above-mentioned Religion and Vaidic philosophy.

10. The Vedas, the Shastras and the Vaidic philosophies unanimously prove that in the course of nature the responsibility of man and woman is similar to that of the seed and soil—man is a mere depositor of the seed and the largest and the most important part in propagation is played by woman as mother. On the other hand, Hindu scriptures also prove that the "Sati" woman on account of her attachment and self-dedication to her husband of an extreme nature exercises no independent will of her own. In fact she has no personal existence apart from her husband. This Tapasya (austerity) in shape of Satitwa (chastity) ensures salvation both for the husband and for herself as well as preserves purity of the seed and blood in Hindus—the spiritual race of humanity. Hindu religious sociology has therefore prescribed great restrictions and taken special care regarding marriage sacrament and family-life of the Hindus.

11. In order to keep the onward march of the Sanatanist Hindu race of humanity in the right direction, Hindu Philosophy and eugenics are of considered opinion that marriage should be performed with the girl of the same caste but not of the same Gotra. The marriage with a girl of the same Gotra is highly objectionable as amounting to marriage with ones own mother. The marriage between persons of different sub-castes of the same caste is not so highly objectionable as that between persons of same Gotra. But at present, the purity of Raja and Virya i.e., the Blood and Seed is not observed strictly in all the sub-castes and many new sub-castes have sprung up, the people professing themselves to belong to them without their really being so. Hence marriage between persons of different sub-castes too cannot be encouraged freely. The main object is to protect the onward march of the nation from stagnation or to prevent the checkmating of the current of evolution.

12. Formerly in previous Yugas, Kamaj (Lustful) inter-caste marriage was permissible among the Sanatanist Hindus, but it was Anuloma and not Viloma, i.e., a male of a higher caste could marry a female of a lower caste and not vice versa. But the progeny of such a couple used to belong to the caste of the mother and not of the father. The principle being that connections helping the onward march were encouraged and those which did not help the advancement were discouraged. This will clearly show the main principle of the scientific caste system of the Hindus. Under these circumstances unrestricted marriages of the nature of civil marriages are not at all recognised by the Hindu Dharma Shastras.

13. The marriage sacrament is thus the backbone of the Hindu religious and scientific sociology. Any attempt to introduce such drastic changes as are provided by the Bill "Hindu Code Part II (Marriage)" will result in complete disruption of the Hindu Society and consequently be resented vehemently producing undesirable reactions. The vast populations of Sanatanist Hindus forming the greater portion of Indian population will take it as a direct hit against their Dharma.

14. As for the unkind remarks in support of the Bills it may be said that the bills aim at providing codified laws of marriage and intestate succession for Hindus as if the Hindus had no such laws. It is nothing but an irony of

that the Nation which has been the Torch-bearer in every branch of learning to the world should be deemed to possessing no laws of marriage and succession. In fact Hindu laws of marriage and succession are the most scientific laws (based on the unchallenged Vaidic Philosophy) that any nation on the face of earth can boast of. If the present day administrators of justice find it difficult to comprehend the philosophical basis of the Hindu Dharma-Shastras, it is no fault of the laws themselves. On the other hand it is the fault of the so-called educated Hindus who generally know nothing about their Dharma and culture. It is because of the materialistic outlook of the civilization in which they have been bred, brought up, educated and trained all their life. This is not therefore be a valid reason for forcing upon the most and spiritually most advanced race of humanity a new law on the lines of that possessed by other Nations of the world.

6. The Reformists express contempt at what they call the pitiable plight of Hindu women with regard to their right of succession, full ownership and divorce. But in fact, as already remarked in the beginning, they in doing so only betray their lamentable ignorance of the Hindu law, sociology, ideology and culture. It is only amongst the Hindus that the women are worshipped as goddess in all stages of life. No other nation of the world has all the women's rights of equality, freedom, succession, ownership, divorce, etc., etc., has ever shown so much respect to woman as to install her at the venerable position of Goddess. The position of Hindu women in married life is far superior to that of their sisters in other Nations of the world, nay, the lot of Indian women in spite of their so-called disabilities is enormously better than that of their sisters in other Nations who enjoy the rights of property, succession, freedom and divorce, etc. If statistics of the nations of the world with regard to the various rights enjoyed by women and their consequences could ever be available the above statements could be amply supported. Any reform against the established practice of the religious social order of the pre-historic Hindu civilization by means of sanction of law is therefore bound to have its bitter reaction.

24. In conclusion, these bills aim at striking at the very root of the Sanatan Dharma, Varnashrama Dharma and their religious sociology. If, passed into Acts, the Bills will play untold havoc and cast unforeseen misery on the Sanatanist Hindus. Moreover the present times hardly warrant such drastic changes disrupting the loyal, God-fearing and a peace-loving society and throwing it off its gear. It is the passing of such few acts in the past few years that has been responsible for the estranged relation between the Sanatanist Hindus and the Congress Government and it will only be stating fact that true Sanatanist Hindus who regard religion dearer to their lives will form the core of their heart hate and consider as their bitterest enemy the so-called Reformer, Leader, Political Society or an Authority that will lend any support to the passing of such acts which to all intents and purposes are meant to stunt the nation's onward progress by undermining its religious social order. For reasons recorded above, I am desirous to register a most vehement protest against the Bills and respectfully submit that it will be for the good of both rulers and ruled that the Bills be rejected before discussion on the floor of the Assembly.

KAMALAKAR DWIVEDI,
VIDYABHUSHAN, RAI BAHADUR.
(Rtd. Collector and Magistrate; U. P.)
Chief Secretary.

Mrs. Joyasri Ghosh, Swarnpoham, Burma
Bridge, Benares Cantt.

We give our whole support in favour of the above two Bills.

L. S. Misra, Esq., Bar-at-Law, Lucknow.

The major changes which the Bill proposes to bring about in the present law of marriage are as follows:—
(a) It insists on monogamy.

(b) It provides for Civil marriage amongst the Hindus, Buddhists, Sikhs and Jains.

I am in complete agreement with the major changes sought to be introduced by the Bill. In fact, apart from the insistence on monogamy, the Bill hardly introduces any important departure from the law as it stands today. I may mention that the abolition of polygamy is a crying need, but it calls for a simultaneous provision for legal right of divorce in suitable cases and I am glad to find that it is intended to legislate at a later date on the topic of divorce amongst the Hindus. There is no doubt that divorce is foreign to the idea of sacramental marriage and would perhaps be considered by some to constitute a violent break from the traditional Hindu Law. I nevertheless believe that the time has now come when Hindu men and women should also be given the right to break unsuitable marriages in order to give themselves a chance of greater happiness in their marital relations and in order to enable the legislature to insist on monogamy.

Dr. Mangal Deva Shastri, M.A., D. Phil (Oxon.)
Principal, Govt. Sanskrit College, Benares.

* * I have the honour to state that a perusal of the statement of Objects and Reasons and other memoranda appended therewith shows that all possible objections that could be raised against them have been considered and dealt with. Where the bills, therefore, depart from the express injunctions of the Dharma-Shastras, they do so deliberately and it is therefore unnecessary to dwell upon them. They will also be doubtless put forward by the representatives of the orthodox public opinion, when the bills come up for discussion in the Legislative Assembly. I would, however, stress one or two points, which orthodox opinion as represented by the Govt. Sanskrit College, Benares, holds particularly objectionable.

* * As regards the Hindu Marriage Bill, I have only to state that orthodox opinion cannot countenance marriage between Sagotras and Samana-Pravaras, as it contravenes the very foundations of Hindu Law, notwithstanding the laxity observed in certain parts of the Country regarding their observance. Such marriages should not therefore be regarded as valid. A Statutory provision to this effect will encourage the celebration of such marriages and will give a death blow to the very first requisite of a valid Hindu marriage.

Rao Raja Dr. Shyam Bihari Misra, M.A., D. Litt.,
Rai Bahadur, of Misra Bhawan, Golaganj,
Lucknow.

* * This Bill deals with the Hindu Law of Marriage, and I generally appreciate its provisions some of which, however, do not go far enough in several respects. I proceed to deal with its prominent points and add my observations where considered necessary.

The Bill seeks to legalise marriage, within the same Gotra, which is a most commendable departure from the present law. It is but too true that among males and females of the same Gotra, who may be removed from each other by 6 or 7 generations, the idea of brotherhood and sisterhood is absolutely wanting, but the present law quite unnecessarily extends that idea beyond dozens of generations and even externally, among boys and girls who may happen to be descended from a common ancestor who lived hundred of years ago. It is common experience that hundreds of suitable pairs are known to exist within the same Gotra, who could with advantage to themselves and others concerned have well become husbands and wives and thus constituted many happy families but for the present law absolutely and quite unreasonably forbidding marriages within the same Gotra for centuries and centuries and it is generally recognized that time has long been overripe for its early abrogation. This is now proposed to be done, and let us hope no dissentient voice may be raised. The change is very simple and wholesome, but we must not forget our old friend, the orthodox man, to whom any change may appear to be undesirable and even revolutionary! All we should do is to take courage in both hands and ignore him for the nonce!

(2) The second important point is the proposal to forbid Bigamy by law straight away. I fully approve of the proposal, but I must add that Divorce should be allowed in case of sacramental marriages also, and I cannot appreciate the action of the framers of the Bill in disallowing Bigamy and at the same time demurring to the extension of divorce to such marriages also. I have no doubt that the salutary provision against Bigamy would probably increase immorality in husbands and wives, who do not like one another, and I see no reason why they should not be allowed to break up their marital tie so as to end their household misery. People of different and hostile temperament cannot be persuaded by law to pass their whole lives happily with a husband or a wife whom they thoroughly hate, perhaps for very good reasons, with the result that immorality may creep in among them if they are forced to continue to live as husband and wife. Luckily I have personally had thoroughly happy conjugal relations throughout my 53 years of married life so far, but I know of cases where it is not so, and life thereby often becomes hell. I see no reason why I should not deeply sympathise with such unhappy friends who are generally excellent persons in other respects. Possibly some orthodox people may be callous enough not to show any sympathy to such persons, but fair-minded people cannot afford to withhold the deepest sympathy from such unfortunate cases. It may be argued that Hindu ladies even now live under such difficulties, but two wrongs cannot make one right, and this on the contrary is a good argument in favour of allowing a Divorce at the instance of a Hindu husband as well as wife. Also, the Purdah system has so far been very common among many Hindus and is still in vogue to a large extent. Educated Hindu ladies are now rapidly and rightly discarding it, and therefore it will become increasingly desirable to allow Divorce also, where necessary. It has to be recognised that Hindu ladies are much more religious and morally virtuous than males, and this excellent tradition has greatly helped them in remaining wonderfully chaste, so that cases of unchastity and immorality are absolutely few and far between among our ladies, but many traditions are gradually dying down and in my opinion the introduction of divorce even in cases of sacramental marriage is an urgent necessity, specially, if the law against Bigamy is to be introduced as it should be. It is really necessary from the point of view of fairness to ladies themselves even without banning Bigamy by law. The Bill is too halting and hesitant in recommending Divorce in cases of civil marriages only, and I am entirely in favour of extending it to cases of sacramental marriages also. I have indeed no objection to allowing re-marriage to divorced Hindu wives, as Hindu husbands can and often do marry a second time not only on becoming widowers but even during the life-time of their first wives themselves, which latter evil is now sought to be removed.

(3) The third important change proposed in the Bill is to legalise inter-caste sacramental marriages among all the four castes of Hindus. This proposal may also be distasteful to some orthodox people but is fit to be accepted by far seeing people. The partial lack of sympathy among Hindus of different castes is largely due to such unnecessary ban among the various castes of Hindus, and its removal will undoubtedly contribute to increased solidarity in Hindu society. Such marriages can generally come into vogue only gradually and slowly with lapse of time, but the removal of the legal ban will in itself by a great achievement.

(4) The Bill recommends inter-marriages among Hindus, Jains, Sikhs and Buddhists as civil and non-sacramental. But the present law itself freely allows sacramental marriages among them and therefore the proposed provision of the Bill can only be considered rather reactionary. At present there is some doubt as to legal sacramental marriages between Hindus and Buddhists, though such inter-marriages were freely current in olden times and no Shastric restriction seems to exist against them even now. I am of the opinion that inter-marriages among all of them should be considered to be sacramental. Civil marriages can of course be contracted among all parties against whom there is no bar to a sacramental marriage under the law. There is, therefore, no reason why such inter-marriages

should at this late hour of the day be recommended only as civil marriages.

(5) Strangely enough, the framers of what claims to be a progressive Bill seek to introduce several uncalled-for restrictions against even civil marriages. This clearly exposes them to the suspicion that they really mean to discourage such marriages in actual practice even after accepting their legality and necessity. The adjective law as proposed in the Bill in respect of such marriages is too stiff in several respects. (i) The proposed age of 21 years for attaining majority for purposes of such marriages is rather too high and may reasonably be placed at 18 years. (ii) The proposed appointment of a guardian for them naturally involves action by Courts of law even when guardians of the same grade are available. Proceedings through civil courts usually take a long time which may be unduly extended in cases of appeals and revisions, and parties to such proposed marriages may have to wait too long, with the result that the marriage itself may at times fall through. There is no harm in allowing independent choice of a guardian, at least to minors of a pretty advanced age, say 18 years or more, if the age of majority is not reduced from 21 years to 18 years. The provisions of the present Sarda Act against minority marriages should suffice in cases of civil marriages also. (iii) The height of absurdity is reached with the proposal of fixing 14 years' residence within the jurisdiction of a Registrar. This proposal is unnecessarily restrictive and would become prohibitive in cases of persons who had to change their domicile from time to time, even for good reasons beyond their control. (iv) The provision for stoppage of such proposed marriages to await the results of protracted litigation in respect of them, probably carried on for vindictive or otherwise undesirable reasons, may in many cases involve a delay of 3 or 4 years or more, with the result that the proposed marriage may have to be dropped entirely, even if it is eventually upheld by the courts. Sacramental marriages themselves are occasionally declared void by courts. Provisions governing such cases should certainly be considered sufficient for purposes of civil marriages also, and no extra restrictions or safeguards are at all called for.

(6) The net result is that although the Bill proceeds on advanced lines in respect of Hindu marriages and is really progressive in several respects, yet it is a very halting, and to some extent even a reactionary, measure so far specially as civil marriages and the question of Divorce are concerned, and stands in great need of being substantially liberalised on those important subjects and also otherwise. I, however, welcome the measure, even as it is and in spite of its short-comings, and I recommend that it may be supported and, if possible, liberalised.

Hon. Secretary, Women's Conference, Moradabad.

I have much pleasure in forwarding you the enclosed opinions* of the prominent citizens of Moradabad on the two Hindu Code Bills.

I earnestly hope that these two Bills will be passed un-animously.

The District Bar Association, Allahabad.

The first point for consideration is whether the Hindu Law requires codification. As the Hindu Law is founded on Customary Law, more or less based on Smritis, it would be rather hazardous to make a uniform law for the whole of India by codification of the Hindu Law, as it is feared that no codification however elaborate can do full justice to the prevailing customs of different classes of people in India. Moreover there are some terms which according to G. C. Sarkar Shastri and the memorandum attached to the Bills can not be properly defined. In such cases reference have often to be made to the original texts on Hindu Law. As for example it may be mentioned here that in the Bill relating to Marriage the terms "Pravara" and "Gotra" have been defined to have the same meanings as in the Hindu Law. Therefore we are of opinion that the codification of Hindu Law will rather tend to complicate the matter and increase litigation than to minimise the same.

* Not printed.

the next point that we considered is whether the Hindu as it exists today calls for any amendment. The subject is rather vast and as we have to consider at present the Bills relating to marriage and succession we are of opinion that so far as it related to those two branches Hindu Law no amendment is at present needed. However considering the proclamation of Her Majesty Queen in 1857 we are of opinion the Legislature has authority to interfere with the social, religious and moral law of any community.

We shall now consider the Bills, as they stand, clause by clause; but we would like to stress here once again that we are definitely of opinion that no amendment in Hindu Law is necessary, and permissible as it is complete in itself in every respect.

Section 2 (a).—In the definition of the terms 'caste' the Bill re-iterates the castes recognised in the ancient texts. It is to be noted that there has been a good deal of controversy for about three decades about the "Varna" which the Kayasthas belong. Most of the High Courts have held that the Kayasthas are Kshatriyas, but the Madras High Court in 10 C. 689 and 20 C. W. N. 901 has held that the Kayasthas are Sudras. In order to avoid controversy about the varna of a Kayastha it would be better that the definition of caste should include the Kayasthas as a varna as there can be no valid marriage contracted as between a Kshatriya and a Kayastha and a Kayastha and a Sudra.

Section 7.—The doctrine of *factum valet* should not be applied to a marriage performed after the passing of the Bill into an Act. A marriage of two persons belonging to the same Gotra or pravara is invalid *ab initio* and the law would not encourage such marriage on the ground that if such a marriage is performed that will be recognised as valid by virtue of the principle of *factum valet*. As the Bill provides for the civil marriage, if two persons belonging to the same gotra or pravara decide to contract a marriage they should go to the registrar of marriages and should not seek a sacramental marriage. In our opinion the section 7 should be deleted altogether.

Section 8 (4).—The wordings of this sub-clause should be substituted by "the parties must not be in sapinda relationship to each other".

Section 19 (1).—The notice contemplated under this Act must also be published in a newspaper, and must be signed by both the parties to the marriage.

Section 10 (2).—The notice must be given to the registrar when one of the parties to the marriage ordinarily resides for business or gain. The residence of 14 days only preceding the giving of notice may be fraudulently made use of.

Section 12 (1).—For the words "has been given" after the word "marriage" the words "has been published" be substituted.

The reason for such an amendment is obvious since it is suggested that notice of the intending marriage should be published.

Section (14).—It may often happen that some unscrupulous man may raise an objection to such a marriage thereby delaying the performance of the marriage. In order to put a check to such harassing tactics it is suggested that a sub-clause (1) be added to section 14 as follows:—

"At the time of filing an objection under section 12 the objector should be required to deposit Rs. 100 as security with the registrar. If a suit is not filed within the period prescribed under section 13, the registrar should pay the amount to the parties intending to marry."

Section (15).—In section 15 after the word "widow" the words "or a woman who has obtained a divorce from her first husband" be added.

Section (20).—The second paragraph of section 20 should be deleted as it is vague and will be a source of corruption.

Section 21.—Divorce in civil marriage under the Hindu Law can only be allowed on the grounds that it contravenes some one or more of the conditions prescribed in clauses 1, 2, 3 and 4 of section 8 of the Bill. The Indian Divorce Act should not en bloc be made applicable to such a civil marriage, and therefore the section should be recast as:—

"Any party to a civil marriage under this Act may present an application to the proper court for divorce on any of the grounds that their marriage contravenes some one

or more of the conditions prescribed in clauses 1, 2, 3 and 4 of section 8 of this Act."

The procedure in such a suit will be the same as in the Indian Divorce Act."

First Schedule.—Instead of "length of residence" the words "ordinary place of residence" be substituted in column 6.

No. 4.—PUNJAB.

From the Home Secretary to Government, Punjab, to the Secretary to the Government of India, Legislative Department, No. 5262-J-42/45866, dated Lahore, the 24th/28th August, 1942.

I am directed * * * * to forward a copy of a letter from the Registrar of the High Court at Lahore, reporting the views of the Honourable Judges and those of a number of the District and Sessions Judges consulted under their orders. The Punjab Government also invited the views of the High Court Bar Association and the Bar Association at the five divisional headquarters as well as of nine selected non-official organisations believed to be representative of Hindu and Sikh opinion. Only four of them, namely, (1) the Bar Association, Rawalpindi, (2) the Bar Association, Multan, (3) the Sanatan Dharam Pratinidhi Maha Sabha, Rawalpindi, and (4) the Sanatan Dharam Pratinidhi Sabha, Punjab, Lahore, have replied, and copies of their replies are enclosed.

2. The Punjab Government have no objection to the proposed Bills.

3. The Bills, with the accompanying Statements of Objects and Reasons including the Explanatory Notes and in the case of the first Bill the Appendix thereto, were published in the issues of the Punjab Government Gazette, dated the 3rd, 10th and 17th July, 1942.

From the Registrar of the High Court of Judicature at Lahore.

SUBJECT.—The Hindu Code, Part I (Intestate Succession) and the Hindu Code, Part II (Marriage).

I am directed to forward a copy of the opinion recorded by the Honourable Mr. Justice Bhide and to say that the Honourable the Chief Justice and the other Honourable Judges agree to it.

2. The views of certain District and Sessions Judges, who were selected by the Honourable Judges to express opinion, are also forwarded in original. Sardar Sahib Sardar Sewa Singh, District and Sessions Judge, Ferozepore, and Mr. T. D. Bedi, Additional District and Sessions Judge, Lahore, were also asked to express their opinion. Their views will be sent as soon as received in this Court.

The two Bills purporting to amend and codify Hindu Law in stages which have been sent for opinion appear to be measures of a far reaching character and of great importance. The first Bill deals with 'intestate succession', while the second deals with 'marriage'. It is proposed to have the whole of Hindu Law codified and the Code brought into operation by 1946. But this will, of course, depend upon the support which the Bills receive in the Legislature.

According to the principles accepted by the Government of India the Judges as a body are not required to express any opinion on Bills which are clearly concerned with matters of public policy or involve purely social or political considerations. The proposed Hindu Code embodies certain changes in the law which are no doubt primarily the concern of the Hindu community. But apart from these changes the codification of Hindu Law has by itself importance for the Courts.

In so far as the Bills purport to codify Hindu Law they will certainly be welcomed by the Courts. The Hindu Law, with its various schools obtaining in different parts of India, is a complex system and its administration is fraught with difficulties. Based primarily on the ancient *Smritis* (dating from about 200 B.C. to 200 A.D.) the law has gradually evolved through centuries by assimilation of a variety of customs, suited to differing local conditions and degrees of civilization. These customs were embodied in commentaries on *Dharma-shastra* by learned pandits, which came to be looked upon as authoritative in course of time.

The law then possessed a certain amount of elasticity which enabled new customs evolved through the growing needs of the society to be incorporated in it. But since the advent of British rule, this elasticity disappeared. The law has now largely become crystallized through decisions of the Privy Council, but it contains many relics of the ancient system, which are not suited to modern conditions. Nothing short of legislation can, however, now, remove such defects. Legislation had to be resorted to accordingly from time to time, but such piecemeal legislation has been found to be unsatisfactory. * * *

There can be no doubt about the advantages of codification of the Hindu Law. The primary requisites of any law are clarity and certainty and it must be said that Hindu Law lacks both at present in several respects. The result is a great deal of waste of time and money—of Courts and Litigants—which will be saved if the proposed codification succeeds. The need for such codification has been felt ever since the time of Lord Macaulay, but the task has not been attempted so far owing to its stupendous character. Mayne, the author of the classic work on Hindu Law, in his preface to the first edition, expressed the view that it would be a miracle if a Code of Hindu Law could be produced to satisfy different sections of the Hindu community all over India. But there has been a growing demand since amongst Hindus themselves for reform and codification of the Hindu Law with a view to simplify and adapt it to modern conditions. The Hindu Law Reform Association of Bombay has been advocating such reform for some years and the opinions received in response to questionnaires issued by the Hindu Law Committee, to which they refer, seem to indicate that the time is now ripe for the step. * * *

In codifying the Hindu Law, the framers of the Bills have not merely attempted to state the existing law in clear and concise language, but have boldly tried to simplify and amend the law wherever necessary or desirable. * * *

The main feature of the second Bill—relating to marriage—are the acceptance of the principle of monogamy and the option given for civil marriage—with provision for divorce. The Committee have pointed out that though polygamy is allowed under Hindu Law, the vast majority of Hindu marriages are monogamous. According to early Hindu Law, monogamy was the approved rule and modern enlightened opinion is distinctly in favour of it. The option for a civil marriage is already available under the Special Marriage Act. This option in a modified form is now proposed to be embodied in the Hindu Law itself and the anomaly as to the offspring of such marriages being governed by the Indian Succession Act and not by Hindu Law has been removed. The law relating to sacramental marriage has also been made precise by defining the essential requisites, essential ceremonies, prohibited degrees, etc., so forth. The doctrine of *factum valet* has also been applied to marriages, which violate rules regarding caste, *gotra*, etc. * * *

There can be no doubt that the changes introduced in the Hindu Law by these Bills are of a far-reaching character. There is bound to be considerable opposition to these changes from the orthodox section of the Hindu community, but there is, I believe, now a strong body of enlightened public opinion amongst Hindus in favour of such reform. * * * The fate of the Bills must depend eventually upon the support they receive in the Legislature. But there can be no doubt that if the proposed Code becomes law, it will greatly facilitate the work of the Courts and will also be a boon to the public inasmuch as it will simplify the law and make it accessible to all in an easily intelligible form. * * *

M. V. BHIDE, Judge.

Sardar Bahadur Sardar Kartar Singh, P. C. S.,
District and Session Judge, Jullundur.

In my opinion the Hindu Law does not stand in need of the proposed amendment. Monogamy is the general rule of the Hindu society. Polygamous marriages are in fact very rare exceptions.

No pressing need for such legislation exists at present.

District and Sessions Judge, Montgomery.

Custom is the prime rule of law in this Province and although there is a presumption that Non-agricultural Hindus are governed by Hindu Law, cases are rare in which the provisions of strict Hindu Law are applicable. Even in such cases special family customs are found to exist modifying the rules of Hindu Law. Under the circumstances so far as this Province is concerned the codification of Hindu Law is not likely to prove of much practical value, as the new measures proposed to be enacted would not affect the existing customs. Moreover I note that they are not to come into force till the year 1946. This shows that it is recognised that there is no immediate necessity for them. It is not known for how long the war is going to last and even if it ends before 1946, a good deal of reconstruction work will be necessary before we settle down to normal conditions of life and this work is likely to engage the attention of all Government and Public Bodies for a number of years. One cannot at this time foresee the political, economic and social changes that will follow at the close of war and it may be necessary to bring about sweeping changes in all branches of the administration. In these circumstances when owing to the exigency created by the war all things are in a more or less fluid state and the future is uncertain, any opinion expressed on a measure affecting Hindu Society in the light of present day condition would necessarily be lacking in the element of permanency and will be subject to alteration later as one cannot be sure to have the same views in the post war period. I find no serious defect in the existing Hindu Law of Marriage and Intestate Succession which require to be remedied immediately and I am of the opinion that such defects may very well wait to be remedied after the close of the war. Possibly a new generation will evolve after the war with views in social matters wholly different from the views of the present generation who may not be satisfied with the limited scope of the enactments now proposed and would like to bring about more drastic changes in the whole field of Hindu Law. For these reasons I do not propose to discuss the merits of either Bill and I suggest that their consideration should be postponed till after the war. * * *

District and Sessions Judge, Ludhiana.

* * * the rule of monogamy is a very wholesome rule which should be observed by all alike. When the Hindu Law will be codified, the deplorable cases will no longer come to light. But at the same time there is a genuine desire for progeny. Some provision should be made where a man can be allowed to satisfy his desire for an issue. This allowance be made under certain limitations and restrictions. Polygamy in no case should be allowed to satisfy one's own lust.

If a marriage is performed although forbidden under certain restrictions it would not be dissolved easily and the rule of *factum valet* is a sound one. * * *

District and Sessions Judge, Sialkot

I find myself in entire agreement with the provisions of the two Bills and have no further criticism to offer.

District and Sessions Judge, Mianwali.

Clause 2 (b).—The words "*gotra*" and "*Pravara*" should be defined with some precision. The clause merely says that these words "have the same meanings as in Hindu Law". This is merely begging the question. The object of the proposed Bill is to codify the Hindu Law and if so this enactment must itself specify what the "Hindu Law" on the subject is. The mere difficulty of framing a definition is not a sufficient justification for evading the point if the legislation is to be effective and helpful.

Clause 6.—This clause confers recognition on sacramental marriages celebrated according to some local custom. It might be useful to insist even in all such cases compliance with the two simple ceremonies prescribed in clause 5:—

- (a) Invocation before the sacred fire, and
- (b) *Saptapadi*, that is, the taking of seven steps.

this would provide a very desirable uniformity even in midst of local diversity.

Clause 4 & 8.—(a) According to clause 4 (c) in the case of a sacramental marriage if the bride has not completed sixteenth year, the consent of her guardian in marriage is necessary. In the case of a Civil Marriage, however, clause 8 raises the age limit in this connection to 21 years. Would it not be more desirable to adopt the same age limit in both the cases? I would prefer 21 years in the case of sacramental marriage also in order to ensure that girls immature understanding or experience can not be induced to enter into a marriage, which they might regret later.

(b) Clause 8 makes it necessary in a Civil Marriage even the bridegroom to have the consent of his guardian in marriage if he has not completed his twenty-first year. Is it a similar provision necessary in the case of sacramental marriages?

Clause 7.—This clause seeks to protect a sacramental marriage "after it has been completed" even if certain conditions (such as the consent of the guardian) were not fulfilled. This in effect would abolish the necessity of complying with these conditions which, if desirable, must invariably be complied with.

Clause 12.—This enables any person to raise objections to a Civil Marriage on certain grounds and hold up the marriage for at least some time. In view of the consequences involved such objections must be supported by an affidavit.

Clause 14.—If an objector brings a suit to establish his objections the court can inflict a fine if it appears that the objections were not reasonable or *bona fide*.

An objector however might raise an objection, hold up the marriage for a specified period and yet not bring a suit. I feel that some penalty must be imposed in such cases also. It is suggested that when an objection is raised the objector must make a deposit of an amount prescribed by Rules and the amount would be declared forfeited if no suit is brought within the period allowed for the purpose.

District and Sessions Judge, Delhi.

I have the honour to state that my first suggestion is that legislation on the proposed Hindu Code should not be taken up piecemeal. As pointed out in the explanatory note accompanying one of the Bills, different parts of the subject are inter-connected; it would not be advisable, therefore, to codify each part separately. There may be advantage in eliciting views of the public on one aspect of it, as a matter of convenience, before proceeding to other aspects but this could be secured by merely inviting public opinion and not proceeding with the Bills further until the subject had been exhausted in full. The explanatory note on the Bill relating to Marriage tends to suggest that this is the scheme likely to be followed.

3. Turning to the Bill relating to marriage I find that it seeks to effect a compromise: it provides for considerable reform, at the same time it keeps in tact several features of the old and existing law. In my view it does not go far enough because it still seeks to confine a sacramental marriage to persons belonging to the same caste. Doubtless the rigour of this bar to inter-caste marriages is eased by the provisions of clause 7, but the fact remains that even under the proposed Bill two Hindus not of the same caste would not be able to enter into a sacramental marriage. My suggestion is that sub-clause (b) of clause 4 of the Bill and the corresponding sub-clause (a) of clause 7 should be deleted. I am also not in favour of sub-clause (c) of clause 7, because in my opinion this negatives the salutary provision of sub-clause (e) of clause 4.

The only other clause of the Bill which calls for criticism is No. 14, which does not prescribe a mode of recovery of fine and also in what manner it should be dealt with after recovery.

Secretary, Bar Association, Rawalpindi.

I have the honour to send herewith a copy of resolution of the Managing Committee, Bar Association, Rawalpindi, with * * * one copy of opinion on Part II (Marriages).

Resolution.

2. Read opinion of Pandit Lakshmi Narayana Sudan, Advocate on the Bill styled as "Hindu Code Part II Marriage" and resolved that the Committee wholly agrees with the reasoning and conclusions and opposes the introduction of the proposed legislation.

Opinion of Pandit Lakshmi Narayana Sudan, Advocate, Rawalpindi.

I have carefully gone through a Bill entitled as the Hindu Code Part II (Marriage) desired to be introduced in the Central Legislative Assembly. The heading shows that by this Bill, it is intended to codify the Hindu Law relating to marriage, but the contents of the Bill show that apart from an attempt to codify the Hindu Law relating to marriage now in force in British India, quite fresh law of marriage for Hindu is attempted to be introduced in the Legislative Assembly. For example:—

In Section 3 of the Bill it is stated that there shall be two forms of Hindu Marriage namely:—

- (a) a Sacramental marriage;
- (b) a civil marriage.

Now a "Civil marriage" has never been recognised by any school of Hindu Law. Various forms of marriage are given under Hindu Law, many of which are abrogated, but there has been no such form as a "civil marriage".

Under Special Marriage Act, 1872—as amended by the Special Marriage (Amendment) Act, 1923, certain marriages could be celebrated before a Registrar of Marriages between persons of the following religions, namely, the Hindu, Buddhist, Sikh or Jain Religion. They are special marriages under a Special Act. You may call them 'Civil Marriages'. But it is not only a misnomer to call it a Hindu marriage, or a particular form of a Hindu marriage. Hindu marriages are not performed before Registrars. So it will be beyond the scope of the Legislative authority to put civil marriage under the category of Hindu form of marriages. Tomorrow if certain persons take it in their heads to have inter-communal marriages between Hindus, Mohammedans, Christians, etc., validated by a special legislation, and afterwards an attempt is made to put it under the category of Hindu Forms of marriage saying it is third form of Special Civil Marriage, how far the Legislature will be justified. I shall request only the Legislators to consider.

So it is not a question of codifying Hindu Law of marriages as now in force in British India.

The real reason seems to be that in the case of a civil marriage performed under the Special Act, the off-spring of such marriage has a special law of Inheritance provided under the Indian Succession Act, and now by calling the Civil marriage also a form of a marriage under Hindu Law, the law of Succession attempted to be followed is Hindu Law.

If Hindu Law of Succession now existing in British India is an undesirable thing as attempts are being made to introduce drastic changes in it by a separate Bill, why is it desired to adopt Hindu Law of Succession by those who are governed by Indian Law of Succession, which is again said to be based on modernised reformed ideas relating to Succession? If the Bill regarding Intestate Succession fails, the promoters of the present Bill (namely Part II marriage) should consider whether they will still like to follow the Hindu Law, which is being considered by some of their friends as "to archaic" to follow. So my submission is that "Civil marriage" should in no case be engrafted as another form of Hindu Marriage under the Hindu Law or in the Hindu Code.

If they want to have change in their law of succession they can make an amendment in the Special Marriage Act.

Now as regards the codification of Sacramental Marriages, if there had been a genuine attempt to merely codify it, then the only and chief objection would have been that it is a subject relating to personal law alone which no difficulties have arisen, and there has no desire of the persons governed by the Hindu Law, to have it codified, why should then be a legislation. Secondly the law of Hindu marriage is also based on a religious foundation, it is only a sacrament and not a civil contract, its union is indissoluble, and the object of the marriage is

not legalisation of sexual inter-course between a male and a female, but a holy union for performance of religious duties, and for begetting children who may perform their religious duties towards their "Pitries". So there should be no legislative interference with religious matters, or matters religio-social or socio-religious. I have already said while discussing the Bill called Hindu Code Part I, and my remarks there apply here also with a greater force, that it is a fundamental principle recognised by the Constitution of all civilised countries that there should be no legislative interference in the conscientious beliefs and matters of faith or religion of any class or community living in a country. The State should always keep itself scrupulously neutral in matters of religion. But this sound, wise, and necessary principle is now being attempted to be violated in the case of Hindus at least by introducing Bills by which drastic changes are desired to be made in matters which vitally concern their religious beliefs.

A memorable proclamation had been made by Her Majesty Queen Victoria in 1859 in very clear and unambiguous words that "We do strictly charge and enjoin all those who may be in authority to abstain from all interference with the Religious beliefs or worship of our subjects on pain of our highest displeasure", and similar announcements had been repeated by Her Successors, but in spite of all that attempts have still been made and are being continued to be made by some members to propose such Bills as would seriously undermine the Texts of Hindu religion, by which I particularly mean *Sauntan* Dharmas.

I can acknowledge that there is so much diversity of thought and religious beliefs amongst the Hindus that one can find all phases of religious thoughts from an unbelieving atheist to a full theist, but whatever be the state of religious ideas and religious ideals of different persons or classes of persons, living, in our country as we do, we must respect the ideas and feelings of others. 'Live and let other live' is the principle which we must follow when living in a Country of heterogeneous beliefs. So no one person or class of persons has any right to thrust his or its opinion by force of legislation on the others who are quite unwilling to accept them. The idea may be actuated by the highest motives of the so-called reform or sheer fanaticism, it should not be thrust upon the others by force or coercion in the form of an enactment.

The members of the Legislative Assemblies who have been elected by the Hindu community have not been sent there to represent their religious ideas. They should in all fairness to themselves and to the Hindu Community when they represent, see that no body introduces a measure which effects the religious beliefs or religio-social matters of any class, sect or denomination, particularly in an Assembly constituted of members from different communities. Even the international law respects the personal law of all nations, and if a marriage had been contracted in any form recognised by the personal law of the parties, the Courts will give effect to it. So there should be no legislation on matters covered by the personal law of the communities. In the case of Hindus, therefore, there should be no legislation regarding the marriage or restraint of marriage as the marriage according to Hindu Law is a holy union for the performance of religious rites.

Now one of the main features of the Bill is to remove polygamy from the Hindus, but polygamy is permitted by Hindu Law. It is sanctioned by the Texts as well as by usages, and there is a religious basis for that. The object of Hindu marriage is begetting children and proper performance of religious ceremonies.

According to Hindu Scriptures, since the purpose of marriage is 'procreation of a son to relieve the parents from the torment of Hell' it follows that that purpose may not be served if monogamy were the rule. (Vide Vishnu XV, 44.) In Bhagwad Gita also it is clearly stated that "the pitras fall from heaven when 'pindodaka' kirya is not performed" (Vide Gita I, 42). It is the legitimate son who can perform it. If the wife is barren or has become incapable of begetting a son on any account, an occasion for marrying another wife may arise, but not otherwise.

There is a Text of Yjurveda which is referred to by the commentators on Manu and Yajnavalkya and which is as follows:—

"That a person is born with three debts:—'Deva rina', 'Rishi rina', and 'Pitri rina' (i.e., liabilities to the Pitries) which is discharged by the begetting of off-spring."

This is what has made marriage as obligatory on Hindus who do not desire to adopt the life of a perpetual Brahmachari or of a Sanyasi. Commentators of Manu and Yajnavalkya have come to the conclusion after a full discussion of Shrutis and Smriti Texts that the stage of house holder (i.e., Grihasti) is obligatory on all the twice born (and even on Sudras) excepting for *Naishtika Brahmachari*, i.e., one who has entered direct from the stage of studentship into the stage of hermit or ascetic. So marriage is *Vyavasthita Vikalpa* i.e., a fixed alternative and not an alternative to be chosen according to pleasure. Mr. Mayne also says that 'a Hindu marriage is the performance of a religious duty'. It is the duty enjoined by Shastras. It is an essential Samskara for regeneration of men of twice born classes, and the fruit of Samskara is stated to be the discharge of debts to the 'Gods' and the 'Pitries'. Procreation of a son being essential, the purpose may not be served if monogamy were the rule. Hence it is that, Hindu marriage could not be necessarily monogamous. Now if the present Bill as proposed by the Learned Authors be passed into a law, it will, while directly interfering with the matter concerning religion, will frustrate the very object on which the principle of Hindu marriage is based.

Again the Bill is quite an unnecessary measure. Though polygamy is recognised by Hindu Law, it is practically in theory as there are extremely few strong cases in which it has been practised. It is very difficult to say what exactly the percentage of polygamous cases is. It will be more or less a guess work to fix any, but there is no doubt that such cases are extremely rare; and out of these cases it will be found that majority is of those in which second marriage has taken place merely for the purpose of begetting a child with the consent or acquiescence of the first wife. There may still be cases in which a man may have married for a second time for some ulterior motives perhaps merely to satisfy his animal passions. But such latter cases are still more rare. These latter cases can in no case be defended, and every body will certainly like to put a stop to such cases. They are both against the principles of Hindu Law as well as Hindu sentiments. The point is what should be the remedy for such cases. It will not be advisable and proper, on the strength of such extremely rare cases, that the Hindu marriage should be made monogamous by legislation, by a Bill like the present one, with far reaching effects, as the other main principle underlying the Hindu law gets annihilation. Such cases should be left to strong public opinion and strong social boycott. Strong public opinion and practical methods adopted by Societies have always been helpful in averting marriages of old men, and in this connection also some such similar method should be adopted, and such cases should strongly be denounced and condemned.

Again one of the remedies proposed by the Bill for restraint of second marriage in Section 24 is that the marriage will be void. This remedy it is submitted will have very far-reaching and harmful results which can be shown from the following illustrations:—

(a) Suppose A has got a wife B from whom no child is born as she is barren. With her consent or without it, A has married a second wife C, who is, say, 15 or 16 years old, for the purposes of begetting a child. According to the proposed Bill enacted into a Law, the marriage with C will be void. Now the marriage according to Hindu Law is a Sacrament, but the Act makes it void. The girl C who is married to A suffers the most. What would be her plight? She has been gifted by her father to A in marriage. What would be her position?

(b) Again if this marriage with C has been consummated, the matter will be still worse. The idea of her remarriage or of finding a second husband for her would not only be most repugnant to the Hindu sentiments, but will be nigh impossible.

(c) Again since Sections 494 and 495 I.P.C. are made applicable the girl according to the new Act, may also be an accused person. Poor girl! she has to suffer not only

because the marriage is to be void under the Act, but shall have to undergo heavy penalties for no fault of hers. Under the circumstances, the Bill is not only opposed to the religious sentiments of the Hindus, but is a harmful and unnecessary measure.

Again no sanction or penalty has been prescribed for a person who marries within the same Gotra or pravara, or marries outside his caste or Varna by Sacramental marriage. Rather factum valid has been made applicable the result of which will be that interested persons will not care to marry within the same caste or Varna, nor outside their Gotra. No penalty has been proposed in any form so that people may not perform such marriages which ought to have been done.

There is a great difference in the proposed prohibited degrees of marriage form there given in the Hindu Law proper. This too cannot be tolerated by the Hindus.

Again by making the marriage monogamous, a foundation is being laid for bringing a Bill for introducing law of divorce amongst the Hindus. Because if a man is unable to have a second marriage, in case his wife is barren or otherwise incapable of begetting a child, he may be compelled to divorce his former wife and then be able to have a second wife.

Under the circumstances the Bill is unequalled for, unnecessary and against the texts of Hindu religion and I oppose the Bill.

Bar Association, Multan.

We have gone through the Hindu Code, Part II (Marriage) Bill and find many laudable provisions in it, especially that a man cannot have two wives at one time and similarly a woman cannot have two husbands at one time. But the defects in the Bill are that if a woman is barren and cannot give birth to any child, there is no provision in the Bill allowing a second wife to the husband. Some provisions should be made in the Bill for such a contingency. Similarly if the husband is impotent and is altogether incapable of having cohabitation with the wife, in such cases though it may be a sacramental marriage, the wife be held to be a virgin and allowed to marry another person, i.e., in the case of impotency of the husband, marriage may be held to be a nullity altogether i.e., there was no marriage at all and she, being unmarried, can marry another male person and the civil court may be authorised to declare such marriage as nullity; otherwise sacramental marriage in such cases shall be a curse and the civil marriages will become iniquity to a large extent and sacramental marriages shall die and Hindu Law of Marriage shall become extinct.

Secretary, Shri Sanatan Dharm Pratinidhi Sabha,
Punjab, Lahore.

Describing the reasons for codifying the Hindu Law it is said in the Statement of Objects and Reasons and the explanatory notes appended thereto, that:—

Firstly, the present day courts felt difficulty in correctly understanding and interpreting the laws made in their own times and with their opinions on them. It was really no wonder, therefore, that the inspired laws enumerated in the Hindu Dharma Shastras were very often wrongly interpreted even by the High Courts as quoted in the accompanying notes.

Secondly, finding that the so called Reformer being unable to lead the people to the Higher goal of Hindu Dharma Shastras was trying to drag them down to the level of present circumstances created by the baneful effects of the western materialistic civilisation which was being exposed nakedly in its true colours in the days, and this necessitated to bring the Hindu Law to modern notions.

Coming to the Bills themselves, we take—

PART II.

As this Bill contains certain clauses which are not based on the Hindu Dharma Shastras, there is much to be said against such clauses along with some suggestions to be made in others.

Section 2 (d) words "uncle and niece" and also "aunt and nephew" require further clarification on the sides of

mother and father, both having equally "the degrees of relationship prohibited by this Act".

The real pivot of this Bill is to abolish polygamy in Hindu society. This idea is chiefly based on the modern enlightened opinion, where equality of women is said to be recognized and this was, what the framers of the Bill say, to be the standard of justice in marital relations, little knowing that the very western people were crying to root them out, because of their various abuses and evils. Dr. Boothe bemoaning the condition of his country says:— "What is happening to the domestic life of the Anglo Saxon Race? It is the same tale which ever the English tongue is spoken—more hotels less homes, more divorces less children". It is this social system, in following which we take so much pride and pull down our tired and scientific social system with our own hand. Are not the warnings of thoughtful westerners sufficient for us to be careful in such matters. Let us quote one of them—Fredric Pincott—who says, that "Every thing tending to the peace and well being of society has been long since reduced by the Hindus to well-ordered rules deduced from the unchanging facts of nature. Any introduction among them of our crude ideas can only result in mischief and tend to bring the Hindu to the chaotic scramble of an agnostic interest which is the character of our disgraceful social nubble."

At the same time it is admitted by the framers themselves that "indeed, in practice the vast majority of Hindu marriages are monogamous" it was only in very exceptional cases based on particular and valid reasons that a second marriage was allowed by the Shastras in the case of the first wife being alive and this was an exception and not a rule. If this was not allowed by this Bill, then it will tend to bring immorality in the families and real purpose of monogamy will be frustrated. It was, therefore, necessary to legalise this very limited and very rare polygamy, so that the Shastrie injunctions be not also violated. The false slogans of "Equality of rights", "personal Freedom", etc., raised from the west for certain purposes should not be allowed to betray us. The Hindu Community has already suffered far more than other communities on this account only. It is, therefore, proposed that provision be made in section 4 (e) where the purport of the restricted second marriage be given.

In section 4 (e) provision is made to obtain consent of her guardian in marriage if the bride did not complete her sixteenth year, while in section 8 (3) similar age is fixed twenty-one years.

In fact it is not consistent with the Hindu sentiments that in any age a bride is to marry without the consent of her guardians, who is to give her hand to a bridegroom with religious ceremonies, but if it was ever necessary the age prescribed in section 4 (e) should tally with that given in section 8 (3).

In section 7, all sacramental marriages completed in certain cases are taken to be valid. To this, the Pandits take objection and will not allow the *Pratiloma* marriages to be valid.

The introduction of civil marriages, as provided for in sections 8 to 22 is not considered to be permitted in Hindu law as valid marriages, though eight kinds of marriages are mentioned in the Smritis—some sanctionable and others condemnable. Therefore the Sabha does not encourage this part of the Bill to be retained as such.

Any how one thing is to be cleared that the counting of the age in any case for the purpose of this Bill should be based on Bikram Era and not the Gregorian Calendar, as we prepare our horoscope on the basis of the former.

No. 5.

From the Home Secretary, to the Government,
Punjab to the Secretary to the Government
of India, Legislative Department, No. 6429t
J. 42/54075, dated Lahore, the 7th October,
1942.

I am directed to forward the opinions of the Lahore High Court Bar Association on the said Bills, which have just been received.

High Court Bar Association, Lahore.

This Association approves generally of the provisions of the Bill relating to Hindu Marriages but would like to offer the following criticism with the object of improving the Act.

Clause VI.—In clause VI the validity of marriages under the Arya Marriage Validation Act (Act 19 of 1937) should be made clear.

In the Bill only two forms of marriages are prescribed and as far as one can see the law is to apply to all Hindus. It becomes doubtful if Hindus who are Aryasamajists and choose to marry under the Arya Marriage Validation Act will be legally married if they transgress clause 4(b) of the Bill.

Clause VII.—In clause VII of the Bill provision should be made for invalidating a marriage performed under coercion or duress or brought about by fraud.

In a large number of cases particularly of girls it has been noticed that marriages with undesirable people are performed under threats of force and not unoften by fraud. In such cases no relief seems to be possible under the law for such girls with the result that they have to lead a most miserable life.

As is clear from such decisions as 22 Bombay 812 and 14 Madras 818, the law of force and fraud does apply to Hindu Marriages. But it is not clear if it would affect marriages where the party or parties to the marriage has or have been forced into marriage or the marriage is brought about by fraud. It is suggested that a provision should be made to protect both parties whether of age or minors.

Clause 8.—It is suggested that the following words be inserted between "Guardian in marriage" and "to the marriage":—

"or where party or parties to the marriage has or have attained the age of 18 years but has or have not attained the age of 21 years. Court of principal jurisdiction where such parties or any of them reside."

In the case of boys and girls who have attained the age of 16 but have not attained the age of 21 some provision by which such parties can have recourse to one of the comparatively superior courts of the country is necessary. It has been noticed that many guardians do not allow their wards to marry out of caste particularly if such guardians happen to be other than father and mother or paternal grandfather. It would be more in keeping with the times if a party could approach the Court in every case where the guardian refuses to give his or her assent to the marriage. Considering, however, that parental and filial authority still has respect in the eyes of the people of this country exception should be made in the case of father, mother, paternal grandfather and elder brother so that in case if the guardian for marriage is one of these four persons their word would be final. Sometime there are cases where no known person from amongst the guardians enumerated in the list given in the Bill is alive or is known; in that case powers should be given to the Court to give their assent to marriages.

Clause 21.—The ground for divorce under the Indian Divorce Act are much too limited and are in some cases not in accordance with the views and needs of the modern society. This Association would suggest that the law on the subject should be brought in conformity with the law as it prevails in England.

The grounds for divorce in the Indian Divorce Act have been found not to be adequate to meet the necessities of advanced Indian Society. As a matter of fact experience in England has also shown that instead of being a help in the case of unhappy marriages they are a hindrance and have led to a great deal of abuse. Cases are not unknown where in order to put an end to domestic unhappiness people have had to resort to subterfuges of seeking adulterous connections and providing false evidence of this for the purposes of getting a divorce. This is a state of affairs which Indian Society would like to avoid. The law as it prevails in England today is a very great improvement and something of that kind is required in this country.

Clause 23.—In the enumeration of guardians for marriage the Court of principal jurisdiction should also find a place. It should be clearly stated that in case of a guardian for marriage other than numbers 1, 2, 3 or 4 refusing to give consent the party to the marriage if above 18 years of age may apply to the principal Court of jurisdiction where he or she resides to give its assent to the marriage.

Clause 26.—A provision should be made to give retrospective effect to the clause so as to apply to those persons who have married according to what is commonly known as Gour's Marriage Act.

A retrospective effect of this provision will not affect vested rights because the rights of women are now protected by the Hindu Women's Right to Property Act, 1937. If further protection is needed this Association would suggest that a father may make a declaration before a prescribed authority not being lower than the status of a District Judge that he desires that he and his children should be governed in the matter of inheritance by Hindu Law and in order to affect the rights of his wife also a joint declaration by both the husband and the wife may be prescribed. This association agrees with the reasons given in the objections and reasons which have induced the framers of the Bill to suggest the incorporation of this clause in the Bill.

No. 6—CENTRAL PROVINCES AND BERAR

From the Secretary to the Government, Central Provinces and Berar, Judicial Department, to the Secretary to the Government of India, Legislative Department, New Delhi, No. 2058—1760-XIX, dated 17/28th September, 1942.

SUBJECT:—The Hindu Code, Part I (Intestate Succession), and the Hindu Code, Part II (Marriage).

17 officials and 26 non-officials are in favour of the Bill while 5 officials and 112 non-officials are against it. Out of 112 non-officials, 80 sent a printed reply which was identical. The Provincial Government is in favour of codifying the Hindu Law and amending it, provided the amendments are suitable and universally accepted. Government should, however, leave the matter of amendment to the members of the Legislature, and interfere only in very exceptional circumstances. It is for the Legislature, and particularly the Hindu members of the Legislature, to decide what is good for the Hindus.

2. The opinions received from the following are forwarded:—

- (1) The Honourable the Chief Justice and other Honourable Judges of the High Court of Judicature at Nagpur.
- (2) The District and Sessions Judge, Nagpur.
- (3) The District and Sessions Judge, Wardha.
- (4) The District and Sessions Judge, Amraoti.
- (5) The Public Prosecutor, Amraoti.
- (6) The Public Prosecutor, Saugor.
- (7) The Bar Association, Jabalpur.
- (8) The District Bar Association, Yeotmal.
- (9) All-India Reporter, Limited, Nagpur.
- (10) Mr. P. A. Pandit, Advocate, Bhandara.
- (11) Mr. L. R. Abhyankar, Advocate, Yeotmal.
- (12) Mr. B. J. Sethi, Advocate, Saugor.
- (13) Rao Bahadur S. M. Parande.
- (14) Colonel Sir K. V. Kukde.
- (15) The Honorary General Secretary, Association of the All-India Women's Conference, South C. P. Branch, Nagpur.

3. The Bill was published in the Central Provinces and Berar Gazette in English on the 19th June, 1942, and in Hindi and Marathi on the 17th and 24th July, 1942.

OPINIONS.

The Honourable the Chief Justice and other Honourable Judges of the High Court of Judicature at Nagpur.

Both the measures are intended to introduce reforms in Hindu Law. They are bound to lead to controversy. I generally support the Bills. The Bill relating to marriage makes monogamy compulsory for Hindus. The legislature should take steps simultaneously to make it compulsory for other races in India.

The present Hindu Society requires to be reformed in respect of these laws. The extreme provisions of the Bills which may be considered as very objectionable may eventually be dropped and the essential ones, if accepted, will still mark an advance. It is in this light that I have stated that the Bills are welcome and I support them. I have not commented on every feature of the Bill.

W. R. PURANIX.—29.6.42.
Judge.

I agree generally with what Puranik J. has said. As regards monogamy I feel that this is rather a drastic step than the religious importance of having a son is considered, however the remedy lies in adoption. *

K. G. DROBY—3-7-42,
Judge.

I have not had the time to study the bill in detail but approve the effort to insist on monogamy. The order of clauses in section 7 (c) might well be changed. It reads little clumsy as it stands. I think an endeavour should be made to encourage the registration of sacramental marriages. I realise that it will not be possible to make it compulsory just yet but such a provision would pave the way. Encouragement to registration would be afforded if a registration certificate is accepted in itself as *prima facie* proof of the marriage.

VIVIAN BOSE—3-7-42,
Judge.

I regret that I have not time to offer a considered opinion on the bills which seem to me to relate to matters that remain for Hindus to decide.

R. E. POLLOCK—3-7-42,
Judge.

The attempt to codify the Hindu Law, though by successive stages, must be welcomed. It is a step in the right direction.

The bill relating to marriage is comprehensive and laudable. The application of the rule of *Factum Valet* to sacramental marriages solemnized without regard to the customary considerations of caste, Gotra or Pravaras, is salutary. It is satisfactory to note that the multitude of castes has been reduced to the four primary *Varnas*. There are bound to arise difficulties in determining the *Varna* of some castes or subcastes but that must be left to be settled by judicial decisions. *Pravaras* often contain more than one *Rishi* and it should be made clear that "common Pravara" signifies all the *Rishis*. The introduction of monogamy is indeed desirable but in the case of sacramental marriages it is likely to operate harshly in the absence of a provision for divorce. Polygamy is gradually disappearing under the new economic conditions but the proposed reform is likely to evoke opposition unless it is also adopted by other communities in India.

I am in entire agreement with the principles underlying the proposed measures.

M. B. NIVOGI—3-7-42,
Judge.

I agree generally with the principles of both bills, but the utility of the Marriage Reform Bill will be greatly impaired unless liberal and comprehensive legislation in respect of divorce is also passed, and think provisions in this respect should be incorporated in the present bill and not left for future consideration.

F. L. GRILLE—15-8-42,
Chief Justice.

District and Sessions Judge, Nagpur.

I am in complete agreement with the general principles of the Bill and would make the following detailed comments on certain sections and remarks in the Explanatory Note attached to the Bill.

(i) Section 2 (a).—I do not think that part of the definition of "caste" "and does not include any sub-caste" is happily worded, because in fact the definition of "caste" would include all sub-castes of the primary *varnas* or caste. I would prefer to substitute "and does not mean sub-caste".

(ii) Section 2, Explanation.—This concludes with the words "and all terms of relationship shall be construed accordingly". I think it desirable to insert the words "unless there is anything repugnant in the context" between the words "relationship" and "shall". The purport of this will be clear when I deal with Section 8.

(iii) Section 7.—As it stands, this gives too many opportunities for fraud and lack of realization of the seriousness of marriage and the sacredness of sacramental marriage. I am in agreement with the principle discussed at page 9 of the Explanatory Note; it is most undesirable that a marriage should be set aside on a mere technical defect in which neither of the parties, or at least one of

them is not to blame. If a marriage is in order in other respects, a party which has entered into it in good faith should not be placed in an invidious position at the mercy of the other party or even a stranger. If both parties are aware that one or other of the conditions in Section 4 are not present, then naturally there would be no valid marriage, except if there is only a simple omission in respect of clause (e) of Section 4. But it is likely that the parties may enter into a sacramental marriage without taking sufficient care to ensure that the conditions are complied with. I do not mean that an elaborate enquiry is necessary, but I do think that both parties should take reasonable care to ensure that they are. A provision would, therefore, be necessary to invalidate a marriage as of the sacramental type, if one of the conditions in clauses (a) to (d) of Section 4 is not satisfied and the parties did not take reasonable care to ascertain that all were satisfied. In practice, if the parties could have found the defect on a reasonable enquiry into their families, then they ought not to be allowed the privilege of a sacramental marriage, if they had not done so. In the matter of failure to obtain the consent of a minor bride's guardian-in-marriage, that should not invalidate the marriage unless both bride and bridegroom were parties in force or in fraud which resulted in the failure to obtain consent. It seems improper, if the force or fraud comes from the side of the bridegroom, for example, that he should be in a position to invalidate the marriage which has been entered into in good faith by his bride. I would, therefore, re-word section 7 by omitting in clause (c) the words "unless there was force or fraud" and adding a proviso:

"Provided always in respect of clauses (a) and (b) that both parties had made reasonable enquiries, or had reasonably good grounds to be satisfied, before the marriage was entered into, or in respect of clause (c), both parties had not been privy to force or fraud so as to prevent a consent being obtained."

Another consideration arises out of the proviso. If there is no sacramental marriage, should we go so far as to say that there was no marriage at all? If the latter view is taken, it may penalise harshly mere negligence and the unfortunate children of the purported marriage. Even where both parties have practised fraud, because it was known the consent of the guardian would not be obtained that again, in view of the comparative formality of this legal requirement, ought not to operate so harshly as to render the marriage invalid. We have to bear in mind that there is nothing to prevent, as the proposed Act stands, a third party acting out of malice. It would therefore seem fitting that such marriage, if discovered to be defective but not otherwise invalid, should be deemed a civil marriage and always legal as such. I would therefore put the whole of the existing section 7 as amended by me as sub-section (1) and add the following as sub-section (2):

"Where a marriage has been solemnized in the sacramental form, but is defective because the parties to the marriage have not made such reasonable enquiries, or had such reasonable enquiries, or had such reasonable grounds as required by sub-section (1), or were privy to force or fraud so as to prevent the consent of guardian-in-marriage being obtained, the marriage shall not thereby be invalidated but shall be deemed ever to have been valid as a civil marriage."

(iv) Section 8 (2).—I would prefer to see sixteenth year substituted for fourteenth year. This is a reformatory measure and where a civil marriage is entered into, there would appear to be no good reason why a woman should be permitted to marry at such a tender age as fourteen.

(v) Section 8 (4).—The definition of "relationship" in the Explanation to Section 2 would exclude relatives by adoption from marrying in the civil form; such persons are to be entirely in the position of blood relatives, which seems to me quite unnecessary where the sacramental element is missing. I would suggest the insertion of the word "blood" between "of" and "relationship", so that the only exclusion would be where the degree of relationship is a blood relationship of the prohibited character.

(vi) Section 13.—I do not propose to go into details here and set out amendments, but it seems to me that this section and the succeeding relative sections are liable to give rise in practice to a position of one law for the rich and one for the poor. Naturally, for the reasons I am about to set out, this is good cause, too, for amending the

Special Marriage Act on the same lines. The point is that as the law stands and is proposed to stand, the marriage can only be stopped by a certificate or decision of a Civil Court. A person interested and he may have very good reasons—in stopping the marriage is bound, if he wants to succeed, to initiate civil litigation—an expensive, difficult and slow procedure. I take it that the Registrar would be a person of standing and education, fitted for the very responsible duties that he is called upon to perform, and in relation also to the dignity of his office and the solemn nature of the act being entered into. Is there any reason then why this officer should not be able to give a summary decision? This would be a salutary way of stopping frivolous objections and afford a speedy and cheap remedy to those who have a genuine case which they can prove, but who would find themselves severely handicapped if forced to the expense of civil litigation. On receipt of the objection, the Registrar ought to have powers to call upon the parties concerned to submit their evidence, which should be in as short a time as possible, in order that he might arrive at a decision. If he dismisses the objection, then a fortnight's time should be given before the marriage is solemnized in order that the objector might have an opportunity to get a certificate from the Court and stay the marriage on the lines proposed in Section 18. The decision of the Registrar, subject to such right, would be final. The Registrar should also have the power to fine in the event of a dismissed objection in which no further action is taken by the objector. Naturally, that power should not extend to the inflicting of a fine of Rs. 1,000 but it might reasonably extend to inflicting a fine up to Rs. 200. If the objection succeeds, then of course, so far as he is concerned, the matter is finished for the time being and it would be for the intending parties to the marriage to get a declaration from the Court, if they be so minded. On obtaining such a declaration, the Registrar would be bound to perform the marriage without further delay, subject to stay action by an appellate authority.

(vii) *Page of the Explanatory Note, Clause 26.*—I see no ground for treating as an outcaste a Hindu marrying a Hindu simply because he has entered into a civil marriage. This has special bearing in view of my observations in respect of sec. 7. The position of Hindus, who perform civil marriages, will have to be carefully considered, but it would be more appropriate perhaps to deal with it in that part of the Code which would deal with rights in property and succession and inheritance thereto.

District and Sessions Judge, Wardha.

The changes in the personal law of Hindus proposed by the two Bills are so radical in their nature and far reaching in their consequences that, in my opinion, it is not desirable to introduce them at a time like the present. The entire nation stands confronted with the problem of its own preservation and therefore it is not possible for it to give adequate attention to the question of reforming the personal law governing the vast majority of its people. Moreover, as a result of war Hindu society like the rest of the world will undergo such a transformation that even the proposed changes will be found unsuitable to meet the changed situation. Is it worthwhile to enact a law which may have to be changed even before "the ink dries", after it is placed on the statute book? There is, in my opinion, no urgency at all for effecting any changes in the Hindu Law relating to succession and marriage or to any other branch of it. I also feel that however convenient it may be to the framers codify the law in stages, it is wrong in principle. It is, further, difficult to form an opinion about a particular set of provisions until it is known what the provisions of the law as regards an allied matter are going to be. The codification of the law is doubtless going to be a long and laborious process and I am not sure whether during the life-time of the present assembly the whole of the law will be codified. It is possible that the present assembly may be able to deal only with the two bills now before it. If that happens and the complexion of the new legislature that has to deal with the codification of the remaining portion of the law is different from that of the present, it is not unlikely that the Code which ultimately emerges may lack in harmony, contain inconsistencies and anomalies and may in the end bring about greater harm than the evil which it seeks to remove. These are amongst the strongest reasons for postponing till the termi-

nation of the war all attempts at codifying or reforming Hindu law. If I remember right (unfortunately I have no books for verifying the facts) a similar attempt made in Britain during the last war for codifying and reforming the Law of real property proved abortive and the law which emerged from Parliament some years after the war ended was widely different from that which was approved of by the Committees of the House of Commons while the War was still on.

* The provision of the Bill regarding monogamy is, in my opinion, entirely unsuited to the present conditions. To introduce such a provision without the necessary concomitant of a provision for a divorce will prove disastrous and lead to increase in immorality. Amongst certain classes of Hindus such as Koshtis, Telis, etc., having more wives than one is an economic necessity. To every Hindu having a son is a spiritual necessity. To prevent a second marriage under all circumstances will go against religious susceptibilities of the people and create great dissatisfaction. Moreover monogamy will have a chance of success only if it is made the common law of the land and not confined to only some (though a vast majority) people inhabiting it. The provision should, therefore, be deleted.

District and Sessions Judge, Amraoti.

1. This subject is of vital importance to the whole of the Hindu society and it is really unfortunate that the subject should come before the legislature in abnormal times. India is at war; with the Axis powers and is fighting for the liberty and freedom by the side of the Allies for the last two years. The attention of the masses is concentrated on war and the Provincial and Central Governments are fully engrossed in making war efforts a success. It is really unfortunate that such hotly contested Bills, affecting almost the life of whole of India, should come before the legislature in such war time. There is still a ray of hope that wisdom will dawn upon the legislative body and the motion for postponement of the Bill for consideration after the war will be moved. This is not at all a piece of emergency legislation and if justice could be administered for over a century without a Code, it will not certainly be hampered by postponing the consideration of the Bill after the war.

2. It appears from the Statement of Objects and Reasons that a Committee was appointed to examine certain Acts, namely, Hindu Women's Right to Property Act and the amending Act and this committee recommended the codification of the entire Hindu Law and the recommendation was accepted by the Central Government. Can it, therefore, be said that this codification is required by the masses. There are three important classes concerned with this codification, namely, the lawyers, the litigants and general masses. Obviously the committee consulted the first class (lawyers) and the opinion of the lawyers cannot be said to be the opinion of the masses. The Hindu Law is based on Shruti and Smriti, which are believed by the Hindu Society to be the precepts of God and the most striking feature is that it is so mingled in the Hindu religion that it cannot be bifurcated and put into compartments. It is true that while administering justice one does not come directly in contact with Smritis and the Courts administer the law as propounded in well known commentaries like Mitakshara and Dayabhaga and by the judicial decisions of High Courts and Privy Council during the last century but at the same time the masses firmly believe that they are following doctrines of Smritis and the Courts are administering the same law in the light of principles of justice, equity and good conscience. The codification will certainly give a death blow to this feeling and sentiment because, the law after the codification would be that enacted by the legislative body and enforced upon the people by force of authority. They would thus feel that they were deprived of the divine law and were subjected to law made by a section of the society consisting mostly of the reformers educated and brought up with western ideals. With utmost respect to the members of the Hindu Law Committee I venture to say that no case has been made out for codification.

3. The possible arguments in favour of codification are (a) uniformity in details for the whole of India, and (b) saving of litigation. Even a casual examination will show that both these arguments do not stand to reason. It is well known to the lawyers and judges how the interpretation of codified law is itself a constant source of litigation. Any branch of codified law, civil or criminal, will satisfy the critics that it has given rise to litigation for decades due to shortcomings of language and fallibility of draftsmanship and ingenuity of lawyers and Judges in construction of words and phrases.

4. As regards uniformity, there is no doubt that there are 2 or 3 schools of Hindu Law prevailing in India and they have gradually developed in course of centuries practically on the same *Smritis*, i.e., Divine Law. India is such a vast country that 2 or 3 schools cannot be said, in any way, destructive to the society. Uniformity in such a case would be artificial and there never has been any grievance by one school against the other. The learned members of the Committee are conscious that each school will have to make some sacrifice for the other, but they think that a "uniform law is well worth the small price". It is not understood why this sacrifice is suggested when other small communities have their own personal law. Uniformity is not to be gained for the sake of beauty or sentiment. Every school presents the development of culture of centuries and there is no clash of interests. It is rather a pity that the learned authors consider the sacrifice of this culture a small price.

5. These two important Bills have had absolutely no publicity in any class of Hindu Society. A casual inquiry by me disclosed that very few of the well educated knew that opinions were freely invited from individuals as well as public bodies. The Central Government suggested publication of the Bills in other Languages but that suggestion does not appear to have been carried out and the masses are, I venture to say, quite ignorant of these Bills.

Really it is impossible to foresee the consequences of these Bills on the Hindu Society. Two months time was inadequate if real circulation was aimed at by the Government. In their anxiety to meet the demands of highly Betorned Section of Hindus, the learned authors have completely trampled under foot the basic principles of inheritance and marriage enjoined, by *Shastras*. There should be further extension of time for opinion by six months and Bills should be proclaimed by beat of drum in every village so that the voice may reach every hamlet.

6. I will now briefly touch the evils of codification. The first and foremost of my objections is that this codification will give a death blow to the Hindu culture. The *Shastras* containing Hindu Law will hardly attract the attention of any scholars much less of any Hindu lawyers and Judges and at the most these might remain book of archaic-curiosity fit for preservation in museum like other things of archaic beauty.

7. The second objection is that once the Hindu Law passes in the hands of the legislative body, the society will be completely at the mercy of the legislative body which is likely to mould it from time to time according to its whim. In enacting laws for the society, one has not to think of few decades but of centuries. * * * once the law is codified it is apt to be amended from time to time with the result that after some time the original principles may be lost in oblivion and the law to be administered would be one made by the society according to its whim and need.

8. It may be urged against this objection that the legislative body has already passed certain acts such as Widows Re-marriage Act, and Hindu Women's Right to Property Act, but still there is a world of difference between voluntary *wholesale* codification without demand and necessity and piecemeal legislation of a particular branch over which there is not controversy and acute difference. The former is like pulling down a whole palatial structure simply because in its few corners it is not found quite suitable in the present century. The latter course though also somewhat objectionable, is something like little widening of the narrow passages or opening a few more new outlets to make it little more comfortable but there is yet the satisfaction of enjoying the old structure and leaving it in tact for generations to come.

9. My third objection is that the process of part codification adopted by the Committee is still greater evil than

codification of the whole at one sitting. It is like constructing one or two limbs of a creature and if they are approved to construct the rest. In this process one does not know what form the whole hybrid animal the picture will create. For instance, the law of marriage and succession is intimately connected with law of divorce and maintenance. The learned authors propose to legislate on these in separate parts. The masses of the Hindu Society will be taken unawares because they do not know what proposals are coming in the other part which are in embryo.

* * * 11. It is impossible to see the consequences of this huge attempt to give a death blow to the original text and substitute a codified law. It will indeed be a colossal blunder to attempt any such codification and to force it upon the poor illiterate masses.

12. After having dealt with the general objections, I turn to the criticism of some of the salient features of the two Bills.

* * * 22. With due deference to the learned authors I wish to submit that in codification of this part II of the Hindu Code relating to marriage, they have given a nominal place to the Hindu *Shastras* and substantially incorporated the law of civil marriage. In doing so they have deliberately introduced a complete foreign element in the body of the Hindu Code. This shows from what angle of vision this codification is really being done. One feels as if there is an attempt to remodel the Hindu Society according to the doctrines of other religions.

23. The preamble refers to the necessity of codifying the whole of Hindu Law now in force in British India and in pursuance of that design they proceed to enact the law of marriage for Hindus. But in the body, we find there is nothing but reproduction of the Special Marriage Act of 1872 popularly known as a Civil Marriage Act. There is of course some reference to sacramental marriage but the doctrine of *factum valet* is again introduced to negative the mandates of the very form of marriage.

24. Clause 3 of the Bill is the most objectionable one and one cannot imagine greater distortion of Hindu Law. This clause provides that there shall be two forms of Hindu marriage, a sacramental and civil marriage. I wonder how the civil marriage can be a form of Hindu marriage by which one necessarily means a marriage according to Hindu *Shastras*. Civil marriage entirely stands on different footing and is so widely different from the sacramental marriage in all its conception that it is absurd to put them on the same place and give them place in the Hindu Code. The orthodox section of the Hindus view the civil marriage as sinful and the learned authors have not attempted any justification to include it as part of the Hindu Law. A casual enquiry into the statistics of this district revealed that there were only four marriages registered in 1940 and one in 1941 amongst the Hindus. Even taking a moderate estimate, the annual figures of the sacramental and customary marriages cannot be less than 20 to 30 thousand in the district on an average of say 20 per village. Can it be said that during the last half century the Special Marriage Act has become popular amongst the masses, taking roughly the proportion of one to 10,000? The special marriage Act was obviously designed only for those, who had no faith in the religious doctrines and who did not want to create an indissoluble tie between the married couple. That Act is already on the Statute Book. Why is there any necessity to give a death blow to the sacramental marriage by incorporating civil marriage as part of Hindu Law? It is apprehended that the learned authors probably have in view to propose divorce in their other chapters equally to the sacramental marriage. It may be urged that the learned Authors have tried to meet the views of both the sections and left the option of performing marriage in one of the two ways. Would any other community whose law of marriage is essentially based on contract, tolerate incorporation of a sacred form of marriage peculiarly known to the Hindu religion because they desire an indissoluble tie and save themselves from the evils of divorce? think certainly not. The Hindu sacramental marriage is praised even by some of the Western writers. It may certainly be improved from view point of enforcing monogamy but the foreign element of civil marriage should not be enacted as part and parcel of the Hindu Code.

25. Unfortunately these clauses are so skillfully drafted that what appears to be mandatory in clause 4 according to the Shastras is trampled down in the latter by introducing the doctrine of *factum valet*. Where lies the mandate? Clause 4 is reduced to a pure recommendation and people are apt to ignore the conditions. The learned authors consider clause 4 as necessary for accidental infraction of the conditions but what have they provided for deliberate breach? Fortunately the doctrine of *factum valet* is not applied to cases of force or fraud but it is just that it should not also apply to cases of reckless and deliberate breach. If at all this doctrine is to be invoked honest mistakes after due diligence and that too if consent may be applied only in cases of *bona-fide* and summation has taken place.

26. Clause 4 (c) requires further amplification, i.e., in case of the Brahmins, that a Brahmin would not be eligible for marriage unless he has become a *Dwij* by thread ceremony.

27. Sapinda relationship is unnecessarily restricted in laying down prohibited degrees of marriage, the original rule of *Mitakshara* being quite sound.

28. As regards monogamous aspect, all that I have to say is that second marriage with the consent of the first wife should be permissible because it is not apt to be misused and every safeguard may be laid down for her consent. Such a step would be in consonance with the spirit of the Shastras.—Polygamy is already dying out but it should not be made an offence. The Bill is thus most objectionable to the masses because of the inclusion of civil marriage in it.

29. To sum up my criticism on the Bills, the learned authors have departed from the very fundamental principles without any justification, only to meet the cry of the few so-called educated reformed section of the Hindu community. It is hardly necessary to emphasise that the masses are still conservative and orthodox, a fact which has been completely ignored in drafting this Bill. The masses are likely to get unnecessarily prejudiced against the Government with a feeling that they are being deprived of their personal Law so closely connected with their freedom of religion.

30. The Hindu Society has been content with uncodified Law for centuries. In fact the texts of Smritis are in form of Code in Sanskrit. English translations of commentaries and texts became necessary for facility of British Courts in India and that is quite enough to administer the Hindu Law. To prepare an *Ideal Hindu Code*, one must have Hindu mind with true Hindu conceptions of Hindu religion. Because it is not possible to draw a border line showing where religious sphere ends and where legal sphere begins and in other words where particular act or omission becomes sinful for oneself or the deceased ancestors' soul.

For the fore-going reasons I would emphatically oppose these two Bills and I would further humbly submit that the very proposal of codification be dropped by the Government.

Public Prosecutor, Saugor.

As regards the sacramental marriage, the Bill makes a change in the traditional law in one very important respect viz., that it proposes to abolish Polygamy and to legalise widow marriages. Monogamy should not be made obligatory under all circumstances. In my opinion a man should be allowed to marry a second wife during the life-time of his first wife in case the latter is barren, diseased or vicious, and a wife should similarly be allowed to marry another man in case the latter is impotent or is traceless for a period of 5 years or renounces the world without voluntary consent of his wife or is deprived or fallen. We find authority for second marriage both for husband and wife under similar circumstances in ancient law and I see no reason why legislative recognition should not be given to such marriages.

Para. 4.—Prescribing requisites of a sacramental marriage should, in my opinion, be amended by adding a proviso to (a) so as to provide an exception in the light of the above remarks.

In other respects the Bill has my full support.

Bar Association, Jubbulpore.

Hindu Law, as has been wrongly supposed, has not all along been unchanged law, but has on the other hand pro-

gressed with the progress of the Hindu Society and culture of each particular Society. Change is however, not to be found in the original sources of Hindu law although there have been interpolations in Smritis, but in the interpretation given to the Smritis or to the commentaries on the Smritis by different Schools, which developed in different parts of country such as Bengal, Benares, Maharashtra and the Southern Countries.

Persons brought up under different traditions have followed their own different schools of thought and a codification of the whole of Hindu law or one part at one time and another part at another, will certainly work a very great hardship upon persons of different schools whose ideas are now settled with regard to the law by which they are governed. Nor there is any national emergency specially this time which could be solved by any attempt of codification of Hindu law. The broad principles of each school of law are now settled and there is no reason why they should be disturbed. We are certain that if an election takes place on the basis of a question whether Hindu Law should or should not be codified not a single member will be sent who advocates a codification of the whole of Hindu law, applicable commonly to any person being in any part of India.

The Bill wants to force upon a society something which is altogether foreign to the main principles of Hindu Society. Some of the definitions, it appears, have been borrowed from Roman law, as declaring a woman Agnate of her father which is nowhere found among the Hindus.

District Bar Association Yeotmal.

(1) Monogamy should be the rule but under exceptional circumstances like specified diseases, barrenness, or viciousness, second marriage should be allowed.

Due provision should be made for sufficient proof of the exceptional circumstances.

All-India Reporter, Limited, Nagpur.

1. *Clause 2*.—The definition of sapinda relationship in Cl. 2(c) provides that such relationship extends as far as the fifth generation in the line or ascent through the mother and the seventh in the line of ascent through the father. This leads to the following result:—While only three ancestors of a person's mother are his sapindas, four ancestors of his father's mother are his sapindas. In other words, the sapinda relationship is made to extend further in one's father's mother's line than in one's own mother's line. Thus in the pedigree given in illustration (ii) to the Clause, A on the left hand side is not a sapinda of C, the common ancestor though he is connected with him through his mother while B on the right side who is removed from the common ancestor by the same number of degrees is within the limits of sapinda relationship although the relationship is through B's father's mother.

It is suggested that the above anomaly may be removed by providing that the number of degrees to be counted is five wherever a female intervenes and seven if the descent is through an unbroken line of males. The dicta of the Privy Council in *Ramachandra vs. Vinayak* (1914 P. C. 1=41 I. A. 200) and *Adit Narayan vs. Mahabir Prasad* 1921 P. C. 53=43 I. A. 86) also show that only five degrees are to be counted wherever the descent from the common ancestor is through a female.

2. *Clause 7*.—Although the provision, that the absence of the guardian's consent does not in itself render the marriage of a minor girl invalid, is in accordance with the case-law on the subject, it is suggested that some provision should be made to enable the guardian to repudiate a marriage which has taken place without his consent. It may be provided that such a marriage is not *ipso facto* void but that it shall be open to the guardian at any time before the end of one year from the date on which he has notice of the marriage to repudiate the marriage by a declaration in writing served on the husband or, if he is a minor, on his legal guardian. It may also be provided that the bride shall be entitled, within one year of her attaining full age (i.e., the completion of the 16th year according to the Bill) to repudiate the marriage by a similar declaration.

No doubt, Cl. 7(c) expressly excepts cases of fraud or force, but it is notorious that it is very difficult to establish a case of fraud in a court of law. Cases also are

receivable in which a girl is given away in marriage to some person behind the back of the guardian and without his consent and the girl's interests are seriously injured though it may not be possible to prove fraud against any person.

The view that the absence of the guardian's consent is a fatal defect in a marriage was put forward so early as 1901 in an Article in 1 Madras Law Journal (P. 627) by then Mr., now Sir) P. S. Sivaswamy Iyer in which he strongly criticises the decision of the Madras High Court in L. R. 14 Madras 316 applying the doctrine of *factum est* to a marriage which has been performed without the consent of the Bride's father. Later decisions seem to proceed merely on the principle of *stare decisis* and have not met the considerations set forth in that Article.

3. Clause 23.—The postponement of the maternal grandfather and the maternal uncle beyond all the agnatic male relations does not appear to be just or expedient and hence it is suggested that in sub-clause (1) the order of guardians after the brother may be altered as follows:—

- (5) the paternal uncle,
- (6) the maternal grandfather,
- (7) the maternal uncle,

(8) Agnatic male relations other than those specified above, in order of the nearness.

4. The object of the words "other than a widow" which have been placed within brackets in Cl. (b) of sub-clause (1) of Cl. 23 is not clear. Their effect would be that the order of guardians here given does not apply to the civil marriage of widows. But what about the sacramental marriage of a widow? The Hindu Widows' Remarriage Act of 1856 provides that the marriage of a widow may be performed in the same manner as if she was not a widow. So apparently, the sacramental marriage of a widow is not forbidden. What is the order of guardianship for such a marriage? Is it to be inferred from the express exception in Cl. (b) (which clause only applies to civil marriage) that the order of guardians given here applies to the sacramental marriage of widows? If so, what about the special provisions in the Hindu Widows' Remarriage Act of 1856 regarding guardianship? Further, in the case of civil marriage of widows, are the special provisions of the Hindu Widows' Remarriage Act to be treated as superseded by the provisions of the clause? It is necessary that these matters are cleared up.

5. As regards civil marriages, Clause 8 lays down four conditions subject to which a civil marriage may be contracted. With regard to a breach of the conditions, there are two provisions: (1) Before the marriage is registered, its registration can be prevented by objection being taken that the marriage would be in breach of any of the conditions. (2) After the marriage is contracted, it can be declared null or dissolved on the ground that it is in violation of any of the conditions (Cl. 21). But if no objections are taken before the registration of the marriage and no proceedings are brought afterwards to have it declared null or dissolved, what should be the consequence? Further, does a breach of the conditions made the marriage null or does it merely make it liable to be dissolved? In the case of the breach of condition as to monogamy, Cl. 24 provides that the marriage shall be void. In the absence of a similar provision regarding the other conditions, presumably, the intention is that unless the marriage is dissolved it should stand. But there is a difficulty in holding so because Cl. 8 provides that a marriage may be contracted "upon the following conditions" and is open to the construction that if the conditions are not satisfied, there can be no legal marriage. It is necessary that the matter is made clear.

6. Moreover, although a marriage of persons below the prescribed ages or without the guardian's consent need not be made *ipso facto* void, it is necessary that a marriage within the prohibited degrees should be declared to be void *ab initio* especially in view of the fact that the Bill prohibits in the case of civil marriages, only unions which will be clearly of an incestuous nature. It may be noted that under the Bill a sacramental marriage within the prohibited degrees would be void.

7. It is apprehended that the age of twenty-one may be too high for requiring the consent of the guardian for a civil marriage and it is suggested that the age may be reduced to eighteen. In the case of sacramental marriages, no age limit is prescribed for marriage (except that liability for prosecution is incurred by persons responsible

for the marriage of a child under the Child Marriage Restraint Act of 1929) and no guardian's consent is necessary in the case of a minor boy while in the case of a minor girl, the guardian's consent is necessary under the Bill only till the girl completes her sixteenth year. Allowing for the difference in the considerations that would naturally apply to a civil marriage, it does not seem to be necessary to insist on the consent of a guardian upto the 22nd year.

8. Under the Bill, a civil marriage is liable to be dissolved on the ground of the want of sufficient age of either of the parties or the absence of the guardian's consent. No time limit is laid down for this. Assuming that the marriage in such a case is not void but only voidable and that therefore the Limitation Act, Art. 120 would apply to such cases, it seems that six years after the marriage would be too long a period within which the marriage should be allowed to be dissolved on such a ground. It is suggested that (vide a similar suggestion made about Cl. 7) in such cases, the marriage may be dissolved, at the instance of the guardian, within one year of the date on which the guardian has notice of the marriage and at the instance of the party who was not of the requisite age or whose guardian's consent was not taken, within one year of such party attaining the age of majority for marriage.

9. The Bill does not make any special provision as regards prohibited degrees for the marriage of widows. Two interesting cases have come before the courts. In 15 Lah. 688 (= A. I. R. 1934 Lah. 283) a man married his son's widow and it was held that the marriage was invalid. In 58 All. 1059 (= A. I. R. 1936 All. 624) it was held that the marriage of a widow with a person belonging to the same gotra as her father was valid inasmuch as on her first marriage she had ceased to belong to her father's gotra and had passed into the gotra of her husband. The Hindu Widows' Remarriage Act does not contain any special rules as to prohibited degrees. It would be better that some special rules are made on the subject. Especially, a rule expressly prohibiting the marriage of a man with his own daughter-in-law seems necessary.

10. The provisions of Ss. 22 to 26 of the Special Marriage Act of 1872 need not be re-enacted.

Mr. P. A. Pandit Advocate, Bhandara.

5. As regards the Law of marriages the Bill is a very good one greatly improving the Law and it should be passed into Law. It does not take away old rights and gives latitude to persons who wish a different mode of marriage than the old one. It is distinctly a measure which is welcome.

Mr. L. R. Abhyankar, Advocate, Yeotmal.

9. I am constrained to point out that there is not a keen sense yet aroused in the Indian society as to justify antipolygamy legislation. The instances of polygamous marriages are far and few. However if we become so touchy on the point in view of the inequality and inequity in respect of the privileges existing in favour of the male sex I would point out that provisions of divorce are quite concomitant and essential. It is obvious to anybody if the sole wife is troublesome or affected by a bad disease or unchaste the husband ought to have a privilege to have divorce. Similarly I think it is necessary to make provision of divorce in case of cruelty abandonment and such other reasons for female sex. It is expressed that a separate piece of legislation on the point of divorce is expected. If so it is well and good otherwise there is strong objection to antipolygamy legislation.

10. The provisions made as regards requisites of a sacramental marriage seem to be retrograde. Anuloma marriages are too current and have been long held valid. If we observe "prohibited relationship" (I accept the standard of prohibition prescribed by the Act) there is no meaning in again retaining the prohibition on the ground of Sagotra and Saparava. The explanatory clause given on page 81 of C. P. Gazette only show that they want to have the doctrine of *factum valet* in exceptional cases but the wording of section 7 of page 75 of C. P. Gazette is very wide and comprehensive and substantially nullifies many of requisites laid down in section 4 (page 74).

11. I do not see any propriety of incorporating provisions of special marriage Act in this legislation. In fact we want to leave such people (who resort to special marriage) apart and we are not prepared to give a go by to sacramental marriages which is essential for Hindu society.

12. The restrictions of caste Gotra and Prawer and sapind contained in section 4 (b) (c) (d) should be deleted.

13. If at all the provisions of civil marriages are incorporated there is no reason why sections 22 to 26 be omitted. They should find place in this legislation also as being more progressive.

I have nothing more to add.

Rao Bahadur S. M. Parande, General Secretary,
A. I. V. S. Sangh.

In connection with the Hindu Code, Part II—relating to marriage, I beg to submit—

(1) That the division of marriage in the Bill into (a) sacramental and (b) civil is most objectionable. The Hindu Law has nothing to do with civil marriage. Those who wish to marry in the latter form have no right to be called Hindus. Hindu Law does not recognize civil marriage as a marriage at all. Hence any one who flouts Hindu Law by considering civil marriage as marriage, has no right to claim his or her spouse to acquire the status of wife or husband in the Hindu society or to have for their children the benefit of inheritance under the Hindu Law.

(2) That the provisions of the civil marriage law under mine the Varna arrangement by legalizing unions between parties belonging to different Varnas. This is subversive of the whole plan of Hindu Law and cannot be tolerated by Hindus who care for their Dharma.

(3) That sacramental marriages between sub-castes are abhorrent to Hindu Law. The Bill expressly sanctions them.

(4) That the present law sanctioning Civil marriages by Hindus, ought to be sufficient to meet the requirements of the so called Hindus. It is not necessary to bring in complications in the Hindu Law proper, by bringing these marriages under the Hindu Law to satisfy the dissenters.

(5) That there are circumstances clearly mentioned in Hindu Law when marriage in the life time of a wife is permissible. This Bill unnecessarily restricts the scope of that law.

(6) That the restriction would apply to Hindus alone while Mehomedans would be free to have four wives and multiply immensely.

These are some of the reasons why the Bill should not be adopted. Marriage is an important sacrament of the Hindus and is the main basis on which the social superstructure is raised. It should not be lightly treated by a mixed Legislature wherein the representatives of Sanatanis are so few to press their point of view. More particularly this is a critical time when the Government will do well not to irritate the Sanatani Hindus and alienate their sympathies.

Colonel Sir K. V. Kukde, Nagpur.

I consider the main features of the Bill as described on page 53 of the C. P. and Berar Gazette of 19th June, 1942 as sound and satisfactory.

I do not feel myself competent to give an opinion on the details of the Bill.

Honorary General Secretary, Association of the All-India Women's Conference, South, C. P. Branch, Nagpur.

Both the Bills of Hindu Law Committee, were explained to and discussed in our meeting held on 26th July, 1942. The opinion of our Branch is given below:—

There can be no two opinions that the codification of the Hindu Law relating to Intestate Succession and Marriage, will be heartily welcomed all over India. The crying need for certain reforms, atlast, is going to be satisfied by these measures. The changes that the Committee has introduced are most reasonable and the codified Bills are much simpler. We deeply appreciate the following reforms particularly. —

* * * 4 strict monogamy in sacramental marriages.

There will be many objections to Monogamy, and specially on certain religious grounds but the outlook of our society is changing, so that legislation on this point even if it comes first, will not be something quite undigestable by the society.

Incorporation of facilities for Civil marriages in Hindu Law, on the same lines as that of Special Marriage Act are very necessary. We now only hope that the Divorce Bill and the remaining Hindu Law will be codified at an early date, so that the whole of the codified Hindu Law will come into force from January, 1946.

No. 7.—ASSAM.

From the Secretary to the Government of Assam, Judicial and General Department, to the Secretary to the Government of India, Legislative Department, No. JJD. 160/42/159, dated Shillong, the 15th September, 1942.

I am directed to say that in the opinion of this Government the general principles embodying the Bills seem to be sound and to recognise the modern changing of ideals and the Bills will no doubt be welcomed by certain sections of the Hindu community.

Copy of the Advocate General's note dated the 5th September, 1942, Government Pleader, Dibrugarh's letter dated the 1st August, 1942, opinions of the Secretary, Bar Association, Hailakandi, the Additional Sub-Judge, Assam Valley Districts, the President, Gauhati Lawyers' Association and the Secretary, Nowgong Bar Association, is forwarded herewith for the information of the Government of India. It will be noticed that a variety of opinions have been elicited ranging from the general approval of the Advocate General to the uncompromising opposition of the President, Gauhati Lawyers' Association. Certain opinions have been received from individual influential members of the Bar in Assam, which will be forwarded if the Government of India so desire.

The Bills were published in English in the Assam Gazette, dated the 17th June, 1942.

Advocate General's note.

I support both the Bills. They aim at social practice and will receive the support of the progressive sections among us, they do indeed make some revolutionary changes but that is inevitable. Ideals and ideas have changed and are changing and it is the business of the Legislature to take note of them. Some of the changes even the orthodox Pundits will be prepared to support.

It is unnecessary to criticise the Bills in details. They embody principles which in the face of them appear to be sound. Any scheme worked out on their basis, would deserve a trial. The Legislature will undoubtedly watch the reactions and intervene when and where necessary. Social practice can be the only criterion and every system of law must undergo changes as the idea of social practice changes. The Bills are a move towards that ideal.

The Deputy Commissioner, Lakhimpur District, Dibrugarh.

There has been still greater improvements in the Bill to regulate marriages. Monogamy has been made the rule. The fact that there has been so far no serious opposition to this, proves that the Hindu public has accepted this. The Bill might have sought to legalise marriages between Hindus of all castes, instead of confining it to the same castes. Modern ideas do not approve that the legal marriages can be contracted only between parties of the same castes. Both civil and sacramental marriages might have been permitted among such persons.

Secretary, Bar Association, Hailakandi.

As regards the Bill to codify the Hindu Law relating to marriage there is nothing to comment particularly. Sacramental marriage should remain polygamous under certain circumstances. Civil marriages should be in the form suggested in the Bill.

Popular tendency to monogamous life has already developed in Hindu Society. Hence polygamy in sacramental marriage will not effect the principle behind the intended prohibition.

Additional Sub-Judge, Assam Valley Districts.

Clause 2, Sub-clause (d).—I would add the words "or not cousins" after the word "nephew" at the end of the sub-clause. A marriage between first cousins is very repugnant to Hindu sentiments.

Clause 2, Sub-clause (c).—The prohibition or polygamy the Hindu Society is a drastic change which the Bill seeks to introduce. Taking a comprehensive view of all the relevant questions relating to this matter I am of opinion that introduction of compulsory monogamy in the Hindu Society at its present stage should be strongly opposed. The present Hindu Society consists not only of educated high caste Hindus but also of peoples in the primitive stages of culture and social habits. There are masses of people in the Hindu fold who are not at all better than most backward animists! The vast majority of the people of India are poor peasants or manual labourers. A wife is not a luxury to the men of these classes as she is in some of the more advanced countries of Europe but she is an indispensable companion and helpmate. She has to cook and provide her husband with his meals, take care of his properties, keep his house in order and help him materially in his cultivation or trade. Amongst the poorer Mahomedans and Hindus a man marries two or more wives in order to secure their manual labour in exchange for the maintenance, shelter and kindly behaviour which they give to their wives. Thus polygamy enters into the economic and practical life of the lower classes of the people of India. If a wife is of poor health or struck with an incurable disease and unable to attend to her daily duties it is often at her request and in order to nurse her and her children as well as to cook the food for the family that a man in poor circumstances have to marry again in the life-time of his existing wife. I do not see any reason for prohibiting polygamy in such cases. In my opinion introduction of compulsory monogamy will result in—(a) practical hardships to the poorer sections of the people, who form the bulk of the nation; (b) increase in the number of unmarried grown up girls, who will be faced with practical difficulties in earning a decent maintenance for themselves, and (c) increase in the number of illegitimate children and growth of a sense of irresponsibility in their putative fathers regarding their education and training. In my opinion the practice of monogamy should be made to depend upon the cultivation of a refined sense in the men. Compulsory monogamy appears to defeat its own object.

I think it will be a healthy provision if the Law gives the existing wife or wives an optional right of divorce with compensation or separation with maintenance, in the event of her or their husband contracting a new marriage without her or their consent.

President, Gauhati Lawyers' Association.

Marriage has been divided (I) Sacramental, (II) Civil.
Sacramental.—Marriage among the Hindus is a sacramental and not a Civil contract. It cannot be altered or changed according to the opinion of person or persons. In abolishing polygamy the code quotes Manu, Chap. IX, verse 107. This is a wrong quotation. This verse does not deal with any such thing.

The Hindu law does not allow divorce, *vide* Manu. IX, verse 46, which enjoins that the relation between husband and wife shall not cease by sale or gift of the wife or by abandonment. But under certain circumstances a second wife is allowed by Manu, *vide* Chap. IX, verse 81, 82, 80, Verse 80 says that when a wife is addicted to drinking, is a bad character, is enmity towards her husband, afflicted with incurable disease, extravagant, and spends husband's money improperly, then the husband may marry a second wife.

Verse 81 says if a wife remains barren for 8 years, gives birth to dead child for ten years and gives birth to female child only for 11 years, then another wife may be taken. If the wife habitually uses bitter words towards her husband then he can take another wife without delay.

Verse 82 says that if the wife is dear and well behaved but is a permanent invalid then the husband may take a second wife with the consent of the 1st wife but the husband's behaviour towards her should never be insulting.

The Hindu law givers found that under certain circumstances it was necessary to take a second wife as there was no rule of divorce. They specified the circumstances when a second wife might be taken. The framers of the code in Clause 4(a) has not taken this aspect of the case.

Monogamy is not always an unmixed blessing. In countries where judicial separation is allowed, the husband or the wife cannot remarry but they do not always pass an unblest life. In taking a second wife the Hindu Law prescribes suitable restriction.

A male child is a necessity in a Hindu house for the present and as well for future life. The giving of a *Pinda* is an essential thing for the benefit of the departed soul, and Hindu Sages allow a second wife for begetting a son for both the purposes.

Clause 7 (a) is an indirect attempt to legalise intercaste marriage which the Hindu law interdicts. Every Hindu knows that a marriage outside his caste is not allowable and if he infringes this important and essential rule it would be most improper to bring to his aid the doctrine of *factum valet*. I have sufficiently dealt with this subject in criticism of Clause 17 of the Hindu Code, Part I.

Civil Marriage.—Act III of 1873 was enacted for persons who did not profess the Christian, Jewish, Hindu, Muslim, Parsi, Buddhist, Sikh or Jaina religion. In 1930 the law was amended and made applicable to Hindu, Buddhist, Sikh and Jaina and the rest Muslim, Christian, Jewish and Parsi were left outside this law. In 1930 when the law was amended Muslims raised strong protest against their inclusion in the Act and their protest was successful but the equally strong protest of the Hindus remained unheeded. The Hindu who wants to marry under the Act will now come under the law.

I have nothing to say on this point.

Secretary, Bar Association, Nowgong, Assam.

Polygamy amongst Hindus generally is not very prevalent and with spread of education it has become more rare and rare. The state of affairs being such no legislation is necessary in this social matter. To introduce this law in respect of Hindus alone, leaving the other community to do as they like, will have the effect of materially helping the other community to increase their member, with communal representation and separate electorates the introduction will seriously effect the vital interest of the Hindus in every sphere of their life.

No. 8—NORTH-WEST FRONTIER PROVINCE

From the Home Secretary to Government North-West Frontier Province, to the Secretary to the Government of India Legislative Department, No. 27002-H. J./1/1-H.-Judl., dated Peshawar the 25th September, 1942.

SUBJECT.—The Hindu Code, Part I (*Intestate Succession*), and the Hindu Code, Part II (*Marriage*).

3. A separate reply on the Hindu Code, Part II (*Marriage*) Bill will follow.

The Advocate General, North-West Frontier Province.

These Bills have been sponsored by the Honourable Sir Sultan Ahmed, Law Member of the Government of India. The object of the Bills is to bring the Hindu Law into a line with modern ideas which are the product of the impact of western social system on the Hindu mind. The Bills were circulated for eliciting public opinion. It is noteworthy that only one Public Prosecutor who is a muslim, has taken the trouble to communicate his views and he too has condemned the Bills. The public opinion in this Province in regard to such matters has not been voiced at all, which shows that the Hindu public is quite indifferent towards subjects, which concern them very deeply. A voice from a far off place, Jagatganj, Benares Cantonment, has been heard and that represents the views of an association called Shri Bharat Dharma Mahamandal. The association is so deeply interested in the matter that it has submitted eight closely printed pages, wherein the basic principles of Hindu religion, law and usages have been expounded. According to this association a woman

has got no independent existence and as such it is irreligious to make an attempt to either make her an heir or touch the law relating to marriage. * * The said Mandal considers that the new Code will shake the very foundation of the Hindu Society and that as an interference in religion will be resented.

The apathy of the Hindu public contradicts the view of the Mandal which seems to be behind time in all respects.

To my mind the Hindu law stands in need of drastic change and the mover of the Code is doing a positive service to the Hindu Society by moving it. I hope that the Central Assembly will take great interest in the discussion and that the Code will come out in the best possible form.

The Code has been scrutinized from the legal point of view and on the face of it, it is not marred by any legal defect nor does it come into conflict with any existing enactment.

No. 9—NORTH WEST FRONTIER PROVINCE.

From the Home Secy. to Govt., N.-W. F. P., to the Secy. to the Govt. of India, Legislative Assembly Dept., New Delhi, No. 29152-H.-Judl., dated Peshawar, the 28th September, 1942.

SUBJECT.—The Hindu Code, Part II (Marriage)
With reference to the last paragraph of my letter No. 27002-H.Judl./1/1, dated the 25th September, 1942, I am directed to say that the Hindu Code, Part II (Marriage) Bill was published in English in the N.-W. F. P. Gazette Part V, dated the 26th June, 1942.

2. The Provincial Government endorse the views expressed by the Advocate General as communicated to you in the above letter.

3. I am also to forward the opinions of the Hon'ble Judicial Commissioner, N.-W. F. P. and of R. B. Mathra Das, R. S. Bala Milawa Ram and R. S. Nanak Chand.

The Hon'ble the Judicial Commissioner, N.-W. F. P.

* * * * *
2. The Hon'ble Mr. Justice Khan Mohd. Ibrahim Khan and I are of opinion that the Bill is a desirable piece of legislation and should be passed into law.
* * * * *

R. B. Diwan Mathra Das, Advocate, Kohat.

The clauses (a) and (b) of Section (4) should be expunged as the former interferes in the Hindu religion while the latter widens the gulf between Hindus, Sikhs, Buddhist/Jains.

Regarding (a) there being no divorce, an exceptional clause, a Hindu will not be able to marry a second wife in the lifetime of his first wife even if she is unable to bear a male child. Consequently such Hindu will have no son to do his Shraddha ceremonies, i.e., after his death.

Regarding (b). Already many Hindus are married to Sikhs (and probably to Buddhist and Jains). To restrict other parties to their own caste would be widening the gulf between the different communities who can legally intermarry.

I am of opinion that unless and until every person living in India is not restricted to one wife, this Bill will affect very hardly the political rights of Hindus as they will be out-numbered by those who can marry more than one wife at a time and produce more children.

R. S. Lala Milawa Ram, Pleader, Bannu.

The same general remarks* apply to this Part II (Marriage) as to Part I (Intestate Succession).

Hindu community has always advocated monogamy though in theory polygamy is not prohibited. The present Bill prohibits it and is therefore welcomed.

Punishment of the husband for bigamy in Section 24 is in accord with the wishes of the Society.

* The present attempt by Government to amend and codify Hindu Law relating to intestate succession and codify it relating to marriage will be welcomed by the community.

No provision, however, seems to have been made for a Civil marriage of a Hindu with a Non-Hindu for instance Christian or Muslim.

R. S. Nanak Chand, Advocate, Mardan.

I am definitely in favour of monogamy which this bill proposes to introduce. No doubt this change is a serious departure from the past, but the present women world is most discontented.

The advanced opinion recognises equality of status of women in their marital relations with men. Therefore justice demands we should have one law for men and women.

With a view to maintain peaceful homes I would suggest amendment in clauses 4 and 7 of the bill.

Sacramental marriage of course does not conceive of a second wife, nor is it yet clear to us whether it would be liable to cancellation by divorce. Whether it is revocable by divorce or not, the husband should be entitled to marry a second wife in case of the first being barren or sterile: because it would be a life disgrace to the first wife if she were to be divorced or discarded. No one would marry her with such disqualifications even she were divorced. It would be in her best interest to continue to be respected and maintained as wife. I would therefore suggest that the following exception should be added to clause 4:—

Exceptions.—(1) In case the first wife is barren or sterile the husband can marry a second wife.

(2) The barren wife will not be divorced at the instance of the husband.

The change will however depend if parties to the sacramental marriage enjoy the right of divorce under the proposed legislation of divorce.

Besides, the rule of *factum valet* has been made applicable to all cases of marriages contravening the provisions of this bill. No doubt it is essential in cases of *bona fide* mistakes but the clause as it stands practically negatives the law which it proposes to enforce. All attempts will be made to defeat it.

Please refer to clause 7.

I would propose clause 7 should be amended as under:—

No sacramental marriage solemnised shall be invalid if it is proved to the satisfaction of court that non-compliance with (a) and (b) was under a *bona fide* mistake of the parties but not otherwise.

(c) should continue as it is.

No. 10—SIND.

From the Dy. Secy. to the Govt. of Sind, Home Dept., to the Secy. to the Govt. of India, Legislative Department, New Delhi, No. S-22/20-H/42, dated Karachi the 17th October, 1942.

SUBJECT.—The Hindu Code, Part I (Intestate Succession) and the Hindu Code, Part II (Marriage).

I am to enclose herewith copies of the minutes recorded by the Honourable the Chief Judge and Judges of the Chief Court and the Ex. Honourable Minister, Local Self-Government, and the letter received from the Vice-President of the Pui Hindu General Panchayat, Shikarpur, and to state that the Government agree with the views of the Honourable the Chief Judge.

2. Both the Hindu Code Bills with the statements of object and reasons were published in English and Sindhi in the "Sind Government Gazette", Parts IV and V, dated 25th June, 1942, 2nd July, 1942 and 30th July, 1942 respectively.

The Ex-Honourable Minister, Local Self-Government.

It is quite true that the proposed two Bills involve fundamental changes in the Hindu Law of a far reaching nature and as such utmost caution is required in passing them into Acts. Considering the various remarks received from officials and other public bodies, I have come to the conclusion that the observations made by the Pui Hindu General Panchayat of Shikarpur, in respect of the two bills, deserve greatest weight and consideration and I strongly support them. * * *

Vice-President, Puj Hindu General Panchayat, Shikarpur.

The present rule of unconditional polygamy is also liked by this Panchayat but at the same time the opinion of this Panchayat is that polygamy should be allowed under the following 3 exceptional cases as prescribed in the early Hindu Law.

- 1) If the wife is barren, i.e., does not give birth up to the age of 30 years.
- 2) If the wife is diseased, of which due certificate should be given by a medical board.
- 3) If the wife happens to be of a vicious and depraved character and most incorrigible which fact should be proven in court of law.

4 The Panchayat wants to add a further restriction against polygamy as under:—

"The husband should in no case marry a second wife at the age of 45 years."

5. This opinion of the Panchayat is consonant with the principles of the ancient Hindu Law as promulgated by the Rishies also rules of equity and good conscience. The subsequent modification of law doing away with all the restrictions against polygamy and allowing a Hindu husband to marry any number of wives at his choice is most testable and prejudicial to the interests of the fair sex.

The Registrar, Chief Court of Sind.

The undersigned * * * is directed to state that the Honourable the Chief Judge is of the view that * * * provision as regards divorce should apply to all marriages otherwise one party to the marriage would be tied to the other however great the misconduct. The Honourable Judges have no remarks to offer.

No. 11.—AJMER-MERWARA.

from the Honourable the Chief Commissioner, Ajmer-Merwara, to the Secy. to the Govt. of India, Legislative Department, New Delhi, No. G/19-1, dated Abu, the 15th September, 1942.

UNREC.—*The Hindu Code Part I (Intestate Succession) and the Hindu Code, Part II (Marriage).*

I have the honour to forward herewith the opinions of—

1. District Judge, Ajmer-Merwara.
2. Additional District Judge, Ajmer-Merwara.
3. The Secretary, Bar Association, Ajmer.
4. The City Magistrate, Ajmer.
5. R. B. M. Mithan Lal Bhargava, President, Arya Samaj, Ajmer.
6. D. B. Harbilas Sarda, Ex-M.L.A., Ajmer.

2. I have no further comments to offer.

District Judge, Ajmer-Merwara.

In this Bill the important change introduced is that monogamy is prescribed by law for all Hindus. Similarly two forms of Hindu marriage are permissible viz. (1) the sacramental; and (2) the civil forms. Provision has been made in this very Bill for divorce in civil marriage. But no such provision is made for divorce in a sacramental marriage. Under the present law a civil marriage is quite different from a sacramental marriage. At present there is no civil marriage under the Hindu law. But when it is provided that there should be a civil marriage under the Hindu law itself and further when provision has been made for divorce in this type of marriage the provision should be extended to the sacramental marriage also. Otherwise the reform in the system of marriage contemplated by this Bill will be one sided. If monogamy is to be prescribed by law there should also be the facility for divorce in suitable cases.

In Section 4 of the Bill it is provided that no sacramental marriage can take place between parties belonging to the same Gotra or Pravara or different castes. At the same time under Section 7 no sacramental marriage can be declared invalid after its completion if the parties to it had belonged to the same Gotra or Pravara or to different castes. This section applies the doctrine of *factum valet* to sacramental marriages. In my opinion the bar itself to marriages between parties having the same Pravara or Gotra or belonging to different castes should be lifted.

Additional District Judge, Ajmer-Merwara.

The Bill provides two forms of marriages, the sacramental marriage, and the civil marriage. The sacramental marriage is one which is solemnized according to Hindu rites, while civil marriage is the marriage contracted before a Registrar under the Special Marriage Act, 1972.

The Bill proposes to make two important changes in the present law so far as sacramental marriage is concerned. In the first place, it abolishes polygamy. Under the present rule of Hindu Law, there is no restriction upon a husband as to the number of wives he can have, while a wife is prohibited from having more than one husband. This system, on its very face, appears to be unjust and the framers of the Bill have rightly proposed enforcement of monogamy. The Shastras enjoin mutual fidelity until death as the highest duty of husband and wife. Discharge of this duty is not possible unless monogamy is the rule.

The other change proposed to be made is to hold valid the marriages between parties of different sub-divisions of a varna. The definition of "caste" read with clause 4(b) of the Bill goes to show that one of the requisites of a sacramental marriage is that both the parties must belong to the same caste. The term "caste" means one of the four primary varnas or caste in which Hindus are divided and does not include any sub-caste. Thus there can be a marriage between parties of different sub-castes or sub-divisions. Such marriages have no doubt a legal recognition but their number is almost negligible. They are still contemptuously treated by the community in general. Parties to such marriages and their off-springs are socially boycotted by their respective sub-divisions or sub-castes. To my mind, the definition of the term "caste" given in the Bill is very wide. It should be confined only to sub-caste or sub-divisions of any of the four varnas. In popular language the word "caste" is used for one of such sub-divisions and not to the varna itself. Marriages between persons of different sub-divisions will lead to serious consequences. It will be very difficult to find out suitable match for girls of poor families. Dowry will be the dominating factor in the selection of bride. The greater will be the scope for selection of a bride the more will be the ambition of promising boys and their guardians in this respect. The practical effect of such marriages will be that in course of time the system of sub-castes will vanish and there will only be four castes which are at present known by the name of varnas.

Secretary, Bar Association, Ajmer.

* That Association agrees to the provision of the Bill generally but it is pointed out that section 7 be modified, because if it is allowed to stand, the provision of section 4 would be rendered inoperative.

City Magistrate, Ajmer.

I have the honour to state that I have no opinion to offer.

President, Arya Samaj, Ajmer.

* I agree to the provision of the Bill generally but I beg to point out that section 7 be omitted, because if it be allowed to stand, the force of the provision of Section 4 is nullified.

Dewan Bahadur Harbilas Sarda, Ajmer.

The Bill to codify Hindu Law relating to Marriage marks a most important stage in the evolution of the Hindu Law of Marriage. The two outstanding features of this Bill are those contained in clause 3 (the recognition of civil marriage as a valid marriage under the Hindu Law) and clause 4(a) (abolition of polygamy).

To meet the demands of those who do not believe in marriage sacrament, the Bill divides Hindu Marriages into two classes (1) Sacramental and (2) Civil. But monogamy has been made the essential feature of both. This is a monumental reform and will be universally welcomed; though it will not make any material change in Hindu Society; for, Hindu Marriages, except in rare cases, are

all monogamous. But the total abolition of polygamy is a triumph for the All India Women's Association and all those, who have been agitating for this most necessary reform.

The recognition of a Civil Marriage (clause 8) is a new feature in the Hindu Law. The Hindu Law of Marriage is customary, and is more or less based on Sastric Texts. In Sastric Texts, however, there is no room for civil marriage. Hence, people who find some of the fetters of the present Hindu Law of Marriage too irksome, have recourse to the Special Marriage Act of 1872, the use of which Act, however is open not only to the Hindus, but to non-Hindus also. The object of including civil marriage in this Bill, evidently is to enable those Hindus who are not particular about performing sacramental marriages but who want monogamous marriages, and do not want to have recourse to the Special Marriage Act, 1872 because of the disabilities with regard to inheritance of property imposed by its provisions as 22 to 26, to perform valid marriages.

The ideal law, of course, would be to permit marriages amongst Hindus without let or hindrance, except as to gotras, sapindas, Pariwars and "degrees of prohibited relationship", and eliminate all mention of caste. And this could be done within the four corners of the present Bill by simply omitting (1) the definition of caste from clause 2; the two sub-clauses 4(b) and 7(a) and by (2) substituting the word "have" for "are members of caste having", in clause 4(c). This is a consummation devoutly to be wished. But to do this at once will raise a storm of opposition and go against the object of the Bill, viz., to codify the present Hindu Law of Marriage. We must, therefore, wait till time comes to our aid, the public opinion advances much further than its present level.

The present Bill is an attempt to meet the demands of the progressive section of the Hindus, without offending the orthodox people, to whom the preservation of the present caste system is an article of faith.

As regards the clauses dealing with sacramental marriages, the most important point is that contained in Clause 4 Sub Clause (b) which requires that both parties to a marriage must belong to the same caste. Clause 7 lays down that after a marriage has been completed, its validity shall not be questioned on the ground that both the parties to it did not belong to the same caste. Though Clause 7, at first sight, seems wholly to meet the demands of the Progressive and the Reformers, yet actually this is not so. The inclusion of these clauses [clause 4(b) and clause 7] as they stand in the text of the Bill makes the Bill self-contradictory. The condition laid down in Sub-Clause (b) of clause 4, which is essential to the solemnization of a valid sacramental marriage is quite inconsistent with the provisions of clause 7 as at present worded. Clause 7 as it is worded particularly makes Sub-Clause (b) of clause 4, a dead letter before the Bill becomes law.

The explanatory note attached to the Bill, however, restricts the application of the provisions of Clause 7 only to certain rare cases, where by mistake girls are married to husbands of different castes. After giving a long quotation from Sir G. D. Banerji's *Hindu Law*, about such marriages, the Explanatory Note (p. 9) says, "The solution we have proposed in the Bill is to extend the *stetum valet* rule to such marriages. This is to say, their validity is not to be called in question after they have been completed." If this restricted interpretation is to be accepted, then this Bill forbids all intercaste marriages.

The Bill therefore has to be judged from two points of view:—

- (1) The manner of codification, and
- (2) Whether the provisions of the Bill meet the requirements of the changes and still changing conditions of life, and secure individual happiness as well as the social well being of the Hindus. As codifying the present uncodified law will give statutory sanction to its provisions it is necessary that the terms used in it must have definite and unmistakable meaning and the provision should be so framed as to be easy of application.

As regards the framing of the Bill, its provisions must not only embody the fundamental principles on which the institutions of marriage is founded, but should provide liberally for the matrimonial needs of the Hindus so that they may not be handicapped in the battle of life that is raging so fiercely.

Happily, so far as the present Bill is concerned, both

points of view will be largely met by the proper settlement of one point. That pivotal point is the definition and interpretation of the term caste.

The definition of caste given in clause 2 of the Act is rather vague, and not absolutely clear in relation to what are known as castes at present. The definition given in clause 2 of the Bill is as follows:—"Caste means one of the four primary Varnas or castes in which Hindus are divided, and does not include any Sub-Caste". The term sub-caste is nowhere defined, nor is any illustration given to enable one to distinguish a caste from a sub-caste. Then, the definition has the defect that it uses the very word to be defined, in defining that word. The words "or castes in which the Hindus are divided", may lead an ordinary reader to think that what is meant by "castes" are the hundreds of the castes prevalent amongst the Hindus.

At the present time, *Varnas and Castes are quite different terms*. Every one of the four Varnas is composed of a number of divisions, called castes. For instance, the Brahmins:—One of the four Varnas—are now divided into Dravids, Gour, Saraswat, Pushkarna, Kanyakubja, Dayma, Nagar, Audich and a hundred others. Some of these are further subdivided. And each division or subdivision is an exclusive caste now. Similarly, the Vaisyas are divided into Maheshwars, Agarwalas, Oswals, Saragees, Bijawats, Gherwals, Rastoji, and so on, and each forms a separate caste; and, under the law as present administered, intermarriages between these castes are sometimes objected to and not recognised.

If the definition had for instance been "caste means one of the four primary Varnas, in which Hindus have from ancient times been divided; and Sub-Caste means one of the various divisions in which each of those four Varnas is at present divided", the definition would have met both the points of view, that is, the clarity and unmistakability of the definition as well as the provision for most of the matrimonial needs of the Hindus. It would then have been clear that the term caste in clause 2 (b) does not bar marriages between Maheshwars and Agarwalas or Saragees among the Vaisyas, and between the Dravids and Kanyakubjas or Saraswats among the Brahmins.

If however, the framers of the Bill mean by castes the several divisions into which each of the four primary Varnas is divided, such as described above, then not only is the definition of caste given in clause 2 bad; for then, the words in the definition "one of the four primary Varnas or" have no meaning, and serve only to mislead people. Moreover, clause 4(b) would then be an objectionable innovation as going against the authority of the Sastric Texts, on which the Hindu Marriage Law in the last resort is based; for, it would forbid marriages between the members of one division and those of another division of the same Varna, for instance, between an Agarwala and a Khandelwal amongst the Vaisyas and a Saraswat and a Gour amongst the Brahmins.

As a matter of fact, the Sastric Texts do not forbid marriages between members of different (castes or) divisions of the same Varna, for the simple reason that castes as they exist now, did not exist when the Sastric Texts were framed. There were then only four Varnas; and not only were marriages in the same Varna freely allowed except in certain prohibited degrees, but marriages between members of the different Varnas were also in many cases allowed.

In any case the definition of the term caste given in the Bill being defective and not unambiguous, should be so changed as to make the intention clear beyond doubt. The definition might be somewhat like this. "Caste means one of the four primary Varnas in which the Hindus have from ancient times been divided, and sub-caste means one of the various divisions in which each of those Varnas is at present divided".

No. 12.—COORG.

From the Chief Commissioner of Coorg, to the Secretary to the Government of India, Legislative Department, New Delhi, No. A-1-2068/42, dated Mercara, the 7th September, 1942.

SUBJECT.—The Hindu Code, Part I (Intestate and Succession) and the Hindu Code, Part II (Marriage).

The Assistant Commissioner has no remarks to offer

while the Munsiffs and the Bar Associations are in favour of the Bills. The Judicial Commissioner remarks as follows:—

"As they are in the nature of social reforms and affect Hindu life and customs in so intimate a manner that it would be better to consider no other opinions than those of Hindus. Hindu Law should not be reformed by persons who will not be affected by the reforms. However excellent such reforms may be in principle, they will lack the sanction of popular support."

The District and Sessions Judge says:—

"The codification of Hindu Law on a uniform basis applicable to the whole of India is long overdue. These Bills relating to intestate succession and marriage appear to be a good beginning for the removal of some of the anomalies in Hindu Law such as sex disqualification in the inheritance of property, Hindu woman's limited estate, polygamy, etc., and as such they are progressive in character."

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ter and are in conformity with the present day ideas of the subject. I therefore give my full support to the Bills."

I have no remarks to offer.

The Bills, together with the Statements of Objects and Reasons and other enclosures, were published in English in the *Coorg Gazette Extraordinary*, dated the 8th July, 1942.

No. 13.—PANTH PIPLODA.

From the Chief Commissioner of Panth Piploda, to the Secretary to the Government of India, Legislative Department, New Delhi, No. 3439-B., dated Central India Agency, Indore, the 28th July, 1942.

SUBJECT.—*The Hindu Code, Part I (Intestate Succession) and The Hindu Code, Part II (Marriage)*

* * I have no comments to offer.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT

PAPER No. III

OPINIONS

ON

THE HINDU CODE, PART II (Marriage)

(Published in the Gazette of India on the 30th May, 1942, under rule 18 of the Indian Legislative Rules.)

Opinions Nos. 24—25

DELHI

PAGES.

- 24.—From the Chief Commissioner, Delhi, No. F-4 (48)/42-General, dated the 21st December, 1942, and enclosure

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SIND

- 25.—From the Chief Secretary, to the Government of Sind, Home Department, No. S-22/20-H/42, dated the 21st December, 1942, and enclosure

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No. 24.—DELHI.

From the Chief Commissioner, Delhi, to the Secretary, to the Government of India, Legislative Department, No. F. 4(49)/42-General, dated the 21st December 1942.

* * * I have the honour to forward a copy of a letter from the All-India Shradhanand Dalitodhar Sabha Delhi, No. 10100, dated the 8th December 1942, together with a copy of its enclosure.

General Secretary, All-India Shradhanand Dalitodhar Sabha, Delhi.

* * * I herewith enclose the unanimous opinions of my Sabha in connection with the bills that you had very kindly sent to us for my Sabha's opinion.

The Bill is a great advance on the existing Hindu Law. Its most important feature is that it proposes to abolish polygamy even if sacramental marriages. The All India Shradhanand Dalitodhar Sabha entirely agrees with the opinion expressed in the explanatory note, that according to early Hindu Law, Monogamy was the approved rule and Polygamy was an exceptional provision. This is all that can be desired from the reformers' point of view. But it is doubtful if the ordinary Hindus will be satisfied with the proposed Law. It will be argued that bigamy should be permitted in certain special cases, e.g., when the wife is proved to be barren or the husband to be impotent. In the case of civil marriages, there will not be much difficulty, as divorce is allowed in those cases. We are of opinion that bigamy may be permitted in such special cases as indicated above.

Regarding the question of divorce, the All India Shradhanand Dalitodhar Sabha Delhi, should make it clear that according to its view it is quite foreign to the Vedic conception of marriage. But considering the present social condition of the Hindus for whom the Bill is meant some such provision appears to be necessary. It has been adequately provided in the case of civil marriages.

The All India Shradhanand Dalitodhar Sabha, Delhi is glad to see that the provisions of Sub-Section 24 of the Special Marriage Act have not been reproduced in the Bill and that consequently the Hindus contracting civil

marriages, will no longer be governed by the Indian Succession Act in matters of succession but by the Hindu Law.

The Bill goes a long way in encouraging and protecting inter-caste marriages. There will of course be no restrictions of caste in Civil Marriage as was also the case hitherto, but the ban has been practically removed from even sacramental marriages by extending the *factum valet* rule to them. The All India Shradhanand Dalitodhar Sabha Delhi, highly appreciates this. The Bill will thus in a great measure also serve the purpose for which the Arya Marriage Validation Act of 1936 was passed by the Legislature through the efforts of the All India Shradhanand Dalitodhar Sabha, Delhi.

There is a minor point on which the All India Shradhanand Dalitodhar Sabha, Delhi, would like to note its disagreement in Clause 2 (d) even first cousins have not been included within the prohibited degrees of relationship for marriage. The explanatory note on page 128 says "There is a Vedic Text pointing to the prevalence of such marriages". We have not come across any such Vedic Text and do not believe that there is any text which permits such marriages. The idea of first cousins marrying each other, is very repugnant to the Hindu mind and we are of opinion that they should be included within the prohibited degrees. In the other Bill on intestate succession daughters have been proposed to get a share along with sons and other female relations have been proposed to be heirs. If the rule of Exogamy as proposed in clause 2 (b) stands there will be a great temptation to marry daughters to first cousins so that the family property may not go outside. This will be very objectionable from a eugenic point of view.

No. 25.—SIND.

From the Chief Secretary to the Government of Sind, Home Department (Political), to the Secretary to the Government of India, Legislative Department, No. S-22/20-H/42, dated the 21st December 1942.

* * * I am to enclose herewith a copy of letter from Mr. Lilaram Jethmal Mukhi of Khudabadi Amil Panchayat, Hyderabad (Sind).

Mr. L. Laram Jethmal—Mukhi, Hyderabad.

With reference to Sind Government's Notification, dated 8th June 1942, inviting opinions of persons or Public Bodies, on the subject of Codification of Hindu Law relating to marriage, The Khudabadi Amil Panchayat, Hyderabad Sind submits, that the Codification or amendment of Hindu Law based on Shastras is of doubtful value and is not called for nor expedient.

There is apparently no demand on the part of the Hindus for change in their personal law of marriage. The only benefit of Codification is an easy reference to particular rules. But this is more than out-weighted by other disadvantages; such as introduction of rules of other systems of law quite alien to Hindu culture and civilisation.

The following suggestions and amendment of the Code are however made. In the opinion of the Panchayat, the civil form of marriage should not find place or be made part of the Code of Hindu Law of marriage. The civil marriage under the bill can be contracted by any person professing Hindu religion with any other person professing Hindu, Buddhist, Sikh or Jain religion, and not with Hindu alone. The only persons prohibited from marrying in the civil form are those related lineally or as brother and sister, uncle and niece, or aunt and nephew. It is the closest fringe of relationship, and all systems of law consider unions within this fringe as incestuous.

This is a most objectionable feature of the Bill tending to sap the fabric of Hindu Society, Hindu culture and Hindu civilization. With this limit of prohibition, parties inclined to marry first cousins will adopt the civil form in preference to sacramental one; and the latter will fall into disuse and be rendered nugatory. The idea of bringing down prohibitions much closer than those prescribed under the Special Marriages Act seems to be that prohibited degrees should be brought in line with other systems of law in complete disregard of Hindu ideas and sentiments in respect of marriages between near relations. But this is not codifying Hindu laws.

It is therefore submitted that civil form of marriage should be left within the scope of Special Marriages Act

under which the limit of prohibition is more distant and in consonance with Hindu ideas and sentiments. Should however, the civil form be allowed to stand where it is, it is requested that sub-clause (d) of Section 2 may be deleted and the degrees of prohibition of Sapinda relationship should be those prescribed in the Special Marriages Act. It is anomalous and does not stand to reason that while prohibited degrees laid down in the Special Marriages Act should govern persons who make a declaration that they are neither Hindus nor Mahomedans nor Christians, etc. Hindus marrying under the civil form should observe lesser degrees of prohibition.

With regard to sacramental marriages, it is submitted that provisions of Sections 6 and 7 are nullified by the doctrine of *Factum-Valet*, being made applicable to breaches of those provisions contrary to all principles of law which exclude the doctrine from its application to acts void *ab-initio*. The doctrine of *Factum-Valet* should not be applied and such prohibited marriages should be declared invalid for all purposes, but with the right to parties to remarry if they so choose.

The Monogamy is insisted on the Bill, and this is its best and most relieving feature. It commends itself in the public opinion of said Hindus, specially to Khudabadi Amil community.

Polygamy should be made illegal and penal, except when it is permitted by Panchayat to which the parties belong, in the following cases only:—

(a) When wife is incurably insane or is suffering from any infectious, incurable loathsome disease such as leprosy, or,

(b) When she is barren and has given a free and willing consent to the husband taking a second wife, or,

(c) When she gives birth only to daughters for 15 years from the date of marriage and consents to the husband taking a second wife.

Reciprocally a wife may be allowed by the Panchayat to remarry when the husband is impotent, or wilfully permanently deserts his wife, provided the first marriage is in the first instance set aside on the above grounds in Court of Law.

GOVERNMENT OF INDIA.
LEGISLATIVE ASSEMBLY DEPARTMENT.

Report of the Joint Committee on the Bill to amend and codify the Hindu Law
relating to intestate succession; with the amended Bill.

LEGISLATIVE ASSEMBLY.

REPORT OF THE JOINT COMMITTEE ON THE BILL TO AMEND AND CODIFY THE HINDU LAW RELATING TO INTESTATE SUCCESSION.

We, the undersigned, members of the Joint Committee to which the Bill to amend and codify the Hindu Law relating to intestate succession was referred, have considered the Bill and the papers
Papers Nos. I to III. noted in the margin and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

We desire to acknowledge with gratitude and appreciation the very valuable assistance given to us by Mr. V. V. Joshi, a member of the Hindu Law Committee to whose labours the Bill owes its existence, who attended throughout our deliberations to place his scholarship at our disposal, by Messrs. V. V. Deshpande and Rama Prasad Mukherjee, Sir B. L. Mitter, Advocate General of India, and a deputation representing the women of Simla, who presented themselves before the Committee to voice certain representative views, and by those associations or individuals from whom we have received expressions of their views though they have not been able to accept our invitation to attend in person to expound them. Memoranda supplied to us by the representatives of the Hindu women in Simla, by the Maharashtra Branch of the All-India Women's Conference, by the Bhatia, Sri Mandal, Bombay, by Mr. Atul Chandra Gupta, Advocate, Calcutta High Court, and by Mr. Rama Prasad Mukherjee as a supplement to his oral evidence, are appended to this our Report.

Before referring to the changes made by us in the text of the Bill, which will be found briefly explained in our remarks on the individual clauses affected, we desire to make some general observations on two basic themes affecting the Bill on which we heard expositions from the witnesses examined by us, namely, the alleged incapacity of women as a class to inherit, and the impropriety of granting to women an absolute estate:

There is a body of opinion which still maintains that women as a class should be excluded from inheritance and should not be given absolute ownership over property they acquire either by inheritance or partition. In support of this opinion are urged (1) certain Vedic texts, (2) the general incompetence of women, (3) the evil of fragmentation of holdings and (4) the fear of the property being lost to the family. It is necessary to examine some of these arguments.

It must be premised, and all the scholars agree, that much of the vast Vedic literature has been lost—little remains in it of positive law. The *Sutras* and *Smritis* who were well versed in all the branches of the Vedas extant at their time, when they were available in greater volume and exactitude, based their *Sutras* and *Smritis* on the law as they found it in the Vedas. In spite of this state of affairs, it has been seriously urged that the Vedic texts lay down a rule of total exclusion of women from inheritance and from full dominion over property and that the rule ought to be revived. Of the various texts relied upon, the foremost is the well known Nirindriya text in Taittiriya Samhita (VI—5-8-2) which occurs in the ritual of the Soma sacrifice and which reads thus: "Soma could not stand being drawn for women; making ghee the bolt (they) struck it; they took it when it became destitute of vigour (*indriya*); therefore women being destitute of strength, take no portion and speak more weakly than even the fallen man". Boudhayana relies upon this incident and this passage (II—2-3-46) for inferring the rule that according to the Vedas, women are weak and therefore incompetent to inherit. This text has been critically examined by many eminent scholars including Professor Max Muller, Dr. Jolly (*Hindu Law*, p. 192), West (*Hindu Law*, pp. 117-118), Dr. Sarvadikari (*Law of Inheritance*, p. 208) and Dr. D. N. Mitra (*Position of Women in Hindu Law* pp. 601-602). All hold that the original passage only referred to the ritual of the Soma sacrifice and the exclusion of women from participation in the Soma juice, and had no bearing on their exclusion from inheritance. It is worthy of note that Mitakshara and Mayukha take no notice of this text, and it is legitimate to conclude that they did not consider the text as having any bearing on the question of inheritance. Reliance is placed upon other passages also which have not even been referred to by any law-giver. A passage from

Satapatha Brahmana (IV—4-2-13) cited reads thus: "He then mixes it with the residue of the ghee left in the spoon: now other libations he completes by mixing, but this one he diminishes; for ghee is thunderbolt, and by that thunderbolt, the Gods smote the wives and unmanned them; and thus smitten and unmanned they neither owned self nor did they own any heritage". Another passage relied upon from Taittiriya Samhita (VI—5-8) reads thus: "Soma could not bear being drawn for women: making the ghee a bolt they beat it; they drew it when it had lost its power: therefore women are powerless, have no inheritance and speak more weakly than even a bad man". These two passages evidently refer to the same incident in the Soma sacrifice, and at most may be taken to have laid down a rule of exclusion from participation in the Soma juice; they hardly support the theory of exclusion from inheritance. Another passage relied upon from Maitrayani Samhita (IV—6-3) reads thus: "As *Sthalī* is given to others and not the wooden vessel, therefore the woman is given to others and not the male". Lastly, reliance is also placed upon a passage from Nirukta (III—4) which reads thus: "As between the two, son and daughter, one is possessed of male sex, who performs meritorious acts, such as offering of pinda, the other possessed of female sex is only adorned with costly clothes and ornaments: a son, being authorised to perform meritorious acts, is entitled to inherit the property of his parents, and a daughter is not so, therefore she is only given to others". These three passages have not been referred to, much less relied upon, even by subsequent writers who favoured the theory of exclusion of women from inheritance; and it is legitimate to infer that these passages were never taken as having any bearing on the question of inheritance. The Sutrakaras like Apastamba (II—14-16-20), and Smritikars like Vishnu (XVIII—34-35), Manu, (IX—186), Yajnyavalkya (II—115: 123), Narada (XIV—12), Brihaspati (as cited in commentaries), Katyayana, and Vyasa recognised the right of women to hold property and the right to receive a share on partition or succession from the property of their husbands. Jaimini's aphorisms that (1) women are possessed of wealth (VI—14), as certain Vedic texts shew that women have the capacity of owning and possessing wealth (VI—16) and (2) by virtue of Vedic texts, husband and wife, both being capable of possessing wealth, should perform the sacrifice jointly (VI—17), place beyond doubt the capacity of women to hold and acquire property. The three passages relied upon for supporting the theory of exclusion, were not even considered by the Smritikars and commentators, either because they had little or no bearing on the question or because the position otherwise was fully supported by Vedic texts which they had before them.

Other evidence to which it is unnecessary to allude here also points to the conclusion that Vedic literature did not support the theory of total exclusion of women from property rights.

The question of absolute estate is elaborately discussed by the Hindu Law Committee in its fourth memorandum and in the explanatory note attached to the original Bill. Those discussions we need not repeat; but we would briefly refer to the position in the Dayabhaga School.

The founder of the Dayabhaga School was chiefly responsible for advocating this theory of limited ownership. In support of his theory Jimutavahana relied upon two solitary slokas of Katyayan which admittedly referred to the property given to a woman by her husband. The whole of the Katyayan text is not available and in the absence of positive statement it is improper to infer that Katyayana wanted to place the same restrictions on property inherited by the woman. The word '*dāya*' in the couplet of Katyayana is expressive of two meanings, viz., gift or heritage, and Vivad Chintamani argues that what applied to the gift must be deemed to be applicable to inheritance as well. Otherwise the query "If so for the property gifted, what about the property inherited?" would remain unsatisfied. This topic is elaborately dealt with by the late Mr. Golap Chandra Shastri Sarkar, a jurist and scholar of outstanding ability and learning. He has pointed out how the texts were misread and how the wrong conclusions were drawn by Courts of law. In the Mitakshara this theory of limited ownership had no place at all. All property however acquired by the

woman became her *stridhana*, and such *stridhana* devolved not upon the heirs of the last male holder, but upon her own heirs; such was the scheme of *Mitakshara*. If it is urged that people have for long meekly accepted the law as laid down by the Courts and that therefore it should be taken and retained as good law, we reply with the observation of Mr. Justice West (in the case of *Bhagirathbai v. Kanhujirao* (11 Bombay 285): "If it could be shown that the customary law, in this instance, rested on a palpable error, on a demonstrable misreading of the text of the accepted authority, then no doubt, it might be said that the popular consciousness, which had accepted its conviction of the law from a corrupt text, would much more accede to the corrected rule."

We have made no change in the preamble which expresses the intention of amending and codifying in successive stages the whole of the Hindu Law now in force in British India. We appreciate the difficulty of dealing with one particular topic of that law without having before us a complete picture of all the proposed reforms. It would have materially simplified our task if we had had drafts of the proposals affecting other topics, some of which, for instance, the law of maintenance, the law of legitimacy and marriage, the law of partition and reunion, the law of adoption, are not without their reactions on the law of intestate succession and might be capable of influencing decisions on some of the points we have had to consider in this Bill. But we have not found it impracticable to proceed with this, the first stage in the work of codification, particularly as the Bill is expressed to come into operation only in 1946, by which date we hope Governors' Provinces may have passed the necessary complementary legislation to make the principles of this Bill applicable to agricultural land, and much further progress may have been made in dealing with further topics of the Hindu Law. We think that steps should be taken to reconstitute the Hindu Law Committee, and to encourage the formulation and enactment of the remaining Parts of the projected Code in the interval which is to elapse before the present Bill, when passed, comes into force. It may well be found that the present Bill will require, before it is allowed to come into operation, readjustment and amendment in the light of decisions taken in connection with other branches of the Hindu Law.

Clause 1.—The new sub-clause inserted as sub-clause (3) to define the application of the Act provides in a more direct and satisfactory manner the effect produced in the Bill as drafted by the definition of "Hindu" previously contained in clause 2(e), and the first proviso appended to clause 3, which we have omitted. We thereby avoid giving an artificially extended sense to the word "Hindu" while securing, as the Bill intended, that its provisions should apply to those non-Hindus who are governed in matters of succession by the Hindu Law. Where the word "Hindu" was used in the Bill in clauses 2(2)(b) and 3 we have substituted the expression "person to whom this Act applies". In transferring to this new position the first proviso to clause 3, as drafted, we have inserted in sub-clause (a) the words "except in Chief Commissioners' Provinces". This correctly states the constitutional position. A Central Act, such as this will be, cannot affect the devolution of agricultural land in Governors' Provinces, but is competent to do so in the centrally administered areas. We have considered it proper to indicate that the Bill is intended to have this effect in Chief Commissioners' Provinces.

Clause 2, sub-clause (1), clause (d).—The words "whether he dies leaving male issue or not" have been inserted, because without them there would be room for doubt whether the case of an intestate in *Mitakshara* jurisdiction who dies leaving such issue is included. The text of *Yajnavalkya*, which is the basis of the law of inheritance in *Mitakshara* jurisdictions, states that inheritance is confined to the estate of one who leaves no male issue: when a man dies leaving a son, grandson or great-grandson, the heritage is unobstructed and they take in all cases by survivorship whether the property is ancestral or the separate property of the father.

We wish to call attention to the fact that by this definition of "heritable property" property of the nature of absolute *debutter* is excluded.

4

In the Illustration "separate property" has been substituted for "self-acquired property". Self-acquired property thrown into the common stock becomes joint property. A reference has also been inserted to "property in the hands of the last surviving coparcener", as being another category of property which under the law as it stands, passes by inheritance and not by survivorship.

The omission of the definition of "Hindu" contained in clause (e) of the Bill as introduced has been explained in our remarks on clause 1(3).

The omission of the word "the" in clause (f) is merely a drafting refinement.

In the definition of "stridhana" we have inserted the words "by way of absolute gift", following the wording used in the Madras case, 21 Madras 100, when setting out the comprehensive definition of "stridhana" given in the *Mitakshara* as quoted in Mulla's Hindu Law, Ninth Edition, page 113; and we have added the reference to "arrears of maintenance" merely *ex majori cautela*.

Sub-clause (2).—The provision that stood as clause (b) of this sub-clause has been transferred to and incorporated in clause 8 of the Bill as sub-clause (4), in order that it may not by virtue of the generality given to its application by its position in clause 2 impinge upon the provisions of clause 5 to which clause it was not intended to have application.

Clause 3.—Both the alterations made in this clause has been explained in our remarks upon clause 1.

Clause 5.—Important changes have been made by us in that portion of this clause which deals with the simultaneous heirs, and our decisions were only arrived at after prolonged consideration of several matters of considerable difficulty and controversy. The Bill had already included among the simultaneous heirs the daughter, whether married, unmarried or widow. We have had addressed to us the argument that the allocation of a share to the daughter is in substitution for the moral or legal obligation to maintain her and to provide for her education and satisfactory marriage which rests upon the father, and on his heirs, that in the case of a married daughter this obligation has already been discharged by the father, and that these considerations justify a differentiation between the unmarried and the married daughter, the latter's interests being sufficiently safeguarded by the fact that the father's natural affection would prompt him to provide for the indigent married daughter. Those holding this view would not admit that the daughter has any right to a share otherwise than in lieu of her right to maintenance. We have not acceded to this view and we have retained unchanged the provisions of the Bill, allotting a share in the estate to both the married and the unmarried daughter. We have also accepted the Bill's proposal that this share should be half that received by a son, though we considered various proposals to accord her a smaller share, or to differentiate between the share taken by a married and an unmarried daughter. Influenced by the consideration that the daughter's inclusion among the simultaneous heirs was based on the fact that she already possessed this right to maintenance, we have considered it equitable that aged parents who similarly have a right to maintenance should receive a share among the simultaneous heirs. We have accordingly included the father and mother when they are dependent upon the intestate, fixing the share of a parent, as will be seen from sub-clause (e) of clause 7, as one-eighth that of the son; but we have added a provision that any property so taken shall on the death intestate of the parent go back into the estate, and pass to the heirs of the son as it would have passed had it not temporarily been diverted to the parents, though we conceive the parents as acquiring an absolute estate in the property, with full power of disposal over it.

We have also included the widowed daughter-in-law, whom the Bill excludes from among the simultaneous heirs. The *Deshmukh Act* of 1937 had given her a right to a share equal to that of a son, or, where there was a son or son surviving, equal to that of her son, thereby in some circumstances adversely affecting the daughter's interests. At one time the Hindu Law Committee had contemplated including her, but in consideration of the fact that she is provided

as the daughter in her father's family and takes a share of her husband's property as his widow, the Hindu Law Committee thought it unnecessary to provide for her again in her father-in-law's family. The opinion was expressed to us that instead of providing her with a share her case should be left to be dealt with by the law of maintenance which could propose maintenance on a generous scale for her. We have preferred to regard her as entitled to a share for the very reason that she has this right to maintenance; and we have accordingly included her among the simultaneous heirs, and have given her, when she is without a son or grandson, half the share that would have come to her husband if living; when she has a son or grandson living we have provided that her share should be reduced to one-fourth what her husband would have received if living, leaving three-fourths for the son or grandson.

When considering the case of the widowed daughter-in-law it appeared to us at first sight to be reasonable that the rights given to the widowed daughter-in-law should equally be given to the grand-daughter-in-law, and the great grand-daughter-in-law, and we tentatively included these also among the simultaneous heirs. When however we addressed ourselves to determining the shares they were to receive and how these shares were to be provided for, we found ourselves confronted with almost insuperable difficulties. Any arrangement we could devise appeared likely to be unjust to the great-grandson where his own maternal grand-mother, the daughter-in-law of the intestate, were both alive. We were forced to the conclusion that it would be impracticable to include the grand-daughter-in-law and great grand-daughter-in-law, for whose inclusion also the argument justifying the inclusion of the grand-daughter, that she had a right to be maintained, was absent.

To the heirs included in Class II we have added after the sister, and sister's son the brother's daughter and sister's daughter in that order. The framers of the Bill recognised that there was some ground for including them and recommended that if included they should be placed where we have placed them.

Clause 7.—Two sub-clauses have been added specifying the shares of a parent, and of a widowed daughter-in-law in accordance with the decisions referred to in our remarks on clause 5. In connection with this provision now made for the daughter-in-law we are of opinion that the male heir should be given a 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. We have not, however, included in the Bill any provision to this effect, on the view that such a provision could not properly find a place in a Bill exclusively concerned with intestate succession.

Clause 8.—Our reasons for the inclusion as sub-clause (4) of this clause of the provision originally appearing as clause (b) of clause 2(2) of the Bill have already been referred to in our remarks under clause 2. We have slightly altered the wording of the provision so as to make it produce the same effect without appearing to affect the status of the woman as an agnate in respect of her father's and husband's families.

Clause 13.—The alteration made in clause (a) of this clause is intended to return that *stridhana* consisting of property inherited from a husband or from his father, grandfather or great grandfather shall pass to the heirs of the husband, and goes some way to meet fears that family property may by becoming *stridhana* pass out of the family.

In clause (b) we have altered the rules for the devolution of *stridhana* of other kinds so as to secure that a son and daughter shall take simultaneously and that similarly a daughter's son and daughter and a son's son and daughter shall take simultaneously.

In consequence of this decision we have had to decide the shares receivable by them, and have by our addition to sub-clause (c) given to the son, the daughter's son and the son's son half the share taken by his sister.

We have postponed the husband's heirs to a position below the mother and father, and, following the order in which the mother and father inherit, we have placed the mother's heirs in front of the father's heirs.

Clause 14.—The change here made is necessitated by the alteration made by us in entries (1), (2) and (3) of sub-clause (b) of clause 13, but does not alter the principle embodied in the clause, namely, that heirs in the second and succeeding generations shall take *per stirpes* and not *per capita*.

Clause 17.—We have made no changes in this clause, though it presented some difficulties to us. The framers of the Bill intended the clause to establish that where there is a marriage valid by Hindu Law though contracted outside the caste, there should in future be no doubt that rights of succession enjoyed by the widow and the issue were the same as in a valid marriage contracted inside the caste. We have been handicapped by not having before us the proposals relating to the law of marriage, and some of us have felt doubts about the effect of the clause in cases where a marriage is contracted by a Hindu with a person not only outside his caste but outside the Hindu community.

Clause 18.—We have omitted the first clause of the proviso which allowed a widow's right to inherit to her husband to be questioned after his death if the husband had made a will which is subsisting at the time of the death depriving her of any portion of his property on the ground of unchastity. The framers of the Bill were concerned to combat the practice of unscrupulous reversioners of blackmailing widows. We have been impressed by instances quoted to us in which widows have suffered grave injustice through unfounded allegations of unchastity made against them in testamentary dispositions left by their husbands. We think that the only case in which it should be possible to attack the widow's right to succeed is that which we have retained in the proviso, namely, the existence of a finding by a Court of Law in a case to which her husband was a party and in which the fact of unchastity was specifically in issue.

In connection with clause 20, we considered whether the abandonment of the Hindu religion and conversion to another religion should be made a ground of disqualification from inheritance. We decided against upsetting the position established by the Caste Disabilities Removal Act, 1850.

2. The Bill was published in the Gazette of India, dated the 30th May, 1942.

3. We are of opinion that the Bill has been so altered as to require republication, and we recommend that this be done.

S. SULTAN AHMED.

*H. N. KUNZRU.

*S. N. MAHTHA.

*RENUKA RAY.

*GHULAM BHIK NAIRANG.

*HOSSAIN IMAM.

*P. N. SAPRU.

*A. P. PATRO.

*G. V. DESHMUKH.

S. A. LAL.

*SUSIL KUMAR ROY CHOWDHURY.

*V. V. KALIKAR.

*BALJNATH BAJORIA.

*A. C. DATTA.

*NILAKANTHA DAS.

*LALCHAND NAVALRAI.

*SÖBHA SINGH.

*AMARENDRA NATH CHATTOPADHAYAYA.

NEW DELHI.

The 8th November 1943.

* Subject to a minute or minutes of Dissent.
† Minute not received.

APPENDIX.

I

Memorandum, dated 8th May, 1943, submitted to the Joint Committee by Mr. Atul Chandra Gupta, Advocate, Calcutta High Court.

The Hindu Intestate Succession Bill, drawn up by the Rau Committee and now before the Central Indian Legislature, has more than one important aspect from which to judge it either for supporting or for opposing.

The most important aspect is the attempt to lay down one law of inheritance for all Hindus of British India. Any person or body of persons who misses this aspect of the Bill and concentrates on some other aspect of it misses the important character of the Bill from which it is primarily to be judged. Any one who speaks of Hindu Unity or Hindu "Sangathan" without realising the force of the Unity of Law of inheritance in bringing about this unity merely utters slogans without meaning anything practical. Any opposition to introducing one uniform law of inheritance for all Hindus is inexplicable, except by a mental inertia opposing all changes, when we remember that by the acceptance of the Mitakshara system practical uniformity of the law of inheritance was established in Hindu India centuries ago with the exception of Bengal. And Vijnaneswar, the author of the Mitakshara, was not a Rishi of hoary antiquity, but a secular writer of comparatively modern historical times. The idea that there is something "religious" in the law of inheritance, so that to change it would be to hit something religious flourishes only on ignorance. The Mitakshara distinctly says that the Smriti texts relating to inheritance are mostly based on usage of people (*Prayen ashmin prakarany loka-hyabharani bhojananti*). Jimutavahana, the author of the Dayabhaga, who deduces his scheme of inheritance not by the test of nearness of blood, but on the theory of efficacy of Pinda in the Parvana Sradh ceremony, did not think that law of inheritance was therefore something religious. He was using the Parvana Sradh Pinda merely as a theory for deducing the scheme of inheritance which according to him ought to be accepted. He definitely says that if the learned are not satisfied with his reasoning based on the Pinda theory, but requires that the scheme should follow from the words of the texts, his scheme does so (*Attharaparito sho bidusham bharanik ebayamartha tathapi yathokta eba bharanayo- cartigrahyam kim bishkarena*). In performing the task of providing one law for all Hindus the Bill generally accepts the Dayabhaga law of inheritance for near succession, and the Mitakshara law for distant succession. The ability with which the Rau Committee has performed this task is a marvel of acute and accurate analysis both of the principles of the Dayabhaga and the Mitakshara as well as of the case law which has developed in course of administration of justice. This scheme of one uniform law of succession for all Hindus, may be with some modifications, should be supported by all Hindus, who desire with sincerity unity of Hindu India. Women's organisation throughout India should give explicit support to this aspect of the Bill, without confining themselves only to those parts of the Bill where new rights are given to women. For after all national welfare as a whole ought to be the concern of women as well as of men if real equality of the sexes is the ideal.

The other important aspect of the Bill is the attempt to remove disqualifications of women in the matter of inheritance merely because they are women. The warm support which this feature of the Bill has received from all women organisations in India at once shows the hollowness of the contention, advanced by some people, that Hindu women are quite satisfied with the law as it is, so happy is their lot in Hindu society by the operation of natural love and reverence in spite of legal disability. There are no reasons for these disqualifications at the present time, whatever might be the historical origin of these disqualifications. The argument that fragmentation of property would be the result of introducing more female heirs and therefore economically detrimental to the society is unfounded if sincere. On the whole no economic change worth noticing would follow and a meaningless injustice, including psychological sense of injustice would be removed. In Bengal, for instance, the majority of agriculturists are Mussalmans amongst whom the daughters inherit along with sons. Is the condition of Mussalman agriculturists of Bengal economically worse than that of the Hindu agriculturists? Again, what is really behind the opposition is the mental inertia which opposes all changes. The Hindu Law of Inheritance (Amendment) Act, 1929, introducing some females as heirs who were not so before has been passed for some years now for Hindus governed by the Mitakshara law, and the Hindu Women's Right to Property Act was passed in 1937 and amended in 1938, making the widow and the widow of a predeceased son heirs along with the son, but no evil economic effect on Hindu society is apparent. No groundless fear should stand in the way of this aspect of the Bill being passed into law. Hindu men should unhesitatingly concede the proposed rights to Hindu women, showing by deed what they profess in words, viz, their great reverence for the mothers of the community.

II

Memorandum submitted to the Joint Committee by the representatives of the women of Simla.

We, the undersigned, on behalf of Hindu women in Simla submit the following points for the consideration of the Joint Select Committee. While strongly supporting the main

principles embodied in the intestate succession Bill to heritable property namely (1) an uniform law for all Hindus in British India, (2) the removal of the sex disqualification, and (3) the abolition of the limited estate for women, we should like to submit the following points for the consideration of the Select Committee. We hope that the Committee will accept our suggestions and amend the Bill accordingly.

Our suggestions are detailed below:—

1. We feel that though this Bill seeks to remove sex disqualification it does not do so fully as there is a great inequality between the share of the son and daughter. We suggest that—

(a) A daughter should not only be a simultaneous heir but should share equally with the son in the father's property.

(b) If son's son and son's son's son are included as simultaneous heirs then the daughter's son, the daughter's daughter and the son's daughter should also be simultaneous heirs—otherwise they should all come in together after the simultaneous heirs. We are aware of the arguments against this procedure but we feel that these can be met provided an unprejudiced view is taken. We detail below the arguments against an equal distribution and the answers to these objections:—

Objection.—(i) The married daughter is not a gotraiy of her father and disintegration of property will result by giving her a share.

Answer.—(a) The daughter is as much the object of parental affection and considering all points of view it is better that a woman should inherit as a daughter than as a daughter-in-law as then she is less likely to be disinherited by a will. We have no objection if the widowed daughter-in-law too is included to the share of the predeceased son, but this should not prejudice the daughter's share. We are quite willing that the widowed daughter-in-law be given maintenance rights rather than inheritance rights in her father-in-law's property—she will come in as a daughter elsewhere.

(b) The ancient shastras do not exclude a daughter from inheritance. Sukra Smriti says that if a man divides his property during his lifetime, the daughter should be given half a share; 4th share is mentioned by Yajñavalkya, Kalyana and Manu, and they are not quite clear if it is 4th share from each son or only of all the sons. As the question of share is so undecided in Smriti authority, we feel that in view of the considerations of equality and of modern requirements, an equal share should be given.

(c) As regards disintegration of property, as partition is allowed in regard to heritable property and this is constantly taking place, there is no reason to fear that the inclusion of the daughter alone should make for disintegration. Besides, the share a daughter takes comes back via the daughter-in-law who also is the daughter in some other family. Provision can be made in regard to certain minor difficulties, e.g., in regard to the parents' dwelling house, a right of pre-emption can be given over a number of years.

Objection.—(ii) As the son is authorised to give Pinda and is involved in all expenses, he must inherit the property.

Answer.—As it is allowable for a widow to give Pinda, there is no reason why the daughter should not be included. However, if there is strong religious scruples in regard to this, all that is necessary is to provide that a certain percentage of the intestate property be set aside for whoever will offer Pinda and the remainder of the property be divided amongst the simultaneous heirs. Of course if the daughter is only given a half share then the need for this does not arise. In the same manner any debts incurred by the intestate should be paid from the property before it is distributed amongst the heirs.

2 (a) *Stridhan Rules.*—In section 13-B we are of opinion that there should be a change by which the son is included as a simultaneous heir with the daughter. The actual share that is allocated to him should be the same as the daughter receives in her father's property, i.e., if the daughter receives an equal share then the son should receive an equal share in the mother's property. If the daughter is given 4 share in the father's property then the son should be given 4 share in his mother's property.

(b) Certain changes are also necessary in the order in which Stridhan devolves on others than the immediate heirs. We are of opinion that Stridhan derived from the father should devolve on the father's heirs before the husband's heirs, and vice versa.

3. *The abolition of the limited estate for women.*—This, of course, is a major principle of the Bill with which we are in full accord. Limited estate has not only been the cause of much litigation but is foreign Hindu Law itself. Its abolition is not only a pressing reform but must meet with the approval of all those who have the interests of Hindu Law itself. We are purposely refraining from entering into the argument that Hindu women are incapable of being trusted with property such an argument has no value at all and is evidently based on the premise that Hindu women are more backward than the women of all sister communities. We are entirely unwilling to countenance such a proposition or enter into argument in regard to it.

Clause 1(5) of the Bill.

Suggested amendment to clause 1(5) of the Bill.—The proposed legislation is designed to redress a real grievance of Hindu women and has been undertaken in response to an united demand of the community specially of those of its members who recognise the justice of our cause and the pressing needs of the present conditions of the society. We, therefore, suggest that unless the Rau Committee is re-appointed immediately to carry out the work of revision and Codification of the whole of Hindu Law there is no valid reason to postpone

the operation of the proposed act to 1946, under such circumstances we request that as soon as this Bill on intestate succession is passed it should be enforced. Of course, we are strongly of opinion that the Rau Committee should be allowed to complete its work of Codification.

Conclusion.—We have put forward our views before the Joint Select Committee after much thought and deliberations. We have considered all practical difficulties and we feel that the solution at which we have arrived should meet with the approval of all. The amendments we have suggested while bringing the Bill into line with the requirements of equity and the social structure of our times has all along kept intact the fundamentals of Hindu Law itself according to the express desire of the authors of the Bill. In proposing the aforesaid amendments we have been careful in avoiding any encroachment on the main principles embodied in the Bill, for we are fully aware that the Central Legislature is already committed to the three main principles when it forwarded the Bill for the consideration of the Select Committee of both Houses.

Finally we thank the Chairman and the members of the Joint Select Committee for giving us a patient hearing. We trust that the Committee will consider the amendments we have proposed and will find it possible to incorporate them into the Bill.

Names of Associations fully supporting the main principles of the Hindu Intestate Succession Bill.

1. All India Women's Conference with 28 branches and 150 sub-branches (Membership 15,000).
2. National Council of Women.
3. Arya Mahila Samaj (Bombay).
4. Baroda Women's Association.
5. Bhagini Samaj.
6. Bombay Presidency Social Reform Association.
7. Bombay Presidency Women's Council.
8. Bombay Presidency Women's Indian Association.
9. Bombay Women's Association—Dadar Branch.
10. Bombay Women's Association—Santa Cruz Branch.
11. Cawnpore Women's Association.
12. Church of Scotland Mission (Bombay Branch).
13. Dadar Bhagini Samaj.
14. Delhi Women's Council.
15. Delhi Women's League.
16. Fort Hindu Stree Mandal (Bombay).
17. Gujar Ladies Social Club (Bombay).
18. Gujarat Hindu Stree Mandal (Bombay).
19. Jain Mahila Samaj (Bombay).
20. Kumarika & Stree Mandal (Bombay).
21. Maharane Chammatai Stree Samaj.
22. Maharashtra Mahila Mandal, Poona.
23. Mahila Samaj, Khar (Bombay).
24. Mahila Sangh, Bombay.
25. Pathare Prabhu Mahila Samaj (Bombay).
26. Prabhshi Bangla Samiti, Delhi.
27. Public Meeting of Women—Baroda.
28. Public Meeting of Women—Benares.
29. Public Meeting of Women—Calcutta.
30. Public Meeting of Women—Ootacamund.
31. Saraswati Mahila Samaj (Bombay).
32. Seva Sadan (Bombay).
33. Suryawanshi Kahatriya Mahila Samaj.
34. Women's Indian Association, Mylapore, Madras.
35. Young Women's Christian Association (Bombay).
36. Ahmednagar Mahila Mandat.
37. All-India Women's Fund Association.
38. Women's Self Defence Committee, Bengal (membership 23,000).
39. Hind Mahila Samaj, Bombay.
40. Nari Sabha, Hyderabad-Sind.
41. Hiraabad Nari Sabha, Sind.
42. Bhaiband Nari Sabha.
43. Public Meeting of Women at the Arya Samaj Hall, Simla.
44. Prabasi Bengali Women's Samiti, Simla.
45. All Bengal Womens Union.
- *Ajmer-Merwara, Andhra, Assam, Baroda, Bengal East, Bengal West, Berar, Bombay, Calcutta, C. P. North, C. P. South, Cochin, Delhi, Gujarat, Gwalior, Hyderabad Deccan, Hyderabad Sind, Indore, Jath, Karnatak, Kashmir, Kolapur, Konkan, Madras, Maharashtra, Malabar, Mysore, N. W. Frontier, Phaltan, Punjab Central, Punjab East, Sangli, Sind, Tamil Nad, Travancore, Agra, Oudh.

The majority of these Associations have suggested the amendments along the following lines for the consideration of the Select Committee—

1. To give the daughter an equal share with the son in the father's property.
2. The widowed daughter-in-law should get some share of the property which would have gone to her husband if he had been alive.

	1,000
below —————	
	10,400

Memorandum submitted to the Joint Committee by the Maharashtra Branch of the All-India Women's Conference.

Clause 3, (1) (c).—The definition of Hindu should be widened to include Converts to Hinduism. The term Hindu to be made applicable to all persons who profess to call themselves Hindus.

Clause 3.—On filing the declaration before a duly constituted authority, any person governed by the Marumakkattayam, Aliasantana or Nambudri, law of inheritance should be permitted to be governed by the new Law of Inheritance. (The Rau Bill.) Such practice will in time tend to unify law all over the land.

Clause 5.—The list of enumerated heirs is considerably simplified. In our opinion the devolution of property should be limited to agnates only. Distant heirs (cognates) to be excluded in favour of the State.

Clause 10.—In view of the proposed amendment to clause 5 clause 10 becomes redundant. But if the amendment is not agreed to, the property should devolve on institutions recognised by the State such as Universities and other educational and health institutions.

Claves 12, and 13, Strickman.—This term now includes property which is inherited by a woman in her own right. She is also made an absolute owner of her property irrespective of its source. This is a statutory recognition of her equal status in law. The devolution of property provided in 13 (b) accords preferential treatment to women and there militates against the principle of equality. The property therefore should devolve according to 13 (a) only.

Clause 18.—This recommendation will greatly safeguard a widow's position. Since both men and women will have absolute right over their property some provision as follows is perhaps necessary. "No husband or wife shall have the power to bequeath more than a stated proportion of his or her property; The remaining property should go to his or her heirs as provided by the Law of intestacy."

The Daughter.—Under the said Bill the daughter is entitled to succeed along with the son. Thus the Bill removes the distinction between the male and the female issues, excepting that the Daughter is entitled to only half the share of the son. Once the distinction between the sexes is removed so far as the capacity to succeed is concerned, there is no reason why female issues also. Thus the issues male and female of a predeceased married daughter should be allowed to take the share which their mother should have taken had she been alive at the time when succession opens.

Daughters of predeceased sons.—Similarly in the case of a predeceased son his share should go **BY REPRESENTATION** to his sons and Daughters.

Widows of Predeceased son, son's son, and son's son's son.—Under the Hindu Women's Right to Property Act, 1937, as amended by the 1938 Act, the widows of predeceased (1) son, (2) son's son, (3) son's son's son are entitled to succeed simultaneously with the sons and consideration. We would like to suggest that the existing rights should not be curtailed by the coming Bill.

Widows of Gotraja Sapindas.—According to the view taken by the Bombay High Court in *Lalubhai v. Mankuyarbai*, I. L. R. 2 Bom. 788, the widows of Gotraja Sapindas become on marriage Gotraja Sapindas, and as such they are entitled to inherit as collateral heirs, and are to be preferred to male Gotrajas in a more remote line. This recognition of widows of Sapindas as heirs in Bombay Presidency, is recognised by the Privy Council in *Lalubhai v. Mankuyarbai*, I. L. R. 7 I.A. 212. This right of a widow of a Gotraja Sapinda appears to have been taken away by the new Bill. The reason given in both the above cases is unanimity. We feel there can be no justification for depriving females of Western India, of the right, which they have been enjoying for immemorial time, only for the sake of achieving unanimity. It can as well be achieved by enabling females in the other parts of India to come in line with those in Western India. We are sure they would certainly welcome this innovation.

We ardently hope that the above suggestions will receive careful consideration before the final draft of the Bill by the Select Committee.

IV

Memorandum submitted to the Joint Committee by the Bhatia Stri Mandal, Bombay.

1. The Bill proposes to make for the first time in Hindu the daughter or daughters of a Hindu dying intestate as simultaneous heirs along with the son or sons and widow of a deceased Hindu.

2. Just as in a joint and undivided Hindu family, the Karta of the family has no right, without legal necessity, or in cases where such a Karta happens to be a father for payment of antecedent debts, to dispose off immovable property belonging to the said joint family, on that analogy, we suggest that when the daughter is given a right to inherit along with her brothers and mother (viz., the sons and widow respectively of the deceased), the interest which would devolve on the daughter, should be subject to the restriction that in respect of immovable property the daughter cannot make a Will or without legal necessity dispose of the immovable property during her lifetime and that on her death, such estate, immovable and movable or such part thereof out of the estate inherited by her from her father as remain at the time of her death, shall devolve upon her children (sons and daughters, married or unmarried, equally) and in case there are no children surviving the said deceased daughter the above estate immovable and movable shall devolve upon the brothers (including the children and/or widow, if any, of a predeceased brother living at the time of the death of the said deceased daughter).

3. The above restrictions as to the nature and character of the inheritance that comes to a daughter would ensure that the daughter does not waste or spend away, without legal necessity, the inheritance thus received by her and further that her husband and his people would not be able to bring any coercion or pressure upon the said daughter to make available her inheritance for the benefit of the husband or his people. But for the restriction suggested it would be difficult for a wife to withstand or oppose the pressure or coercion from her husband or his people, and thus marital bliss would be seriously embarrassed and disturbed.

4. It seems clear that a son, a son's son and a son's son's son inheriting as one of the simultaneous heirs would as between himself and his sons take such heritable property with all incidents applicable to joint family property. If the existence of a son is not considered as an impediment sufficient to enlarge the character of the estate received by male heirs, we do not think the suggested limitation in the case of widows or daughters aforesaid in the character of her estate is unreasonable, otherwise the Bill as it is at present framed gives larger rights to females succeeding as simultaneous heirs to those given to males.

5. Suggestion made in some quarters that any opposition to this Bill classed as conservative and that it is akin to opposition to the evil system of 'Suttee' is hardly convincing besides being irrelevant.

6. We do not approve of the exclusion of the right of a sonless son's widow to inherit as a simultaneous heir according to Deshmukh's Bill. The suggestion in some quarters that a father is likely to take care of a daughter is one which creates an apprehension about a son's widow (daughter-in-law) being excluded in a Will and her right should therefore be retained. Her character of the estate may be in the same footing as that of a widow.

7. It should be further provided that upon "Conversion" of a widow of a predeceased son or the widow of a predeceased son's predeceased son or daughter, married or unmarried, to a non-Hindu faith, her right to inherit as a simultaneous heir

with her brothers and mother (i.e., the sons and widow respectively of the deceased Hindu) shall be lost as if she is civilly dead, otherwise it would be a dangerous and unworkable proposition that when the inheritance opens if a daughter and particularly a married daughter has converted herself from the Hindu faith, still she, by legislation, be given a right to inherit along with her husband, brothers and mother. There is a strong feeling amongst us that this enlargement of rights to be given to Hindu females by recognising them as simultaneous heirs should be co-extensive with her remaining in the creed of Hinduism. The estate disabilities Act should therefore be made not to be applicable in case of the widows and daughters aforesaid inheriting as simultaneous heirs.

8. The extent of the estate, that is given to the daughter, viz., half that of a son should be reduced in the case of a married daughter to one-fourth instead of half. Whereas an unmarried daughter would require marriage expenses and her maintenance to be met, a married daughter would not need the above facilities and would at the same time be entitled as a member of her husband's family to be maintained and to inherit. It is reasonable that her share should be substantially less than that of an unmarried daughter, we suggest one fourth that of a son.

9. *Section 5: Enumerated heirs.*—The Bill proposes to postpone the mother and father of a deceased Hindu to clause 2 and wants to introduce the son's daughter and the daughter's daughter as preferential heirs being Nos. 3 and 4 in clause 1. This is very unsatisfactory and unfair. For illustration, let us imagine a case of a daughter's daughter inheriting the estate of a deceased Hindu in preference to the mother or father of the deceased. If the daughter's daughter is of the above of 18, we can easily visualise the age of the mother or father of the deceased to be not less than about 70. The proposed Bill would give the whole of the estate absolutely to the daughter's daughter who is 18 in our example and would leave the aged mother and father who would be 70 years old or over to be maintained by that daughter's daughter. This would be a most ridiculous proposition.

10. It appears that in the present law after the amendment brought about by the Deth-mukh's Act, a widow of a predeceased son or a widow of a predeceased grand-son of a deceased father inherits together with the widow of the deceased in the Bill this right of the widow has been taken away, whilst introducing the daughter as simultaneous heir. This would lead to considerable hardship in the case of such widows of predeceased son or grand son. Their right to inherit should be retained as it is at present.

11. *Re. Section 2, Sub-Clause (2), Sub-Clause (2) (b).*—This should be made by an exhaustive definition that for the purpose of determining the classification in which a female heir falls in case of inheritance on intestacy a woman is to be treated as if she was an Agnate of her father and his Agnates; otherwise considerable confusion is likely to arise; since the principles of the change of Gotra by marriage of Hindu woman would be seriously offended and we do not think legislation should or can satisfactorily or effectively bring about a change in the principles relating to religion, usage and personal law of a people. We can appreciate that it may be necessary for conciseness and to avoid considerable details which would be otherwise necessary for describing the various heirs that an artificial definition should be incorporated and in the circumstances this should be made very clear. The clause as provided does not make it clear since it merely says "a woman shall be deemed".

12. *Re. Sections 12 and 13.*—The rights over Stridhan should not be changed but should be allowed to remain as they are under the present Hindu Law. By its very nature, Stridhan property of a Hindu woman is meant for being used in case of extreme need or urgency equivalent to legal necessity and the law should not permit her to deprive herself of that benefit by giving her an absolute right to dispose of the same during her lifetime without legal necessity. So also, amongst the heirs upon whom the Stridhan of a Hindu woman should devolve, since now under the proposed Bill, the daughter is being made an heir jointly with her brother, in fairness a corresponding provision should be made that amongst the Stridhan heirs the daughter and sons of a deceased Hindu woman shall be joint heirs.

V

Memorandum supplied by Mr. R. P. Mukherjee at his appearance before the Joint Committee.

POINTS.

1. Competency of the legislature to legislate in respect of religious matters.
2. Time inopportune—world war—suspension of Constitution in most of the provinces—great economic distress—not a proper time for controversial legislation.
3. Procedure adopted not satisfactory—Committee appointed for suggesting amendments to Act XVIII of 1937 as would resolve the doubts, clarify the nature of the right of the widow, and remove any injustice that might have been done to the daughter—Committee points out at least 15 items of defect in 1937 Act—recommends drafting complete Hindu Code after survey of whole field—first instalment of proposed Code circulated to certain selected lawyers and some other persons—neither answers to original questionnaire issued by Committee, nor opinions received after first draft of the Bill made public—only material explanatory note and memoranda.

Bengal affected most by Bill—no proper publication—Calcutta Gazette 18th June, 1942 in English—no publication in Bengali or even précis prepared for general information—Bengal Government asked in July different persons and bodies to submit opinions by 15th August, 1942, on two Bills, Inheritance and Marriage—India Government fixed 15th September, 1942, as last date for Provincial Government—even now copies of the Bill not available to persons except in Gazette—time allowed for submitting opinion wholly insufficient—many individuals and bodies failed to submit opinions within time.

Even now attempt should be made to have larger Committee representing adequately regional and sectional views professing different shades of opinion to visit the more important places affected by Bill, specially Bengal—appreciation of local or sectional problems and opinion absolutely necessary—such procedure would ease public anxiety and minimise opposition to final recommendation made after due consideration of details.

4. Though Bill aims at uniformity result otherwise—one law for non-agricultural lands, another for agricultural—expectation that provinces will pass similar laws wholly improbable—quite likely particular provinces or provinces may not accept Bill as drafted for agricultural lands.

One law for Mitakshara coparcenary and special systems in vogue on the Eastern Coast as also Rule of Primogeniture allowed to continue.

Bengal treated differently from rest of India—ancestral or coparcenary property not affected by Bill, but ancestral and joint properties under Dayabag affected—same person will be governed by different laws in respect of different properties—chance of litigation or compelling persons to execute wills—highly undesirable in a country like India.

Owing to suspension of Constitution in various parts, expression of opinion in Local legislation impossible—Local Acts for agricultural lands ought not to be Governor's Acts.

5. Whether proposal in effect piecemeal legislation—Committee definitely against piecemeal legislation—recommend survey of whole field and draft, if not complete Code, at least those branches necessarily affected—delayed reform better than piecemeal legislation to be amended every few years—women's organisations ask for further revision of entire law—need for comprehensive co-ordinated solution rather than quick remedies (Report, pp. 12-13).

Some items of co-related and dependent subject matters—succession to shebaiti right governed by ordinary rule of succession—sheba-puja of family deity to be considered—law relating to debutter estate to be considered before laying down rules of Inheritance.

Law of maintenance to be settled simultaneously with laws of Inheritance.

Legitimate kinship to be decided upon along with the law of marriage—question of Anulom, Pratilom, Sagotra marriages.

Proposal for placing son whether divided, undivided or re-united in the same category cannot be considered without taking into account the law of partition and re-union.

Proposal for placing adopted sons of different classes in same category—effect of giving absolute estates to the simultaneous heirs on the law of Adoption—vesting and divesting of properties on adoption—law of inheritance and law of adoption to be considered together.

Proposal for merging Dayabag and Mitakshara in one mould and introducing new provisions affect the law of joint family—implications to be considered along with the law of joint family.

If Hindu Law to be codified—still possible to prepare a draft, if not of complete Code of co-related subjects.

6. Whether Dayabag and Mitakshara can or should be substituted by one common Code—Committee's view not abolition of school, but uniformity where possible, divergent where inevitable—Committee's ideal of uniformity not achieved, diversity still continuing—fundamental points different between Dayabag and Mitakshara, not idiosyncratic but having historical, economic and sociological background—even if it be possible to unify sub-schools under Mitakshara, Dayabag cannot be wholly merged with Mitakshara, neither necessary nor desirable—peculiar problems in Bengal—individuality developed during centuries not to be destroyed. Compare position in U. S. A.—deviation from the then British practice largest in matter of inheritance—each State determines its own laws of inheritance—result dissimilar laws in different States—Indian Constitution destined to be Federal—attempt introduction uniformity throughout India at this stage not desirable.

7. Religious basis of law should not be abolished—dangerous to introduce new rules principally on supposed grounds of justice and equity—except very small section of urban population life of every Hindu still influenced by and permeated with religious ideals and ceremonies—what appears now to be just and equitable to some bound to be modified with the change in the personnel of persons in authority—Hindu Law principally a matter for Hindus—what majority of Hindus think proper should be accepted—social and religious law not to be a pawn of politics, but to be approached from a different angle—social laws specially rules of inheritance not to be the subject-matter of constant experiments by successive legislatures.

8. Social and economic consideration not to be overlooked—entire structure of Hindu society and legal system based on a family as unit—law to be propounded to keep up that principle—legislation to be very careful, if any proposal affects the family as unit.

Without considering whether absolute estate to the family heirs supported by original texts or necessary from the present day circumstances, the economic factor to be considered.

Every Hindu in Bengal affected by Bill—at least 75 per cent. dependent on agriculture—agricultural lands now excluded from Bill, only the separate residential houses come under the Bill—according to Floud Commission Report, each family has about 4 acres of land including agricultural lands. Giving absolute estate to women mean disintegration of family property—daughter married in another family can have no possibility of residing in a portion of the father's residential house—result sale of that share to outsider, ultimately leading to partition of the small holding—very difficult for poor people to purchase daughter's share—similarly, widow being given absolute estate, chance of that share going to her father's family, if she is childless or if she has a daughter, that share going to her as Stridhan.

Position of unmarried daughter or daughter-in-law may be made definite as in the Shastras.

Position of women in India not same as in England, where large percentage remains unmarried up to comparatively older age—in England 96 per cent. at 20, 75 per cent. at 25, 43 per cent. at 30 and 27 per cent. at 35 are unmarried.

MINUTES OF DISSENT.

I am strongly of opinion that in the interest of peace and harmony of all concerned apostasy from religion should be made a disqualification for inheritance. Consequently a Hindu who abandons the Hindu religion or a female Hindu who marries a non-Hindu should be disqualified from inheritance. I, therefore, disagree with the majority who consider that apostasy should not be a ground of disqualification.

SOBHA SINGH.

I am of the opinion that as the Bill deals with the law of intestate succession, it should be complete by itself. Hindu opinion is strongly against an apostate inheriting property. Section 20 which refers to disqualifications from succeeding to any property should therefore be complete by itself by referring to apostasy as one of the disqualifications. This would necessitate repeal of the Caste Disabilities Removal Act. I disagree with the view taken by some of my colleagues that the position established by the Caste Disabilities Act should not be disturbed.

The Bill has undergone many important changes and so I am of the opinion that the Bill be sent for republication and re-circulation.

GOVIND V. DESHMUKH.

The 24th August, 1942.

I am against disintegration of Hindu Society. The traditional status and position of the Hindu family must be maintained. With that view I am against much fragmentation of the corpus of the family property. The report aims at bringing on a par with ingredients of Mohamedan Law and Indian Succession Act with those of Hindu Law but the conditions and circumstances of those societies differ vitally.

(a) I would not give a simultaneous share to a married daughter in the parental property. Under the present system she is much better provided for, by her parents and the love lost is mutually retained. Taking away a share to a different family would entail a lot of litigation and bad blood. Rau Committee agreed with this view but changed it for no substantial reasons.

(b) There may be rare cases of unmarried girls not provided for their upkeep and marriage expenses by the parental family. Thus there arises no necessity of giving her a separate share. But if that is done at all, her share should be $\frac{1}{2}$ of the son's share and not $\frac{1}{4}$.

(c) I am in favour of some provision being made for the widow of pre-deceased son provided she remains chaste. Her share should be $\frac{1}{4}$ of a son's share and not $\frac{1}{8}$.

(d) I am not in favour of giving a share to a divided son, unless the father has so desired.

(e) If all these fragmentations are allowed, I am in favour of giving $\frac{1}{8}$ share of a son, to the father and mother, respectively.

(f) I object to the Act being applied to agricultural land in the centrally administered areas. That will be against the scope of the Bill and the clear provision in clause 3 proviso (i) with which the Bill was committed to the Select Committee, especially when the views of those areas are not obtained on this point.

(g) I would not include the property acquired by a woman by inheritance or at a partition of the family property or in lieu of maintenance or purchased with her husband's funds, as Stridhana. That would amount to making no difference between ordinary heritable property and Stridhana. If this is done the Stridhana property should devolve as much upon the son as his sister and not half as much as his sister.

(h) I don't agree with the view that the question of option being given to the male heir to purchase immoveable property inherited along with the male heir on her deciding to dispose of it, should be left out from finding its place in this Bill; when the report concedes that the legal option should be given.

(i) In my opinion time has not yet arrived to deviate from the reasoned traditional impropriety, of granting to women an absolute estate. If the western wave of the women wishing to stand on their own is not reasonably obstructed in India, for preserving family system, time may arrive to yield to this demand. If, however, this provision is made law, it should be subject to a proviso that the estate will be absolute only when there is no son, son's son or a son of a son's son with the object of keeping the nucleus of the family property intact.

(j) Apostasy should be made a disqualification to inheritance, and the Caste Disabilities Removal Act, 1850, should be repealed by this Bill. Apostasy in Mohamadan Shariat Law is also a disqualification and that community should have no objection in joining hands to repeal the aforesaid Act by providing its repeal in the schedule attached to the Bill repealing other enactments.

(k) The Bill has been drastically changed and in view of the several important points having been dealt with by the Select Committee, the Bill must be republished and circulated to elicit public opinion.

LALCHAND NAVALRAI.

The 22nd August, 1943.

I regret I cannot sign along with those who agree to sign the report of the Joint Committee on the "amendment and codification of the Hindu Law of Intestate Succession", as it has emanated from the Joint Select Committee. I regret further that I cannot join with those who want to send the report of the same to be republished, which means delaying tactics to undo the work. Having disagreement with both I have to submit my own notes on the matter separately.

Referring to the first page of the report I very reluctantly have to submit my differences. I do not think that Mr. Joshi had rendered the Joint Committee any appreciable help as an adviser. Our worthy Chairman might have chosen him to be a witness instead of an adviser. Sir B. L. Mitter, the Advocate General, should have been elected as an adviser instead of a witness or somebody who was well versed in Vedic and Sanskrit Sastrie Texts. It must be said to the credit of Mr. Joshi that he confessed that he was not a Sanskrit Scholar. Our Chairman was quite competent for the purpose of the Bill. Pandit Desh Pande of Benares University could not help the committee much because he did not give his own opinion but gave interpretation according to his light which did not convince me. He would not accept any interpretation by others so long he was not closetted with him. So his evidence was of no consequence.

Mr. Ramaprosad Mukherjee represented the Baugiya Brahman Sabha, whose idea or opinion is, that whatever is in Sanskrit Text is absolutely unchangeable under any circumstances; they are eternal. Such mentality did not appeal to me as I feel that nothing is unchangeable: Change is the order of nature. But I must confess, that Mr. Ramaprosad Mukherjee's interpretation of the text, i.e., daughters' inheritance was helpful. He said that unmarried daughters were entitled to inherit in lieu of dowry, $\frac{1}{2}$ of brothers' share and if any balance remained, she was entitled to have it after her marriage from her brother. This helped the Committee. Sir B. L. Mitter endorsed that. Sir B. L. Mitter had insisted on giving absolute right to whatever women were entitled to inherit and he insisted very strongly that this Bill should be passed into an Act only when all the analogous parts of Hindu Law, viz., marriage, endowment, adoption, and maintenance would be gone into by fresh committee like Rau Committee and Bills on every subject should be ready for Joint Select Committee. In his opinion codification of Hindu Law could not be complete without this. I fully endorse that. Further the agricultural laws being excluded from the present Bill it remains incomplete.

I do not place much stress on the Vedic texts or Sanskrit texts as I feel that very few Pandits are acquainted with Vedic grammar and real Sanskrit language. Had there been such Pandits there would never have been so varied interpretations. A language has a meaning and if any language gives room for different and varied interpretations, then either the language is defective or the interpretations are wrong and it is difficult to select the right one. Meaning cannot be settled by votes. But we have been following certain interpretations by which we have been keeping women deprived of rights of inheritance. This has therefore become Customary Law so to say. It has become a part and parcel with the Hindu Society that "Women cannot and shall not inherit". This is absolutely unreasonable. It might have been necessary at certain stage but it is harmful at this stage. This controversy regarding the Vedic Sutras has no charm at this stage. Hindu Law during British Regime has undergone serious change and if codification is needed further changes conducive to the weal of the Society must be admitted. Sentiment devoid of reason is not worth anything.

Regarding the principles of the Bill, the Joint Select Committee agreed or else there could not have been a Joint Select Committee at all.

We desire that Hindu Law should be codified after proper amendments and this should be done neither in a hurry nor in procrastinating way. It should be carried on with circumspection within reasonable time; 1946 is a reasonable suggestion.

Regarding removal of sex-qualification regarding women's inheritance, I submit, there was no disqualification at all as it was proved by reference to Sutrakars like Apastambha (II. 14—16—20), Smritikars like Vishnu (XVIII. 3435), Manu (IX. 186), Yajñavalkya (II. 115), etc., when there were no sons, daughters inherited. Stridhan also led to prove the same.

But I agree that position of women in Hindu Society required improvement and they should be given rights to inherit like male descendants. I fully endorse giving absolute right to all alike who inherit property under Hindu Law. In case of intestate succession—a daughter, daughter-in-law (widow) and widow wife should have right to inherit.

Regarding codification of Hindu Law, I beg to submit that there are four schools of Hindu Law (1) The Mitakshara (2) The Dayabhaga (3) The Bombay School and (4) The South Indian Hindu Law. For consolidation of Hindus all over India—the Hindu Law prevailing in the Hindu States should also be included within the purview of the Bill. But this Bill has taken into consideration—the Mitakshara and the Dayabhaga School only. But even in this matter there has been discrimination. The ancestral property under Mitakshara School has been excluded, while it has been taken in the Dayabhaga School. So this sort of half-hearted codification of Hindu Law will not achieve its end. Effort at consolidation is destined to fail if all schools of Hindu Law are not brought under the scope of the Bill. Consolidation signifies inclusion of all Schools into one complete Code.

This Bill was an outcome of the findings of the Rau Committee which was set up to codify Hindu Law, as piecemeal amendments were not desirable. If codification is not possible on the lines suggested above piecemeal amending Bills should be revived and passed into Acts after proper discussion in the two Houses of Legislature.

Regarding constitution of the Joint Select Committee, some members objected to the Moslem and Parsi members taking part in the deliberations during the Committee stage. They have every justification in taking part and our Chairman who was a Moslem could not be replaced by a Hindu who might deal with the matter in a better spirit. He was quite competent and our Moslem and Parsi colleagues were quite competent. But I did not like our Chairman to break the convention. The convention is that Moslem or non-Hindu should not vote on matters relating to Hindu Law and Hindus and non-Moslems should not vote on matters of Moslem Law. In this Committee that convention has been broken. In my opinion this procedure has vitiated the Bill as it has emanated.

CLAUSES.

Clause 1.—Of the report page 3 "Where the word 'Hindu' was used in the Bill in clauses 2 (2) (b) and 3, we have substituted the expression 'Persons to whom this Act applies' " is not definite—it is defective—to this might be added *vis.*, the Buddhists, the Jains, the Sikhs, the Brahmos, the Arya Samajists, the Scheduled Class, those Moslems to whom this Act applies".

Clause 2.—Sub-clause (1) Clause (d). I have pointed out the defect in my preliminary observation. The Mitakshara ancestral property has been excluded.

Regarding Stridhan I have no disagreement. I believe the arrangements made in the way of amendment are quite reasonable and practicable. It leaves no room for change.

Clause 5.—Regarding simultaneous heirs, whatever had been done by the Committee was done after deliberation. Of course they were carried by majority not unanimously. The Committee thought that this was an important change. I do not agree, the changes were not only desirable but were indispensable for the good of Hindu society. The charge of fragmentation does not stand at all.

Clause 17 should be left untouched and when marriage law will be discussed this clause could then be taken up or else it remains undecided. Valid marriage should be defined before clause 17 is taken up.

In clause 20, no decision having arrived at—is left open—therefore it is incomplete. Regarding apostasy and inheritance by remarried females—opinions are sharply divided.

Regarding the opinions placed before the Committee members—it must be confessed that they are neither sufficiently large in number, nor very clear. More clear and numerous opinion could have been more helpful.

Now that by majority it has been decided that the Bill as has emanated from the Joint Select Committee be republished, I feel inclined to observe that simply by republication matters would not improve as people generally are indifferent. I would suggest that the Joint Select Committee be turned into a Commission of enquiry as has been done in the matter of the "Sarda Bill". While this Commission would be engaged in enquiries in the Provinces, a fresh Rau Committee or a Committee like the Rau Committee could be set up to go over the other Departments of Hindu Law and that the whole of the Bill might be examined together and might be passed into an Act by April 1946. This procedure could sufficiently set at rest all controversies regarding adequate publicity and discussion. Simple republication would be useless.

I believe the Hon'ble the Law Member, the Leader of the House and the Hon'ble the Advocate General would sit together to give these suggestions a shape immediately after the 15th October and continue the work till the whole of Hindu Law would be ready for codification.

AMARENDRA NATH CHATTOPADHYAYA.

DELHI:

The 31st August, 1943.

I regret I cannot accept the view of some of the Hon'ble Members of the Committee that there ought to be no codification of the Hindu Law. I think a machinery should be set up which should examine the Hindu Law in all its branches and come to definite conclusions. For this purpose a committee consisting of the best Hindu Lawyers in India who have studied the Hindu Law from the Vedic and the Shastric point of view should be constituted. This committee may also include on its personnel some reformers who want to modernise the Hindu Law but they must also be those who have made deep study of the Hindu Law. Besides I am of the opinion that this committee be not set up immediately until the Legislature in Provinces begin to function; and they also agree to the codification of the Hindu Law. This is very necessary because under the Government of India Act of 1935, it is the Provincial

Legislature who have the power to legislate about the agricultural land. I know the task is stupendous one but it has to be taken up sooner or later. My object in having the Hindu Law codified is to guide the courts in British India to administer and to interpret the Hindu Law uniformly and properly.

The Bill before us seeks to give legal effect to the following three principles:—

I. Abolition of the several systems of succession and a provision for a common law of intestate succession for all Hindus in British India.

II. Removal of sex disqualification so far as inheritance of the property of intestate is concerned.

III. Abolition of Hindu woman's limited interest and giving absolute rights of property to the women over all inherited estate.

For the present I do not agree with first principle noted above. This will be a piece-meal legislation, and instead of doing good to the Hindu society, it will do harm by creating bad blood by a legislation of this nature only.

As regards the second point, namely, the removal of sex disqualification no Vedic or Shastric authority has been cited either by the Rau Committee or by the supporters of this Bill to carry conviction that the women can become simultaneous heirs in the matter of inheritance to the property. On the other hand some Vedic and Shastric authorities were cited to us by two witnesses before the Committee. But these authorities were ignored by the supporters of the Bill.

It is noteworthy that even the British Courts while administering the Hindu Law, during the last one and a half century, in a liberal manner, dared not interpret it without the Vedic or Shastric sanctions. If therefore the reformers desire to effect a change in the fundamentals of the Hindu Law they should openly state that they want to bring about a change whether there is any Vedic or Shastric sanction for such a change or not.

Moreover when a female is married in another family she becomes a 'Gotraja' of her husband's family and loses all her interests in her father's family.

I therefore do not agree with the view of some of my colleagues that the females should be simultaneous heirs with the males; because it is the male heirs on whom the religious and secular responsibility of the maintenance of the family traditions devolve.

As regards the third point, namely, the removal of ban on the widows inheriting absolute interest in the estate, I have to say, that it is a logical corollary of the second principle mentioned above. In my opinion a female is not entitled to an absolute interest in an inherited estate, as she has no liability or responsibility to discharge. According to shastras a male is entitled to perform the 'Shradha' ceremony of the deceased to the exclusion of the female and so it naturally follows that the male heirs should succeed to the property of a deceased excluding the female heirs. The female heirs are entitled to maintenance according to the status of the family and as such they can be given some share in the property of the deceased with limited interest, which interest will, on her death, devolve on the heirs of the deceased.

I therefore hold the view that for the reasons stated above, a female should have only a limited interest in the property of the deceased.

Before I examine some of the important clauses of the Bill, I feel compelled to make a general observation.

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 recognised that law of succession is closely inter-related 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

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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.

EXAMINATION OF CLAUSES.

Definitions.—*Stridhan*: I do not agree with the definition of '*Stridhan*' as put in the Bill by the Joint Committee. '*Stridhan*' means ornaments, clothes, utensils, and other gifts given to female at the time of her marriage or after marriage, by parents and other near relatives. Under this Bill it includes property acquired by women by inheritance or otherwise from a male or a female. In my opinion '*Stridhan*' should not include property inherited by females from male heirs.

Clause 5.—*Simultaneous heirs*: I have already stated above that the females cannot be simultaneous heirs with males and as such the daughter should not be a simultaneous heir with the son in inheriting the property of an intestate. But as the Select Committee decided to make daughter a simultaneous heir with the son, I was induced to agree to the view that the parents and widowed daughter-in-law who are dependent on the intestate should also be simultaneous heirs. In my opinion adequate provision should be made for the maintenance of the above-mentioned persons which will be legally binding on the intestate's heirs. Provision should also be made for the maintenance and marriage of the unmarried daughters.

Heirs Class I.—If the right to maintenance has to be safeguarded as has been done in the case of the widow and the widowed daughter-in-law in Act XVIII of 1937 as amended by Act XI of 1938 or the marriage and education of unmarried girls is to be similarly provided for, all this may be done by a careful adjustment between provision and maintenance on the one side and inheritance on the other. Yet in no case the family property should be allowed to disintegrate into bits. Women therefore should enjoy limited life interest in property inherited in this way.

Clause 13.—*'Stridhan Property'*.—I have indicated above that in my opinion '*Stridhan*' should not include property inherited whether from the father's side or the husband's side. No confusion arises if such inherited property involves woman's limited estate, ultimately to come to the intestate's next male heir.

Succession to a woman's '*Stridhan*' would vary as the intestate was married or unmarried, and according as she was married in an approved or unapproved form. A maiden's property, according to all schools, passes in the following order and the same be continued:—

1. Uterine brother;
2. Mother;
3. Father;
4. Father's heirs in propinquity;
5. Kinsmen of the deceased herself, that is, her mother's heirs in order of propinquity.

Other kinds of '*Stridhan*' should pass as follows:—

1. Unmarried daughter;
2. Married daughter who is unprovided for;
3. Married daughter who is provided for and son simultaneously;
4. Daughter's son or daughter's daughter and son's son simultaneously;
5. Husband.

Clause 20.—*Apostasy*: It is essential that the abandonment of religion and conversion from Hindu religion to another religion must be made a ground for disqualification.

As the Joint Committee has made important changes and decided to republish and circulate the Bill for eliciting public opinion, I do not desire to dwell upon other clauses of the Bill.

Before I close, I regret, I have to note about the irregularity of the proceedings of the Joint Select Committee. One member of the Rau Committee who was with us as an adviser actually took part in the deliberations as a full fledged member of the Committee except that he did not vote.

Secondly the convention that has been so far observed in the Central Legislature, that the members of the other community should not take sides in the measures, relating to the personal law of their sister community, was broken in the deliberations of the Committee by the Muslim members.

V. V. KALIKAR.

New DELHI;
The 1st September, 1943.

I strongly protest against any social legislation being enacted in these abnormal times and specially when the majority of the Hindu elected members are not attending the Central Assembly. It does not lie in the mouth of persons whose very existence in the Legislature depend on the pleasure of the Bureaucracy to say that they represent the Congress point of view and Congress Party would have supported them had that Party been present in the Assembly. And even if there is any substance in their claim, what will there be if they wait for that Party to come in and do not pass a legislation which affects the Hindus and their social and economic structure most vitally in such unseemly hurry. Besides at the present moment the whole attention of the people as well as the Government should be to ameliorate the food situation in the country and to alleviate the miseries and sufferings of the people. The Bill affects the Bengali Hindus more than anybody else and public opinion in Bengal has condemned the proposed legislation in no uncertain terms. The condemnation would have been stronger if the Bill was circulated and if the people of Bengal were not living in close proximity to the war zone and also faced with the severest famine since the days of the East India Company. These factors alone are strong and sufficient to deter the Government from proceeding with a social legislation which affects the Hindus not only of the present time but the future generations to come. The Bengal Legislative Council has very appropriately passed a resolution that the consideration of the Bill should be postponed till after the war. One of the aims of the Bill is said to be to embody a Common Law of Intestate Succession for all Hindus in British India. That aim remains unfulfilled as the ancestral properties of persons governed by the Mitakshara school remain untouched by the Bill and only the separate property (which is practically negligible) of a person governed by the said school is included in it. The properties of persons governed by the Marumakkattayam, Aliyasantar or Nambudri Law of inheritance are also excluded. Then again, the agricultural properties in Governors' Provinces have also been left out for obvious reasons as they are not within the jurisdiction of the Central Legislature. And it is almost certain as can be ascertained from the opinions received, that many of the Provinces will refuse to pass any complementary legislation in respect of the agricultural properties.

Many of the clauses in the Bill have been passed in the Joint Committee through the help of non-Hindu votes. Would the Muslims like a Bill affecting their community to be passed with the help of non-Muslim votes?

The proceedings of the Committee have been wholly irregular as Mr. Joshi a member of the Rau Committee took part in the deliberations of the Joint Committee throughout and was allowed to examine and cross-examine all the witnesses who appeared before the Committee in spite of protests from some of us. There were other outsiders also who were present during the Committee meetings on some days or other.

It is undesirable that a social legislation affecting one particular community should be in charge of a member not belonging to that community, who, however well intentioned he may be, is likely to be misinterpreted and misunderstood by the community such affected.

It is very much to be regretted that copies of deposition of witnesses before the Committee were not made available to members of the Committee and no value has been attached to the evidence adduced.

The Honourable mover of the Bill made a statement in the Council of State on the 1st of April, 1943, that he will withdraw the Bill if any *Smriti* text can be shown against the principles of the Bill. Mr. Ramaprasad Mukherjee, an

eminent Advocate of the Calcutta High Court, who gave evidence before the Committee, cited not one but three *Śruti* texts against the principles laid down in the Bill but that had no effect with the Honourable mover. 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.

The Hindu public opinion has not at all been consulted by the Rau Committee or by the Government and if they do it they will find that opposition to the proposed legislation is of much greater magnitude than they ever imagined.

I am of opinion that the Bill should be re-published and circulated for eliciting public opinion thereon. If the Bill is taken into consideration in spite of what I have stated above, I suggest the following amendments to the different clauses of the Bill.

Clause 1 sub-clause (4).—It should be so amended that this Act shall not come into force before the whole of the Hindu Law is codified and enacted.

Clause 2 Sub-clause (d) and the Illustration thereunder.—It should be so amended as to exclude the Dayabhaga School from it.

Clause 2 sub-clause (h).—It should be so amended that property acquired by a woman by inheritance or devise (except an absolute devise) or at a partition is excluded from the definition of "Stridhana".

Clause 3.—It should be amended and the word "Dayabhaga" be added before the word "Marumakkattayam" in the third line of the said clause.

Clause 5, Class I (1).—The word "unmarried" be added before the word "daughter" in the first line.

Clause 5, Class I (4).—As daughter's daughter is not considered at present an heir under Hindu Law, she should be removed from here and placed in Class II after brother's son's son.

Clause 7, sub-clause (d).—It should be deleted and the sentence "Each of the Intestate's unmarried daughter shall take one-fourth share to that of a son" be substituted in its place and the Illustrations be amended accordingly.

Clause 12.—A woman should have a limited interest over properties inherited by her. It should be so specially in the case of a childless widow as otherwise she is likely to take away the property to her father's family or if she chooses to re-marry to her newly married husband's family.

Clause 13, Sub-clause (b).—(8) and (9) should interchange places.

Clause 18.—Paragraph 2 beginning with the word "Provided" be deleted.

Clause 20.—Apostasy should be made a disqualification and the clause should be amended accordingly.

The Schedule.—It should be amended and "The Caste Disabilities Removal Act" of 1850 be included herein.

SUSIL KUMAR ROY CHOWDHURY.

There are many provisions of the Bill which I can not support. But as the Joint Committee has recommended republication and recirculation of the Bill, no useful purpose would be served by a detailed examination and criticism at this stage. Suffice it to say that I am opposed to some of the proposed amendments upon the general principles governing the Hindu Law of Succession as also upon economic grounds.

A. C. DATTA.

In connection with clause 5, the use of the word "important" to qualify the changes that have been made in regard to simultaneous heirs is not, in our opinion, justified. We dissent from the view that the changes made in Clause 5 of the Bill or for the matter of that in any other clause are of such an important or fundamental character as to justify the recommendation that the Bill should be republished or recirculated. The main principles of the Bill, as we understand them, are (1) that there should be a uniform code of succession

for all Hindus in British India, (2) the removal of the sex-disqualification for inheritance, and (3) the abolition of the limited estate for women; and we would point out that none of these principles have been abrogated or modified in the Bill. In Clause 5, to the simultaneous heirs as originally contemplated by the Bill as referred to, we have added Parent if dependant upon the deceased and the widowed daughter-in-law. The inclusion of the widowed daughter-in-law was left an open question by the Rau Committee. It was considered by them and supported by many persons who were consulted by them. Some of the organisations and individuals who sent their opinions had strongly urged that Parent, if dependant upon the deceased should be moved up from class (ii) to class (i), in Clause 5, and thus made simultaneous heirs. The addition of these heirs cannot be described as constituting important changes. We are therefore strongly opposed to the republication motion. We may mention that the addition of the Son as an heir to the Stridhan of the Mother in Clause 13 is not, in our opinion, a change which radically alters the Bill. It is a necessary corollary to the principle that sex-disqualification should disappear.

P. N. SAPRU.

H. N. KUNZRU.

RENUKA RAY (MRS.).

S. N. MAHTHA.

G. B. NAIRANG.

H. IMAM.

We dissent from the opinion expressed in the Report that 'the Hindu Law Committee should be resuscitated to encourage the formulation and enactment of the remaining parts of the projected Code' as the experience of the last Hindu Law Committee (known as the Rau Committee) does not justify such resuscitation at all. The Rau Committee produced only two Bills, the Hindu Intestate Succession Bill and the Hindu Marriage Bill. Both these Bills in the name of codification and uniformity seek to make revolutionary changes in the very principles of the social order of the Hindus in utter disregard of their age-long traditions. Their proposals if accepted would lead to the disruption of Hindu families and to the disintegration of their family property without any compensating advantages. We hold that codification will make Hindu Law rigid, stereotyped and stagnant. Its process of ever absorbing new entrants into the Hindu fold will be stopped. The picture that Rau Committee has drawn of codified Hindu Law as simple, easily intelligible and capable of being translated into vernaculars for the edification of all Hindus has no relation to realities. Perhaps the Bill under our consideration is the most effective repudiation of the theory of a simple Code.

To draft a simple code of Hindu Law is an almost impossible task. No reason has been advanced why the Government has changed the stand it took up when the question of codification of Hindu Law was under debate in the Legislative Assembly in 1921. The Rau Committee can be no substitute for the machinery that the Government then thought necessary for the carrying out of the stupendous task. It is not only more stupendous to-day in the midst of the most gigantic struggle in world's history, but the Central Legislature now has not got the powers which it had in 1921. It is necessary now to go to the Provincial Legislatures (many of which are not even functioning to-day) to get supplementary legislation passed with regard to 'Agricultural Land' which constitutes the bulk of the heritable property in the country. It is putting the cart before the horse to ask the Central Legislature to enact laws without being assured of the support of Provincial Legislatures beforehand. And if such support be forthcoming from the Provinces action should first be taken under Section 103 of the Constitution Act, under which the Central Legislature may be given full powers to enact complete laws for all kinds of properties in British India, both agricultural and non-agricultural.

The Bill before us seeks to give legal effect to the following three principles:—

- (1) Abolition of the 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 of property to women over all inherited estate.

I. We are unable to accept any one of the above principles. The first one, so far as simplicity is concerned, is impossible of achievement as just indicated. Different schools of law are in vogue in different parts of India. Differences like those between Mitakshara and Dayabhag schools are sometimes fundamental. They have historical, economic and sociological back-ground. They cannot wholly be merged into one another. Such merger, moreover, is neither necessary nor desirable. Peculiar problems in Bengal necessitated the Dayabhag school of law. It has not been accepted in other parts of India in course of Centuries. Not could Mitakshara with its complete sway in most other parts of India could encroach upon Bengal. Both the Schools have developed their individuality sometimes exclusive of each other. It is not easy to achieve any organic synthesis, which may be acceptable to the Hindus all over India. Any mechanical blending may be disastrous.

The proposed law will mostly affect Bengal, Assam and certain portions of Orissa governed by the Dayabhag school of law. The other Provinces where the Mitakshara law prevails will not be so much affected. The separate property which is included in this Bill of a person governed by the Mitakshara law is practically negligible. The ancestral properties are not affected as they pass by survivorship as distinct from inheritance.

On a reference by the Governor General of India the Federal Court has held that 'succession' in the list III of the 7th Schedule of the Constitution Act, includes survivorship. This Bill excludes from its operation coparcenary properties governed by the Mitakshara law. After their exclusion it is absurd to say that the Bill gives a common Law of Succession to the whole of British India.

The proposed provisions, therefore, will not achieve uniformity inspite of the radical changes it will introduce. This Bill completely justifies the opinion expressed by John Mayne on the question. That great jurist regarded codification of Hindu Law as a miracle. He 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, Rameswaram, of Amritsar and of 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." With unconscious humour the Rau Committee quotes this very passage in its report. (Page 12.)

II. As to the second question, viz., the so-called removal of sex disqualification our dissent is most emphatic. That women are considered of less importance than men in the matter of inheritance in Hindu society is not sex disqualification, as such. But apart from this big sociological question let us consider Shastric authorities on the subject. Our colleagues also ostensibly rely on them, though we have not been shown any authoritative text from the Shastras which supports inheritance by women in the way provided for in the bill. Mr. Joshi, one of the members of the Rau Committee, sat on the Joint Committee, acted as if he were a member of it without a vote and was allowed to examine and cross-examine all the witnesses who gave evidence before the Committee (we do not know under what rules he did so inspite of protests from some members of the Joint Committee). He also could not help us in the matter. He could not translate and explain Shastric texts even in non-Vedic Sanskrit when requested to do so. It is indeed very daring to assert as has been done in the report that 'It must be premised, and all the scholars agree, that most of the vast Vedic literature has been lost—little remain in it of 'positive law'.

We do not understand how the absence of authority, for whatever reason it may be, can itself be an authority. The authority of many relevant texts has been ignored with this remark—"Reliance is placed upon other passages also which have not been referred to by any law-giver. If reference to it by a law-giver is to be the criterion of a passage being an authority our colleagues will find themselves in a quandary. For both this report and the report of the Rau Committee almost entirely depend on Quotations of Jaimini and Savarswami, of which no mention has ever been made by any law-giver.

We are constrained to say that the interpretation put on several texts by the Rau Committee and our colleagues is not correct. The interpretation of Manu (IX. 130) given in Rau Committee's Report (page 15) is obviously misleading, for it refers to an appointed daughter, who is brotherless, and who thus takes the place of a son and is by her own son meant to perpetuate her father's line. Dr. Dwarkanath Mitter, another member of the Rau Committee, has quoted Jaimini and Savarswami in his book 'Position of women in Hindu Law'. One fails to find reference to inheritance in all that he quotes. He evidently twists interpretation of the texts to suit his preconceived theory propounded in his thesis. The Rau Committee also failed to take into consideration that simultaneous heirship of the daughter with the son is expressly forbidden by the Vedas (Rigveda Samhita III. 81, 2 and Nirukta III, 6). It is regrettable that neither Professor Deshpande, with his erudite knowledge of Dharmashastra both Vedic and non-Vedic nor Mr. Ramaprasad Mukherjee, the well known advocate, and the robust representative of the Brahman Saha, both of whom placed before the Joint Committee irrefutable Shastric Texts, including Texts from Shrutis, to prove conclusively that females cannot inherit in the presence of males, could make any impression on our colleagues, i.e., the majority in our Committee including amongst them the four non-Hindu members.

In the opinion of our colleagues, to give the right of inheritance to women is advancement as it is progress towards removal of sex disqualification. But advancement is a relative term. They forget that 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 responsibility. If she gets any money or property she gets it only for enjoyment. There cannot be any rights without relative duties and responsibilities. Even Rau Committee in their Report (page 15) state that "under Hindu Law the son is under a legal obligation to maintain, amongst others, his aged parents, while a daughter is not." But it will be seen that under the provisions of this Bill, a daughter will inherit from her father, from her father-in-law and from her husband without any responsibility but to use and enjoy the property herself as she likes; the 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 is really removal of sex disqualification with vengeance! Apart from Shastric Injunctions, equity and justice demand that the daughter should not be simultaneous heir with the son.

Another very important consideration in this connection should not be lost sight of. The paramount consideration in any change of law of succession should be the general desire of the property owners about the way in which their property should be devolved after their death. The law of succession was changed in England by the law of Property Act, 1925. The Government Spokesmen, Sir Leslie Scott, the then Solicitor General, emphasised that the change in the law was in conformity with the general desire of the property owners as evidenced by the examining of Wills in the Summerset House. The report here gives the list of women's associations who desire the change, but makes no references whatsoever to the general desire of the property owners. The beneficiaries are heard and are being assisted in dividing the booty. But there is no concern about those whose property is to be so mercilessly divided. This is improper method of approach in investigation and the conclusion cannot be just.

III. The third principle, i.e., removal of widow's limited estate is but a corollary from the second one. The widow should not get absolute estate in the property she inherits. It must be remembered that the woman gets the limited estate in lieu of maintenance. It is not inheritance as such. The Rau Committee failed to distinguish between women holding or owning property and women inheriting property. Jaimini and Apastamba speak of women owning and possessing property. But Baudhayan speaks of inheriting it. As a woman has no liability or responsibility to discharge, all that she wants the property for is to maintain herself and so she generally holds it in trust for the next male heir. Property may be allotted even for her upbringing or marriage, but not absolutely. Even where the daughter inherits in the absence of a son, in principle she holds it in trust for her own son.

Reference may be made here to the religious aspect of inheritance. Only those who can offer spiritual benefit to the deceased are entitled to inheritance and as women, even daughters, are not capable of doing so, they cannot claim inheritance and absolute right to property.

Apostasy should be a disqualification to succeed.

In our opinion the Hindu Women's right to property Acts of 1937 and 1939 should be repealed as even according to the Rau Committee these Acts have proved to be totally unworkable in practice and it has not been easy to interpose the widowed daughter-in-law in the list of heirs. We strongly believe that if interposition of one widowed daughter-in-law has caused so much dislocation in the social order and the scheme of inheritance, this Bill which seeks to make simultaneous heirs of so many relatives including even the daughter in presence of the son and radically changes the order of inheritance is bound to create innumerable difficulties in working.

We regret, we have not been favoured with replies received to the questionnaire and letters issued by the Rau Committee. These papers would have been of great help to us.

Before we examine the Bill clause by clause we feel compelled to make one more general observation. 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 recognised that the law of succession is closely interrelated to the law of marriage. The prohibited degrees in marriage recognised 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 Muhammedan 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, can not 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.

A woman when she marries passes completely out of her father's family and becomes completely merged in her husband's family. Our law givers who had studied the science of sociology perhaps a little better than our ardent reformers, dictated by the conferences of society ladies, recognised that one of the most potent causes of marital unhappiness was retention of the wife's interest in her father's family. No interest can be of more potent influence than the interest of property. And therefore they provided that a married woman should have, generally speaking, no interest in the paternal property. The Rau Committee

have signally failed to view the Hindu Law and Hindu society as a scientific whole and we feel that they are entitled to no commendation in that regard.

Definition.—We do not agree with the definition of 'Stridhan' which has been made far too wide. "Stridhan" originally means ornaments, clothes, utensils and gifts given at the time of marriage by parents and other near relations. 'Stridhan' under this Bill means all property acquired by woman by inheritance or otherwise. 'Stridhan' should not include property inherited from males.

Clause 5.—Simultaneous Heirs.—We are emphatically of the opinion that daughter should not be a simultaneous heir and that the estate inherited by females should be limited Hindu Women's estate and not absolute estate. We have given our reasons in detail above. Parents should not be included as simultaneous heirs. But adequate provisions legally binding on the intestate's heirs should be made for the maintenance of all whom the intestate was morally bound to maintain, i.e., the widow or widows, the dependant parents, the widowed daughter-in-law, the widowed grand daughter-in-law, the widowed great grand daughter-in-law. The maintenance and marriage of unmarried daughters, fatherless grand daughters, and fatherless and grand fatherless great grand daughters, of the intestate should likewise be provided for.

Heirs Class I.—If the right to maintenance is to be turned into share as has been done in case of the widow and the widowed daughter-in-law in Act XVIII of 1937, as amended by Act XI of 1938, or the marriage and education of unmarried girls is to be similarly provided for, all this may be done by a careful adjustment between provision and maintenance on the one side and inheritance on the other. Yet in no case the family property should be allowed to disintegrate into bits. Women therefore, should enjoy limited life interest in property inherited in this way. The unmarried daughter may get a fourth of her each brother's share as a guarantee, so to say, against her marriage maintenance and educational expenses. In this arrangement for the unmarried daughter our witnesses were unanimous as was also the Committee.

Daughter's daughter is not an heir at all and is considered a distant relation. She should not come under Class I but in Class II after brother's son's son.

Clause 13.—Stridhan Property.—We have indicated above that in our opinion 'Stridhan' should not include property inherited from males whether from the father's side or from the husband's side. No confusion arises if such inherited property involves women's limited estate, ultimately to come to the intestate's next male heir.

Barring this, the intestate's 'Stridhan' should be inherited in the following order, viz.:—

(1) daughter, (2) son, (3) husband, (4) daughter's son and daughter's daughter, (5) son's son and son's daughter.

Clause 20.—As we have already said, it is essential that the abandonment of the Hindu religion and conversion in to another religion must be made a ground for disqualification from inheritance.

As the Joint Committee has decided that the Bill should be recirculated, we do not desire to dwell upon other clauses of the Bill.

Lastly we note with extreme regret the flagrant breach in the case of this Bill of the salutary convention that in consideration of social measures affecting one community only, members belonging to other communities should not take part. But in this case the non-Hindu members taken into the Committee took part in deliberations on controversial questions and influenced the decisions of the Committee, and that in almost all cases against the wishes of the majority of the Hindu members.

NILAKANTHA DAS.
BAIJNATH BAJORIA.

We are of opinion that simultaneously with a change in the Law of Intestate Succession as proposed by us in this Bill, Government should take steps to repeal Act XXI of 1850 in so far as it affects succession to the property of a Hindu intestate, so that renunciation of the Hindu religion may be a bar to inheritance under the Hindu Law. There is a strong feeling in the Hindu community which we share that apostasy, i.e., change of religion should be a disqualification for inheritance, in the case of a Hindu. Whether the Act of 1850 should be dealt with separately or the change that we desire should be effected by the insertion of a suitable provision in the Hindu Code, Part I (Intestate Succession) Bill is a matter which we leave to Government to decide. All that we urge is that a change of religion should in future disqualify an heir in the absence of an express will to the contrary from inheriting property under the Hindu Law, but conversion to sects or creeds of Hindu origin such as Buddhism, Jainism, Sikhism, the Brahmo Samaj, the Prarthana Samaj or the Arya Samaj should not be regarded as a disqualification. We make this suggestion as we have been impressed with the strength of Hindu sentiment on this question, and as we think that it is intrinsically sound and not inconsistent with any principle of freedom of conscience in which we believe. The property to be disposed of in the case of a Hindu intestate is after all that of a Hindu and it may reasonably be assumed that he would have liked it to go to heirs who profess his religion. The Hindu Law treats apostasy as a disqualification for inheritance. We can see no reason why this provision of the Hindu Law should not be given effect to in the case of succession to a Hindu intestate.

H. N. KUNZRU.

P. N. SAPRU.

S. N. MAHTHA.

[AS AMENDED BY THE JOINT COMMITTEE.]

(Words underlined or sidlined indicate the amendments, suggested by the Committee; asterisks indicate omissions.)

A Bill to amend and codify the Hindu Law relating to intestate succession.

WHEREAS it is expedient to amend and codify, in successive stages, the whole of the Hindu Law now in force in British India;

AND WHEREAS it is expedient first to amend and codify the general law of intestate succession;

It is hereby enacted as follows:—

PRELIMINARY.

1. *Short title, extent, application and commencement.*—(1) This Act may be called the Hindu Code, Part I (Intestate Succession).

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

(3) It shall apply to any person who, if this Act were not in force, would be governed in matters of intestate succession by the Hindu Law; but it shall not apply—

(i) to agricultural land except in the Chief Commissioners' Provinces, or

(ii) to any estate which descends to a single heir by a customary or other rule of succession or by the terms of any grant or enactment

(4) It shall come into force on the 1st day of January, 1946.

2. *Definitions and interpretation.*—(1) In this Act, unless there is anything repugnant in the subject or context,—(a) one person is said to be an "agnate" (*gotraja*) of another, if the two are related by blood wholly through males;(b) one person is said to be a "cognate" (*bandhu*) of another, if the two are related by blood, but not wholly through males;

(c) "heir" means any person, male or female, who is entitled to succeed to the property of an intestate under this Act;

(d) "heritable property" means property which belongs to an intestate in his or her own right and passes, whether he dies leaving male issue or not, by inheritance as distinct from survivorship;

Illustration.

All property of a Hindu governed by the Dayabhaga School of Hindu Law is heritable property, as it passes by inheritance and not by survivorship; so too is the separate property of a Hindu governed by any Mitakshara School of Hindu Law, as also the property in the hands of the last surviving coparcener, as such property also passes by inheritance and not by survivorship.

* * * * *

(e) "related" means related by legitimate kinship, and any word expressing relationship or denoting a relative shall be construed accordingly;

(f) two persons are said to be related to each other by * "full blood" when they are descended from a common ancestor by the same wife, and by * "half blood" when they are descended from a common ancestor by different wives;

(g) "son" includes a *dattaka* son, *dwydmushydyana* son and *kritrima* son, but not a *dasiputra*; and *dattaka* son, *dwydmushydyana* son, *kritrima* son and *dasiputra* have the same meanings as in the Hindu Law;(h) "*stridhana*" means property acquired by a woman by inheritance or devise, or at a partition, or by way of absolute gift in lieu of maintenance or arrears of maintenance or by gift from a relative or stranger before, at, or after her marriage, or by her own skill or exertions, or by purchase, or by prescription, or by any other mode whatsoever.

(2) In this Act, unless there is anything repugnant in the subject or context, words importing the masculine gender shall not be taken to include females, and for the purposes of this Act,—

(a) a person is deemed to die intestate in respect of all property of which he or she has not made a testamentary disposition capable of taking effect;

* * * * *

(b) the domicile of a person to whom this Act applies shall be determined in accordance with the provisions contained in sections 6 to 18, both inclusive, of the Indian Succession Act, 1925 (XXXIX of 1925);

(c) when an adoption takes place,—

(i) in the case of a *dattaka* son, the natural tie is severed and is replaced by the tie created by the adoption,

(ii) in the case of a *dyudmushyayana* son, the natural tie continues side by side with the tie created by the adoption,

(iii) in the case of a *kritrima* son, the natural tie continues, while the tie created by the adoption is limited to the person adopted and the person or persons adopting him.

Illustration.

A adopts C, son of B. C has a son, D, born to him after the adoption. Then, for the purposes of inheritance, the following consequences will result, depending upon whether C was adopted as a *dattaka*, *Dyudmushyayana* or *kritrima* son of A.

If C was adopted as a *dattaka* son, he becomes the son of A and ceases to be the son of B. He also becomes the grandson of A's father and the nephew of A's brother, and so on. He ceases to be the grandson of B's father and the nephew of B's brother. Likewise, D becomes the grandson of A but not of B.

If C was adopted as a *dyudmushyayana* son, he becomes the son of A, but continues to be the son of B as well. He also becomes the grandson of A's father and the nephew of A's brother, but continues as well to be the grandson of B's father and the nephew of B's brother. Likewise, D becomes the grandson of A, and of B as well.

If C was adopted as a *kritrima* son, he becomes the son of A while continuing to be the son of B as well. He does not, however, become the grandson of A's father or the nephew of A's brother, but remains the grandson of B's father and the nephew of B's brother. D on birth becomes the grandson of B and not of A.

3. *Application of Act.*—This Act regulates the succession to the heritable property of a person to whom this Act applies, other than one governed by the Marumakkattayam, Aliyasantana or Nambudri law of inheritance, dying intestate after the commencement of this Act, in the following cases, namely:—

(a) where the property is movable property, unless it is proved that the intestate was not domiciled in British India at the time of death,

(b) where the property is immovable property situated in British India, whether at the time of death the intestate was domiciled in British India or not:

Provided * that upon the death of any woman who at the commencement of this Act had the limited estate known as the Hindu woman's estate in any heritable property, such property shall devolve on the persons who would under this Act have been the heirs of the last full owner thereof if he had died intestate immediately after her:

Succession to the property of males.

4. *Devolution of heritable property of males.*—The heritable property of a male intestate shall devolve according to the rules laid down in this Act—

(a) upon the enumerated heirs referred to in section 5, if any;

(b) if there is no enumerated heir, upon his agnates, if any;

(c) if there is no agnate, upon his cognates, if any;

(d) if there is no cognate, upon the heirs referred to in section 10, if any.

5. *Enumerated heirs.*—The following relatives of an intestate are his enumerated heirs:—

Class I.—Parent, widow, * descendants and widow of descendant:—

(1) Parents if dependant on the intestate, widow, son, daughter, son and widow of a pre-deceased son, and son of a pre-deceased son of a pre-deceased son (the heirs in this entry being hereinafter in this Act referred to as "simultaneous heirs").

(2) Daughter's son.

(3) Son's daughter.

(4) Daughter's daughter.

DU

Class II.—Mother, father and his descendants:—

(1) Mother unless, as dependent on the intestate, she has inherited as an heir included in entry (1) of Class I.

(2) Father unless, as dependent on the intestate, he has inherited as an heir included in entry (1) of Class I.

- (3) Brother.
- (4) Brother's son.
- (5) Brother's son's son.
- (6) Sister.
- (7) Sister's son.
- (8) Brother's daughter.
- (9) Sister's daughter.

Class III.—Father's mother, father's father and his descendants:—

- (1) Father's mother.
- (2) Father's father.
- (3) Father's brother.
- (4) Father's brother's son.
- (5) Father's brother's son's son.
- (6) Father's sister's son.

Class IV.—Father's father's mother, father's father's father and his descendants:—

- (1) Father's father's mother.
- (2) Father's father's father.
- (3) Father's father's brother.
- (4) Father's father's brother's son.
- (5) Father's father's brother's son's son.
- (6) Father's father's sister's son.

Class V.—Mother's mother, mother's father and his descendants:—

- (1) Mother's mother.
- (2) Mother's father.
- (3) Mother's brother.
- (4) Mother's brother's son.
- (5) Mother's brother's son's son.
- (6) Mother's sister's son.

6. *Order of succession among enumerated heirs.*—Among the enumerated heirs, those in one Class shall be preferred to those in any succeeding Class; and within each Class, those included in one entry shall be preferred to those included in any succeeding entry, while those included in the same entry shall take together.

Illustrations.

(i) The surviving relatives of an intestate are his widow, his mother and his father's father. The widow who is included in Class I is preferred to the mother who is in Class II and the father's father who is in Class III.

(ii) The surviving relatives are two daughters and a son's daughter. The daughters who are included in entry (1) of Class I are preferred to the son's daughter who is in entry (3) of the same Class, and the two daughters take together.

(iii) The surviving relatives are a widow, two sons, three daughters, two grandsons by a pre-deceased son and a great-grandson by another pre-deceased son's pre-deceased son. All of them, being enumerated heirs included in entry (1) of Class I, succeed simultaneously, no one excluding the others.

7. *Manner of distribution among simultaneous heirs.*—The distribution of an intestate's property among the simultaneous heirs in entry (1) of Class I shall take place according to the following rules, namely:—

(a) The intestate's widow, or if there is more than one widow all the widows together, shall take one share.

(b) Each son of the intestate shall take one share, whether he was undivided or divided from, or re-united with, the intestate.

(c) Sons, sons of pre-deceased sons, and sons of pre-deceased sons of pre-deceased sons, shall take *per stirpes*, that is to say, the sons of a pre-deceased son shall take the share which would have been taken by him if he had been alive.

at the time of the intestate's death; and likewise, the grandsons of a pre-deceased son shall take the share which their father would have taken if he had been alive at the time aforesaid.

(d) Each of the intestate's daughters shall take half a share, whether she is unmarried, married or a widow; rich or poor; and with or without issue or possibility of issue.

(e) Each parent shall take one-eighth of a share; but any property so inherited shall on his or her dying intestate devolve upon the heirs of the intestate son from whom the property was so inherited in the same order and according to the same rules as would have applied if the property had been his and he had died intestate in respect thereof at the time of the parent's death.

(f) The widow of a pre-deceased son, if she has no son or son's son surviving, shall take half the share which her husband would have received if he had been alive at the time of his father's death, and if she has a son or son's son surviving she shall take one-fourth of the share which her husband would have received if he had been alive at the time of his father's death, and the son or grandson's share receivable under clause (c) of this section shall be reduced accordingly.

Illustrations.

(i) The surviving relatives of an intestate are three sons' five grandsons by a pre-deceased son, and two great-grandsons by a pre-deceased son of another pre-deceased son. Each son takes $\frac{1}{5}$ th of the heritable estate, each grandson $\frac{1}{25}$ th, and each great-grandson $\frac{1}{100}$ th.

(ii) Only a widow or daughter, and no other simultaneous heir, survives an intestate. The widow or daughter, as the case may be, takes the whole of the heritable estate.

(iii) The surviving relatives of an intestate are two widows, a divided son, two undivided sons, an unmarried daughter, two married daughters, a widowed daughter, and four grandsons by a pre-deceased son. The two widows together take one share, each of the three sons takes one share, each of the four daughters takes half a share, and the four grandsons together take one share. Thus, each widow takes $\frac{1}{14}$ th of the heritable estate, each son $\frac{1}{7}$ th, each daughter $\frac{1}{14}$ th, and each grandson $\frac{1}{28}$ th.

8. *Order of succession among non-enumerated heirs.*—(1) The order of succession among agnates and cognates, other than enumerated heirs, shall be determined by applying the Rules of Preference in section 9.

(2) For the purpose of applying the said Rules, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent, or degrees of descent, or both, as the case may be.

(3) Degrees of ascent and degrees of descent shall be computed in the manner indicated in the illustrations below:—

Illustrations.

(i) The heir to be considered is the father's mother's father of the intestate. He has no degrees of descent but three degrees of ascent represented, in order, by (1) the intestate's father, (2) that father's mother, and (3) her father (the heir).

(ii) The heir to be considered is the father's mother's father's mother of the intestate. She has no degrees of descent, but four degrees of ascent represented, in order, by (1) the intestate's father, (2) that father's mother, (3) her father, and (4) his mother (the heir).

(iii) The heir to be considered is the son's daughter's son's daughter of the intestate. She has no degrees of ascent, but four degrees of descent represented, in order, by (1) the intestate's son, (2) that son's daughter, (3) her son, and (4) his daughter (the heir).

(iv) The heir to be considered is the mother's father's father's daughter's son of the intestate. He has three degrees of ascent represented, in order, by (1) the intestate's mother, (2) her father, and (3) that father's father, and two degrees of descent represented, in order, by (1) the daughter of the common ancestor, viz., the mother's father's father, and (2) her son (the heir).

(4) A woman shall be entitled to inherit as an agnate of her father and his agnates, and shall not, by reason only of her marriage, be entitled to inherit as an agnate of her husband or his agnates.

9. *Rules of Preference.*—The Rules of Preference referred to in section 8 are as follows:—

Rule 1.—Of two heirs the one who has fewer or no degrees of ascent is preferred.

Rule 2.—Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent.

Rule 3.—Where the number of degrees of descent is also the same or none, the heir who is in the male line is preferred to the heir who is in the female.

line at the first point (counting from the intestate to the heir) where the lines of the two heirs can be so distinguished.

Rule 4.—Where neither heir is entitled to be preferred to the other under the foregoing Rules, they take together.

Illustrations.

In the following illustrations, the letters F and M stand respectively for the father and the mother in that portion of the line which ascends from the intestate to the common ancestor, and the letters S and D for the son and the daughter respectively in that portion of the line which descends from the common ancestor to the heir. Thus MFSS stands for the intestate's mother's father's son's son (mother's brother's son), and FDS for the intestate's father's daughter's son (sister's son).

(i) The competing heirs are (1) FFSD (father's brother's daughter) and (2) FDDS (sister's daughter's son). Although No. (2) is descended from a nearer ancestor yet, as No. (1) is an agnate while No. (2) is only a cognate, No. (1) is preferred to No. (2).

(ii) The competing heirs are (1) SDSS (son's daughter's son's son) and (2) FDDS (sister's daughter's son). No. (1) who has no degree of ascent is preferred to No. (2) who has one degree of ascent.

(iii) The competing heirs are (1) FDDD (sister's daughter's daughter) and (2) MFSD (maternal uncle's daughter). The former who has one degree of ascent is preferred to the latter who has two such degrees.

(iv) The competing heirs are (1) FDSSS (sister's son's son's son) and (2) MFSSD (maternal uncle's son's daughter). The former who has only one degree of ascent is preferred to the latter who has two such degrees.

(v) The competing heirs are (1) MFDS (mother's sister's son's son) and (2) MFSS (mother's father's sister's son). The former who has two degrees of ascent is preferred to the latter who has three such degrees.

(vi) The competing heirs are (1) MFM (mother's father's mother) and (2) FFFDSS (father's father's sister's son's son). The number of degrees of ascent in both cases is the same, viz., three, but the former has no degree of descent while the latter has three such degrees. The former is therefore preferred.

(vii) The competing heirs are (1) FFM (father's mother's father) and (2) MFF (mother's father's father). The number of degrees of ascent in both cases is the same, and there are no degrees of descent. The lines of the two heirs diverge at the very first point, No. (1) being in the male line and No. (2) in the female line. No. (1) is preferred to No. (2).

(viii) The competing heirs are (1) EDSS (sister's son's son) and (2) FDDS (sister's daughter's son). The heirs are equally near both in ascent and descent. The dissimilarity in the lines occurs at the third point. At this point No. (1) is in the male line and No. (2) in the female line. No. (1) is therefore preferred.

(ix) The competing heirs are (1) FMFSS (father's mother's brother's son) and (2) EMFLS (father's mother's sister's son). The former is preferred.

(x) The competing heirs are (1) FDDS (sister's daughter's son) and (2) FDDD (sister's daughter's daughter). The former is preferred.

(xi) The competing heirs are a daughter's daughter's son of one sister (FDDDS) and a daughter's daughter's son of another sister (FDDDS). Both of them take the estate in equal shares.

10. Heirs not related by blood.—If there is no cognate entitled to succeed under section 4, the heritable property of the intestate shall devolve, in the first instance, upon his preceptor (*āchārya*); if there is no preceptor, upon the intestate's disciple (*śishya*); and if there is no disciple, upon the intestate's fellow-student (*sa-brāhmachāri*).

11. Rules for hermits, etc.—(1) Where a person completely and finally renounces the world by becoming a hermit (*vānaprasthā*), an ascetic (*yati* or *sanyāsi*), or a perpetual religious student (*naishthika brāhmachāri*), his property shall devolve upon his heirs, in the same order and according to the same rules as would have applied if he had died intestate in respect thereof at the time of such renunciation.

(2) Any person who has so renounced the world shall not inherit to any relative of his, by blood or marriage, but the inheritance shall, in such a case, pass to the heir who is next in the order of succession.

(3) Any property acquired by such a person after his renunciation shall, on his death, devolve, not upon his relatives by blood or marriage, but as follows:—

(a) in the case of a hermit, upon a spiritual brother belonging to the same hermitage (*dharmabhāratrakatirthi*);

(b) in the case of an ascetic, upon his virtuous disciple (*sacchishya*);

(c) in the case of a perpetual religious student, upon his preceptor (*āchārya*).

Stridhana.

12. Right of women over stridhana.—A woman shall have the same rights over her stridhana, including the right to dispose of it by transfer *inter vivos* or by will, as a man has over property acquired by him in the like manner, that is to say, a woman's rights over her stridhana shall not be deemed to be restricted in any respect whatsoever, by reason only of her sex.

13. Order of succession to stridhana.—The stridhana of a woman dying intestate, in so far as it consists of heritable property, shall devolve as follows:—

(4) Property inherited by her from her husband or his father, his father's father or his father's father's father shall devolve upon her husband's heirs in the same order and according to the same rules as would have applied if the property had been her husband's and he had died intestate in respect thereof immediately after her death.

Explanation.—For the purposes of this clause, property devolving on another widow of the husband, whether under this clause or under entry (9) in clause (b), shall be deemed to be property inherited by such widow from her husband.

(b) Other property shall devolve upon the following relatives of the intestate, in the order mentioned, namely:—

- (1) Son and daughter;
- (2) Daughter's son and daughter's daughter;
- (3) Son's son and son's daughter;
- (4) Husband;
- (5) Mother;
- (6) Father;

(7) Husband's heirs, in the same order and according to the same rules as would have applied if the property had been his and he had died intestate in respect thereof immediately after his wife's death;

(8) Mother's heirs, in the same order and according to the same rules as would have applied if the property had been hers and she had died intestate in respect thereof immediately after her daughter's death;

(9) Father's heirs, in the same order and according to the same rules as would have applied if the property had been his and he had died intestate in respect thereof immediately after his daughter's death.

(c) Where of two or more heirs of the intestate, no one is entitled to be preferred to any other under the provisions of this section, they shall take together, a son, daughter's son or son's son taking half as much only as his sister.

14. Stirpital succession to stridhana in certain cases.—If the stridhana of a woman devolves on two or more of the following relatives, namely, daughters' sons and daughters or sons' sons and * daughters, they shall take it *per stirpes* and not *per capita*.

Illustration.

The surviving relatives of a woman are four grand-daughters by one daughter, A, and three grand-daughters by another daughter, B. Each of A's daughters takes 1/8th of the property and each of B's daughters takes 1/6th.

General Provisions.

15. Full blood preferred to half blood.—Heirs related to an intestate by the full blood shall be preferred to heirs related by the half blood, if the nature of the relationship is the same in every other respect.

Illustrations

(i) A brother by the full blood is preferred to a brother by the half blood; but a brother by the half blood succeeds before a brother's son by the full blood, a brother being a nearer heir than a brother's son.

(ii) A paternal uncle by the half blood is preferred to a paternal uncle's son by the full blood, an uncle being a nearer heir than an uncle's son.

(iii) A full brother's daughter's daughter is preferred to a half brother's daughter's daughter; but the former is not preferred to a half brother's daughter's son, as the nature of the relationship is not the same in the two cases. The latter, who is a nearer heir by virtue of Rule 5 in section 9, is preferred though he is only of the half blood.

16. *Right of child in womb.*—A person who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate.

17. *Rights of surviving spouse and descendants of a valid marriage.*—The surviving spouse and descendants of a valid marriage contracted by a male or female Hindu outside his or her caste shall, for all the purposes of this Act, be treated in like manner as the surviving spouse and descendants of a valid marriage contracted within his or her own caste.

18. *Disqualification of widow who was unchaste during husband's lifetime.*—If an intestate's widow has been unchaste during his lifetime and after her marriage, she shall, unless the unchastity has been condoned by her husband, be disqualified from succeeding to his heritable property; and it shall devolve on his other heirs as it would in her absence:

Provided that the right of a widow to inherit to her husband shall not be questioned on the ground aforesaid, unless—

a Court of Law has found her to have been unchaste as aforesaid in a proceeding to which she and her husband were parties and in which the matter was specifically in issue, the finding of the Court not having been subsequently reversed.

19. *Murderer disqualified.*—A person who commits murder or abets the commission of murder in furtherance of his or her succession to any property shall be disqualified from inheriting such property; and the inheritance shall, in such a case, pass to the heir who is next in the order of succession.

20. *Disease, defect, etc., not to disqualify.*—No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity or, save as provided in sub-section (2) of section 11 and sections 18 and 19, on any other ground whatsoever.

21. *Mode of succession of two or more heirs.*—If two or more heirs succeed together to the property of any intestate, they shall take the property—

(a) save as otherwise expressly provided in this Act, *per capita* and not *per stirpes*; and

(b) as tenants in common, and not as joint tenants.

22. *Escheat.*—If the intestate has left no heir, or no heir qualified to succeed to his or her heritable property, such property shall go to the Crown.

23. *Repeals.*—The enactments specified in the Schedule are hereby repealed to the extent mentioned in the fourth column thereof.

THE SCHEDULE.

(See section 28.)

Year.	No.	Short title.	Extent of repeal.
1	2	3	4
1928	XII	The Hindu Inheritance (Removal of Disabilities) Act, 1928.	The whole.
1929	II	The Hindu Law of Inheritance (Amendment) Act, 1929.	The whole.
1937	XVIII	The Hindu Women's Rights to Property Act, 1937.	Section 3, sub-section (1).

NOT FOR PUBLICATION

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GOVERNMENT OF INDIA
LEGISLATIVE ASSEMBLY DEPARTMENT

PAPER NO. 1

OPINIONS

ON

THE HINDU CODE, PART I (INTESTATE SUCCESSION) BILL

(Introduced by the Honourable Sir Sultan Ahmed)

Opinions Nos. 1-9

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No. 1.—PANTH-PIPLODA

Chief Commissioner of Panth Piploda

I have no comments to offer on the provisions of the Bill.

No. 2.—BALUCHISTAN

Chief Commissioner in Baluchistan

I am directed to inform you that local opinion in Baluchistan is in agreement with the main principles of the Bill.

No. 3.—THE PUNJAB

Government of Punjab

I am directed to forward a copy of a letter from the Deputy Registrar of the High Court at Lahore, reporting the views of the Honourable Judges and those of a number of the District and Sessions Judges consulted under their orders. The Punjab Government also invited the views of the High Court Bar

Association and the Bar Associations at the five divisional headquarters as well of nine selected non-official organizations believed to be representative of Hindu and Sikh opinion. Only four of them namely (1) the Bar Association, Rawalpindi, (2) the Sanatan Dharam Pratinidhi Maha Sabha, Rawalpindi, (3) the Sanatan Dharam Pratinidhi Sabha, Punjab, Lahore and (4) the Arya Pratinidhi Sabha, Punjab, Lahore have replied, and copies of their replies are enclosed. Five other non-official organizations namely (1) the Sikh Right's Protection Society, Lahore, (2) the Mahabir Dal, (3) Shri Guru Singh Sabha, Rawalpindi and (4) the Dharama Sangh, Ludhiana, and (5) the Hindu Sabha, Rawalpindi have also sent their opinions, copies of which are also enclosed.

2. The Punjab Government have no objection to the proposed Bill.

3. The Bill was published in the issues of the *Punjab Gazette*, dated the 28th January, 4th and 11th February, 1944.

**Deputy Registrar (Administration), High Court of
Judicature at Lahore.**

I am directed to forward a copy of the opinion recorded by the Hon'ble Mr. Justice Ram Lal and to say that the Honourable Mr. Justice Beckett and the Honourable Mr. Justice Mehr Chand Mahajan agree to it. Copies of the notes recorded by the Honourable the Chief Justice, the Honourable Mr. Justice Din Muhammad, the Honourable Mr. Justice Abdur Rahman, Kt., the Honourable Mr. Justice Mehr Chand Mahajan, the Honourable Mr. Justice Teja Singh and Honourable Mr. Justice Bhandari are also sent. The Honourable Mr. Justice Blacker, the Honourable Mr. Justice Sale, the Honourable Mr. Justice Muhammad Munir and Honourable Mr. Justice Martin do not wish to offer any opinion. The Honourable Mr. Justice Abdul Rashid agrees with the Honourable Mr. Justice Din Muhammad.

2. The opinions of the selected District and Sessions Judges who were consulted in the matter are also forwarded.

Hon'ble Mr. Justice Ram Lal

I have little criticism to make regarding the drafting of this Bill but as the measure affects very large sections of the people I think the principles underlying the proposal should be examined with care to consider how far, if at all, it should be supported. The principles underlying the proposal are to codify the Hindu Law of Intestate Succession and to produce a uniform rule applicable to all Hindus; secondly, to remove sex disqualifications and to give to women a larger and an absolute interest in the matter of inheritance. So far as the first object is concerned, it is a step in the right direction and there will be little opposition to the application of a uniform rule to all persons living under the same social, economic and religious conditions. Uniformity, however, has not been achieved by the Bill for clause 3 excludes certain sections of the Hindu population from the operation of this measure and more important than this, agricultural land is excluded because except in the centrally administered areas, the Provincial Governments alone can legislate about agricultural land. When it is remembered that most of the property held by the community is agricultural, the importance of the inability to legislate for this class of property will be apparent. It is doubtful whether Provincial Governments will be willing or able to carry through complementary legislation and till the views of Provinces are more fully known it would be useless to give effect to the proposed legislation. The difficulties of ascertaining these views are many and far-reaching and under the present conditions when in a large number of the Provinces, the legislatures are not functioning there can be no hope in these provinces of complementary legislation which can claim to have the sanction of the elected representatives of the people. At best till this happens, the proposed legislation will affect small sections of the community resident mainly in urban areas, and even there it will cause confusion by the fact that one family owning both agricultural and urban property will be subjected to two widely different rules of succession to property.

So far as the second principle underlying the Bill is concerned, the object to benefit females who, it is believed by some, are not sufficiently provided for by the prevailing Hindu Law may possibly be achieved but, if achieved, it will be at the sacrifice of something that Hindu society will regard as more valuable and it appears to me that the gains will be illusory and the corresponding loss both real and incalculable.

The underlying idea seems to be to make females simultaneous heirs with males and instead of the limited estate to females to invest them with absolute estates which pass to their own heirs. The basic principle of all Hindu society for countless generations has been to look upon the joint Hindu family as a unit and this I believe to be the unit on which the entire structure of Hindu society and its legal system is based. I fear that the present proposal will disrupt that institution in a comparatively short time. Amongst Hindus of all shades of opinion and education, the married daughter passes out of the family of her birth into the family of her marriage. The degrees of prohibition are more considerable here than in any other known system. If absolute interest in property is given to daughters, as proposed, there will always be the danger of forced partitions at the instance of the heirs of females who are married in distant places and in families who have no other ties than the one created by this marriage. The inevitable effect will be expensive litigation, the bitterness which such legislation breeds and the breaking up of the joint Hindu family. The provision that the male heir has the option of the purchase of the share of a female when she decides to sell will hardly be sufficient to prevent this disruption.

It has been said that what the daughter takes away from the family will be compensated by what a daughter-in-law brings in, but this will not prevent forced partitions and litigation. The system may be workable among societies and communities where the marriage of cousins is not only permitted but is the rule. It will, however, cause great difficulties in the present Hindu society, and till the laws and custom of marriage are changed, the disposition of the property in the manner proposed should not be undertaken.

A further objection to investing females with an absolute interest in the presence of male heirs is that whereas the male heirs such as sons have the duties of providing for maintenance for the other members of a family and for the payment of the debts of the father there is no such corresponding liability on the female heirs. The property taken by females should be and has so far been intended to be in lieu of maintenance and for this purpose it would be more appropriate to embark on legislation along the lines of section 488 of Criminal Procedure Code or even to give defined shares in the property with a limited interest during life and its reversion back to the family when there is no further need for maintenance. To this extent Hindu sentiment will support the change in the law.

I am personally of the opinion even though it be an individual view, that if the Bill is made law, the class which it is intended to benefit, will be the loser by it. The daughters are provided for by giving to them dowries at the time of marriage and customary presents on various occasions such as the birth and the marriages of their children. Once females are given a definite share in the property belonging to a joint Hindu family these customary payments by way of dowry, etc., will diminish in value if not disappear altogether. Amongst families with comparatively small property, the complaint has always been that daughters are given an extravagantly large share and thus what they take by way of these customary dues more than they would now get by legislation. To that extent their position would be worsened by the proposal. Further, when a share has been definitely assigned, intercourse of a married daughter with the

family of her birth, will become less than before, and the bitterness that a background of a possible litigation will bring about will certainly outweigh any gains to the females.

Amongst propertied classes who are generally fairly well educated and where the sentiment of keeping alive the joint Hindu family as a unit persists, either the daughters will remain unmarried for a long time as there may come about a reluctance to marry them or the property will be made the subject of wills or gifts *inter vivos* to those who would carry on the joint Hindu family.

As one of the minor matters of criticism it appears to me that clause 20 of the Bill which gives to an apostate Hindu a share in the inheritance would be universally condemned by the Hindu community and this is evidenced to some extent by the minutes of dissent appended to the Bill. As pointed out in one of these minutes, the property to be disposed of is that of a Hindu intestate and it may be reasonably assumed that he would have liked it to go to heirs who continue to profess his religion.

The Bill appears to me to be influenced by a section of opinion claiming advanced ideas of education and a sentimental regard for the supposed interests of women and certainly will not have Hindu sentiment behind it. The Bill in question may have produced a system of disposition of property which may be better and more equitable than the prevailing Hindu Law but it certainly is not the Hindu Law of Succession and is not supported by any authoritative Shastric texts. It appears to me that if the convention in the legislatures is maintained that non-Hindu members refrain from voting on a Bill which is purely meant for Hindus, the Bill will not have an easy passage in any legislature.

For the reasons given above I am unable to support the principles underlying this Bill.

Harries, O. J.—Though privately I do hold views on this matter I do not think that I am entitled to express them in my official capacity. The matter concerns the Hindu community.

Din Muhammad, J.—I lend my whole-hearted support to this measure in so far as it seeks to ameliorate the condition of women under Hindu Law and thus remove a long-standing grievance of theirs. There is no reason why in the matter of succession female heirs should not be reckoned at all as heirs. Considerations of nuptial and post-nuptial expenses in their case are altogether out of place, inasmuch as such expenses are incurred even in the case of sons and other male heirs, who further secure an additional advantage of expensive education, of which female heirs to a large extent are and may continue to be deprived on account of mass illiteracy in the country.

The old patriarchal way of living is already fast losing ground under the influence of western culture and western civilization and it is incorrect to say, therefore, that the recognition of female heirs as heirs will tend to shake the foundations of Hindu Society in so far as it would undermine the joint family system. As regards the danger of ruinous litigation arising in such circumstances, suffice it to say that my long experience both at the bar and the bench has convinced me that it is only individual greed that promotes litigation and that one should entertain no fear on that account, if one is charitable enough to render unto Caesar what belongs to Caesar.

It is also stated that it is unfair to give female heirs share in the inheritance without holding them proportionately responsible for the debts that the

estate may owe. Here, too, I do not apprehend any real hardship as the burden of indebtedness would fall on the estate as a whole and female heirs would naturally share it to the extent to which they are concerned.

Finally, clause 20 has been criticized on the ground that it takes no notice of apostasy. It is now close on a century that apostasy has been held not to be a disqualification and as I look at the matter, it was not within the scope of the present legislation to introduce any such innovation, especially as it affected not the Hindu community alone but the other communities as well.

Rahman, J.—I do not agree with my brothers Ram Lal and Mehr Chand Mahajan and I think that time has come when females should be given equal rights, as far as possible, with males and should not be deprived of their patrimony on account of an incidence of birth over which they had no control. I agree with most of what has fallen from my brother Teja Singh although I must say I would not change the law for any fear of Miss Mayo—if I considered it to be in the interest of the country at large. But I do not think so.

Mehr Chand Mahajan, J.—I agree with the opinion expressed by Mr. Justice Ram Lal. My detailed opinion is already with the Hindu Law Committee and it was on the same lines as the opinion given by Mr. Justice Ram Lal. I wish to add nothing to what has been said by Mr. Justice Ram Lal and I do wish to say that I do not agree with the views of Mr. Justice Bhandari and Mr. Justice Teja Singh.

Teja Singh, J.—I have not been able to read through the proceedings of the Legislative Assembly and the report of the Joint Committee and therefore am not in a position to give a detailed opinion about the provisions of the Bill. I wish, however, to say that I am in complete agreement with the object of the Bill. I wish further to add that I regard the lot of female heirs under Hindu Law as most unsatisfactory and it is time that the Legislature should intervene and improve it. No doubt a section of the Hindu community will like to stick to old conditions but in view of the modern education and awakening that it has brought about, particularly among women, demand for giving greater rights and better status to female heirs has become quite vocal and persistent. Moreover, the demand appears to be quite just. It is correct that an average Hindu considers it his duty to give substantial dowry to his daughter at the time of her marriage and continues giving her presents in one shape or the other even after marriage. But I do not think that this can be a reason for depriving her of a share in her father's property on the latter's death. Incidentally the recognition of the daughters as an heir to her father along with her brothers may result in substantial reform of the dowry system, a reform which a large section of Hindus consider to be overdue.

Bhandari, J.—I regret I am unable to see eye to eye with my learned brother Mr. Justice Ram Lal. Time has now arrived when the women of this country should cease to be chattels and should have the rights which are being enjoyed by their sisters in other civilized countries of the world. The manner in which we treat our women is a byword and a reproach and is responsible for effusions such as Miss Katherine Mayo's "Mother India". We ought to put our house in order and treat our women with liberality if not with generosity.

The measure as it has emerged from the select committee is designed to redress the principal grievances of Hindu women and should, I think, be brought on to the statute book of the country with as little delay as possible. My criticism is not that the Bill gives too much but that it gives too little.

District and Sessions Judge, Lyallpur

The Bill in question purports to give effect, among others, to the following three principles :

- (1) Abolition of the several systems of succession obtaining under different schools of Hindu Law and a provision for a common law of intestate succession for all persons governed by Hindu Law in British India.
- (2) Removal of sex disqualification by which Hindu women are precluded from inheriting property.
- (3) Abolition of Hindu women's limited estate and giving a absolute right of property over the inherited estate.

That the principles governing intestate succession prevailing in different parts of British India are by no means uniform, and that the diversity of rules obtaining under different schools of Hindu Law has been a source of great trouble and confusion is admitted by all. The present state of law cannot be said to be satisfactory. In the absence of codified law, one has very often to dive deep into the vast ocean of case law and pass through the marshes of various commentaries to know the law on a particular point requiring decision. Under the circumstances, it is quite desirable that Hindu Law, bearing on all its branches should be codified.

The present Bill, however, deals with intestate succession only, which is closely inter-related to the law of marriage, maintenance, adoption, partition, alienation partition and reunion. All these branches are not without their reactions on the law of intestate succession. No attempt having so far been made to codify the law bearing on marriage, maintenance, adoption, etc., the Bill in hand, is a half measure. In my opinion, the entire Hindu Law should be codified at one time, so that the mutual re-actions of all co-related subjects may be considered and the necessary adjustments made by one committee. Moreover, in case of piecemeal legislation, it is likely that the committees appointed at different times may approach the subject from different points of view and with different pre-conceptions and the resulting legislation will therefore lack uniformity of spirit and organic vitality.

The spirit of Hindu Law is that rights correspond to obligations or duties. Thus if daughters were excluded from inheritance they had equally no obligation to discharge their father's debts, while a Hindu son is under a pious obligation to discharge all just debts of his father. A Hindu father or brother owes a legal or at any rate, a moral obligation to maintain, educate and marry his sister, but no such obligation is fastened on the sister. A Hindu father or brother, being the head of the family, has to discharge all these and other allied duties and obligations from which women are immune. It is for these reasons and also for the reason that a Hindu woman on account of her natural limitations arising out of her sex, is incapable of managing property as efficiently as a male, that the law-makers excluded her from inheritance in the presence of a son or a grandson or a great grandson. The impact of western ideas, particularly that of economic equality of men and women, is however,

acting as a ferment in Hindu society and if the time has come to recognize its effects in legislation and to give extended rights over property to women, it would only be fair that they should be burdened with corresponding obligations.

This is a general criticism of the principles of the Bill. Coming to its details certain defects and omissions need to be pointed out.

Agricultural land is not within the ambit of the Bill because in view of the provisions of the Government of India Act, 1935, it can only be dealt with by the Governors' Provinces. In order that the law governing intestate succession be alike for all the properties, it is desirable that the Provincial Governments be also asked to pass complementary legislation in respect of agricultural land. The Bill should further define the words 'agricultural land' to avoid all speculation and controversy as to the meaning of the term.

One of the essential ideas of Hindu Law is that on marriage a daughter is transplanted into another family. The religious sacrament giving effect to this notion is *kanya-dan*. I do not think that Hindus would stand a married daughter taking her father's property into another family and married daughters should not therefore be given a share unless the daughter has become a widow who was dependent on and residing with her father.

Among the enumerated heirs daughter's son and son's daughter should come on par and there appears no justification for the difference in their degree for inheritance. A daughter's daughter is generally not recognized as an heir under Hindu Law and she should therefore be taken out from Class I and placed in Class II after brother's son in section 5. Immediately after the daughter's daughter should come the sister and the order in Class II will therefore be as follows :

- (1) Mother.
- (2) Father.
- (3) Brother.
- (4) Brother's son.
- (5) Daughter's daughter.
- (6) Sister.
- (7) Brother's son's son.
- (8) Sister's son.
- (9) Brother's daughter.
- (10) Sister's daughter.

The widow of a pre-deceased son's pre-deceased son is not included in the enumerated heirs and it appears that she would not get any share because she is not considered even an agnate of her husband's agnates under section 8(4), whereas she had rights under the Hindu Women's Rights to Property Act of 1937 as amended.

A divided son does not deserve to get a share over again, once at partition during the lifetime of the father, and then at the latter's death.

Father's sister is not one of the enumerated heirs in section 5, while her son is. I consider that she should also be considered among those heirs above her son.

It should be provided in the Bill that the debts of the last holder would be a charge on the property left by him or her and each heir inheriting the property would be liable to pay them in proportion to the estate inherited by him or her.

The Bill proposes a very wide definition of *Stridhan* and in fact no distinction is left between *Stridhan* and the property owned, inherited or acquired by a male Hindu. If, however, this definition is retained, there should not, in section 13, be any distinction in the succession of property inherited by a woman from her husband, or his ascendants, and that held otherwise. When the woman is given absolute right over all kinds of *Stridhan*, the distinction sought to be made in section 18 is anomalous.

Apostacy should disqualify a person from inheritance in intestate succession.

District and Sessions Judge, Hoshiarpur

I have the honour to say that the Bill as drafted is to my mind perfectly sound and I am in entire sympathy with its provisions.

District and Sessions Judge, Amritsar

It cannot be denied that females in certain cases have not received fair treatment at the hands of relatives on whom they are economically dependent. Cases of this character furnish a strong argument for a modification of the Hindu Law on the lines proposed in the Bill. It is, however, necessary to proceed cautiously and to make sure before a change is made in the law that the remedy will not be worse than the disease itself.

So far as the religious aspect of the matter is concerned, the same does not interest me at all. If a certain change is necessary or desirable in the interest of the Hindu community, the same must be made irrespective of the consideration as to whether the same was or was not in accordance with the spirit of the *shastras*. No law ought to be immutable and every community must understand that the laws they are governed by, are liable to be and must be adapted to the needs of the community in the changing circumstances of the times. A refusal to agree to any change in the law on the ground that it is against the *shastras* and on that ground alone can only be calculated to retard the progress of the Community. The Hindu Law has already been modified by the Legislature in many respects and if, in my opinion, the proposed modification were necessary in the interest of the Hindu community, I would not oppose the same simply because it was not sanctioned by the *shastras*. The question, however, is whether the amelioration of the economic condition of Hindu women sought to be effected by the proposed piece of legislation, firstly by giving them an absolute estate and secondly by making the daughters simultaneous heirs with their brothers, is likely to achieve the object which the framers have in view. In my judgment, it will not result in any improvement in the economic condition of Hindu females, and the mischief it will cause, will greatly outweigh the benefit that is likely to accrue in some cases.

The persons whom the Bill is calculated to benefit will, the great majority of them, be illiterate women and possession of an absolute estate, without the capacity to manage the same is, to my mind, meaningless. Education must come first and so long as the majority of the females whom the Act is intended to benefit are illiterate and remain in *pardah*, the change had better not be made. It might be urged that once the females become economically independent, advance in other respects will follow; illiteracy and *pardah* will go and a new chapter will have been opened in the status of Hindu women in this country. I do not share any such happy expectations. Under the Bill the position of Hindu daughters is sought to be

approximated in some respects to that of the daughters under the Mohammadan Law. These have under their personal law been all along entitled to a share along with their brothers. My experience gained through cases tried in court is (and this is confirmed by inquiries from a number of Mohammadan brother officers) that daughters generally do not claim a share. They usually make their appearances in courts when a brother is in trouble. They then claim their share so that the whole of the estate may not be sold at the instance of the creditors of the brother. It would be interesting to hold an inquiry into a number of cases to find out how far the right has been claimed and conceded in families admittedly governed by Mohammadan Law. Even in cases where the right has been conceded and a share of the estate has passed to the daughters, the same has generally gone to swell the estate of the husband, but what the husband gets through his wife, he loses to his sisters. The average Hindu female thinks in terms of the family and if she finds that the proposed piece of legislation is not going to benefit the family as a whole, but herself only with corresponding loss to her husband and children and ill-feeling and unpleasantness besides, she would prefer the law to remain as it is. Of course the operation of the law would effect different families and different individuals differently, but on the whole and taking a family as a unit there will be neither loss nor gain. At present daughters and sisters, among the Hindus, are a sacred trust and in a very large number of middle class families, they get more in the shape of dowry and seasonal presents than they would get as their share under the proposed piece of legislation. If the Bill becomes law, the present happy relations between brothers and sisters will be a thing of the past. There will be endless bickerings and litigation. It also appears to me that the present evil of dowry system will be accentuated in a different form. In my opinion, what is required at this stage is that a start should be made by a piece of legislation on the lines of section 488 of the Criminal Procedure Code. Indigent daughters and sisters and other females as also certain classes of males should be given a statutory right to claim maintenance from those whose moral duty it is to maintain them. This right should be exercisable by means of a simple proceeding instead of, as at present, by a regular law suit and Civil Courts should have summary powers to allow maintenance up to a prescribed maximum on such applications. This would, in my opinion, meet the difficulty of the situation in a very great majority of cases in which this primary duty is neglected and at the same time it would not disturb the harmony that exists at present in the relations between brothers and sisters in the very great majority of Hindu families. My experience is necessarily limited and confined to the most to my own Province; conditions may be different in other Provinces but I would like the above suggestion to be given a trial at least in my own Province.

It will be urged that the provisions of the law will apply only in cases of intestate succession and it will be open to the father to make a will so as to deprive the daughters of their share. Having regard to the fact that the great majority of the persons concerned will be illiterate and will have no means of access to lawyers, the Bill would, for all practical purposes, confer an absolute right of succession on the daughters and the cases in which this right will have been taken away by wills, will be few and far between, not because the fathers would not like in most cases to leave the whole of the property to their sons but to the difficulty of making a will at a proper time and in a proper

manner. The power to change the course of succession by means of a will is useful in cases where recourse to solicitors or some such other agency can easily be had, and it will be dangerous to introduce provisions of this nature applicable to a whole community throughout India in the present state of illiteracy.

The provision that even apostasy will not affect the right of an heir to inherit is, to my mind, against the best interests of the community and even if the right of succession is allowed to daughters and other females, there must be a provision that in case of apostasy the person or persons concerned will not be entitled to a share.

District and Sessions Judge, Lahore

I have the honour to say that I approve of the provisions contained in the proposed Bill. The objections to the Bill are not based on religious prejudices as they profess to be but proceed from an unwillingness to part with *de facto* rights and a reluctance to break away from the tradition of male economic superiority. In my opinion the change contemplated will go a long way to improve the status of women in the Hindu society and will invest them with a feeling of self-respect and security.

District and Sessions Judge, Montgomery

The chief principles of the Bill are—

- (1) the provision of a uniform law of succession for all Hindus of British India,
- (2) the removal of the sex-disqualification in the matter of inheritance, and
- (3) the abolition of the principle of limited estate for women.

I do not think that the framers of the Bill have been entirely successful in achieving uniformity of succession and in any case I do not think that it is a very desirable object. As regards the other two principles which the Bill seeks to give effect to I wholly support them. I am inclined to think that in order to avoid obvious complications the codification of other connected subjects of Hindu Law should be taken in hand before this Bill is enacted and enforced or very soon after it.

I endorse the opinion which has been expressed by a number of members of the Joint Committee on the Bill that simultaneously with the passing of this Bill Government should take steps to repeal Act 21 of 1850 so that renunciation of Hindu religion may be a bar to inheritance under the Hindu Law. The feeling that a change of religion should be a disqualification for inheritance is strongly entertained by a large majority of Hindus.

The only amendment I would propose to the Bill falls under section 18. I think it will greatly simplify matters if the rights of an unborn child are secured not by reference to his being in the womb at the time of the death of an intestate, which might be a difficult matter to prove, but by enacting that the rights shall accrue to any child born alive within a specified number of days, say 280, of the death of an intestate.

Pandit Lakshmi Narayana Sudan, Advocate, Senior Vice-President, Shri Sanatan Dharma Pratinidhi Mahasabha, Punjab, Rawalpindi.

I should say at the outset that the constitution of the Joint Committee was irregular and against the recognized convention that no non-Hindu should participate in a measure which exclusively concerns

the Hindus. The Bill was practically sponsored by a non-Hindu, and a non-Hindu acted as a Chairman of the Joint Committee. There were good many irregularities which are mentioned in the minutes of Dissent of the members and they are quite sufficient in themselves to vitiate the Bill.

The Bill clearly shows that there was no 'necessity' to amend and codify the whole of Hindu Law now in force in British India but it was considered only 'expedient' by the Committee to do so. The word 'expedient' is significant.

After Deshmukh's Act of 1937 and Amending Act of 1938, certain other Bills had been introduced and the Central Government appointed a Committee known as the Hindu Law Committee to examine these Acts as also the Bills subsequently introduced. It was this Committee which after making detailed examination of the subject made a report *suo moto*, recommending that the Hindu Law should be codified in successive stages. It was not done at the desire of the people of India, nor at the demand of any body of persons owning property who may have felt the necessity of having one uniform law of inheritance for their progeny different from that now prevailing. The Joint Committee does not seem to have considered this aspect of the matter, otherwise it would have been found that such codification was quite unnecessary and uncalled for, and that the memoranda of the Hindu women in Simla or Maharashtra Branch of the All-India Women's Conference representing all its branches and sub-branches was quite insufficient to induce anybody to make such drastic changes in the settled law of the Hindus as are desired to be made. The members of this Association are not confined to Hindu women only but women of different communities as well as nationalities, e.g. Hindus, Mohammadans, Christians and Europeans, etc. Their membership may perhaps be 15,000 as shown in the memorandum submitted by them to the Joint Committee, but it would have been more relevant and to the point, if the exact number of the Hindu members only had been shown. Church of Scotland Mission, other councils, Leagues and Clubs (majority of whom are confined to Bombay Presidency) are conspicuous enough to show that the number of Hindu members would be rather insignificant. The fact that the entire remaining population of Hindu women of the whole of India abstained from joining the above Association in their present move was not a matter of small importance to be ignored altogether.

As a matter of fact it was not only expedient, but positively necessary to invite the opinion of the male section of the Hindus particularly who owned property, and who were to be affected materially by this Bill. This Bill was circulated only in the third week of January, 1944 and thus quite insufficient time is afforded to the public for considering the Bill and expressing their opinion thereon by the 1st of April, 1944.

On reconsideration of the whole matter, I reaffirm and hold that the present Bill is not only quite unnecessary but is bound to undermine very seriously the existing harmony and solidarity amongst the Hindus.

Three main features of the Bill are :—

- (1) provision for one common law of intestate succession in place of several systems of succession now in existence;
- (2) removal of the so-called sex disqualification;
- (3) abolition of Hindu Women's limited estate and extension of the scope of *Stridhan*.

Each and every feature of the Bill jars most discordantly upon the basic principles of Hindu Law.

There being diversity of religious beliefs, sects, sub-sects, denominations and other various classifications and on account of different modes of life influenced by geographical conditions and environments, it is only natural to have variety of rules governing the Hindus of different provinces, India by no means being a small country. Even in the United States of America we find each State determining its own laws of inheritance and it is a matter of great pride for India that in spite of their being so many provinces, we have got only two main schools of Hindu Law of inheritance Dayabhag and Mitakshra. There being fundamental differences in them it is a vain attempt to unify them and make one codified common law for all Hindus in British India.

Even Sir John Mayne, the most eminent Jurist, considered codification of Hindu Law a practical impossibility. In his words as quoted by the Honourable members Messrs. Nilakantha Dass and Baijnath Bajoria "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, Rameswaram, of Amritsar and of 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."

In this Bill, the rule of succession is confined to a separate or heritable property of a deceased intestate as defined therein. Some members consider that the heritable property is generally negligible or very small in comparison with the joint or ancestral property of a deceased. This may or may not be so. The Bill which is now intended to be placed on the Legislative anvil is only a thin edge of the wedge. It is not known what rule of succession is coming next to govern the joint family property. It may next be proposed, as once already done by Doctor P. C. D. Chari, that a 'daughter' should be considered a member of joint Hindu family with the father, so that rule of survivorship may also apply to her. It is submitted therefore that no codification is necessary, and in no case should radical changes be made, as different rules of succession with regard to separate property, joint Hindu family property and landed property will only create great many difficulties, discords and financial troubles in the family.

Again, situated as we are in the Punjab and N.-W. F. P. where the Mohammedans are in majority, and there already being various divergent sub-divisions amongst the Hindus and the Sikhs, we cannot afford in any case to have further family feuds and disintegration which the Bill, when enacted into a law and put to practice, is bound to bring in as its natural consequences. Hindu members in the Assembly representing the Punjab and N.-W. F. Province are bound to disagree with this Bill. Supposing this Bill is enacted into a law and subsequently the Punjab and N.-W. F. P. are dismembered (in spite of our wishes against it), under the Pakistan Scheme, from the rest of India, and in order to maintain our solidarity, unity and wealth-power-of-man we want to alter this enactment which is now being forced upon us, it will be well-nigh impossible to do so under the altered conditions with preponderating Muslim majority in the Legislature. So it is submitted that if it be considered absolutely necessary to amend and codify the Hindu Law as proposed in this Bill, Punjab and N.-W. F. P. and other Muslim Majority provinces should be left alone and exempted from its operation.

It is important to note that in spite of Muslim Shariat Act, XXVI of 1937, by which all Muslims are now governed by the Shariat Law in respect of all property movable and immovable (excepting agricultural land) the Punjabi Muslims owning agricultural land, who are generally governed by agricultural custom which is based practically on the same lines as the Hindu Law of Mitakshra, did not care to be governed by the Shariat Law and consequently the Punjab Legislature has not, upto this time, thought it expedient to move in the matter. The reason is quite apparent that they do not want to make a daughter an heir along with the son, nor do they want to alter the woman's life estate to an absolute one. There is no reason why to make such drastic changes in the Hindu Law as proposed in the Bill, and to thrust them on the unwilling Hindu public.

As regards the 2nd feature :—

The report of the learned members of the Joint Committee while discussing the capacity or right of a woman to hold property or to acquire it otherwise shows, that there was a great confusion of thought. It is one thing to consider whether a Hindu woman has got a right or capacity to hold property and quite another whether she can acquire any property by inheritance in presence of a son. Two points should have been kept separate. There may be ample support for considering that a woman has got a right or capacity to hold property for her enjoyment, but there is no authority anywhere in the Shruties, Smritis or other religious scriptures for imposing the drastic change that the widow, the daughter and the dependent parents are entitled to inherit along with the son, the separate property of the deceased intestate. The three passages referred to in the report and other authorities were brushed aside on very feeble grounds but no authority could be quoted for inheritance of the women otherwise. It is ignored that all Smritikars and eminent commentators were at one on the point that the son is the sole heir after the death of the intestate, of his separate property. If no authority did appeal to the minds of the learned members of the Joint Committee to hold that a female was incompetent to possess or hold property, certainly there was nothing to justify the conclusion that any female was competent to inherit the property in presence of the son, as is now proposed in section 5 of the Bill.

The point for consideration is why the son excludes all the females and even the parents of the deceased from inheritance. It is to be remembered that 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 obligation. If a female gets any money, ornaments or property she gets only for her enjoyment. There can be no rights without corresponding duties. Moreover the son's right to inherit the separate property of his father is founded on his religious duty to make an offer of oblations and *Pinda* to the deceased and to perform his *Shradh* and he is more entitled on the ground of religious efficacy to make such offers than any of the other relations, and thus a duty and a corresponding right of inheritance.

"Pitri rina" (i.e. paternal debt) which is known to every Hindu worth the name should not be ignored from consideration by the members of the Assembly, who are representing teeming millions of Sanatan Dharmi Hindus who have got firm faith in their religious principles which are not only found inherent in

them, but being ingrained in their mode of life, form their culture quite different and distinct from that of the others.

The whole law of inheritance is mainly based on the capacity of the heir to offer oblations to the deceased. The more the capacity, the more his preferential right to inherit. Thus it is clear that the Hindu Law of inheritance is based on such obligations rather than on any sex qualifications or disqualifications. In the absence of son and the widow the daughter inherits. She inherits not because she is 'gotraja' of the deceased, as she is now proposed to be made, for she is not of the same *gotra* as that of her father, but because her son will be the preferential person to perform the *Shradh* and offer oblations and thus will be a preferential heir; and hence it is that the daughter has only a limited estate so as to form a conduit pipe to pass the inheritance undiminished to her son who is really intended to be benefited.

The principle that right of inheritance according to Hindu Law is wholly regulated with reference to spiritual benefit to be conferred on the deceased proprietor is not only found in Hindu scriptures, but has been laid down on the highest judicial authority as an article of legal creed which is universally true. It was recognized by their Lordships of the Privy Council in 12 M. L. A. at page 96 that "there is in Hindu Law so close a connexion between their religion and their succession to property that the preferential right to perform the *Shradh* is commonly viewed as governing also the preferable right to succession of property and as a general rule they would be expected to be in union." So the Law of inheritance has got religious principles for its foundation and that should in no case be altered.

Again, under Shastric injunctions it is the bounden duty of the son to maintain his aged parents, and other dependents, while the daughter has got no such duty. Under the proposed Bill, the daughter will inherit from her father, from her father-in-law and from her husband without any corresponding obligation, but to use, enjoy and dispose of the property in any manner she likes.

It is most curious to note that son's daughter and daughter's daughter are also mentioned as heirs in class I of section 5 of the Bill. If the daughter be not an heir, surely son's daughter has no place for being made an heir. Of course she is to be properly maintained out of the family property. The idea of putting daughter's daughter as an heir even in preference to parents who are not dependent on the intestate, to brother, brother's son, brother's son's son, father's mother and father's father, is subversive of the acknowledged principles of Hindu Law and the property is transferred altogether to a different family far removed without any corresponding good to the deceased, or any spiritual benefit or religious efficacy. Can we not ask what authority moral, religious or legal has been considered in doing so? It is preposterous to think that the real mother, father or brother should get nothing, but the whole property of the deceased should be transferred to his daughter's daughter, whose interests have practically receded from the main family.

So far as the rights of the other proposed heirs in the next 4 classes are concerned, I have already discussed them in my previous criticism.

The order of succession in the proposed Bill seems to have been moulded to some extent according to the principles of Mohammedan Law. A list similar

to the sharers of Mohammedan Law should have, in no case, been engrafted on Hindu Law in the form of simultaneous heirs; nor should have the daughter been made an heir with a Quranic share of $\frac{1}{2}$ along with the son, giving us a vivid picture of the combined list of sharers and residuaries of the Mohammedan Law. There will be no surprise if with a view to secure a share to the daughter in her father's property and with a view to complete the picture, next time when a bill for testate succession is mooted by the Legislature, it may be proposed that an owner cannot make a will for more than one-third share of his property to a stranger or an heir without the consent of all the heirs as required by the Shariat. Institutions like those of widow remarriage and divorce, practically unknown at present, will also be forced upon the Hindu society as a necessary consequence of the drastic changes contemplated by the learned sponsors of the Bill, the most unfortunate aspect of the same picture.

It is submitted, therefore that we do not want any radical changes in our law of succession as now in force in British India, nor is it desirable to engraft on the Hindu Law the rules of succession governing the Christian or Mohammedan societies, wherein marriages between near relations such as cousins (in the family itself) are permissible, while such marriages are absolutely prohibited amongst the Hindus.

As regards the 3rd feature :-

The Bill abolishes the Hindu women's limited estate. It is submitted that this provoking change is the worst type of a change to say the least. A Hindu female is not entitled to an absolute interest in an inherited estate as she has no liability or responsibility to discharge. She gets the limited estate in lieu of maintenance. As a matter of fact it is not inheritance as such. According to Shastras a male only is entitled to perform the *Shradh* ceremony of the deceased, and so it naturally follows that the male should succeed to the property of the deceased excluding the females. In the absence of male heirs female heir gets the property as she is entitled to maintenance and she holds it as such, but it is in trust for the next male heir. The widow inherits the property and holds it for her life and can use it only for legal necessary purposes, so as to pass it after her death to the reversioners. Similarly the daughter inherits it in the absence of a son, so that she may hold it during her life time and pass it on to the next male heir, i.e. her son. The collaterals and the daughter's son are entitled to perform *Shradh* and offer oblations for the benefit of the deceased and hence their inheritance. There is, therefore, absolutely no ground for absolute inheritance by females.

The definition of "Stridhan" as now proposed with a view to include all property acquired by a woman by inheritance or devise or at a partition or as arrears of maintenance is altogether subversive of the elementary principles of Hindu Law. The word "Stridhan" would not have found any place in the legal vocabulary of Hindu Law if it had not been confined only to the property gifted to her before, at or after marriage by her relations and other strangers connected with the family. The expression was coined with a view to be used in contra-distinction with the property which was inherited or acquired by partition, etc. and was to be her life estate.

I have already discussed in my previous criticism of the Bill that the scope of the word Stridhan can in no case be extended on the erroneous interpretation made by Vijnaneswara of the word "adi" in the

definition of Stridhan, given by Yajnavalkya. I had already proved that it was an obvious error of Vijnaneswara in view of the definitions given of the word Stridhan by Manu, Vishnu, Narada, Apastamba, Vyasa and Devala, the most eminent Smritikars, as also it was found to be incorrect by their Lordships of the Privy Council more than half a dozen times whenever the matter went up to the Judicial Committee for decision. So the members of the Rau Committee and the Joint Committee were in no case competent to take their stand on the erroneous definition of the word Stridhan given by Vijnaneswara specially in the absence of any other authority to support them and particularly when it is totally incompatible with all the principles of Hindu Law.

Stridhan as now defined is sure to produce anomalous results which can be seen from the following illustrations :

1. Suppose a Hindu dies intestate leaving a son, a grandson, a daughter and a daughter's son. After the death of the intestate, according to the present Bill, share of property inherited by the son will be ancestral in presence of the grandson and the son will be incompetent to alienate the property without necessity. But on the other hand the property inherited by the daughter will be her Stridhan and she will be competent to dispose of it in any manner she likes in presence of her own son.

2. In the above illustration suppose the deceased leaves a widow of a pre-deceased son also and suppose she remarries and has got a son and a daughter from the 2nd husband, now on the death of this widow the sons and the daughters from the second husband will also be entitled to inherit along with the descendants of the former husband, if any. So there will be a succession of uterine sons and daughters. But it is not known whether consanguine sons and daughters from another widow will also inherit or not.

3. Suppose in the 2nd illustration the widow does not leave any descendants, the property will go to her 2nd husband, under clause 13, who is quite a stranger.

4. Suppose in illustrations 2 and 3 the widow had remarried a Muslim or a Christian, the property will go to her descendants from this husband, or to the husband as the case may be.

The more we consider over the matter, such illustrations can be multiplied.

So the definition of the word Stridhan is to be remodelled so as to exclude the property which a female inherits or acquires at a partition or in lieu of maintenance or by purchase out of her husband's funds or otherwise by seizure or adverse possession as a limited owner.

Apostacy should also be a disqualification to succeed.

I entirely agree with the minutes of dissent recorded by Messrs. Nilkantha Dass and Baij Nath Bajoria and generally with those expressed by Mr. V. V. Kalikar (excepting his views regarding codification).

As regards the Bill itself (if it be considered inevitable to codify the Hindu Law in any case) it is submitted :—

Clause 1.—Punjab and N.-W. F. P. should be exempted from its operation.

Clause 2.—In clause (a) the words 'and who are of the same gotra' should be added at the end.

In clause (h) a change should be effected so as to exclude from the definition the property acquired by inheritance or devise or at a partition, in lieu of maintenance or by purchase out of funds inherited from a male or acquired by prescription or adverse possession as a limited owner.

Clause 3.—A clause should be added 'so that the Sanatan Dharmi Hindus are totally exempted from the operation of this Act'.

Clause 5 and other clauses.—There should be no enumerated heirs, nor simultaneous heirs. Son's daughter and daughter's daughter should be deleted. Substantial provision for the maintenance of the dependents should be made.

All inheritance should be according to the Mitakshara or Dayabhaga schools of Hindu Law as in force at present. Desmukha's Act and the Amending Act of 1938 should be repealed.

Clause 13.—As already said Stridhan should not include property inherited from males, and the former law of succession regarding Stridhan should be retained.

I want to make a note that in our part of the country father and mother will never like even to touch the property belonging to the daughter. There is no question of inheritance of daughter's property by her parents or their relations.

Clause 17.—Is controversial. It is not known what marriage is called valid. We are opposed to the marriages outside caste. This clause assumes the validity of marriages outside caste and perhaps community, which are not recognized as valid by the Hindu Law.

Clause 18.—Proviso should be deleted.

Clause 20.—Hindu Law, as it now exists, should be maintained. Apostacy also should be made a ground for disqualification from inheritance. Caste Disabilities Removal Act, 1850 should be repealed. The decision of the Joint Committee in support of this Act of 1850 while proposing a Bill in favour of and in the interests of the Hindus is not understood. There should have been no hesitation in repealing the Act.

The rules of Hindu Law regarding succession with all its distinctive features quite intact survived upto the present times in spite of receiving rude shocks for thousands of years through the heavy onslaughts of different civilizations, and in spite of centuries of continuous foreign domination. It may appear surprising but the reason was that they stood on the firm rock of sound reasoning based on religious background. These settled rules should therefore be allowed to remain untouched.

Such drastic changes like the present which are quite incompatible with the distinctive features of Hindu Law made every time on the uncertain whims of certain interested persons are sure to unsettle the settled condition of the society, and are bound to react on the Hindu social life and to make the life miserable on account of their ruinous and disintegrating consequences.

I would appeal to the members of the Legislative Assembly to kindly seriously consider over the whole matter and withdraw the proposed Bill as soon as possible, as it is causing a great anxiety to the minds of the people in general who are in a position to judge the detrimental consequences of the Bill.

If on any account there are persons who still maintain that they want to have such a measure for themselves then they can have a separate measure for

themselves only. In the proposed Bill a clause may be added that it should apply only to those who make a declaration to that effect to a prescribed authority as has been done in the Shariat Act of 1937. But in no case should it be thrust on the teeming millions of Hindus who are quite opposed to this measure and who are bound to suffer if the Bill is made applicable to them.

I want to point out that under the existing law a Hindu is quite competent to dispose of his property by will, and if he intends to benefit his female heirs like the daughter, or daughter's daughter or any other person in presence of the sons, he can do so without any restriction. So the Bill is quite out of place and unnecessary. Hence I oppose the Bill.

Resolution passed at a meeting of the Working Committee of Shri Sanatan Dharma Pratinidhi Mahasabha, Punjab, Rawalpindi.

The opinion of Sjt. Pandit Lakshmi Narayana Ji Sudan with regard to the Hindu code, Part I (Intestate Succession) Bill as introduced in the Central Assembly, read and resolved that the same be adopted. Resolved further that it is most detrimental to the interests of the Hindu community to enact the Bill as introduced and that the Government be requested to withdraw the Bill. The Mahasabha trusts that the hon'ble members of the Legislative Assembly will oppose the Bill.

The Bar Association of Rawalpindi

We have had the advantage of reading the opinion recorded by Pandit Lakshmi Narayana, Advocate, on behalf of Shri Sanatan Pratinidhi Mahasabha, Rawalpindi, Punjab, and we are in general agreement with this opinion. Our criticism of the Bill is however, not based on the religious aspect of the Bill which has been dealt with in Pandit Lakshmi Narayana's opinion, but on general principles.

Legislation, as very well put up by the eminent jurist Bentham, is itself an evil and should not be resorted to unless it be to remove a bigger evil. The main arguments of the protagonists of the revolutionary change which is sought to be introduced in the Hindu social structure are—

- (1) the necessity of introducing uniformity in place of diverse schools of Hindu Law, e.g. Mitakshra and Dayabhaga, etc. and
- (2) the disabilities under which the Hindu women are generally labouring and the consequent hardships which the disabilities bring in their train viz. depriving the women of right of inheriting along with their brothers, etc. and allowing them only a life estate instead of full and absolute ownership in the property inherited by them.

As regards No. (1)

Seemingly laudable as the object may seem the question arises whether the desired result will be achieved and if achieved would conduce to greater happiness of the community for whose supposed benefit it is intended? The fact cannot be gainsaid that the different schools of Hindu Law are themselves based on texts which are considered to be of divine origin and purport to be merely interpretations of the same rule. Yet different commentators gave different interpretations to the same texts simply because these different interpretations were found more suitable to the people inhabiting particular localities or living under conditions peculiar to them. Would it therefore

be just, equitable or convenient to brush aside by a few strokes of pen the cherished conventions and practices which have obtained a sort of religious sanctity? Assuming that the change in the direction proposed is desirable would the change have the effect of introducing the uniformity desired and remove the confusion which it is sought to remove? In our humble opinion it would have just the opposite effect by making the confusion, as the phrase goes, worse confounded. Taking for example the case of Bengal the result would be that while on the one hand the persons living in towns and owning house property only would be governed by the NEW system, the persons living in villages and owning agricultural land only would most of them be governed by Dayabhag School of Hindu Law; while the small minority of persons in Bengal following the Mitakshra system and living in rural areas will be observing that law in respect of the agricultural land. Again those who own urban property or property other than agricultural land as also agricultural land will be subject not only to one system of law as at present but to two widely different systems differing from each other as poles as under. It is not merely imaginary difficulty we are referring to but a real one. A few years back the Shariat Act was passed by the Central Assembly which, owing to the limited legislative powers of the Central Assembly applies only to the property other than agricultural lands.

The Punjab Legislative Assembly has not yet thought it expedient or necessary to pass legislation adopting the principles of the Shariat Act in respect of agricultural lands. There is no reason to suppose that the Punjab Assembly will adopt the principles of the proposed legislation in respect of the agricultural lands in respect of the Hindus what it failed to do in case of the Muhammadans. The expectations of the sponsors of the Bill as regards the Provincial Legislature adapting their policy will be nothing but a pious hope with the result, as we have said, of inevitably making confusions worse confounded.

A few words more might be said on this point. We find from the various minutes of dissent recorded by several members of the Joint Committee that there were several non-Hindu members of the Committee who voted for this principle and there are several non-Hindu women's organizations whose representations were received listened to and were perhaps allowed to influence the opinions of the members. May we ask if there are not different schools of Muhammadan Law also? Has any attempt been made or is such an attempt in contemplation to introduce a uniform rule of inheritance or in respect of other subjects in the case of Muhammadans? If not how could those non-Hindu members come to think that Hindus require greater amount of unanimity in such matters than the Muhammadans? As a matter of fact there is, as far as our knowledge goes, much greater diversity amongst Muhammadans than in the case of Hindus. If one uniform system of law cannot be devised in respect of one-fourth population of a country with any advantage to that section of the population how can one expect one uniform system to be devised in respect of a section of population three times as large?

As regards No. (2)

One of the principles of legislation is that it should cover the case of majority of people. In other words the legislation has in view as its object the greatest good for the greatest number. The question of succession in the sense that there is property to divide

arises here in a poor country like India in very few cases hardly even one per cent. of cases. By far the over-whelming majority of cases are such that either there is one small house or a couple of hundred worth of property which if it were to be divided would hardly yield a few rupees to each sharer. In all such cases it is not the fact of the existence of a bit of property which, if sold would hardly fetch sufficient to maintain the whole family consisting of mother, sisters and brothers, etc. for a few months, but the moral obligation of the brothers, after the death of the father which is responsible for maintaining the mother and sisters. On the occasion of marriage of the sisters the brothers would like, simply to save their face, to do all in their power to see that the sisters are properly married and get presents on appointed occasions. Introduce the mercenary considerations (as the present Bill proposes to do) in these matters that the sisters must insist in getting their full pound of flesh by insisting on their right to force partition, and all moral obligations are cast to the four winds and the result will be that daughters of poor deceased persons will be thrown on their own resources and nothing but confusion—nay chaos—will result. The legislation which has been enacted since 1929 by which sisters, widows and widowed daughters-in-law were given rights of inheritance was a step, certainly, in the right direction. This legislation, particularly the one in 1937 was a welcome reform which secured to the widow in the presence of sons, even in case of joint families, and to the widow of predeceased son, a share equal to that of a son and no reasonable person has any cogent reason to object to such a change. But to go further with a view to redress some supposed grievances and to give shares to daughters who on their marriage would share the property with their husbands is a radical change which is most uncalled for and can result only in one direction—complete disintegration of what little remains of the Hindu social structure. The whole clamour on the part of the various women's organizations is based on the assumption that man as such is oppressing the woman as such and a man, whoever he is, would ignore the claims of his own daughter, wife or sister or mother simply because she is a woman and would deprive her to benefit his collaterals at the expense of his womenfolk. The basic idea involved in the clamour of so-called women's rights is that women are equal to men in all respects. This idea is fundamentally wrong. There is no question of equality or superiority or inferiority. Man and woman are part of one whole, neither equal to each other nor superior nor inferior; they are just complimentary to each other.

Giving shares to women on the lines of Muhammadan Law would be as unworkable in the case of Hindus as has been found to be the case in case of Muhammadans. It is in our knowledge that although in theory Muhammadan Law applies to all non-agricultural tribes but it is honoured more in the breach than in observance. It is in very rare cases that women get their Quranic share. In the few cases where there is substantial property to divide the women get in theory what they are entitled to but in actual practice they surrender to their brothers etc., what is allowed to them by the Sheriat. If this rule of inheritance has been found to be unworkable amongst persons who profess the Muslim religion amongst persons who call them devout Muslims how can it be expected to work amongst Hindus who for thousands of years have been following their own personal law and to whom this new rule would be as strange as it would be unpalatable. The so-called rights of women may

well be left to the love and affection of the parents who will do all they can and what they will consider proper and reasonable, i.e., in the very small percentage of cases in which the question can arise having regard to the extent of the property possessed by the parent.

The proposed enlargement of the powers of women over the property inherited by them is as undesirable as it is unnecessary. Hindu men possess limited powers over the property inherited by them from their father and nobody can say that the restrictions placed on their powers have proved irksome—they are a wholesome check on extravagance—and nobody has ever complained against this and no claim has so far been put forward that their powers over such property should be so enlarged and yet we find suggestions being made to remove all restrictions. It is noteworthy that a certain powerful women's organization has protested against giving unrestricted powers over the property inherited by women.

In remarkable contrast to this is a suggestion made by one women's organization that testamentary powers of men should be curtailed and the Hindus also should be placed on the same level as Muhammadans, viz. that they should not be allowed to will away more than one-third of their property: all that we need say about such like suggestions is that they carry their own condemnation with them.

With these general remarks, we have expressed our inability owing to a copy of the Bill not having been sent to us to deal in detail with the Bill. We oppose both the principles of the Bill as also the Bill itself.

The Arya Pratinidhi Sabha, Punjab

The proposed measure has been fully considered by this Sabha. While this Sabha does not feel inclined to oppose the succession of daughters and other females, it is clearly of the opinion that the female heirs should not be given absolute rights over the shares they get from the males. Society has not yet reached the stage at which women have attained sufficient capacity to deal with the outside world and protect themselves from the fraud and machinations of their greedy relations. Education alone will not fit them to manage their property to their best advantage. They must have a good knowledge of affairs to be able to protect themselves. In the case of males, they become associated with their elders in the management of property or carrying on the family business from an early age while this opportunity is not usually available to females.

Again succession to female holders of inherited property requires revision. Her issue should of course have priority over every one else. Property once descending in a male becomes his absolute property. Failing issue, however, property must go to the heirs of the last male holder, and not to the husband as proposed.

It is, however, to be noted that female heirs particularly daughters should not have the power of ruining the family business. In the case of business, the male co-parceners or partners should have the right to buy of a female heir at a valuation. It is possible that the daughter's husband may be interested in poking his nose into her father's business or even ruining it by insisting on dissolution of the firm.

The condition imposed upon a father or a mother, succession in section 5 will in the opinion of this Sabha give rise to litigation for determining whether a particular parent is or is not dependent within the meaning of this section. Very often the parent will stand to lose the share for inability to go to court and fight a case.

This Sabha has no further comment to offer.

Shri Sanatan Dharma Pratidinhi Sabha, Punjab, Lahore

1. The Rau Committee (commonly called the Hindu Law Committee) was appointed by the Government of India to codify the Hindu Law. The reason given to justify this action was stated to be that "In consequence of certain difficulties of interpretation arising out of the Hindu Women's Right of Property Act and the Amending Act, 1938", the Government had to appoint the said committee.

2. The reason given for such a step to be taken was quite an extraordinary and lame one. Such a position could only be for two reasons :

Firstly the drafting of these Acts must be so defective that it required a change in them. But instead of taking the right course of correcting them a wrong course of changing the whole Hindu Law is taken.

Secondly it showed that the presiding judges of the courts were considered to be incompetent to interpret these Acts correctly. Here a wrong course is again taken. Instead of removing the incompetency of the judges or replacing them by more competent and abler judges the whole Hindu Law was sought to be changed.

This was really a curious way of doing things and especially the framing of the laws. It was a true case of putting cart before horse.

3. Was it not a fact that every day all kinds of laws were interpreted by lower courts and appellate courts upset their decisions and still higher courts gave them another interpretation. Could there be a justification, then, to change those laws every day?

It was therefore a lame excuse. In fact some other motives worked behind the curtain and that also to upset the whole structure of Hindu Law by one stroke of pen.

4. It was a patent fact that whole social even political and economic structure of the Hindu society rested on Dharma, i.e. truth, justice, love, service, etc., therefore this question of succession also was a purely religious one. The Rau Committee, also relying on Vedic texts proves the contention, though they interpret them according to their own idea to justify their position as such. On the other side the British Government in India declares its policy of non-interference in such matters, one could not understand how the Government justifies its action taken in this behalf. It was a plain case of religious interference. But still it was being done.

5. It is said that already drastic changes have been wrought in the Hindu Law by adopting certain measures and enactments. We know it was so, but it was never done, with our consent and approval. Rather in the face of our stern opposition things were being forced upon us by the Government with a specific object of further weakening the religious

sentiments of the Hindus and thus breaking their solidarity, so that the British power in the country may be strengthened, which solidarity has already undergone enormous and woeful changes. Thus the Government was using it as a political weapon to punish the Hindus as well.

6. It was a great misfortune for the Hindu society, that such plans of the Government were being backed by a class of Hindus, who were the creation and production of certain schemes, such as that of Lord Macaulay and who were, though, Hindu in blood and colour but for all intents and purposes were no less than the British in their opinions, views, manners and thoughts. Therefore they could not be expected to represent the real Hindu sentiments and ideals. They boasted to be reformers and had the western ideals before them, little caring to think that where those ideals have landed these very western nations and what was awaiting the western civilization in very near future. The number of so-called reformers alone could naturally be larger and those who did not subscribe to the western ideals could not be in large numbers in the legislatures and nor carried any weight with the British authorities.

7. The sponsor of the Bill was a Muslim gentleman, who by his natural inclinations, born tendencies, bent of mind, training and religious beliefs could never be expected to know the real significance of the Hindu Law nor have a just and sympathetic view towards the opposers of the Bill. Moreover he was merely a tool in the hands of the British authorities and could not dare to go against the avowed policy of his masters, to harm the Hindus.

8. The present Joint Select Committee was such, which could not be said to be above suspicion, especially when it was composed of non-Hindu element as well. There were four such members. We don't blame them as such, but it was clear that they could not be expected to be quite impartial by nature, though they might be doing it unconsciously.

9. Thus the so-called healthy convention of keeping such measures confined to the discussion and vote of the Hindus alone, is deliberately being violated, not in this respect, but in eliciting opinions also. Giving the list of the Women's Conferences and other women organizations into account was another instance of this nature, not caring that the list contained such bodies, which had non-Hindu women as their members. So far so that Christian women organizations were brought in to swell the list, as if the public had no common sense to understand this kind of machinations.

10. It is generally complained by the members of the very select committee that glaring irregularities were committed in its proceedings, but the chairman will not care to hear them and correct the mistakes, even when they were brought to his notice. This was a clear indication that the Government will not care for any opinions and procedure and will go on with the measure with fair or unfair means. And how this will be administered, if enacted, this all gives a clear indication to the people.

11. Several members suggested the inclusion of apostasy as one of the disqualifications, but the Muslim Chairman will not care to pay any heed to it. Neither the Muslim members supported the same. Was it not a clear indication to prove that as it affected their religious community, they did not come forward to support it. It was, therefore, quite clear from their conduct that they could not think and act impartially.

12. It is pointed out in the proceedings that while the meanings of the Vedio texts were twisted by certain member and the chairman of the select committee and recorded, on the other the texts put in support of the opposition were not recorded. Could there be a stronger proof of the partiality of the larger number of the members of the select committee to the weakening policy of the Hindus.

13. It is also complained by the select committee members of Mr. Joshi—a member of the Rau Committee previously—being allowed by the chairman to take part in the discussions of the select committee and to examine the witnesses. Was it fair and just?

14. Members of the select committee were not supplied with the copies of the depositions of the witnesses who appeared before them, thus making it all a mere show and farce.

15. The members were not also supplied with the copies of the replies of the questionnaire and letters issued by the Rau Committee. It seems there must be good deal of material to damage the Bill itself.

16. It will be a surprise, then, if the Bill prepared under the circumstances was not summarily thrown away without considering its merits and demerits. The Legislative Assembly will also be a party to such a fraud, even if they took it up for consideration.

17. It was claimed by the framers of the Bill that it will bring uniformity of law in the Hindu India, while it was not so at all, as there were several exceptions in it. Moreover it did not cover whole of the property and as Sir B. L. Mitra said it was a limited, then why to commit a sin of disturbing the Hindu Law at all by violating the religious neutrality as well.

18. Another factor to show the partiality of the Government towards the Bill is quite evident from the fact that while one lady member in support of the Bill has been nominated on the Assembly, a request for the nomination of another lady to put the other side of the case was summarily rejected.

19. In some places the framers of the Bill pose to claim that they were not bringing any change in the Hindu Law, on the other our reformer friends were arguing that they wanted to modernize the Hindu society and bring it to the level of other civilized nations, as if the Hindus were the barbarous people. In fact it was not merely codifying it, but it was to bring in changes in it on the model of western people. Thus it was wrong to say that no change was to be introduced. It was in fact a device to put the Hindus off the religious track for political reasons and our reformer friends were unconsciously helping in this sinister motive.

20. At the time of its first introduction, though by back door policy to avoid publicity and opposition and rush it through the legislature, there were 102 opinions against, 68 for and 7 neutral out of a total of 175 received on one or more principles of the Bill. Even now the Bill does not seem to have been translated in the languages of the provinces to give it wide publicity. It was, therefore, doubtful if it will reach the hands of the masses whom it concerned the most and vitally.

21. It was really very unfortunate that the framing of the most of the laws of this country was based on western ideals and laws, however unsuitable and harmful they may be to Indian conditions, traditions and ideals and life.

22. Another disturbing element in these religious matters was that the same were put before a legislature which was composed of different and in no small degree conflicting elements. It was not, therefore, possible to get right kind of result out of such a procedure and discussion.

23. We were a regular prey to a sort of poisonous propaganda with different slogans by the British people that we could not very often recognize our real position. For instance it was urged that the Hindus did not give their women equal status in the society and they were treated as slaves. There could not be a more mischievous lie than this. It was altogether wrong to say so. The Hindu ladies were queens in their sphere of home and wielded a supreme influence on the society in this position.

24. In case this kind of law was passed, it was bound to create a worst kind of confusion in the society and this is admitted even by those reformers who were in its favour. One could not understand, then, why such a mischief producing measure was ever thought to be brought on the anvil of legislature at all, unless the authorities were using these things for political reasons.

25. What kind of mischief will be created by the passing of this Bill, some of them are given below:

A. Relations between the parents and daughters, sisters and brothers, sisters and sisters and others will be strained to a great extent and a new sort of litigation will crop up in the Hindu society, with mutual bickerings and animosity consequent in this all.

B. The property given to daughters will also be a further source of friction between the husband and wife and he will coerce her to get it from her, as is done even today to press the wife to bring more money from her parents.

C. This procedure will further tempt the husbands to have more than one wife, by doing away with the previous one, so that they could get more money in this way. There have been cases in which wives were actually killed for insurance money.

D. It was wrong to say that the Hindus considered their women unfit to manage their affairs of property and other things. But as their sphere was mostly within the four walls of the house it was not practicable for them to give time and attention for outside affairs also. This will make the property to suffer and also the home and children.

E. If the husbands were to manage the property acquired by their wives, then it will not be possible, to do it effectively, as the property will be in far off places of their fathers-in-law.

F. The wife's property acquired from her father will be again distributed amongst her daughters and it will change hands so often that it will not be easy to manage it. False transactions will come in force.

G. This kind of litigation will lead to most harmful custom of divorce and husband and wife will not be able to live together peacefully. A slight excuse will separate them from each other and the Hindu society will be made to suffer the baneful consequences of divorce, as are manifest in the west.

H. It was no wonder that a time may come when this legislation may lead the Hindus to marry their daughters in near relations, thus making the purity of blood to suffer enormously, as is the case amongst the Muslims. Hindus cannot tolerate it.

I. If the sons inherit the property from their fathers they owe a duty to them as well, i.e. to serve their fathers in old age. This duty is not enjoined on the daughters, which they cannot fulfil in the circumstances in which they live.

Thus they were not entitled to have any share in the father's property and it was quite just.

J. Moreover the sons are enjoined to perform certain religious ceremonies after the death of their parents, but no such obligation was enjoined upon daughters. This in consequence does not give them any share in the property of parents.

K. If the daughters do not inherit any property from their fathers, the daughters-in-law also do not bring any property with them as such, thus there was no disparity in treatment and the property, too, remains intact in the original family and does not change hands so often, as will be the case if this kind of legislation was enacted.

L. In Hindu law property does not possess first place in human relations, especially the husband and wife. But by passing this kind of law the relations will become more of material nature. Thus relations in the family which have already gone a substantial change towards materialism by the spread of western education and civilization with most detrimental results for the Hindu society, will further deteriorate to harm the whole humanity.

M. It is also wrong to say that daughters don't get any share out of the property of their fathers, but practically they get more than that of brothers in the form of dowry and otherwise for whole of their lives. Even their children get gifts which are considered sacred to be discharged by the fathers and brothers. At the same time this procedure does not create those evil results which are bound to follow, if this law was passed and enforced.

N. Besides at the present time there was a provision in the Hindu Law that certain articles belonged to wife only which was termed as *Sridhan*. The husband also treats it as such and considers it sinful to take anything out of it. But as they were bound by spiritual bond, they were always ready to take equal part in each other's pleasures and pains and never think that only one of them was the proprietor of home property. This law was sure to be a kind of wedge in their relations and the idea of wife being sole lord of a certain property will create an idea of separation in her mind which was harmful for a peaceful home.

O. The Bill will at once throw away the sacred scripture of the Hindus to winds in their own eyes and the present courts will take their place. It was a patent fact that by this the Hindus will be governed by these courts which have been found to be most corrupt and incompetent and neither they have the knowledge of the Shastras. It is complained that Indians were resorting to litigation very much and were not honest people, though before the advent of British in India they were described even by foreigners to be the most honest and truthful people. It was the present law which made them as such and by this they will be further adversely affected morally.

P. Suppose a married daughter dies childless, then on whom the property acquired by her from her father will devolve? If she has got some daughters and dies and the husband marries again, then as the conditions are the offspring of the first wife will not get any benefit out of the acquired property. This will complicate the matters and the property will suffer very much.

26. Under these circumstances this Sabha was definitely of opinion that the Bill be dropped altogether and not be proceeded with. The new committee formed for the codifying the Hindu Law be disbanded and the idea be abandoned.

President, Dharam Sangh, Ludhiana, President, Mahavir Dal, Regd., Hindu Panchayat and Hindu Sabha.

We beg to submit that in our opinion neither the Government of India nor any of the Provincial Governments does possess or has at any time possessed any right to legislate upon matters of private laws of the Hindus, the present policy of the Government of India of codifying the Hindu Laws through the Agency of the Central Legislature specially under its present form and constitution most reprehensible and its contemplated action thereon *ultra vires*, and that the action of the Government of India in constituting the Hindu Law Committee for the preparation and drafting of the Hindu Code is fully unwarranted and unjustifiable and that the Hindu Intestate Succession Bill and the Hindu Marriage Bill contain too many provisions quite opposite to the spirit and letter of the Dharmshaster and detrimental to the Hindu culture and civilization that Government should be asked to withdraw both of these bills and abandon any further attempt to legislate upon any subject of the Hindu Law.

Mr. Girdhari Lall, ex-Honorary Secretary, M.C., Ludhiana, Mr. R. P. Gupta, The Kewal Trading Co., Ludhiana.

The main object of the Bill seems to westernize the age-long Hindu Law about marriage and inheritance, undoubtedly, by this frontal attack against the existing socio-economic construction of the Hindu society. It is extremely irritating and provoking to find that westernized Hindus want this change with the help of Muslims and European elements in the country and the legislative body.

Hindus will be convinced of the good intention of the promoters of such revolutionary changes if they agree to the following conditions:—

- (1) Such laws be made by Hindu members only.
- (2) General Elections to the Legislative bodies be held specifically for this issue.

Lay persons do not know who amongst the Hindus have the right to make a will. It is in rare cases that people make any will about succession. Such laws always depended on the spot of the customs, i.e. general approval of the community. Some persons say that such bills are a modern way of making Muslim of Kafirs (non-believers in Islam). On one hand Government's policy is against fragmentations but in this case disintegration and fragmentation is being promoted with a vengeance; personal ownership of most irresponsible character will be developed.

Under the present order marriage expenses of the sisters are borne by their brothers and brethren. Maintenance and other legal charges are the first charge on the ancestral property. After passing such laws brother will not bear any expenses for their sisters and others out of their own share or the property and the moral effect in the society will be ruinous. Cases of abduction will fearfully increase as combination of wealth and women increases.

In short the effect of the change of the law will be destructive and most constructive though the social reform of the sort liked by Mr. Emery & Co. may be greatly brought about.

Lastly such interferences not only in social but religious matters of Hindus is not justified even by humanitarian view. Position of poor girls will become helpless and pitiable and in this country 80 per cent. of the people are poor. Not inherited property but the custom and the religious conception help the society to maintain the standard of morality and relationship. By such enactments relationship is replaced by partnership.

Resolution passed at the meeting of Shri Guru Singh Sabha, Rawalpindi.

Whereas the drastic amendments proposed to be made in Hindu Code, Part I (intestate succession) are not only most revolutionary, but detrimental to the interests of the Sikh community;

Whereas there will be total fragmentation of the property of individuals which will be transferred to absolute stranger families;

Whereas the present solidarity of the Sikh Community will be seriously and adversely affected;

Whereas the rule of Mohammedan Law by which the property of deceased Mohammedan devolves on his heirs in certain set shares and the daughter get Quranic share of $\frac{1}{4}$ with his son as a residuary, is being engrafted to the Sikh Community by making a daughter a sharer along with the son as a simultaneous heir;

Whereas a most provoking change in the definition of the word *Stridhan* is desired to be made by making the property to be inherited by her as her absolute estate, and thereby creating antagonistic interests in the family;

Whereas economic interests of the Sikh Community will be very seriously undermined by this drastic Bill;

Shri Guru Singha Sabha, Rawalpindi is quite opposed to the proposed enactment and strongly protests against its being enacted into a law.

Resolution of Hindu Sabha, Rawalpindi

Hindu Sabha, Rawalpindi records its strongest protest against the Hindu Code, Part I (Intestate Succession Bill) as introduced by the Joint Committee in the Central Assembly inasmuch as:

(i) The Hindu Law of Succession has got a very close connexion with our religion as it is based on Shrutis and Smritis, and therefore there should be no Legislative interference in the matters of our religion,

(ii) Drastic changes are intended to be made by this Bill which will cut at the root of Hindu culture,

(iii) Principles of Mohammedan Law of Succession in the form of Sharers and Residuarys are being engrafted on the Hindu Law by introducing a table of simultaneous and enumerated heirs,

(iv) Preference has been given to relatives such as daughter's daughter even to father, mother, brother etc. which is quite foreign to the principles of Hindu Law,

(v) By fragmentation of property and its transfer to stranger families the economical condition of the Hindus will be very seriously undermined,

(vi) By making a female an absolute owner of the property even in respect of property inherited by her from different relations, there will be constant quarrels in the families resulting in disintegration, thus adversely affecting the solidarity of Hindu community.

Hindu Sabha, Rawalpindi trusts that the Hindu members of the Assembly will strongly oppose this measure, which is most detrimental to the interests of the community.

Sikh Rights Protection Society, Lahore

The effect of this Act on the heirs of an intestate widow is not comprehensively and clearly set out in the body of the Act. The contingency of a Hindu having two wives has been ignored. If, for example, a person A dies leaving two widows W1 and W2, each having issues and W1 dies intestate, the effect of the Section 13(a) would be to pass her share in the property on to the heirs of W2 as well, which seems rather strange. Secondly there is no provision whereby the *Stridhan* of W1 mentioned in Section 13(b) will pass to her own relations in preference to the relations of W2. If this property were to pass to the sons and daughters of W2 as well, the Act will be infringing the long established tradition of Hindu Law. The following additions are suggested to remedy these defects:

Add under Section 15.—

“Explanation (iv).—If a person has two wives or leaves two widows W1, W2 and W1 dies intestate, her son, daughter, daughter's son, daughter's daughter, son's son and son's daughter, will have preference to such relations of W2.”

No. 4.—COORG

Chief Commissioner of Coorg

As usual, I consulted the Judicial Commissioner of Coorg, the District and Sessions Judge, the Munsiffs and the Bar Associations. The Judicial Commissioner states as follows:

“Social legislation of this kind affecting the law of Intestate Succession to Hindus is not a matter on which I would venture to express an opinion. I consider that only Hindu opinion is entitled to any weight.”

I enclose copies of opinions of the District and Sessions Judge and of the Bar Associations of Mercara and Virajpet. The Munsiffs of Mercara and Virajpet agree with the opinions of the respective Bar Associations.

The Bill as reported by the Joint Committee was published in the *Coorg Gazette* in English on the 1st February, 1944 and in Kannada on the 1st March, 1944.

District Judge, Mercara

I am in agreement with the provisions of the Bill generally. In my opinion, the change suggested does not go far enough. I fully support the views expressed by the members of Mercara Bar and stoutly oppose the suggestion of the Munsiff, Virajpet, and the members of the Bar there, that the consideration of the Bill should be deferred till after the war. A change of law relating to succession to the property of a Hindu is long overdue and it should be expedited.

Bar Association of Mercara

The members of the Mercara Bar are entirely in favour of codifying Hindu Law and bringing such codified law into force as early as possible. They therefore generally agree with the provisions of the Bill. They, however feel that the Bill is somewhat defective for the following reasons:

(a) It excludes from its operation the arcestral property under Mitakshra School. The members feel that if ancestral property is excluded from the

operation, there is very little property left out being subject to the operation of the codified law. The object with which the law is codified will be defeated if the major portion of the property still continues to be governed by the old law. The uniformity and the certainty at which the codification aims will not be achieved unless the whole range of property is brought under one law.

(b) The Bill is not clear whether the persons who were governed by their customary law in matters of intestate succession will be brought within its operation. If the object of codification is to simplify the law, and make it applicable to all classes of Hindus irrespective of castes, creeds or geographical areas, then the Bill must make it clear that all Hindus must be governed by the law as codified and not by any other law. In clause 1(3) of the Bill, the words, "It shall apply to any person who . . . would be governed . . . by the Hindu Law" are ambiguous. The clause should be suitably amended to include (1) all Hindus, (2) all those persons who were governed by Hindu Law in matters of intestate succession such as Jains, Brahmos, Sikhs, Buddhists and Muhammadans, (3) Apostasy must be made a disqualification for inheritance and Caste Disabilities Act should be repealed to that extent.

With the changes as suggested above, the Bill will become acceptable to the members of the Bar.

The Bar, Virajpet

We have very carefully gone through the provisions of the Bill, as proposed by the Rau's Committee, as amended by the Joint Select Committee and the notes of assent and descent by different individuals and organizations. Coorg being administered by a Chief Commissioner and hence directly under the Central Government will directly be affected as soon as the provisions of the Bill become law. Hindu Law should be codified but as whole and piecemeal as proposed. We feel that at present it is inopportune to try to codify Hindu law both on the ground that the representatives of the people have no hand in the Government and on the ground that it would not be possible to get the correct public opinion on a matter of such vital importance in the midst of a world war. Further, we desire to add that the method of finding public opinion by circulation is very inadequate on a matter of such vital importance to Hindu society. It is noted with great regret that non-Hindu members of the committee have taken active part in influencing the decision of the committee much against the will of the Hindu members and we record our emphatic protest at it and we wonder how the Muhammadan members would have reacted if Hindu members had tried to influence the decision on a social legislation purely confined to Muhammadans. Even if the Bill is to be passed and made into law we *very strongly insist* that apostasy should be made a disqualification to inherit.

No. 5.—AJMER-MERWARA.

Chief Commissioner, Ajmer-Merwara

I forward herewith opinions on the provisions of the Bill. Numerous protests received from ladies and gentlemen of the Hindu community in Ajmer-Merwara against the proposed legislation are also enclosed. The Judicial Commissioner, Ajmer-Merwara has stated that personally he has no comments to offer not being a Hindu. Mr. S. Khurshid (the permanent Chief Commissioner) has left a note to the effect that although he is in the same position as

Judicial Commissioner, he is in general agreement on practical grounds with the District Judge's remarks but he is of the opinion that in any case the present is hardly the time for embarking on so highly a controversial subject as the one contemplated by the Bill. It will be seen that the Deputy Commissioner, Ajmer-Merwara also has expressed the same opinion. With their opinions I entirely agree.

Deputy Commissioner, Ajmer-Merwara, Ajmer

The most important aspects of the Bill are:

- (1) An attempt to lay down one law of inheritance for all Hindus in British India.
- (2) Removal of the sex disqualification in the matter of inheritance.
- (3) Abolition of the limited estate for women and giving absolute rights of property to the women over all inherited estate.

Re. (1).—At present clear proof of usage outweighs the written text of Hindu Law. This provision of Law leaves a great loophole and codification of law will put an end to frivolous litigation and will simplify matters. At the same time the measure is fraught with obstacles, connected as it is with religious scripts which admit of no easy interpretation.

Re. (2).—So far women in general have been excluded from inheritance. It is only in certain circumstances that a woman inherits and that too for her life time. The principle that property once vested cannot be divested does not strictly apply to their case. They get limited interest only. Such a state of affairs leads to estrangement of feelings between the limited heirs and presumptive reversioners. Limited estate is responsible for much of the litigation under the Hindu Law. On the other hand it saves the property from being lost to the family. Women may therefore be allowed to inherit the property of the family where they are married but not their parental property.

Re. (3).—I am not in favour of total abolition of the limited estate and giving absolute proprietary rights to the women. The existing rights may be made more liberal.

In conclusion it may be pointed out that the proposed Bill is an extremely contentious measure and is bound to incite intense opposition. In my opinion it may well be deferred till after the war.

District Judge, Ajmer-Merwara

The Bill, as it is framed, is intended to give legal effect to the following three Principles:

- (1) The abolition of the multifarious systems of succession now in force in India under different schools of Hindu Law and the setting up in their place of a common law of intestate succession for all Hindus in British India.
- (2) The abolition of the sex disqualification by virtue of which Hindu women in general have so far been precluded from inheriting property in various parts of India.
- (3) The abolition of Hindu women's limited estate and giving absolute rights of property to women over all inherited estates.

2. As far as (1) is concerned, I doubt whether it is desirable or practicable to have a common law for all Hindus in the matter of intestate succession. For centuries, different schools of law have existed in various parts of India. These different schools owe

*Not printed, but originals placed in the Library.

their origin to historical, economic and social conditions which vary from province to province. They cannot wholly be merged into one another. Any mechanical blending in the face of historical and social antagonisms might easily lead to disaster.

3. As regards the removal of sex disqualification for women, this again is a matter which is deeply ingrained in Hindu religious and social sentiment. The disqualification of women from succession was not an arbitrary matter. It had its origin in old Vedic times and the Hindu conception of life after death. A male descendant under the Shastras has to perform *Shradh* for his ancestors and the offering of *pinda* has, since times immemorial, been looked upon as a basis for succession. A daughter in a Hindu family on her marriage leaves her parental home and goes to her husband's house. After marriage she has no claim upon her father, whereas her husband is bound to maintain her and she would be entitled to succeed to her husband under certain conditions. In my opinion, the term 'disqualification' is a misnomer as applied to Hindu women. The framework of Hindu society may be different from that in the West or even from other religions in India, but it is understandable when one ponders over the enormous responsibilities placed upon the son or male descendant in a Hindu family.

Point No. 3

4. This follows as a natural corollary from point (2). In view of what I have said above, while discussing Point no. 2, I would say that a widow should not get absolute estate in the property she inherits from her husband. She gets the limited estate in lieu of maintenance, as a woman has no liabilities or responsibilities to discharge. All that she wants property for is for her maintenance and so she holds it in trust for the next male heir. The religious aspect of inheritance should not be lost sight of, because that is the bed-rock of Hindu Law. Only those who can offer spiritual benefit to the deceased, are entitled to inheritance. Women, even daughters, are not capable of offering oblations to the spirits of the deceased. Therefore, they cannot claim inheritance and absolute right of property.

5. I should like to add that apostasy should be made a disqualification for purposes of inheritance.

Judge, Small Causes Court, Ajmer

This is a very controversial social piece of legislation. I think the Bill would affect to a certain degree the entire structure of Hindu society and legal system based on a family as a unit.

The Bill would improve the position of women in Hindu society.

It seeks to establish two principles :

Firstly that Hindu women as a class should not be excluded from inheritance.

Secondly they should be given absolute ownership over the property.

In my opinion there ought to have been a codification of other allied branches of Hindu Law such as Law of Maintenance, Law of Legitimacy, Law of Partition and Re-Union. Because they would affect the property some way or other and the definition of "Stridhan".

The definition of "Stridhan" is very wide. Some of the Hindu lawyers may not agree. But in view of the main principles of the Bill the amendment sought for is reasonable.

I think to preserve the integrity of the family apostasy from religion to be made a disqualification for inheritance. It would meet with Hindu opinion a great deal which is strongly against an apostate inheriting property. This would also necessitate the repeal of provisions of Act 21 of 1850 so that renunciation of the Hindu religion may operate as a bar to inheritance under the Hindu Law. As the Hindu Law treats apostasy as a disqualification for inheritance.

There is nothing further to suggest to the other clauses of the Bill. There is bound to be a difference of opinion between the class of persons holding orthodox views and a body of Hindus holding advanced and reformed views.

It is for the Hindu community as a general body to support or to oppose the Bill or to suggest amendments in the clauses of the Bill as would suit them.

I see no reason why the provisions of the Bill be not given effect to in case of succession to a Hindu intestate.

The Sub-Judge, Beawar

I support the Bill. It is time Hindu women were given specific rights of inheritance.

Bar Association, Beawar

In the opinion of the Beawar Bar such a Bill would not be conducive to the welfare and amelioration of the Hindu society but on the other hand the Bill as laid before the legislature is likely to uproot the Hindu culture and civilization and is a great encroachment on the freedom of the Hindus in matters solely governed by their religious scriptures; such a legislation is not welcome to the Hindus since it tends to change the dictates of Hindu Shashtras based on Vedic doctrines to which Hindus attach great reverence and faith. The suggested Bill is meant to affect the life and customs of a majority and so the members of Beawar Bar feel that it would be wise to defer the consideration of the codification of Hindu Law at least during the present transitional period of the constitutional history of India. It is well-known that the religious beliefs and social usages of the Hindus are so closely intertwined with each other that an attempt to secularize these usages would prove disastrous in the end. An attempt towards complete re-orientation of these usages under the influence of western civilization is bound to result in the disintegration of the Hindu social order and the final disappearance of the Hindu philosophy, Hindu institutions and Hindu ways of life.

The Hindus, however, poor they may be are happier than many so-called civilized nations of the world under their present joint family system. The provisions contained in clauses 2(d), 2(h), 5(1), 7(b), 12, 13 and 21(b) are bound to bring about a compulsory disintegration of a joint Hindu family and for ever prevent the formation of such a unit. There would be no solidarity and oneness in a Hindu family and there would then be no property as a joint Hindu family property. When on the one hand we enact Laws calculated to give an impetus to the formation of corporations, on the strength of social utility we should not help in the destruction of a natural, time honoured and very deep rooted institution so very carefully nurtured under the Hindu social system with an eye to true social utility.

This Bill introduces a number of females as simultaneous heirs with males and recommends a scheme for the devolution of property that would gradually transfer the bulk of the wealth of the Hindus in the hands of the female members with rights of absolute ownership. The disastrous consequences of these proposals in respect of immoveable properties and agricultural lands would be to render them in small fragments owned by strangers to the family residing in distant localities. Our province being a Chief Commissioner's Province the Bill will apply directly to us and would contravene the provisions of our land revenue regulation whereby a check has been placed on very small holdings in this area. Apart from the disintegration and fragmentation of the family property the Bill will have another grave result. The absolute ownership of females over properties (coupled with the operation of the Caste Disabilities Removal Act of 1850) would place an additional incentive in the hands of miscreants to give them the hope and even assurance that success in carrying away or kidnapping Hindu females would not only minister to their carnal gratification but would in addition bring with them some reward in the shape of property belonging to them and to which they may be heirs after their conversion.

There are several other anti-social provisions in the Bill such as (a) equal rights to unmarried, married widows; rich or poor daughters, (b) validity accorded to intercaste union and equality of treatment accorded to the issues of such union with those of caste marriage, (c) for practical purposes removing unchastity as a bar to inheritance by a widow, and so on. So in the opinion of the Beawar Bar such a Bill should not be passed: in any case its consideration should be postponed till after War when a new constitution is expected to come into existence.

Dewan Bahadur Harbilas Sarda, Ajmer,
Kunwar Chand Karan Sarda, Ajmer

The Bill to amend the Hindu Law relating to intestate succession, is not intended to regulate succession to property generally but only the heritable property of an intestate.

The chief distinction of this Bill is that it recognizes the claims of a widow to a share in her deceased husband's and the claim of a daughter to a share in her father's heritable property. The recognition of the rights of the daughter and the widow should give general satisfaction. Another good feature of the Bill is that it abolishes the Hindu woman's limited estate.

But there are some very objectionable features in this Bill. The Bill divides the enumerated heirs into five classes. The classification given in clause 5 is inequitable. It gives preference to a daughter's son to a son's daughter. This is repugnant to those who live as members of a joint Hindu family. A son's daughter lives in the house all the twenty-four hours of the day, is born and brought up in the family, and is far nearer and dearer to a person than a son of a daughter, who belongs to another family, lives far away and is undoubtedly a much more distant relation with a different *gotra* from his birth, than the son's daughter. To recognize the claims of a daughter's son as superior to the claims of a son's daughter is unnatural and unjust.

The reason given in the Explanatory Note for this preference has no reality in it. It says "The high place given to the son's daughter and the daughter's daughter needs a word of explanation. These are grand-children of the intestate himself and cannot in justice be separated from his other grand-children, the son's son and the daughter's son."

Now, the Bill itself does separate them, for, the daughter's son is preferred to or excludes a son's daughter. Then the grand-children of the intestate by his daughter must in justice be separated from his grand-children by his son, for two reasons:

- (1) The daughter's son is born in another family and bears from birth a different *gotra*, while the son's daughter is born and brought up in the family of the intestate and is its member till married.
- (2) The daughter's son will inherit a far larger share of his father's property than the son's daughter in her husband's property.

The reason given in the Explanatory Note (page 7) for disinheriting the widow of a predeceased son is equally without force. The reason given is stated thus: "We would suggest that when the subject of maintenance is taken up, the obligation of a father-in-law to maintain his widowed daughter-in-law, which is at present merely a moral obligation, be changed into a legal obligation. The combined effect of such a provision and the provisions which we have embodied in this Bill would be that instead of a precarious right of inheritance of a son's share in her father-in-law's property upon his death, she would get (a) the certainty of maintenance during her life and (b) a reasonable certainty of half of a son's share in her father's property."

Now, it is quite wrong and unfair to make a "reasonable certainty of half a son's share in her father's property" as a *quid pro quo*, along with the certainty of maintenance, for depriving her of her lawful share in her father-in-law's property. Her share in her father's property, she will get in any case, whether she gets a share in her father-in-law's property or is denied it. The only real *quid pro quo* for disinheriting her is "maintenance for life". Let us consider whether maintenance is an equivalent of a share in her father-in-law's property. If her father-in-law is rich, then she will get far more as her share than she can get as maintenance. As maintenance, she will get barely enough to keep her body and soul together; for, the family and the courts think that a Hindu widow has nothing to live for in this world except to pray, fast and live on as little as possible. If the father-in-law is very poor, she cannot get separate maintenance, and life in the family as one maintained will be worse than if it is realized that she has a share in her father-in-law's property.

Moreover, if maintenance is an equivalent or is better than the precarious right of inheritance, then why does the Bill give the widow, a share in her deceased husband's property, and not maintenance merely. What is good in the case of a widow ought to be good in the case of a widowed daughter-in-law.

Similarly, in the order of succession to Stridhan, to give preference to the daughter's daughter and to the daughter's son to her own son, considering what love a mother has for her son, is most objectionable and unjust. The entire classification has to be most carefully scrutinized and revised so as to bear relation to the realities of the joint Hindu family life. The framers of this Bill have completely forgotten that the

special favour shown in the Dayabhag and the Mitakshra to a daughter and her progeny was due to the fact that she was not allowed under the then Hindu Law, any share in her father's or husband's property. But now when a daughter is given a share along with her brother, and a widow is also given a share in her husband's property, there is no longer any reason to prefer her daughter's daughter to her own son.

The reason for making these retrograde changes given in the Explanatory Note attached to the Bill is not at all convincing. Paragraph 4 of the note says: "The Mitakshra jurisdictions have already accepted the changes made by the legislation of 1929, giving a higher place to the son's daughter, the daughter's daughter, the sister and the sister's son: they should find no great difficulty in accepting now a similar promotion to higher rank of certain other near relations such as the paternal aunt's son and the maternal uncle's or aunt's son who are included in the Dayabhag scheme of near succession." This is special pleading. For we ought not to forget, that the changes made by the 1929 legislation were accepted only because the daughter at that time was denied any share in her father's property and some compensatory consideration had, therefore, to be shown to her and her progeny. But now, when as stated above, she is given a share, there is no longer any reason for such consideration, and it would be doing great injustice to rightful heirs, if we do not undo what was done in 1929 in circumstances which no longer exist, but further "accept now a similar promotion to higher rank of certain other near relations such as paternal aunt's son", etc.

The remark at the end of the paragraph "A uniform law is well worth this price" recognizes a principle which may be acceptable in an executive matter where peace and order may be concerned, but is out of place where right and justice are the only considerations.

The same fallacy occurs in the reason given in the Explanatory Note (page 7) for preferring the mother to the father. The note says:—"Yajnavalkya mentions father and mother together (Pitarau, that is, parents) without specifying which parent is to come first, the Mitakshra puts the mother first, the Mayukha and Dayabhaga put the father first; Srikantha is of opinion that both parents are meant to take jointly. The point does not appear to be of cardinal importance in normal circumstances. But on general considerations it would seem that the mother should come before the father as an heir to the son because, if the father happens to have married a second and younger wife there is the chance of the deceased's own mother suffering." This also shows confusion of thought. For, there will be now monogamy, and there will be no question of the father marrying second and a younger wife, and there will be no chance whatever of the deceased's own mother suffering. The reason given for preferring mother to father therefore fails, and in equity both should share equally.

Another objectionable feature is that the Dayabhag has been imposed now on those who have always been governed by the Mitakshra. To say that in order to secure a common law of intestate succession, the Bill has adopted for the most part the Dayabhag scheme for near succession and the Mitakshra scheme for distant succession—a compromise—is only a plausible and a fallacious argument. For, it is the near succession that counts and not the distant succession. Effect will be given to the near succession rule in 999 cases out of 1,000; and only in one case in a thousand, the

turn of a distant relation will come. For the sake of justice and to prevent dissatisfaction, the Mitakshra which governs succession in the United Provinces, Rajputana, Punjab, and Central India should be adopted for succession in the province, and the Dayabhag where it now obtains, or in the alternative, the Mitakshra should be adopted for near succession and the Dayabhag for distant succession.

The important features of the Bill from the point of view of the vindication of woman's rights are:

- (a) Recognition of the right of a daughter to a share in her father's property and of a widow to a share in her husband's property. (Clause 5, Class I, Succession Bill.)
- (b) Recognition of the right of the woman in her Stridhan to be absolute and not limited, Stridhan not to be a woman's absolute property. (Clause 12, Succession Bill.)

The objectionable features are:

(1) The order of succession in the Hindu Intestate Succession Bill is inequitable and unjust—

- (a) to prefer a daughter's son to the son's daughter,
- (b) to prefer a mother to father in Clause 5, Class II, when they should share equally, monogamy being the rule,
- (c) to disinherit the widow of a predeceased son,
- (d) to ignore the claims of the daughter of a predeceased son, and some other things, are matters which must be set right before the Bill is passed.

(2) The order of succession to Stridhan is also objectionable. A woman succeeds to her husband, but the husband in the Bill is denied succession to his wife's property. This is inequitable. The succession to Stridhan in the present law prefers female to male heirs only because at present, a woman does not succeed her husband, but when the Bill gives her such succession, it would be inequitable to debar the husband from succession to his wife.

(3) It is unjust to allow a daughter and her children to succeed, and disallow a son and his children to do so, notwithstanding the fact that both the daughter and the son are under the Bill, heirs to their father.

(4) It imposes the Dayabhag law on those who disagree with its principles and who have upto now been governed by the Mitakshra.

It is hoped that the glaring defect of the Bill will be removed before the Legislative Assembly accepts them.

No. 6.—THE NORTH-WEST FRONTIER PROVINCE Government, N.-W. F. P.

I am to state that this Government are in favour of the Bill. As it stands, it appears to be wholesome for the Hindu community. Copies of opinions of Judicial officers and leading lawyers of this province are forwarded herewith. I am further to add that the Bill was published in the *North-West Frontier Province Gazette*, dated the 18th February, 1944 at pages 4—12.

The Hon'ble Mr. Justice Khan Bahadur Kazi Mir Ahmad Khan

The Bill has been arrived at after great deliberation and I think we have to say as it stands. It is wholesome for the Hindu community.

District Judge, Peshawar

In as much as this is a codification of a complicated system of law, it must be welcomed. Regarding the details, it is more fitting that Hindu jurists should give an opinion.

The Additional Judge is also in favour of the proposed Bill.

District Judge, Hazara

I should like to begin my remarks about the Hindu Code, Part I (Intestate Succession) Bill by stating that in my opinion the question involved is one which in the last resort should be decided by the Hindus themselves, because it is for every community to decide upon its own laws and usages in such social matters as succession, adoption and the other subjects covered by the Hindu Law.

On page 1 of the Joint Committee's Report they refer to four arguments put forward by a certain body of opinion which maintains that women as a class should be excluded from inheritance and should not be given absolute ownership over property they acquire either by inheritance or partition. These arguments are given as (1) certain Vedic texts, (2) the general incompetency of women, (3) the evil of fragmentation of holdings, and (4) the fear of the property being lost to the family. The Joint Committee stated that it was necessary to examine some of these arguments, but in fact they examined only the first. I cannot discuss their finding on this point, because I am not a Sanskrit scholar and can express no opinion on this matter.

The other three arguments are certainly arguments of substance which needed a reply from the Joint Committee.

I do not think that any experienced judge or lawyer will dispute these two propositions (a) women in India are less competent than men to deal with property and (b) women have less feeling of responsibility for and to the family in cases wherein disposition of property comes into question. These two disabilities of women can be largely removed by improved education and in fact are being removed, but the process has in my opinion not advanced sufficiently far to make it desirable that women should be placed on the same footing as men in India in respect of property. Women have inevitably less sense of responsibility to the family because they start in one family and by marriage they proceed to another. The basis of Hindu Law of property seems to me to be the idea that property belongs to a family and should not be alienated from that family without good cause. Married women who receive property from their father's family will inevitably tend to amalgamate it with the property owned by their husbands' family and in my opinion this is both undesirable and contrary to the spirit of Hindu Law.

The evil of fragmentation of holdings and the fear of the property being lost to the family are both important arguments against the proposed Bill. It is idle to pretend that the Act would not have the effect of increasing fragmentation of holdings and the separating of property which goes to married daughters from the corpus of the family property and its amalgamation with the property of the families into which these married daughters have gone. The Joint Committee has accepted a principle of grant of a share in property in lieu of maintenance. From such studies as I have been able to make it does not seem to me that this principle has any authority in

ancient Hindu Law and it seems to me that it will lead to very undesirable results by the fragmentation of holdings. A provision has been made in the Bill that the share of dependant parents shall revert to the family of their death intestate, but this is a very poor safeguard, as it would always be open to the parents who take such shares to will them away. The grant of a share to married daughters means that this property would in effect go to the daughters' husbands' families. This is particularly important in cases governed by Dayabhaga Law where all property passes by succession.

The proposal to abolish the woman's limited estate is a revolutionary one for Hindu Law, and in many respects I consider that it is contrary to the spirit of Hindu Law and at present very undesirable. I have already referred to the fact that women in India are at present less capable of dealing with property than men are, and any experienced judge knows of the numerous cases which are instituted by the reversioners to set aside the alienations made by Hindu women during their limited estate. It is a very common practice for women holding a limited estate to dispose of the property without legal necessity and if women are given absolute estate it is my considered view that there will be wholesale fragmentation. The object of the woman's limited estate in Hindu Law appears to be to prevent dissipation of property and to secure its reversion intact to the family on the death of the widow. Both these objects will be frustrated if the limited estate is abolished.

In any case if intestate property is to be distributed in succession cases according to shares and an absolute estate is to be given to women, it is essential that there should be some limit to testamentary freedom in order to ensure that much property should not be wholly willed away to strangers. Most civilized countries have some restrictions on testamentary freedom and if this Bill becomes Law I think this will be essential for the Hindu community in India.

This Bill cannot apply to agricultural land without the concurrence of the provinces, in view of the Government of India Act, 1935. If the Bill is passed without getting the concurrence of the provinces there will in many provinces be one law for succession to agricultural land and another for succession to other kinds of property. This in itself seems undesirable and in my opinion the Bill should not go through unless all the provinces undertake to introduce similar legislation regarding agricultural land.

In this province in 1935 Mohammedan Law was substituted for custom. One effect of this was that the customary limited estate of women was abolished. I have not been long enough in this province to express a very reliable opinion on this point, but I believe that litigation has greatly increased as a result of this change in the law. This is a point which might be considered by the Hon'ble Judicial Commissioner when he expresses his opinion in view of his vast experience, in this province. My impression is that the abolition of women's limited estate among Hindus would create a vast increase in civil litigation throughout India. I think the legislature should pause before it passes a measure which is likely to throw the whole of the Hindu community into a legal turmoil of this nature.

To sum the matter up, I am not in any way an anti-feminist and I consider that the education and status of women in every community in India would be improved in every possible way. The legal disabilities of women should also be removed as far as

possible. I very seriously question, however, whether it is desirable in the present state of women's education in this country to introduce a revolutionary measure of this kind. It seems to me that the learned framers of this Bill have been actuated by very laudable spirit of reform, but they perhaps hardly realized the difficulties which lie in their way and the far-reaching social and economic effects of such a measure as the present, which would certainly shake Hindu society to its foundations and might even disintegrate the whole of the joint Hindu family system which is the basis of the Hindu Law. I do not think that the time has come to put this measure into effect and I am a little doubtful whether it will ever be possible to introduce such a measure within the existing framework of the Hindu Law.

District Judge, Dera Ismail Khan

I have consulted two local leading lawyers, viz. Lala Roshan Lal and Lala Manohar Lal Bagal. Copies of their opinion on the subject are enclosed. I agree with them.

Rai Sahib Lala Ram Lubhaya, Advocate, Peshawar

This Bill is not likely to be received with enthusiasm among the Hindus. It seeks to introduce some drastic changes in the law of inheritance as laid down in the Shastras. These changes particularly the placing of the daughters among the enumerated heirs are indeed revolutionary in character and public opinion is not likely to view them with favour. Reform by legislation has its advantages but if it is forced on an unwilling people the law in many cases remains a dead letter as the people employ all possible devices for evasion. Again it is not easy to say that the measure is either necessary or desirable. It affects materially the fundamental principles on which the marriage laws and the joint family system of the Hindus are founded. The innovations proposed are obvious imitation of existing non-Hindu systems which have not been shown to lead to the greater happiness of individuals outside the Hindu fold.

Codification again is not an unmixed blessing. It destroys elasticity as very desirable a feature of Hindu Law. Besides, codification of Hindu Law in its present state would be attended with numerous difficulties and the attempt to make the law clearer and certain is not likely to succeed. It will stop evolutionary progress which Hindu Law does sanction. On the whole I feel that it is not possible to support the Bill either in the principle or in its details.

Lala Milawa Ram Kalia, Advocate, Bannu

The Bill as redrafted by the Rau Committee gives legal effect to the following three principles:

- (a) One law of intestate succession for all Hindus of British India.
- (b) Removal of sex disqualification.
- (c) Abolition of Hindu woman's limited interest and giving her absolute right over all inherited estate.

I will discuss below each point seriatim—

- (a) Hindus of India in the matter of inheritance are governed by two quite different systems called Mitakshra and Dayabhag. This will attempt at unity of law of inheritance for all Hindus of India thus helping the Hindu unity. But one school of thought is of opinion that in this way the law will become too rigid to allow any development.

- (b) The enlightened Hindu opinion both male and female agree that sex disqualification should be removed and females allowed to inherit with males. But the females' share should be so adjusted so that by inheriting in two families, females might not gradually absorb all the property.

- (c) Hindu women's limited estate should not be abolished as it has come from generations. Moreover, even the *Karta* of a Hindu joint family other than the father has limited rights over the transfer of joint Hindu family property why then should a female have absolute right over property which she might squander away. But she should have better rights with the advance of times, for instance she may be allowed absolute right only when there is no son, son's son or a son of a son's son.

General.—There is a section of Hindus who are deadly against the codification of Hindu Law. Their argument is that Hindu Law or Dharamshastra was never promulgated by any power political or otherwise. It has no physical sanctions behind it. It is obeyed because it is mixed up with religion and it is believed to have a divine origin. Codification will violate the basic principle and Hindu Law will become a command of the political sovereign and will not be changed without his permission thus retarding the free growth of the law itself.

The opposite view is that there can be no religious sanctity attached to the law of the land and the fiction that there is something "religious" in the Hindu Law is based on ignorance. The codification, they say, will remove this misunderstanding.

The other objection to codification is that in the matter of inheritance the present Bill is practically a copy of the Mohammedan Law which is greatly resented by the orthodox Hindus.

If the Bill is to be codified apostacy should be made a disqualification to inheritance and the *Caste Disabilities Removal Act of 1850* should be repealed by the Bill.

Anyhow codification in whatever form will remove many difficulties now experienced in every case concerning Hindu Law.

Lala Roshan Lal, Advocate, Dera Ismail Khan

The Bill as it has emerged from the Select Committee is greatly changed from what it originally was. According to Hindu ideas, custom, when followed for a long time overrides hundred written texts. As Hindus think that the right of inheritances is based on the capacity of the heir to make offerings for the soul of the deceased after his death, it would be unfair to make radical changes in the law of inheritance to bring it in line with Mohammedan Law on the provisions of Indian Succession Act.

The most revolutionary provision in the Bill is that by which a share of property is given to married daughters. This idea will be repugnant to the Hindus generally. It is against general Hindu feelings to allot a share to married daughters although it may be quite fair to give a share to unmarried ones, so that they may be well provided for till marriage. Daughters are given a good deal of dowry and some times beyond the capacity of the parents, out of sheer love and affection. If married daughters are given a share in inheritance, that would effect their sweet relations with the father's family and it would cut at the very foundation of Hindu Law, the basic principle of which is that the property of the family should remain in the family.

The introduction of Muslim Personal Law in the North-West Frontier Province according to which married daughters get a definite share from the estate of their parents, quite in opposition to the customs which prevailed in the province till recently, has been keenly felt by the Muslims of the Province and various devices are resorted to, to deprive the daughter of their legitimate share of inheritance.

This provision shall never be approved by the Hindus generally and the introduction of such a provision in the law of inheritance is likely to lead to the adoption of underhand methods and practices to deprive the married daughters of their right of inheritance. It would not be desirable to give absolute estate to unmarried daughters also.

On the whole such legislation is undesirable and codification of the Hindu Law of inheritance is not likely to be approved at all but even if it is codified, it will be undesirable to allot a share in father's estate to married daughters.

Lala Manohar Lal Bagal, Advocate, Dera Ismail Khan

I have read the Bill. It is very difficult to discuss or refer clause by clause nor, perhaps, it is so required from me. I will hazard a general opinion on the codification of rights of Hindus in the matter of succession.

The Bill as at present is better recast. But in my opinion there is no need of codification. There is abundance of case-law which is consistent throughout on the main points, and that is enough. It will be baneful to introduce the rigidity. The Hindus will be satisfied with the "unwritten constitution". The old texts of Hindu law-givers are a safe guide.

It is a bold step to allow a share in the property to daughters. The Hindu society will not receive this without demur. But in case codification is made allowing share to daughters then it should be enjoined that she will not have a right of partition but only to enjoy the produce or yield out of that property. It must be from the property of his father's family. Moreover, a small fraction should be kept as a share. There is another proposal that whatever share comes to her it should be given at the time of marriage in the form of dowry, whether in cash or property.

I am not in favour of codification.

No. 7.—ASSAM

Government of Assam

I am directed to say that in view of the divergencies in the opinions expressed by different persons and public bodies consulted, this Government find it very difficult to express any definite opinion on such a controversial piece of legislation concerning a particular community.

The Bill was published in English in the *Assam Gazette*, dated the 19th January, 1944.

The Judge, Sylhet

I have the honour to state that the Bill has the support of the Judicial Officers of this district as a long felt want.

**Mr. K. R. Borooah, Additional Subordinate Judge,
A. V. D.**

1. The Bill will introduce some revolutionary changes in the matter of intestate succession in the provinces governed by the Dayabhaga school of Hindu Law. In the case of other provinces where Mitakshra school prevails only the separate property of a Hindu dying intestate will be affected while

devolution by survivorship will continue in the case of joint family property. Except some English educated people who generally keep themselves in touch with the proceedings of the legislative bodies, the bulk of the people who will be affected by the proposed legislature are unaware of the provisions of the Bill. At the present time the World War and the social, economic and political situations that have resulted from it have greatly absorbed the interest of the public and created obstacles in the way of issuing of pamphlets or organizing mass meetings for discussion of the proposed changes. It is not suitable time for enacting a piece of legislation of the nature of the Bill. If Hindu India could wait so long without a codified Hindu Law no great harm will ensue if we wait till the return of the normal times.

2. Although the principles underlying the Bill may be excellent and logical, yet the guiding consideration in case of a legislature of this nature should be the opinion and feeling of the people who will be affected by it. If we judge the Bill by this standard then I have no doubt that it is a very unwelcome measure. Except some English educated families of the higher strata of Hindu society who have lost touch with the bulk of the Hindu population and some go-ahead reformers the mass of the Hindu population are yet too much wedded to the Hindu joint family system to like the proposed changes because it is their natural desire that the property of the family should remain to the family so long there are male descendant of a deceased intestate to succeed to his estate.

3. I am personally of opinion that women should be given larger rights of inheritance than they possess at present under the Hindu Law. But such larger rights should be given in respect of the properties of their husbands, father-in-law and husband's agnate relatives. Enlargement of a woman's right of inheritance in respect of the properties of her father's family will be distasteful to Hindu sentiment.

4. As I have already observed the Bill does not achieve uniformity in the matter of intestate succession amongst the Hindus of India. Attainment of such uniformity has wrongly been urged as a ground of support to the Bill.

5. Another ground of objection to the Bill is that in spite of the fact that the object of its sponsors is the codification of the entire Hindu Law yet the Bill is a piece-meal legislative attempt. It fails to give any idea as to what will be the law regarding adoption, partition and the maintenance of the members of a Hindu family.

6. In my opinion there should have been a provision in the Bill for repeal of the Caste Disabilities Renewal Act.

7. In clause 5 of the Bill, I would omit "daughter" from entry No. 1 and put her in entry No. 2, making necessary changes in the numbering of the subsequent entries. Other necessary changes in the Bill should be effected. In clause 7, sub-clause (d) the word "Half" should be omitted. In clause 7, sub-clause (e), I would change "one-eighth of a share" to "one share". This will be more in accordance with Hindu sentiment. In clause 7, sub-clause (f), I would omit the word "half" in the second line. In the same sub-clause, in place of the words "she shall take one-fourth.... reduced accordingly", I would have the following words:—"she will receive one share as if she were a son of her deceased husband". Other necessary changes should be made. In clause 8, sub-clause (4) should be omitted.

In clause 13, sub-clause (b), I would put daughter's son, daughter's daughter, son's son and son's daughter in the same entry, giving them equal rights. This seems more logical and will accord with the sentiments of the people.

Secretary, Sylhet Hindu Sabha

This meeting of the Hindus views with great concern the introduction of the Hindu Intestate Succession Bill to the Indian Legislature as it is against the Shastras and so harmful to Hindu Society, this meeting is of further opinion that the present Legislature as constituted is not a suitable machinery to effect changes in laws and customs of Hindu society and present is not a suitable time for raising such controversial issues, this meeting protests against the provisions of the Bill and hope that the Bill will be dropped.

S.-D. O., Goalpara

Any legislation in respect of social and religious matters is bound to evoke a storm of protest from a section of people of our country who taking advantage of Government's attitude of reluctance to interfere in our social and religious matters take a pleasure in making a parade of their orthodoxy and in quoting all sorts of texts and scriptures to oppose reforms and stagnate the society. Where is the guarantee that the texts and scriptures have come down undiluted during the bygone ages and there have not been interpolations by interested people. Again assuming that the texts and scriptures are as they were at the source why should not they be adjusted to the changing conditions of modern times in the same way as the Hon'ble Gentlemen who are opposing the changes have taken to modern dress, modern food, modern conveyances in places of *dhoti* and *chadar*, palanquin, etc., of the old days. If the Hon'ble Gentlemen who have opposed the Bill feel inconvenient to make locomotion in palanquins or on foot and will take the help of a car or a train to attend sittings of their legislatures, why should texts and scriptures be quoted to stand in the way of social and religious reforms.

Modern conditions need that the women should have share in inheritance along with males. In my opinion the males and females brothers and sisters should share equally as an atonement for the disabilities under which women have suffered so long. Brothers and sisters are offspring of the same parents, share equally in all their affections, and it is only equity that the equality of shares in affection should be reflected in the shares in the properties left by the parents. If this is done there will be no more jealousy between brothers and sisters, males and females, and it will lay the foundation of a harmonious social structure. Litigation regarding inheritance to properties will almost cease.

On the point of apostasy, I would submit that it should be made a disqualification to inheritance. The moment one forsakes his or her religion, he or she will be deemed to forsake all the secular benefits which accrue under it.

Secretary, Bar Association, Goalpara

We are of the opinion that the proposed legislation is calculated to bring about revolutionary changes in the Hindu society and the time is most inopportune to pass a controversial legislation like this. The Dayabhaga School of Hindu Law which governs Bengal and Assam has historical, economic and sociological back-

ground. The peculiar problems of Bengal and Assam ought to be fully considered before any changes be effected on grounds of justice and equity.

We are afraid that the learned mover of the Bill has not considered the fact that the Hindu Law is principally a matter for the Hindus and when the majority of the Hindus are opposed to the innovations which will lead to disintegration of social fabrics, the Bill should be sent for re-publication and re-circulation. The constitution is suspended in the major Hindu provinces and the opinions of the personages which should really count are not in the picture. In the circumstances, our association will humbly advise the Government for giving a wide publication of the Bill not only in the English language but in the major vernacular languages of the Indian provinces as well, while appreciating the attitude of the learned mover of the Bill to remove the so-called disabilities of the Hindu women in matters of succession and inheritance, we are constrained to add that there are good many vital things which if proper safeguards be not provided for will lead to endless troubles and disruptions and ruinous litigation.

Secretary, Bar Association, Dhubri

I am against the provisions of the Bill as this will lead to fragmentation of the family of the Hindus.

Goalpara District Association

My association supports the Bill from more than one point of view. One aspect is that the Hindu Laws are man-made laws suited to the time in which they were promulgated. Since then many centuries have rolled away and with the time the rigidity of the Hindu Laws and customs has slackened and taken a great change. The relaxation is the rule of the present progressive days. Vijnaneswar the author of the *Mitakshah* based his theory of inheritance mostly on the usage of people while Jimutabahan the author of the *Dayabhaga* deduced his scheme of inheritance on the theory of the efficacy of Pinda. The Hindu community from the Himalayas to the Cape Comorin has been crying hoarse, it appears for the unification of the Hindu community. If the Hindu community is sincere in its desire, then one and the same law not only in the matter of inheritance but also in other matters too should guide the Hindus. The other aspect of the Bill is an honest and sincere desire to remove disqualifications of women in the matter of inheritance and thus give them a footing and status in the society. The cry for the amelioration of the Hindu community seems to be insincere if the Bill be not supported. The fear of the fragmentation of the integrity of the property seems to be groundless as in the Muslim world there has been no difficulty. So all people who are sincere in the national welfare should support the Bill.

Secretary, Shillong Bar Association

This is very complicated subject of Hindu Law and bristless with many problems not capable of easy solution. Hindu Law is as old as the Vedas and times have changed since then beyond recognition. Society and Law must move with the times otherwise there will be stagnation in all walks of life.

The Joint Committee in their Report have proved by quoting extracts from the *Shastras* that Vedic literature did not support the theory of total exclusion of the women-folk from property rights.

(1) Women should have a right to inherit.

(2) Apostacy should be a disqualification, but it should mean only embracing Islam or Christianity. Conversion to sects or creeds such as Buddhism, Jainism, Sikhism, the Brahmo Samaj, Prathana Samaj, the Arya Samaj should not be regarded as a disqualification.

(3) Unchastity of a widow in order to disqualify her from inheriting should be proved in a Court of Law.

(4) The principle of escheat should operate in the following way: i.e. the property shall not go to the Crown but to some Hindu religious or charitable institution according to the directions of the District Judge within whose jurisdiction the property is situate.

(5) Only daughters should inherit, but not daughter's daughter. If the daughters inherit they will be under the legal liability and moral obligation to maintain their aged and diseased parents as the sons do.

It should also be considered if piecemeal legislation should be undertaken in a particular branch of Hindu Law.

Government Pleader, Dibrugarh

There is one great disadvantage of codifying Hindu Law in that it transforms the personal law of Hindus with *lex loci*. Time will come when the law applicable to Hindus in British India will not be same with Hindu Law as administered in Native States. At the same time certain radical changes have become necessary. So, on the whole, codification of Hindu Law is to be supported.

Provision of making certain women simultaneous heirs with men is necessary in the present state of society. But the grafting of the principles of Mohammedan Law, on the law of Hindus cannot be supported.

I think instead of following principles of Mohammedan Law in this respect—it would be better to follow the principles of natural justice and equity. Daughters and widows should be allowed same shares with sons in case of intestate succession to a Hindu's estate.

Whenever a woman becomes an heir—her interest should be absolute. She should have full right to dispose of her property by Will. In case of intestate succession, on her death property should pass to her heirs.

It is difficult to support the idea of making father and mother simultaneous heirs with children and the widow. At best they may be entitled to maintenance only.

Women should have power of adoption like men. They should be able to adopt a man or a woman.

In short position of women heirs should be same as that of men and women's estate should disappear. Women should have absolute power of disposing their property.

Hindu Law should be made to move with progress of time. And this should be done mainly by direct legislation. Hindu Law Committee should be revived to codify the entire Hindu Law. Public opinion will soon accept these changes.

Secretary, Bar Association, Dibrugarh

I am of opinion that as the Bill deals with the law of intestate succession it should be complete in itself. Partial legislation may bring chaos in respect of other parts of Hindu Law. Present time is not proper to bring a change into Hindu Law running from time immemorial. Apostacy should be made a disqualification.

Nowgong Bar Association

The Association is against disintegration of Hindu society and is also against much fragmentation of the corpus of family property.

Deputy Commissioner, Garo Hills

I have the honour to inform you that after consulting the necessary local opinion in the district, I would report that the Bill is generally found acceptable as it will provide a uniform common law for all Hindus in British India as it represents the largest common measure of uniformity that is practicable at this stage. It is however thought that some of the proposed innovations: viz. (1) removal of sex disqualification of women for inheritance and (2) abolition of Hindu women's limited estate are rather drastic as they are diametrically opposed to Hindu ideology as interpreted in the Shastras whereby a woman in marriage passes completely out of her father's inheritance and becomes merged in her husband's family. It is however thought that the changes in the status and outlook of present day Hindu women justified the removal of the stigma that they are incapable of inheriting property and the conclusion arrived at on these proposed innovations is that married daughters should be excluded from the simultaneous heirs in Class I(1) of section 5 but may be included as an entry (2) under it so that they may inherit in the absence of a widow, son, unmarried daughter, widow of a pre-deceased son or grandson and that the subsequent entries should be re-numbered (3), (4) and (5).

The proposal that widows, unmarried daughters and widowed daughters-in-law should inherit shares as provided in the Bill is also favoured.

It is also thought that apostacy should be a disqualification.

S. C. Kagi, E. A. C., Tura

The object of codifying the Hindu Law of which the proposed Intestate Succession Act is the first part has my full support. This will simplify the various provisions of Hindu Law now scattered over inaccessible Shastras and the often conflicting case laws of the various High Courts. It is hoped the Hindu Code will ultimately provide a uniform common law for all Hindus in British India. This will not be an easy task considering the fundamental differences among the Dayabhaga, the Mitakshra and the other local schools of Hindu Law extant in different parts of India.

The proposed Act as stated in clause (d), section 2, and the illustration thereunder will be applicable to all properties of a Hindu governed by the Dayabhaga law and the separate property or the property in the hand of the last surviving coparcener in the case of Hindus governed by the Mitakshra law. The ancestral property of a joint Mitakshra family is excluded from its operation. The Hindus governed by the Marumakkattayam and Nambudri law of inheritance are similarly excluded by section 3. Messrs. Nilakantha Das and Baijnath Bajoria of the Select Committee have therefore condemned the Bill

on the ground that it has failed to achieve its object of uniformity. But I believe the Bill represents the largest common measure of uniformity that is practicable at this stage. Coparcenary property governed by the Mitakshra law pass by survivorship as distinct from inheritance of the Dayabhaga law. It is impossible therefore to bring the two under the same law of succession. The proposed Act provides a common law of inheritance for Assam, Bengal and those parts of Orissa, which are governed by the Dayabhaga School. It also provides a common law of inheritance for the separate property of a Hindu governed by the Mitakshra school in the rest of India. I do not agree that the separate property of a Hindu governed by the Mitakshra law is negligible. With the increasing urge for individual enterprise more people are acquiring separate properties. So that increasingly large numbers of people governed by the Mitakshra law will gradually come under the scope of this Act. The proposed Act is a step in the right direction and should not be condemned simply because it does not lead all at once to the objective of complete uniformity.

But I cannot agree with all the innovations that have incorporated in the proposed Act. The most important of these are (1) removal of sex-disqualification of women for inheritance, (2) abolition of Hindu women's limited estate.

The first is really a drastic innovation and has evoked strong protest from the conservative elements who have quoted from ancient Shastras to show that women as such are unfit to inherit. The interpretation of the Shastric texts is still a controversial point. But we should be guided not by what the Shastras say but by what is just, equitable and economically sound. The Shastras were written ever so long ago having regard to the state of society then existent. Hindu society has undergone such revolutionary change that the Shastric injunctions are no longer applicable. The change in the status and outlook of present day Hindu women surely warrants the removal of the stigma that they are incapable to inherit property. But I foresee practical difficulties and economic consequences of a far-reaching character in allocating shares to women as in the Bill.

The Bill includes daughters, both married and unmarried, as simultaneous heirs along with sons, widow, widowed daughter-in-law and others. The Select Committee seems to think that the widow and unmarried daughters should inherit as they are entitled to maintenance under the present law. But the same cannot be said of married daughters. It is the duty of their husbands and not their father to maintain them. If a married daughter becomes a widow she will under the proposed Act, inherit from her husband, and also her father-in-law so that there should be no necessity to draw upon the resources of her father's family.

The inclusion of married daughters as simultaneous heirs will take property out of the family and will lead to fragmentation of property. This should be avoided in a country already suffering from the evils of over-fragmentation of property. It will not matter so much in the case of the rich who can and as a matter of fact do provide for their married daughters by gift or testament. But the limited property of the poor who will largely come under the designation of "intestate" should be protected from uneconomic over-fragmentation.

As a judicial officer, I have noticed how difficult it is for brothers to pull on together as regards the enjoyment of property. This often leads to lengthy and expensive litigations. This being the case among brothers, we can imagine what will be the effect of giving a share to a married daughter whose actions would be largely dictated by her husband who is a comparative stranger to the family.

Since this Act will largely affect Bengal we should as well take note of the practice of demanding huge dowries prevalent in that province. True there has been strong public agitation against this practice, but it is still very far from being extinct. Poor parents have to run into debt to provide dowries at their daughter's marriage. In such cases there can be no justification for giving married daughters a second share of their father's property.

According to Hindu ideology a woman on marriage passes completely out of her father's property and becomes merged in her husband's family. This is conducive to harmony in the husband's family. Retention of the wife's interest in her father's property is incompatible with the Hindu ideology of marriage.

I am therefore of the opinion that married daughters should be excluded from the simultaneous heirs in Class I(i) of section 5 but may be included as entry (2) under it so that they may inherit in the absence of a widow, son, unmarried daughter, widow of a pre-deceased son or grandson. The subsequent entries should be renumbered (3), (4) and (5).

I am in favour of the widow, unmarried daughter and widowed daughter-in-law inheriting shares as provided in the Bill for their maintenance or education.

I do not believe in limited estate for women. Women should have an absolute estate. But there should be provision in the Act reserving the right of pre-emption for the other heirs in respect of their shares. This is necessary not only to preserve the corpus of the property but also to safeguard the women from the designs of unscrupulous persons who might seek to deprive them of their property. A similar right of pre-emption may with advantage be provided in respect of the share of any male heir who wants to dispose of his share.

Several persons whom I consulted were unanimous that apostacy should be a disqualification.

Rai Bahadur Amarnath Roy

I am in agreement with the principle underlying the Bill but think, like Sir B. L. Mitter and some others, that the Hindu Law Committee should be revived, other parts of the Hindu Code, as administered at present, should be examined and amended and complete amended Hindu Code should come up before the Central Legislature for consideration. Otherwise some of the provisions of the present Bill may have to be revised shortly after enactment, involving reduplication of work.

I find that most of the Hindu members of the Joint Committee are opposed to succession going to apostates. Whatever be the merit of the stand they have taken, as a matter of principle, their view should prevail. No doubt, in a country where different religious communities live side by side, there can be nothing to prevent one proprietor of a joint property from transferring his share to a person professing a different religion, and there have been innumerable such transfers under the existing law, but I think, to start with apostates should be denied succession, if only to prevent hasty and ill-considered changes of faith which tend to disrupt society.

M. C. Dutta, Secretary, Bar Association, Sunamganj

I regret that I cannot accept the general principle underlying the Bill. The Dayabhog School of Law is the product of the historical, economical and sociological problems, peculiar to Bengal which precludes the desirability of a provision for a common law of intestate succession for all Hindus in British India. Then again the removal of sex disqualification highly offends against the Vedic or Shastric authority. When a female is married she ceases to be a 'Gotraja' of her father's family and forfeits all her interests in that family and becomes a 'Gotraja' of her husband's family. She is further entitled to her 'Stridhan' property in absolute right. On the other hand the religious and secular responsibility of the maintenance of the family traditions devolve on the male heirs. Besides fragmentation of property would be the inevitable result of introducing more female heirs and would lead to disastrous economic upheaval to the society where the member of small land owners is almost cent. per cent. In this view of the matter and for other cogent reasons the females should not be simultaneous heirs with the male. Besides the female heirs have no liability or responsibility to discharge but they are entitled to maintenance according to the status of the family. Consequently they can be given some share in the property of the deceased with limited interest which interest will on her death, devolve on the heirs of the deceased. But this should not extend beyond widow wife, daughter and widowed daughter-in-law. Apostacy should be a disqualification to succeed. Anyway a complete amended Hindu Code should come up before the Legislature for consideration before hazarding this piece-meal Legislation.

S. D. O., Habiganj

The Hindu Law relating to intestate succession did little or no justice to their women and the proposed enactment of the law is hailed in all quarters as a great boon to the Hindu women who have so long been treated most inequitously in society, the privileges in matters relating to property rights being absolutely denied to them. The Joint Committee seem to have taken great pains to show from the Hindu scriptures themselves how the framers of the Hindu Law on succession had twisted the "Shastras" and taken perverted interpretations of the law only to suit certain purposes viz. (1) the prevention of the evil of fragmentation of holdings, (2) as a remedy against the property being lost to the family. The law under enactment certainly raises the status of women in society and removes the notion about the general incompetence of women as a class.

As regards the details of the Bill and its amendment I generally subscribe to the view expressed by the Joint Committee except in a few points which are enumerated below. I differ from them in the allocation of an equal share of the intestates property to his daughters regardless of the fact whether she is a daughter married, unmarried or widowed. Here I rather accede to the view expressed by Mr. Lalchand Navalrai in his minute of dissent about giving a simultaneous share to a married daughter and endorse the observations made by him that taking away a share to a different family would entail a lot of litigation and bad blood rendering the society poor in substance as it actually happened in case of the Moslem society everywhere. As it is proposed to amend and codify the Hindu Law in successive stages the case of married daughters may be left from the list of enumerated heirs in section 5 of the Act.

Another criticism I have to offer is about the order of succession given in section 5 and section 13. In section 5 the sister is given a place below a brother's son or a brother's son's son similarly in section 13 a daughter's son and a daughter's daughter are preferred to a son's son and son's daughter. The Joint Committee have passed on this order, but I think the proximity of the blood ties would justify a reversion of the order in the above cases.

S. D. O., Karimganj

I have consulted some gentlemen of the Hindu community and am of opinion that there cannot be any objection to the amendments being passed.

S. D. O., South Sylhet

The time placed at my disposal for expression of an opinion is not sufficient to deal with such an important reformation. However, as the aim of the Bill is to first amend and codify the general law of intestate succession it should be so codified and amended as to be admitted by all schools of Hindu religion. Apostacy should be made a disqualification and clause 20 should be amended accordingly.

Resolution passed by a Hindu meeting of Bongaiagon

I beg to inform you that a meeting of the Hindu residents of Bongaiagon, post Bongaiagon, district Goalpara was held at Bongaiagon on 13th April, 1944.

The following resolutions were unanimously passed :

Resolution no. 1

This meeting resolves that as in its considered view neither the Government of India nor any of the Provincial Governments does possess or has at any time possessed any right to legislate upon matters of private laws of the Hindus, 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 and its contemplated action thereon *ultra vires*.

Resolution no. 2

This meeting further resolves (a) that without prejudice to the contents of the first resolution, the action of the Government of India in constituting the Hindu Law Committee for the preparation and drafting of the Hindu Code is fully unwarranted and unjustifiable, (b) that the Hindu Intestate Succession Bill and the Hindu Marriage Bill contain so many provisions quite opposite to the spirit and letter of the Dharmashastra and detrimental to the Hindu culture and civilization, that Government should be asked to withdraw both of these bills and abandon any further attempt of legislating upon any subject of Hindu Law.

I have the honour to request you that the above two resolutions be kindly forwarded to the Government of India for favour of necessary action.

Resolution passed by public meetings held at Madhyaganar, Ramdigha, Chamardani, Sahapur and Deral Doaj Daudpur.

This meeting of the Hindus is of opinion that the Bill entitled Hindu Intestate Succession Bill which has been circulated for eliciting public opinion is destructive in its nature and if passed into law will give a death blow to the Hindu society.

Resolution passed by public meetings at Chadlipara, Barpatia Shapur Nayagaon, Tahirpur, etc.

This meeting of the Hindu public emphatically protests against the Hindu Intestate Succession Bill as it is detrimental to Hindu interest and ruinous to Hindu society.

The Bill if passed into law will by its revolutionary measures hit the very structure of the Hindu society, based on principles of Hindu Shastras. The pledges given by His Majesty's Government not to interfere in religious matters of its subjects will thus be violated.

Petition of Henendra Chandra Chakrabarty and others

This meeting of the Hindus registers its strong protest against the Hindu Intestate Succession Bill owing to the reactionary nature of the Bill and requests the Government to withdraw it.

Advocate General, Assam

1. The Bill seems to be a highly controversial measure. It appears that there are almost as many minutes of dissent as there were members of the Joint Select Committee. The main features of the Bill are that (1) it seeks to embody a common law of intestate succession for all Hindus in British India, (2) it proposes to remove the sex disqualification by which Hindu women in general have hitherto been precluded from inheriting property in various parts of India and (3) it abolishes the Hindu woman's limited estate. The question is how far these objects are commendable in themselves and how far they have been implemented by the provisions embodied in the Bill.

2. Regarding the first point it has got to be remembered that Hindu Law as administered in British India owes its origin from the *Smritis*, *Smritis* and Customs. These have been differently interpreted by different commentators and Courts, which have given rise to different schools of law. An attempt to unify all the divergent systems, if possible, and to codify the same is an object which should be supported. Uncertainty and complexity of the law lead to causes of friction and ruinous litigation and a codification of the law will be of benefit to the Hindu public. The first object of the Bill, viz., the provision of a uniform law for all Hindus in British India has not however been fully attained. The law as embodied in the Bill will not apply to agricultural land which must form a very large proportion of the properties usually dealt with under Hindu Law. It will not also apply to Mitakshra coparcenary property and to the properties of persons governed by the Marumakkattayam and Aliyasantana or Nambudri law of inheritance; as also to estates governed by the law of primogeniture. In order to attain the ultimate object of a uniform law for all Hindus, there should be some provision for the application of the law as enacted to persons or properties now excluded from its operation by some easy procedure, without recourse to further legislation.

3. Codification of Hindu Law cannot be complete leaving the other branches of the law unsettled and varied in their applications to the different schools of law. The Law of Succession itself is co-related and dependent upon several other subjects e.g., maintenance, marriage, adoption, legitimacy, joint family, partition, religious endowment, etc., and until one gets a complete picture of the whole law on all the subjects appertaining to the Hindu Law, it is difficult to say that a particular branch has been completely or properly enacted. I would therefore respectfully endorse the suggestion made before the Joint Select Committee that this part of the Code

should be enacted into law along with the other parts of the proposed Code; otherwise, I apprehend, difficulties and inconsistencies may arise.

4. The question of removal of sex disqualification has I think, been unnecessarily raised and it has clouded the issue to some extent. Women in Hindu Law have never been generally excluded from inheritance because of their sex, widow, daughter and mother have always been classed as heirs, and some of the female relations have even been preferred to males of the same degree, e.g. under Mitakshra law, mother, father's mother, father's father's mother are preferred respectively to father, father's father and father's father's father. The exclusion from inheritance of some of the female relations was not on the ground of their sex, but because of remoteness of relationship and because some of them went away to other families by marriage. The main structure of the Hindu society was based upon the system of joint family and the basic idea of the Hindu Law of Succession is the preservation of the joint family property for the benefit and maintenance of all the members of the joint family. The holder or holders for the time being of the joint family property, though owner or owners *de jure*, were expected to hold the same as if in trust for the benefit of all the members and dependents of the joint family. The idea or theory was somewhat socialistic in outlook and worked well and without any hardship to any one so long as the basic ideal was honoured and followed. But the impact of western civilization has loosened the tie which held the joint family and the western ideal of individualism is gradually breaking as under the joint family system. The result has been that some relations, specially some of the female relations, who were excluded from inheritance, but owing to the smooth working of the joint family system, had previously been under no difficulties as regards their maintenance, education, marriage expenses, etc., were left uncared for and put to great hardship and privation, while those who got the benefit of the inheritance—not males in all cases—appropriated all the profits for their own benefit and often wasted the property in luxuries. This unfortunate state of affairs led to the intervention of the legislature and some persons had to be included in the list of heirs in the order of succession at different stages [*vide* Hindu Law of Inheritance (Amendment) Act No. II of 1929, Hindu Women's Rights to Property, Acts No. XVIII of 1937 and Act XI of 1938].

5. The question therefore is really not one of sex equality or removal of sex disqualification, but one mainly of conflict and change of ideals. Modern Hindus who profess to be progressives have adopted the western ideal of individualism and the joint family system is fast disappearing. On the other hand, people of the older school, who are looked upon as orthodox, though professing old ideals, have not been able to stop the disruption of the joint family or devise any suitable means for safeguarding the interests of the relations who had no share in the inheritance but were dependants of the family. The present Bill aims at doing a social justice and is a recognition of the change of ideals. In one view it is a retrograde measure, inasmuch as it would lead to a disruption of the society and disintegration of the family property. As regards the changes it seeks to introduce, it has no sanction in the ancient Hindu scriptures but is based upon the principles of propriety, natural justice and equitable distribution. But so far as the remote heirs are concerned, it has generally followed the line of succession as laid down in the scriptures. However much one may regret that

the Hindu society is being led away from its ancient moorings, one has got to recognize the modern change of ideals and the resultant injustice and hardship on some of the helpless female relations, which the society could not remedy and consequently the legislature must interfere.

6. Keeping the above points in view, I would suggest the following amendments to the Bill :

7. The Committee, I think, ought not to have omitted the definition of the word "Hindu". To say that the Act applies to those persons, to whom it would apply, but for the Act, is not codifying the law, but, I regret to say, shirking it. If the Bill professes to be a Code complete in itself, it should be made clear and definite as to whom the Act is to apply and the word "Hindu" must be clearly defined. The definition in the draft Bill was of no practical value, and I would prefer a more precise statement, and may suggest that "Hindu" in the Code should mean a person professing the Hindu religion and would include any person, who by custom or usage has adopted the Hindu Law, e.g., a Buddhist, Sikh, Jain or a member of the Brahmo Samaj, Arya Samaj or the Prarthana Samaj. The definition should be made as exhaustive as possible in order to prevent future disputes and complications and may also leave the way open for person professing the Hindu religion by declaration in the prescribed form to be admitted under the jurisdiction of Hindu Law.

8. *Clause 5, Class I, Entry (1).*—(a) The widow of a predeceased son of a predeceased son was given the right of inheritance by the Hindu Women's Rights to Property Act, and there is no reason why she should be deprived of an existing right. The reasons given in the report of the Joint Select Committee for excluding her are not convincing and will not bear scrutiny. The said reasons if logically followed would exclude many others whom the Committee have given shares, and the question of justice that has been raised may even be a ground against many alterations in the present state of law, sought to be made by the Bill.

(b) Like the widow, the daughters of a predeceased son and of a predeceased son of a predeceased son, require protection, specially when she is unmarried and if she loses her mother also, her predicament would be still more precarious. The reason for the inclusion of the widow and daughter in this category is their helplessness, and this reason applies with equal force to the cases of daughters of predeceased sons or grandsons. From the point of view of the removal of sex disqualification also, they should be classed along with their brothers.

So in my view, Entry (1) should be amended as follows :

(1) *Parents, if dependant on the intestate, widow, son, daughter's son, daughter and widow of a predeceased son, and son, daughter and widow of a predeceased son of a predeceased son (the heirs in this entry being hereinafter in this Act referred to as "simultaneous heirs").*

(2) *Daughter's son, son's daughter and daughter's daughter should on the same principles be classed together under entry (2) and entries (3) and (4) omitted. There is no reason why one should be preferred to the other and if the avowed object of sex equality is to be maintained, all these three should inherit together.*

9. *Class II.*—There is no reason why the mother should be preferred to the father. This again violates the avowed principle of equality of sex, so also in the case of brother and sister and in order to carry the principle to its logical end, I would suggest that the entries in Class II should be as follows :

(1) *Mother and father, unless, as dependant on the intestate they have inherited as heirs included in entry (1) of Class I.*

(2) *Brother and sister.*

(3) *Brother's son, brother's daughter, sister's son and sister's daughter.*

(4) *Brother's son's son.*

10. On the same considerations, I would suggest the following alteration in

Class III—

(1) *Father's mother and father's father.*

(2) *Father's brother and father's sister.*

(3) *Father's brother's son and father's sister's son.*

(4) *Father's brother's son's son.*

Class IV—

(1) *Father's father's mother and father's father's father.*

(2) *Father's father's brother and father's father's sister.*

(3) *Father's father's brother's son and father's father's sister's son.*

(4) *Father's father's brother's son's son.*

Class V—

(1) *Mother's mother and mother's father.*

(2) *Mother's brother and mother's sister.*

(3) *Mother's brother's son and mother's sister's son.*

(4) *Mother's brother's son's son.*

11. If my suggestion regarding the amendment of Entry (1) in Class I of clause 5 is accepted, then some consequential amendments will be necessary in sub-clauses (c), (d) and (f) of clause 7.

12. *Clause 17.*—It is difficult to understand the real significance of the provisions of this clause until one is sure of the law of marriage, which is also on the legislative anvil. But in order to obviate future complications, I would suggest that the words "*with a person professing the Hindu religion*" should be added after the words "*his or her caste*" and before the word "*shall*".

This would also make the provision consistent with the main purpose of the Bill. The provisions of sections 22, 23, 24, 25 and 26 of the Special Marriage Act (III of 1872) may also be referred to in this connexion. Without the addition suggested above, the proposed clause 17 will come in conflict with the above provisions of the Special Marriage Act.

13. *Clause 20.*—Renunciation of Hindu religion should be a bar to inheritance under the Hindu Law. This is the general consensus of Hindu opinion. A man who voluntarily goes out of the Hindu religion should not be allowed to claim the benefit of the Hindu Law. Succession to his own properties would not be governed by Hindu Law and there is no reason why he should inherit properties of his Hindu predecessors in order to take them out of the Hindu family. Provision of section 24 of the Special Marriage Act may be referred to in this connexion.

14. *Clause 22. Escheat.*—The following words should be added at the end of the clause :—"*Subject to all the obligations and liabilities to which an heir would have been subject*".

15. Regarding the question of the abolition of the Hindu woman's limited estate, though I consider it a retrograde step, for the reasons stated in paragraphs 4 and 5 above, I would not object to it as litigation under Hindu Law mostly arise out of transfers by limited owners and the grant of the full right to the Hindu women may have the effect of considerably reducing litigation. Moreover, the estate was limited in the view that they were entitled only to maintenance; now that they are being given a share in the inheritance along with the other heirs, there is no ground for such limitation.

But I should think that in view of the fragmentation of the property that may come about as a result of the measure and in view of the fact that many of the female heirs would be members of other families, provision should be made for the exercise of the right of pre-emption in favour of the co-sharers of the joint property generally.

16. These are my observations on the Bill as it at present stands. But these may require revision in consideration of the provision of the other parts of the Code inasmuch as the law of succession is so closely allied with the other branches of the law, such as, marriage, maintenance, adoption, legitimacy, joint family, partition, etc.

Secretary, Cachar Jono Sava, Silchar

I do not know of any such defects or drawbacks in the existing Hindu Law which make it incumbent upon the Legislative to undertake such codification which as we can see is mainly prompted by idea of reforms in order to have some uniform law throughout India and to provide for better rights of inheritance for women. There is no justification for such drastic and radical changes in the existing Hindu Law in the name of reforms.

The codification is practically going to apply the principles of Mohammedan Law in the matter of Hindu succession. But these account quite incompatible with the religious, spiritual and social conception of Hindu family and rules of succession in conformity with such conception. In the name of reforms Hindus will be renouncing one of their most ancient institutions in the world and such renunciation is opposed to all nationalistic ideas. It is calamitous to think of abolition of the system of Mitakshra succession by survivorship existing in all other provinces in India except Bengal and Assam.

This is certainly not the proper time for codification of such a vital law concerning such a vast population. No real popular Governments are functioning in the Provinces or at the centre and at the same time it will be very difficult to gather the actual public opinion in such unheard of abnormal times.

On the very face of it, the code provides for double rights of inheritance for a woman, one as a daughter married, unmarried or widowed and again as a widow who is to get an equal share with the son.

The provisions in the proposed code are sure to cause disruption in the Hindu family and fragmentation of the family property.

Under the present conditions some legislation may be supported to provide for some rights to unmarried daughters only.

Secretary, Bar Association, Silchar

I have the honour to say that members of this association do not agree with the provisions of the proposed Bill.

Mr. H. Dutta, Government Pleader, Silchar
I am in favour of the Bill.

No. 8.—DELHI
Chief Commissioner, Delhi
I do not wish to offer any opinion.

District and Sessions Judge, Delhi

From the number of dissenting notes which accompany the report of the Joint Committee it is clear that the subject matter of the Bill is highly controversial and I cannot help feeling that in a sense it would be impertinent for an Englishman like myself to express any decided opinions on such matters without having made a special study of the history of Hindu Law, which I have not. I do not, however, consider it would be out of place to observe that all the courts must welcome the codification of Hindu Law as a whole of which the proposed Bill forms a part, and I for one welcome those parts of the Bill which give greater rights to women regarding heritable property, and I do not agree that apostasy should now be made to constitute a disqualification to succession, involving as it would, the repeal of so old a statute as the Caste Disabilities Act of 1850.

Mr. Harish Chandar Mittal, Subordinate Judge, 1st Class, Delhi

I am not in a position to express an opinion on the individual clauses of the Bill under reference but a general study of the Bill leads me to the conclusion that it is very likely to lead the evils of fragmentation of holdings and passing of the property into strange families. On the whole, in my opinion, the changes which the Bill will bring about in the Law of Intestate Succession among Hindus will do more harm to the community than good.

Lala Tara Chand Aggarwal, Commercial Sub-Judge, 1st Class, Delhi.

I am of opinion that the provisions of the Bill as amended are likely to meet with the approval of all educated Hindus especially Punjabis. The Punjabis have been trying to educate their girls on the same lines as their sons, and to allow them every facility. The proposed amendment would remove a long-felt grievance of the female members of the Hindu families and help in giving them better status and making them feel independent. By becoming heirs in their own rights they would be able to pursue their education and follow such careers as may appeal to them without their being dependent on the mercy of the male members of the family. The proposed Bill is a step in the right direction.

Sheikh Masud Ahmad, Sub-Judge, 1st Class, Delhi

1. The most notable features of this Bill are the recognition of simultaneous heirs and preference given to female heirs. This being a departure from the recognized principles of Hindu Law, I fear that there would be very strong opposition from the Hindu public. The principles underlying the recognition of simultaneous heirs have, in main, been taken from Mohammedan Law, and as a *Mussalman* I have nothing but approval for these principles.

2. Agricultural land being a Provincial subject, it has been excluded from the operation of this Bill. The result of this would be that part of the estate of a Hindu dying intestate would devolve according to the rules laid down in the proposed Bill, while a part of it would devolve according to the recognized principles of Hindu Law. This position, in my

opinion, would be anomalous. It is, therefore, respectfully suggested that steps may be taken to make the rules of succession uniform whether a part of the estate consists of agricultural land, or not.

3. The parents have been included in class no. 1 of enumerated heirs, if they are dependent on the intestate and in class no. 2 if they are not dependent on the intestate. In my opinion entries nos. 1 and 2 of class no. 2 may be deleted and parents, whether dependent or not on the intestate, should be included in entry no. 1 of class no. 1.

4. Daughter's son, son's daughter, and daughter's daughter have been shown in different entries as enumerated heirs in class no. 1. The result of this would be that the daughter's son would exclude the son's daughter and the latter would exclude the daughter's daughter. In my opinion, all these three heirs should be included under the same entry and should inherit together. A son's daughter or a daughter's daughter may, however, be given one half share if a daughter's son is in existence.

Sub-Judge, Class I, Delhi

There can be no doubt that the idea to codify the Hindu Law and specially to codify law on the subject of intestate succession has arisen because it has been felt that opinions with regard to it, in the country are so varied and different that the law as it stands today required a radical change and in the form of a set of well defined principles. The main change in the matter of intestate succession, is desired, with respect to the women. It has been generally accepted that mere sex should not disqualify a female from inheritance and therefore the Bill gives to female heirs rights that they never possessed before. That there is some strength in not discarding the female heirs cannot be denied, but as I will explain later on, it would be dangerous to become too generous to them.

My opinion therefore generally is that women should not be excluded from inheritance simply on the ground that they belong to the 'weak sex'. I also endorse the view that the law of inheritance, should be overhauled and systematically codified.

As regards the actual provisions of the Bill, I do not understand why so many eminent jurists and public men have opined that apostasy should be considered as a ground of exclusion from inheritance. We are living in an advanced stage of society and to lure a person into a particular religion by dangling before her or him a penalty if connection is severed from it appears to me as unjustified. That person claims inheritance on account of blood, but if his private inclinations are opposed to the principles and provisions of a certain religion I do not see why he should be penalized. If the rule is insisted upon, you may prevent a person from formally changing his religion, but if he has no internal sympathy with it, he can be hardly taken to be a member of that religion. He cannot impart to his children the notions and principles of the faith he dislikes and there will appear a weakening of the notions towards faith as he leaves such descendants.

As regards giving a share to female heirs, I think that the Bill as amended by the Standing Committee has been too soft to them. The exclusion of certain female heirs, had a lot of force behind it. Females do not always remain in the family of their parents and on their marriage the property will disintegrate and might in some cases be lost altogether as the husbands of the married daughters, would like to meddle with it.

Most of our women are or are forced by circumstances to come under the sway of their husbands and if they cannot freely use the property as they like, the whole idea of female succession will receive a source of dangerous interference.

In the case of a married daughter therefore, I think the suggestion of Mr. Lal Chand Nawal Rai is good viz. she should get $\frac{1}{4}$ th of a son's share and not half. I also endorse his other suggestions except what I have already stated above. I also agree with him that the law as proposed should not apply to agricultural lands administered by the Central Government.

Sarvadeshik Arya Pratinidhi Sabha, Delhi, Arya Samaj, Delhi (Diwan Hall).

We are opposed to the Intestate Succession Bill in the form it has been circulated for opinion. As progressive bodies of the first rank we would have welcomed any measure which aims at raising the status of women provided it is based upon the tenets of the Vedas and Shastras and serves as a means of strengthening the Hindu society in general, which it is regretted it does not. On the other hand from the face of it, it appears that it would lead to the disintegration of the society and other dire consequences. We therefore deem this Bill highly detrimental to the best interests of the Hindus on the following main grounds:

(1) Secularization of the personal law of the Hindus based on Shruties and Smritis by a body constituted of a few Hindus and some non-Hindus is highly objectionable.

(2) Piece-meal legislation regarding the most comprehensive and complicated personal law chiefly based upon Shastras is most likely to undermine the very roots of the culture formed on Vedic religion.

(3) The proposed Bill as it stands will lead to the fragmentation of properties and increase litigation among the Hindus. To make provision for women from the property of their husband does, appeal to reason and has sanction behind it but to concede to daughters simultaneously right to succession to father's property along with the sons, is to introduce an alien element in the Hindu society which would create insurmountable practical difficulties leading to unnecessary litigation (as so often happens in Muhammadan families) and fragmentation of property. It will also be hard upon commercial concerns as by introducing the daughters or their husbands as partners, the interests of the established firms are most likely to be prejudicially affected. It will complicate matters by producing disharmony in the family and sisters who have till now been looked upon with reverence and affection will come to be looked upon with a dread as being rival claimants to father's estate.

(4) The removal of apostasy and other accepted disqualifications is likely to multiply detrimental activity among the people affected by the new enactment.

(5) The absolute ownership of females over property coupled with the Caste Disabilities Removal Act of 1850 would place an additional incentive in the hands of miscreants.

(6) No attempt seems to have been made to obtain the opinion of the specialists well versed in the Vedic literature or to exclude those who are not expected to know much about the Shastras of the Hindus.

(7) A great number of the elected members of the Central Legislature is not at this juncture in a position to participate in the considerations of the proposed Bill.

(3) The flagrant breach in the case of this Bill of the salutary convention that in the consideration of social measures affecting one community only, members belonging to other communities should not take part, is extremely regrettable.

For the above mentioned reasons it is strongly urged that the Intestate Succession Bill be not passed into Law.

The Provincial Hindu Sabha, Delhi

The Provincial Hindu Sabha, Delhi, would welcome any measure to raise the status of women in the Hindu society, but the present Bill is so defective in certain aspects, that this Sabha strongly opposes the Bill for the following reasons :

(1) This Sabha is against the piece-meal codification of Hindu Law. Unless a complete sketch of the whole law is before us, it is rather difficult to express our opinion about the important subject of succession. The Law of marriage and maintenance, gifts and wills are so connected with succession, that unless an idea of the proposed legislation on these subjects is given it would be dangerous to enact a law on the subject of succession. A committee consisting of Hindu eminent lawyers in India, should be constituted. This Committee should also include some scholars in Sanskrit who shall help the Committee in interpreting the various texts or Vedas and Smritis.

(2) This Sabha is against the provisions of simultaneous succession of so many persons in the presence of sons. This would lead to disruption of Hindu families and to the disintegration of the family property. The commercial concerns would suffer on account of inclusion of strangers like daughter's husbands. The affection between brothers and sisters in Hindu family, which we see today, would disappear and the sisters would be looked upon as rival claimants in the property of father. Useless litigation amongst brothers and sisters would ruin the families. The legal systems in which daughters succeed simultaneously with brothers also provide that she should not marry outside the family or tribe. In order to keep the property in the family, people would marry their daughters in the families, which is today abhorred by the Hindus. It will be a change for the worst. At present the law of prohibited degrees is a bar to such marriages.

(3) This Sabha strongly opposes the Bill on the ground that apostacy has not been made a disqualification to succeed to the property of Hindu relations. In recent times Hindu females in provinces, where Muhammadans are in majority, are regularly kidnapped and converted. The absolute ownership of females over property, coupled with Caste Disabilities Removal Act, 1850, would place an additional incentive in the hands of miscreants to give them the hope of that success in carrying any Hindu female would not only minister to their carnal gratification but would in addition bring them some reward in the shape of property.

(4) Lastly we protest against the flagrant breach in the case of the Bill of the old convention amongst the members of the Assembly, that in consideration of social measures affecting one community only members belonging to other communities should not take part. But during the discussions on this Bill, the non-Hindu members not only took part in deliberations but influenced the decisions of the Committee and that too against the wishes of the majority of Hindu members.

All-India Digambar Jain Mahasabha, Delhi

Regarding the Bills named (1) Hindu Intestate and Succession Bill and (2) Hindu Marriage Bill introduced in the Central Assembly on the recommendation of Law Committee I beg to state that all-India Digambar Jain Mahasabha is totally against both of them. The whole Jain community has got religious objections and thinks that these bills will destroy the social structure of the Hindu society.

Acharya Rajendra Nath Shastri, Shrimad Dayanand Ved Vidyalaya, Delhi

I am afraid the work of codification has been entrusted to those people who have not understood the *Shastrie* Texts, so often quoted by them in support of their contentions, thoroughly. First, they are prejudiced with a very wrong notion that much of the vast Vedic literature has been lost—little remains in it of positive law. Secondly, they have always quoted translations of texts and these translations convey the belief of the translator only and not those of the author of the text. No doubt slight modifications were made here and there in the customs, etc. by the *Rishis*—being law givers—but the chief characteristics remained the same and nothing in the nature of a change was made or considered necessary at any time the sole reason being that they all recognized the authority of the Vedas as such.

"*Dharmam jijnysa samaanaanaam pramaanam paramam Shrutih*" (Manu 2-13).

Let us first take up what the *Shrutis* have to say in respect of *Dayabhaga*.

"*Abhraatara iva jaamayastishthanu hatavarchasah*" (Atharva 1-17-1)

lays down : A brotherless girl shall stay in her father's house (and take care of his property). Such a girl is called a *putrika*. Manu corroborates the same and lays down :

"*Yasyaastu na bhavedbhrataa na vijnyayeta vaa pitaa, nopayachchheta taam prajinyah putrika dharma shankayaa, i.e. a brotherless girl should not be chosen for a bride as she has to perform the functions of a putrika . . . (3-11)*". Moreover "*Aputronenavidhinaa sukaam kurveeta putrikaam, yadapatyam bhavedasyaam tan mam syaat evadhaakaram*" (Manu 9-127) states : a sonless father adopts his daughter as a *putrika* because the son born of her is entitled to offer *pinda*. It is clear from this that a brotherless girl becomes a *Dayabhagi* by staying in her father's household as a *putrika*.

"*Abhraatara punsa eti prateechi, gartaarugiva sanaye dhanaanaama* (Rigveda 1-124-7)", i.e. a brotherless girl returns to her father's house to look after his property—also conveys a similar idea. It is clear from this that she has no business with her father's property if she has got a brother. The same view has been mentioned in unmistakable words in "*Na jaamaye taanvo rikthamaarika*" (Rigveda 3-21-2)—i.e. a son does not hand over the *rikthi* (property) of his father to his sister. Meaning thereby that the successor is the son and not the daughter.

While taking in marriage a bridegroom says to the bride :

"*Tena grihaami te hastam maavyathishthaa, mayaa sah prajayaa cha dhanena cha* (Atharva 14-1-48)" i.e.

I take your hand, do not feel the pang (at being deprived of paternal property and separation from brethren), along with me get and enjoy progeny and wealth. Had the girl been the successor to the

father's property her sorrow would not have been in the least minimized by the prospect of wealth in the bridegroom's house. And according to the westernized ideas it would not be in conformity with the respect due to her to say: "*Mameyamastu poshyaa*" (Atharva 14-1-52), i.e. I shall look after and provide for you. Commenting on this Vedic principle Niruktakara Yaskaacharya has said:

"*Anyatarah santaanakartaa bhavati pumaan daayaadaah*" (3-7-6), i.e. other (than the sister) who is a *santaanakartaa* (having the prospect of a progeny) is entitled to Dayabhaga.

Now we come to *Smritis* which stand next only to *Shrutis* in authority. The *Smritikaras* have said:

"*Yadvaikincha Manuravadata tadbheshajam*—i.e. Whatever Manu has said is the solution of all the ills". Manu says:

"*Oordhvam Pitushcha Maatushcha sametya bhraatarah samam bhajeran patrikam rikthamaneeshaaste hi jeevatoh*—i.e. all the brothers would distribute the property of their father after their death and not during their life-time—Manu (9-104)".

Yajñayalkya says:

"*Vibhajeran sutaa pitrooordhvam riktham rinam samam*—

i.e. sons should distribute the assets and the liabilities of their parents after their death equally among themselves—(Dayabhaga Prakaran 8-117)". Narada *Smriti*, *Vivada Pada*, sloka 13, also says: "sons distribute (among themselves) their father's property. The learned have called it Dayabhaga." *Vrihad Vishnu Smriti* 17-1, 2, 3 has also corroborated this. Thus we see that the *Vedas* and the *Smritis* have given the right of succession only to the son and not to the daughter.

However, we see that the daughter is entitled to *Stridhana*. Manu says:

"*Maatustu yautakam yatsyaat kumaaree* (Manu 9-131) *bhaaga eva sah, dauhitra eva cha haredaputrasyaakhilam dhanam*—i.e. a maiden is entitled to the wealth acquired by her mother at the time of her (mother's) marriage. And if the maiden's parents are sonless the property will go to the daughter's son (*Dauhitra*)". Meaning thereby that the property that devolves upon a *putrika* does not become her *Stridhana* but is inherited by her son or sons (when born) who will be treated as paternal grandsons of the intestate. Commenting on this Kullukbhata has quoted Gotam in the words:

"*Stridhanam dukhitrinaam adattaanaam apratishthitaanaam cha, aputrasya cha maataamahasya dauhitra eva prakritatvaat putrikeyah samagram dhanam grihniyaat*" meaning that the *stridhana* devolves upon the maiden daughter and the property of the sonless maternal grandfather devolves upon his daughter's son as if he was his son's son.

Manu says: "*Jonanyaaam sansthitaayaa tu samam sarve sahodaraah, bhajeran maatrikam riktham bhaginyascha sanaabhayah* (9-192), i.e. if the *matridhana* (*Stridhana* of the mother) is divided after her death then all the brothers and sisters (both real) will receive equal share." Yajñayalkya says: "*Maaturduhitarah shesham rinat tanhyaay rite anayah* (8-117), i.e. daughters should distribute their mother's assets after deducting the liabilities and in

their absence the sons." Mitakshra, in the *Avataranika* of this shloka has said:

"*Maataapitrordhanam sutaa vibhajeran ityuktam tatra maatridhane apavadaamaah*—

i.e. It has already been said that sons inherit their parents' property except for the *matridhana*, which is to be divided as follows (quoted)". He has also said:

"*Dukhitrabhava maatridhanam rinaavasishtam ko grihneeeyad ityata aah, taabhyo dukhitrabhyo vinaa dukhitrinaam abhaave anayah putraadir grihneeeyad*—i.e. the balance of the *matridhana* after deducting the liabilities should, in the absence of daughters, go to the sons."

Thus we see that the *Vedas*, Manu, Yajñayalkya, Gotam, and other *Smritikaras* as well as Mitakshra—*Vijnaneshwara*—who is only a commentator of Yajñayalkya and not a *Smritikara* himself—lay down the principle in respect of Dayabhaga that it should be given to the sons and that the right of succession of the *putrika* terminates with the birth of a son to her. Let it not now be said that the *Shrutis* do not disqualify a daughter from absolute property.

But there is another point, however, as to who should bear the burden of a girl's marriage or her maintenance, in case she takes to spinsterhood throughout her life, after the distribution of the property. Kullukbhata while commenting on: "*Svebhyo anshebhyastu kanyaabhyah pradadyur bhraatarah prihak svaat svaadanshaachchaturbhaagam patitaasyuraditsavah*" (Manu 9-118) says: "every brother should give one-fourth of his share to his real sister for the performance of her marriage ceremony" and has quoted Yajñayalkya in his support as follows: "*Asanskritasstu sanskaaryaa bhraatribhi poorvasanskritaih, bhaginyascha nijadanshaad dattvaansham tu tureeyakam*" (Yaj. 8-124)—

i.e. married brothers should get their unmarried brothers married and further spend one-fourth of their share each on the marriage of their sisters."

Mitakshrakara *Vijnaneshwara* has also translated Yajñayalkya (8-124) in the same way as Kullukbhata but he has further expressed his own view showing his failure to understand the text as well as simple arithmetic. In the explanatory note appended to the original Bill Mitakshrakara has been quoted and it is alleged that the share of the daughter will be different and will depend upon the number of brothers. The position is quite otherwise. The share of the daughters is quite independent of the number of brothers and on the other hand depends upon their own number. According to Manu and Yajñayalkya one-fourth of the total wealth is to be spent on the marriage of all the daughters together and three-fourths is to remain with all the brothers together. I can boldly say that the opinion of Mitakshra is not in conformity with Manu or Yajñayalkya and is, as such, invalid. Moreover, I hold that nobody can interpret the original text in any other manner. In spite of all this Mitakshra has nowhere held that a daughter is a *dayabhagi*. He says that some portion of the wealth should be spent on her marriage.

Yajñayalkya (8-115 and 123) have been quoted in favour of dayabhaag for women by the Joint Committee. Mitakshra has translated these as follows: "If a father divides his property among his sons equally he should give an equal share to his wives who have not received their *stridhana* from their husband (himself) and their father-in-law (his

father);" and "If the property is divided after the death of the father the wives should also get shares equal to the sons." Thus Mitakshra has provided property for a woman, not from her father, but from her husband or her father-in-law. This is quite in conformity with the Vedic principles.

This has never been the view of anybody that women as such should not get any property or wealth. The fact that daughters and sisters are not entitled to dayabhaga does not mean that mothers and wives should not also get anything. This can never be. The responsibility for the maintenance of a woman lies on the husband who has to provide for her. If he does not, he commits a guilt. Dayabhaga cannot help her at all.

Let us now consider the various difficulties that might arise if dayabhaga is provided for the daughters.

1. The parents, in order to save their belongings and property from disruption would prefer to marry their daughters among near relatives just as amongst the Muhammadans. This would, in its turn, lead to undesirable results which have been enumerated at full length by Rishi Dayananda—the greatest reformer of modern times—in his immortal work *Satyartha Prakasha* (Chapter IV). Some of these are the accepted principles of eugenics. This view has also been corroborated by Yaskacharya in the words: "*Duhitaa durhitaa doorehitaa*—i.e. a girl should be given in marriage in a distant land and among those not related by blood."

2. If, as is preferable, a girl goes in marriage to a far off place it would be very inconvenient for her to take journeys every now and then to look after the property. If she looks after the property she shall not be able to fulfil her obligations towards her family. In support of this, reference may be made to *Atharva* 14-1, 42, 53 and 54 and *Rigveda* 1-85-44. A woman is called a "*Virsoo*" that is mother of brave sons. This she cannot be unless she pays full attention to her son long before his birth and after.

3. She cannot then be called a *samrajnyee* or an empress in the whole of the household—a status given by *Atharva* :

"*Samrajnyee edhi shwashureshu samraajnyee ut devrishu, nanaandu samraajnyee edhi samraajnyee ut shwashravak.*" (*Atharva* 14-1-44.)

On the other hand she would be like a partner in a concern. Speaking with a fair degree of correctness it can be said that it is due to this property share, that women in non-Hindu society get, that they cannot aspire—in fact they do not—to enjoy that status of *samrajnyee*-ship that the Hindu society affords. *Manu* says :

"*Yatra naaryastu poojyante ramante tatra devataa*—i.e. where women are honoured there the gods reside."

4. The sister would never receive anything at any time just as any brother does not get from the other—being a sharer in the property. The famous *Baksha-bandhana* festival of *Bharatavarsha* with all the obligations enjoined by it will fade into oblivion. The stories of brothers laying their lives for the protection of the honour of their sisters would no more be heard.

5. Family life would then appear to have no particular benefits and without being aware of the consequent miseries girls would be enamoured of dissolving their marriages every now and then, just as in other societies where property right exists. This is very heinous from the Hindu point of view.

6. It would be intolerable to see mothers and sisters going to the law courts and bearing insults (as is very common) while applying for divorces or other litigations in respect of property and debt disputes. Moreover, if women have to go out so often the whole society would come to grief as there would then be a greater incidence of promiscuity.

7. Now if the daughter is entitled to have share in property there would be no moral binding on the brothers and father to get her married just as in the case of a brother or a son. This is quite unlike the belief in Hindu society wherein people consider it a great act of piety to see a poor father's daughter married through their own efforts whilst in the case of a boy others do not at all feel concerned.

8. In this poor country a very large percentage of people are uneducated and poor. They are the people who would be worst affected by this codification. The rich and the educated would be on the alert and make a will to nullify the bad effects of this Bill. The others have small holdings managed on joint family system. If the girl takes her share the property is broken up simply to be disrupted. A small portion of a small holding is not very useful and is rather a liability for the girl sitting at a very large distance. The vanity of having a holding for the having of it would not let her leave it in favour of her father's householders. The brothers and the father also would be losers, there is no doubt about it. There business would thus gradually come to a standstill.

9. The wealth and the property would gradually pass on to the women, and nothing would remain with the males after a few generations.

It is, therefore, clear that on other grounds as well dayabhaga for daughters is very undesirable. The greatest reformer and preacher of modern times—Rishi Dayananda—has also supported the view that sons alone should get dayabhaga. (*Satyartha Prakasha*—Chapter IV.) For his followers and for *Arya Samaj* as a body constituting of not less than 20 lakhs, his word is law. A Rishi because of his thorough knowledge (insight) of the Vedas is a law-giver. Any law-giver cannot be a Rishi, just as a cow gives milk but the milk-maid is not a cow.

The then Law Member has given the following reasons in support of this Bill: (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. Let us take them one by one.

1. The might of a government can enforce any law throughout the land. Why not dayabhaga? Why not a common civil law for all the Indians alike? Why an exception has been made in clause 3 to Nambudaris, etc.? What about the Hindus residing in the Indian States and Overseas?

2. Rather it removes the sex qualification. She is the *samrajnyee*—an empress—and has to play a very active part in bringing forth the next generation. This additional burden, as has been pointed out above, would be a great hindrance in the performance of her duties.

Why not try sex reciprocity? Let man's place be the hearth and the home and the women's the field and the office. Would not the women then come to grief?

The so-called sex disqualification would not be removed by the proposed bill even. (a) The daughter has not been allowed a share equal to that of the brother—*Clause 7(d)*. (b) All the widows together get a share equal to that of a son—*Clause 7(a)*. (c) Achaaryas, shishyas, and sa-brahmacharinies (all females) have not been included in *clause 10*.

3. Absolute estate has been granted against the authority of the shastras. The moral obligation is replaced by a partnership by enactment. This would end all the lofty sentiments hitherto prevailing and constant quarrels would find a place in the Hindu household.

The following remarks are also offered for consideration :

(1) The government's interference with the personal law goes against the proclamation of Queen Victoria.

(2) No non-Hindu should be allowed to interfere in this matter as it concerns the personal law of the Hindus alone. They should not, at least, be allowed to vote on this Bill.

(3) A Hindu who would not like to take even a single pie from his or her daughter considering it to be a sin will have to accept the position of a *dayabhogi* to the daughter—*Clause 13(b)* (9) and (10).

(4) It has been said in the explanatory note that on the whole the best solution seems to be to put Hindu women on a par with other women in India who get full rights and to abolish the limited estate. Has the government made any effort to put the non-Hindu women at par with Hindu women in various other respects in removing sex disqualification? A Muslim woman cannot divorce but can be divorced. A Muslim can marry four wives and keep as many concubines as he would but the woman cannot be a polyandrist.

(5) The widow having been given the right to inherit property as absolute estate will feel less inclined to adopt a son and thus families after families will terminate and the property ruined.

(6) It is stated in the explanatory note that "as between a share in her father-in-law's property and a share in her father's property we believe the latter to be more secure, because there is less chance of the provision being defeated by a will. A father-in-law is more likely to disinherit his daughter-in-law than a father his daughter". Further on it has also been stated "We have also little doubt that an owner of property if asked to choose between a scheme which gives a share to his daughter and the one that gives a share to his daughter-in-law would normally prefer the former." It would rather be correct to say that a reasonable man would provide his daughter-in-law than his daughter as in the latter case the property would be disintegrated. People would be compelled to defeat the purpose of the proposed bill by making a will.

(7) No distinction has been made between the portions of an unmarried and a married daughter. Should an unmarried daughter marry herself out of the property inherited by her? The father in his life time and his successors after his death would not feel an obligation to see the unmarried girls married.

(8) Provision should be made to see that change of religion disqualifies a person from inheritance, except conversions to creeds of Hindu origin. It is shocking to find that the Joint Committee has not made any such provision.

(9) Under the present Hindu Law and social order a woman is well provided for, in spinsterhood in her father's house and in married life in her husband's house. If, unfortunately, her husband dies she can either remarry if an *Akshatyni* or remain amicably in her deceased husband's family. But if she would neither remarry nor remain in the family amicably there is no hesitation in accepting that the Hindu Law and social order does not provide for her. Such a right is not recognized as a legitimate one. However, (i) if she is turned out by her husband on grounds of being an *apriyavadin* (Manu) or (ii) if her husband has turned her out having taken to another woman, she can remarry another husband or ask for maintenance by law or go to her father's house and spend her remaining days.

(10) There is really no necessity of any such codification. If there are any remote possibilities which have not been provided for it cannot be helped. For stray loop holes here and there a law is never codified. In the same manner it would not be in conformity with any sense of proportion to bring about revolutionary changes on the basis of a stray commentator whose authority is very much in dispute.

In my opinion, therefore, the government should withdraw the Bill as it is against the shrutis and smritis and affects the personal law of the Hindus. This would be in keeping with Queen Victoria's proclamation.

No. 9.—SIND Government of Sind

I am to state that on consulting progressive Hindu opinion, the Government of Sind agree to the principles embodied in the Bill.

2. The Bill as reported by the Joint Committee was published in English and in Sindhi in the *Sind Government Gazette*, Parts IV and V, dated 17th February, 1944 and 2nd March, 1944 respectively.

Registrar, Chief Court of Sind

The Honourable the Chief Judge and Judges of the Court approve the Code as amended by the Joint Committee subject to the suggestions made by the Karachi Bar Association.

Karachi Bar Association

I have the honour to state that in the opinion of the Karachi Bar Association, there should be codification of analogous parts of Hindu Law, viz. Marriage, Endowment, Adoption, Maintenance, as early as possible.

I am further to state that as to the various clauses of the Bill, the Karachi Bar Association is of the following opinion :

Clause 1(2).—This is vague. It should be made more definite by enumerating the various classes of persons to whom the Act applies. The object of codifying Hindu Law is to make it easier for Courts to decide cases coming before them and not to refer to the old texts and decided cases to be able to find whether the Act applies to a particular class of persons or not.

Clause 2(d).—In the definition of "inherited property", the words "and passes whether he dies leaving male issue or not, by inheritance as distinct from survivorship" apparently refer to a male Hindu only and not a female. The following amendment will make the definition more clear viz. between the words "and" and "passes" the words "in the case of a male" should be added.

Clause 2(h): Stridhan.—It is not necessary now to name any property as "Stridhan" and to define what is "Stridhan". Once a female is given right of inheriting property in the same manner as a male, all the property acquired by her in whatsoever manner should become her own property. Why should it then be called by a special name like "Stridhan"? In the definition of "inheritable property" all the property which belongs to an intestate female in her own right is included. Therefore calling that property by another name viz. "Stridhan" will be creating confusion.

Clause (3), Proviso.—This should be deleted. All females who own property should be placed on the same footing, whether the property has come into their hands before the commencement of this Act or comes into their hands after.

Clause 5(1).—Before the word "daughter" the word "unmarried" should be inserted. A married daughter should not be in the same category as an unmarried daughter. A daughter at the time of marriage gets dowry from her parents and after marriage she becomes member of the family of her husband. Under this Act she will be entitled to inherit the property of her husband or parents-in-law, as the case may be. She should not therefore have double advantage. Married daughter should come in sub-clause (2) of clause 5 and sub-clauses (2), (3) and (4) should be re-numbered as (3), (4) and (5) respectively.

Clause 7(d).—In view of the above remarks each unmarried daughter should be given a half share and not married or widowed daughters.

Clause 12.—In view of remarks under clause 2(h), the word "Stridhan" should be altered to "property".

Clause 13.—The word "female's property" should be substituted for "Stridhan". All the property left by an intestate female should devolve on her heirs as mentioned in sub-clause (b) irrespective of the source from which it was acquired. There should be no distinction between the property inherited by her from her husband or his ancestors and other property. Once the right of absolute estate is conceded to her so that she can dispose of her property in any manner she likes, there is no reason why any distinction should be made between properties acquired from different sources.

In sub-clause (b) (1) "daughter" should be replaced by "unmarried daughter". Sub-clause (2) should be "married daughter" and (2) to (9) should be re-numbered as (3) to (10) respectively.

Clause 14.—The word "property" should be substituted for "Stridhan".

Clause 20.—Apostacy should be made a disqualification. A person who abandons his father's religion should not be permitted to inherit. For all practical purposes he is dead to the family. Similar provision is to be found in the Muslim Shariat Law. The Caste Disabilities Removal Act should be repealed by this Code.

District Judge, Hyderabad Sind

I agree with the principles embodied in the Bill and am in general agreement with the main report of the Joint Committee.

Collector of Nawabshah, Sind

The object of the Bill, as far as I can see, appears to be to liberalize the Hindu Law in order chiefly to better the position of the Hindu women, who are according to the Vedic rule totally excluded from inheritance or from full dominion over property.

The Joint Committee's report shows that they have examined all aspects of the Bill very minutely and have given cogent reasons in support of the Bill as altered by them. But these reasons do not appeal to the general Hindu public and several Hindu gentlemen whom I have consulted about the advisability of the Bill being passed into law have expressed strongly against it. They think that the amendments proposed are not only revolutionary but in certain respects strike at the very root of the Hindu society. Although they admit that in theory the correctness of the step to amend the Bill cannot be disputed they are of opinion that in practice the Law if amended would bring nothing but chaos in the Hindu social life and disrupt the Hindu joint family system. They therefore, prefer to have no change in the present system, which is sanctioned by usage of several centuries and has stood the test of time, but think that if any changes are considered necessary they should be such as not to demolish or interfere substantially with the present structure of the Hindu society.

2. The present Bill will not achieve the above object, but tends to create complications which are likely to be the cause of litigation such as are rampant in other communities in which the females have absolute right over property. The system of matrimonial alliances recognized by the Hindu Law does not, like Moslem Law of Shariat permit such alliances amongst relations connected by blood with the result that if the Bill as reported by the Joint Committee is passed into Law the property of a Hindu dying intestate is bound to get divided and sub-divided to such an extent as to be ultimately lost to the family. The general public opinion in this district, therefore, is that the right of a female to inherit property should be limited only to a life's interest in immovable property, so that the property should revert either to her paternal relations or relations of her husband as the case may be after her death; and that in the case of a married girl the amount of dowry given at the time of her marriage should be deducted from her share in the moveable property. It is also considered necessary that a special provision should be made in the case of apostacy in order that the property should revert back to the source from which it was inherited, and also that apostacy should be regarded as a disqualification if the right to inherit accrues after it.

3. Whatever may be my personal views on the subject I cannot deny the patent frankness with which the above opinion is expressed and the potentialities of such opinion from the point of view of the Hindu public. I must, therefore, give due weight to this opinion and taking into consideration its intrinsic implications I suggest the following amendments to the Bill:

(1) The definition of the "Stridhan" in clause 2(h) should be restricted so as to apply only to moveable property and clause 13 should be so amended that the moveable property inherited by a Hindu female should go to her father's or her husband's relations from whom she inherited it as the case may be.

(2) Clause 5, class 1(i) read with clause 7(d) should be so amended as to restrict the absolute right of a female only to moveable property and only to a life interest in immovable property except where the immovable property consists of a residential house, where only a widow or unmarried daughter should have the right of residence.

(3) Clause 7(b) should be amended so as to restrict the right of inheritance to an undivided or reunited son only. It will not be correct to give a share to

a son who has divided from his father during his lifetime as this affects the very root of the Hindu joint family system and indicates lack of recognition of a filial duty on the part of a son.

(4) Clause 7(f) should also be amended to restrict the right of a widow of the predeceased son to only a life interest in the immoveable property and absolute interest in the moveable property inherited by her.

(5) A new section should be added to disqualify an apostate from inheriting any property.

Infine all clauses of the Bill require to be so amended as to restrict the right of a female to a life interest in immoveable property inherited by her.

Khudabadi Aml Panchayat

We have examined the Bill and are of the opinion that as it stands, it cuts at the root of the Hindu joint family system and the fabric of Hindu family life is put at stake.

The prevalent Hindu Law of Intestate Succession is founded on the principle that such succession starts only when a person dies leaving separate or self-acquired property without leaving any male issue. Where one leaves male issue which includes grandson and great grandson his property descends by the law of survivorship to such issue who take it as members of a joint family who become coparceners of joint tenants and not tenants-in-common having separate interest. The corollary from this principle follows that the grandsons have in it a right by birth which exist independently from his father or grandfather as the case may be even though they are alive.

Now let us see what this Act aims at and the results that ensue therefrom. This Bill provides for an intestate leaving separate or self-acquired property whether he dies leaving male issue or not. It abolishes the rule of survivorship by which the male issue succeed as joint tenants even though the property be separate or self-acquired property of the intestate and provides that such issue become tenants-in-common. The result will be that in course of time new joint families will cease to come into being thus affecting the very basis of our family life and laying the foundation of disintegration and disunion. Further the valuable right of the grandson or great-grandson, which he acquires by birth even in the presence of father or grandfather which is a wholesome check on spendthrift or improvident fathers and prevents them from alienating any immoveable property, will be lost.

The main interest in the Bill in what are called simultaneous heirs viz. the widow, the dependant parents, the male issue including the son of a predeceased son or a predeceased grandson, the daughter, whether unmarried or married and among the latter indigent or rich, widow of a descendant including the predeceased son of a predeceased grandson of a predeceased great grandson.

The widow already gets a share under the Act of 1938, which she can have divided by partition which was denied to her by the strict Hindu Law, by which

she got a share only when the sons came to a division among themselves, the maiden daughter already gets 1/4th share of the son under the Smritis though in strict practices only maintenance and marriage expenses are given to her which in most cases would exceed the share due to her. We have no objection if a separate indefeasible share is given to her even extending to half of the son's share with an option to her to take it or leave it to her brothers in lieu of maintenance and marriage expenses. There is no case for providing for married daughters at all as they would succeed in the family of their husbands. If they are included, sons-in-law will almost invariably be a source of litigation and disruption of family system.

The male issue should succeed as joint tenants to the residue left after providing for the widow and unmarried daughters.

The dependant parents and the widows of predeceased descendants should have a right of maintenance assured to them and have no case for getting a separate share. It is fantastic to include such widows as simultaneous heirs. They are not blood relations.

As the Bill is a compromise between the Mitakshra and Dayabhag system of family laws, we have no objection if like the sister's son, who already succeeds under a status sons of father's sister or like sons of sister of remote fathers are allowed to succeed even before the agnates. There is no quarrel with the rest of the order except that we think that father should succeed before the mother as under the Mayukha of the Dayabhag because he is the superior parent and the progenitor. There is no case for preferring the grandmother or remoter grandmothers to the grandfathers as even under the Mitakshra only the mother has precedence over the father.

As to the law of succession to the property of a female, we appreciate that the law of Stridhana which is otherwise complicate is simplified and made uniform for most kinds of Stridhanas. We also appreciate that sons are allowed a share along with their sisters from the property of their mother under the principles of reciprocity, but object to their getting only a share half of the daughter.

They live along with their mothers under the same roof and have a joint mess in most cases and should not have an equal share with their sisters whether unmarried or married.

We are also of the opinion that the existing preference of an unmarried daughter over her married sister should be continued to her as before.

As to the estate of a female heir we may note that daughters and sisters already take an absolute estate here. There is no valid reason why a widow or a mother should get a restricted estate likewise other female heirs need not be differently treated. We are therefore of opinion that the provision of an absolute estate for all females throughout India is a just measure and has our full support.

GOVERNMENT OF INDIA
LEGISLATIVE ASSEMBLY DEPARTMENT

PAPER No. II

OPINIONS
ON

THE HINDU CODE PART I (INTESTATE SUCCESSION) BILL

(Introduced by The Honourable Sir Sultan Ahmed)

Opinions Nos. 10—20

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No. 10.—The United Provinces
Government, United Provinces

I am to forward herewith the opinions of the High Court, Chief Court and other associations on the provisions of the Hindu Code, Part I (Intestate Succession) Bill, as amended by the Joint Committee. His excellency the Governor prefers to express no opinion in the matter. Other non-official opinions received by this Government from various individuals and associations are also enclosed.

2. The Bill was published in Part VII of the United Provinces Gazette, dated January 22 and February 5, 1944, in English and Hindi respectively.

Magistrate, High Court of Judicature at Allahabad, United Provinces

I am directed to say that the Hon'ble the Chief Justice and Justices Ismail, Verma, Hamilton, Dargatzis and Plowden have no opinion to offer. Mr. Justice Julla is strongly opposed to the principles of the Bill which, in his opinion, are destructive of Hindu society. The opinion of Mr. Justice Mathur was communicated to Government in the Court's letter No. 4931, dated September 1, 1942.

2. As desired by Government the opinion of the District Judges of Allahabad, Benares, Moradabad, Agra, Jhansi and Meerut, were invited on the provisions of the Bill. The District Judge of Jhansi (Mr. V. Bhargava) has nothing to add to the opinion which he expressed in 1942 and which was forwarded to Govern-

ment with the Court's letter No. 5027, dated September 8, 1942. The opinions of the remaining five District Judges are sent herewith.

District Judge, Allahabad

I have the honour to say that I still stick to the opinion already expressed by me in my previous letter No. 860/XV dated August 31, 1942. I, however, enclose a copy of the very thoughtful opinion given by Mr. Babu Ram Verma, Civil Judge, Allahabad, which I endorse except on one point. I do not agree with him that women should have absolute rights in the property inherited by them from the husband's side. As stated by me in my letter dated 31st August 1942 the ignorance of the widow is in most cases likely to be successfully exploited by unscrupulous persons to the detriment of the family and if she is made the absolute owner of such property it is more than likely that the property would pass out of the family. In regard to other matters I endorse the views expressed by Mr. Babu Ram Verma.

Mr. Babu Ram Verma, Civil Judge, Allahabad

An analysis of the provisions of the bill would disclose that its provisions are calculated to secure the following objects:—

(1) to secure a uniformity in the system of intestate succession by consolidating various systems into a single law;

(2) to secure rights in the property for women and for this purpose provisions of three kinds have been made;

(a) those according a recognition to female heirs whom

the Hindu Law did not yet recognize as heirs;
 (b) those fixing the extent of the shares of the newly recognized heirs; and
 (c) those which provide for the abolition of the limited estate; and

(3) to confer the rights of inheritance on ascendants. *General observations:* I shall offer my opinion on the points separately but would make some general observations. The gamut of critical opinion relating to the bill, it seems, runs from unrestrained criticism to warmest of support. Its adverse critics are naturally those diehard conservatives whose equanimity is perpetually threatened by any attempted departure from established and time worn conventions. They would seek refuge in religion for perpetuating a system which has outgrown all its utility and would twist and twirl the cryptic texts of the *shastras* for seeking a sanction for the perpetuation of institutions which not only jar against the modernist conscience but which conserve in themselves the corruptions of ages.

On the other hand, the ultra-modernist reformer feels like snapping all traditional moorings of society by breaking through the shackles of archaic institutions and starting with an entirely clean slate. Thus while the former ignores the dynamism of life and consequently of all human institutions the latter ignores the logic of history and the entire background of the institutions which they are anxious to reform.

I personally think that in all social legislation it is necessary to steer a middle course. I personally have no religious or scriptural obsessions. I am not prepared to concede that the problems under consideration are strictly within the domain of religion. The texts relate to a period in the history of humane evolution when not only the subject of metaphysics was the exclusive preserve of religion but politics and law also were under the direct dominion. The science of politics has already been completely secularized and I see no reason why law should also not burst through its canonical shells and be treated as an entirely secular institution. I do not consider any human institutions to be so wholly sacrosanct as to be incapable of modification. I would certainly not like social and sociological problems to be disposed of on the basis of the questioned and questionable interpretations of religious texts written in and designed for a pre-historic past. I should not, therefore, like to see that any reformist ventures are allowed to founder on the rock of religious conservatism.

On the other hand, the present development of all social institutions is the result of an evolutionary development with history tapering back into centuries. The institution of law is calculated to secure an adjustment of the social machinery and all legal institutions of a time must keep pace with the progress of the evolution of social institutions upto that particular stage. In so far as the legal reform is calculated to weed out provisions which have become effete by the dynamic march of social institutions they have always to be welcomed but there is a real danger in allowing reformist zeal to outrun the salutary restraints of discretion. To introduce reforms which not only ignore the entire historical background of centuries of traditions the bed rocks of all social institutions but also warp and twist the law altogether out of shape and harmony with the development of society is to defeat the very object which the proposed amendments are calculated to serve.

I would, therefore, treat, not the religious injunctions, but the fundamental principles on which the superstructure of society stands and the gathered momentum of public opinion as the real touchstones for the determination of the principles of legal reform. I am sure religious opinion has already veered round many reformist moves in the domain of law and it should I think be exploited to the extreme limits but it is necessary to see that the fundamental principles on which the social institutions of the Hindus are working with smoothness are not altogether ignored lest the new wine of reform prove too strong for and crack the old bottle of Hindu society.

I shall now deal with the points separately. I. *Securing uniformity of legislation:* something may of course be urged in support of the contention that to introduce the unanimous system of inheritance is not merely to reform but

actually to scrap off the entire fabric of the social institutions in which Hindu society has for ages been living in the different parts of the country. There is no doubt that the unanimity of laws is conducive to a greater simplicity in interpretation and administration. Human social machinery is however inherently complicated and its exigencies require that provision must be made for those complications. It would be too much to sacrifice principles at the altar of simplicity. I am of opinion that the policy which respects the personal law in its application to different communities in India (e.g., the various sub-sects among the Mohamedans) may perhaps warrant an extension of the same principles to the case of Hindus.

I would, therefore, suggest that provision should be made at least for the administration of the Dayabhaga Law to the areas and persons to whom it applies while the other schools may be moulded into a single system governed by the *Mitakshara*. As an alternative, a provision for an optional acceptance of a uniform school may be made by permitting a declaration within a period to be fixed after the coming of the act into force.

II. *Provisions relating to women:* It is these provisions which constitute the storm-centre of controversy about the bill. I have no hesitation in my mind in thinking that even the most conservative and orthodox among the thinkers are not easy in their conscience with respect to the provisions of the Hindu Law as to women. In the matter of legal rights Hindu law in common with the law of other early societies has relegated women to a distinctly inferior status. The force of feminist opinion has been actually gathering momentum through centuries and the comparatively later systems of law have made provisions though rather halting—for improving their legal position. But Hindu society finds itself geared up with an archaic system designed for primitive societies and the Hindu women therefore still flounders in her primitive position. Public opinion, both male and female has however, I am sure, now reached that standard of maturity when something has got to be done to ameliorate their lot.

The anti-feminists naturally seek refuge behind two stock arguments:

- (1) that to do so is to transgress the shastric texts; and
- (2) that there is an inherent disability in women for the management of their own affairs.

I regret I have no direct knowledge of any shastric text but the opinion expressed by critics on both sides go to show that it is possible by ferreting the ancient texts to discover something to lend support to all reformist legislation. In any case, it is possible to find material which would at least constitute a balm to the legislative conscience in trenching upon the so-called religious preserve. As to the other plea, I am afraid it is too late in the day to sponsor it any longer. It is not necessary to delve into the past for discovering any justification for such restrictions in those times. It is enough to note that women are already fast outstepping all anticipations in the matter of enlightenment and education and all attempts to keep them under a perpetual subservience can only be condemned as sheer and unpardonable obscurantism. The experience of women in all other societies is a standing refutation of this argument and there is no justification for so hopelessly sceptical an underestimate of the intellectual potentialities of Indian women.

Coming now to the actual position of the bill on this point I find that the position of women is said to be affected in two ways:

- (1) as heirs in their husband's family; and
- (2) as heirs in their paternal family.

There is no doubt that the hardships inflicted by the Hindu Law are nowhere more seriously felt than in the provisions relating to the devolution of property in the husband's family and it is there that something has to be done to secure her position. I extend my warmest support to the provisions relating to the devolution of property on widows and the sons' widows. I would further suggest that a better security should be afforded to them by further supplementing provisions of some such kind:

- (1) there may be a statutory restraint prohibiting the husband or father-in-law from disposing of by will the chief instrument by which it is likely that a wife or

daughter-in-law may be hoodwinked of her rights—of a specified share in his property for these relations; and (2) if the property is transferred by the deceased a statutory charge should be created on the property for maintenance, etc.

The position of women in the parental family is however different I am afraid in giving effect to this matter the whole matter is being viewed in a hopelessly incorrect perspective. The arguments in support of the view seem evidently to be based on what I presume is an altogether fallacious assumption that the Hindu society betrays an unnatural lack of affection for daughters. In considering the proposal for a simultaneous succession I would invite attention to a number of facts which must be treated as fundamental principles for consideration.

(1) The Hindu law has made provisions for the marriage and bringing up of daughters until the time of their marriage. Persons of other communities have scarcely any idea of how at every step in the life of a daughter prohibitive expenses have to be incurred, for example, in marriages, births of children and numerous ceremonies etc. It can of course be urged that they are all optional matters but every Hindu knows that a relentless social code would leave no option to him. It is common knowledge that marriage expenses alone are often in excess of what a daughter's paternal share may actually be. Add to this the expenses of education which the requirements of modern society dictate, it would not be difficult to realise what extent of patrimony goes to a daughter. Schemes of the proposed kind may well be considered at a time when Hindu society outgrows the social evils of which it is a victim to day.

(2) There is a lack of an element of reciprocity which forms the foundation of all systems of inheritance. The daughter will take a share in the father's property but it would, I am afraid, need decades together before the Hindu social opinion could possibly reconcile itself to the idea of a father inheriting any property from his daughters. The bill does seem to make some provisions for a succession of the father to his daughter's property. This would involve not only serious objection of the conscience but even the position assigned to him as an heir is, comparatively speaking, so distant that in a majority of cases that eventuality may never arise. I am afraid sufficient reflection has not been given to this aspect of the case.

(3) The bill ignores the fundamental principles of the structure of the joint family system. It is the family and not the individual that forms the foundation of the structure of Hindu society. Many of the ancient texts of the Hindu law have been devised with an eye expressly on that system. This institution has filtered down through the ages and persists in surviving all impacts of modern reformism. Until the Hindu society as a whole is prepared to throw the entire institution overboard it would be too much to resort to this indirect process for liquidating it. It is unnecessary to enter into the merits or demerits of the institution. Much may perhaps be said in defence of it but, in any case, it is certain that legal reform must in this matter bide its time till public opinion musters strong enough to discard the institution.

(4) The worst however of the evils to which expression has been given is that the bill is calculated to lead to a disastrous fragmentation of the family property. I cannot resist the feeling that the bill is intended to transplant the exotic institution of the Mohamedan law—regardless of the conditions of the habitat in which it was nurtured—into the rather uncongenial soil of India. Even among the Mohamedans this fragmentation has been responsible for perpetual domestic strifes. In the case of Mohamedans however the evils are mitigated by the legal sanction and actual practice of closely endogamous marriages. The result is that in by far the majority of cases the property continues to be in the same family and the evils of fragmentation are substantially counterbalanced by frequent combination within the same family. For the Hindus, with their strictly exogamous system, there would be no relief from a perpetually multiplying fragmentation. The co-shares in the course of two or three generations would naturally not only become legion but would belong to places very distant from the paternal family I am afraid no Hindu can contemplate with equanimity this virtual mincing of his property.

(5) I am afraid in the exuberance of a feminist feeling the fact is being ignored that what the bill is going to confer on a daughter by one hand in the paternal family is being taken away by the other by the reduction of her share in the husband's property owing to the inheritance of shares by the daughters of the family.

I am distinctly of opinion that the bill, in so far as it introduces female shares in the paternal family is bound to prove the prolific parent of endless litigation. It is I am afraid bound to have very ugly repercussions and would seriously jeopardise the domestic peace of Hindu families, the placidity of which has fortunately not yet been disturbed by serious litigation. The legislature should, I submit, do nothing to introduce or accentuate any avoidable causes of strife.

On the question of the extent of the rights which should be conferred on female heirs I am of opinion that in the property inherited from the husband's side the woman should have absolute rights. This limited estate has been a fruitful source of endless litigation. Widows have resorted to devices for disposing of property in many cases when there is no necessity for transfers and have thus deprived themselves of their own property. On the other hand even in cases of genuine necessity widows have found themselves helpless and the fear of claims by reversioners has generally been responsible for their inability to transfer the properties and in any case to get full values of their property. By placing women in full control of their property a very unsavoury chapter in the history of litigation relating to Hindu Law will be closed.

Should it however be necessary to give effect to the provisions of the bill I would like the following suggestions to be taken into consideration:—

(1) provisions may be made for an optional payment of compensation for their share by the male members;

(2) certain items of property (e.g., residential and other property required for personal use) should be excluded;

(3) rights of preemption should be given to the males alone irrespective of custom;

(4) provisions may be made for excluding the expenses of marriage before a married daughter gets her share. They must stand on the same footing as debts. In the cases of unmarried daughters also the marriage expenses may first be deducted;

(5) the share of inheritance may be limited only to cases of unmarried daughters;

(6) the shares of daughters may be substantially reduced; and

(7) Stridhana devolving from the parental side may in the event of childlessness devolve only in the paternal family.

III. *Share for ascendants:* I think it is sufficient to make the maintenance of ascendants a charge on the property. In any case a share may be given only for lifetime and only in cases of dependent parents.

District Judge, Benares

The amendments suggested by the Committee in no way solve the difficulties, and all the previous objections still stand. The proposed enactment will shatter the fabric and shake the very foundation upon which the Hindu civilization rests. It will cut at the very root of Hindu joint-family system, which has stood the test of time. No doubt the proposed enactment is in keeping with the slogan of independence for women, but at the same time it means a destruction of the Hindu law of jurisprudence. When parents, widow, son and daughter etc., succeed simultaneously with absolute rights, there is bound to be a division and disintegration of the property. There is bound to be a dispute regarding such property inherited by the daughter married to a stranger at a different place. Mohamedans have to resort to indogamy to avoid their family property going into strange hands.

Wills will freely be executed to defeat the provisions of the proposed enactment. In fact one obvious objection to the proposed enactment is that its provisions can easily be defeated by executing a will according to one's own likes and dislikes. In other words every Hindu can make his own law if he so chooses to do. He or she can disinherit every proposed heir and will away the whole or part of his or her property to his mistress or her paramour as he or she likes. Under the present law no Hindu can

deprive certain heirs of maintenance nor can he lay down a new line of succession, but under the proposed enactment there seems to be no such bar. Piece-meal legislation by different bodies at different times cannot be expected to give a satisfactory result acceptable to the masses.

The proposed amendment does not define the exact scope and meaning of the phrase "parents if dependent on the intestate". The phrase is vague, and will give rise to considerable litigation. The definition of "Stridhan property" also requires reconsideration. Law reports are full of cases wherein Hindu widows have been found to have wasted large estates inherited by them from males. If they are made absolute owners thereof, the result will be disastrous. The female education in India is still in its infancy, and making females absolute owners of the property in their hands will be too drastic a change.

Sec. 2(g) gives the terms Dattaka, Dwamushayana son and Krikrama son and Dasiputra have been given the same meaning as in the Hindu law. These definitions are vague, and one has to hunt up the entire Hindu law as prevalent in different provinces and in different schools to find out the exact meaning of these terms.

Sec. 10 makes the Acharya, Sishya and Sabrahmachari as heirs if there is no cognate entitled to succeed u/s. 4. This section is not in keeping with the spirit of the proposed enactment. These heirs were recognised as such, at a time when spiritual relationship counted amongst the Hindus. There is no scope for such heirs in the present day society.

District Judge, Moradabad

The law of Intestate Succession is closely allied to the law of legitimacy and marriage, adoption, partition and allied topics and so it is desirable that there should be no piece-meal legislation as in the present case. The law of Intestate succession should be made to come into force when the law regarding the connected and allied topics is codified and brought into force. So far as the amended bill now submitted is concerned I approve of all the provisions but would desire that Apostasy should be made a disqualification to succeed.

District Judge Agra

Clause 5 Class I (1).—I am not in favour of "Parents if dependent on the intestate" being included in this entry as it might lead to unnecessary litigation on the point whether the parents were dependent on the intestate or not.

Clause 5 Class I (2) (3) (4).—I would prefer "Daughter's son" "Son's daughter" and "Daughter's daughter" to be put in one entry like widow, son, daughter, etc., just after the simultaneous heirs. It seems odd for example that a daughter's son should exclude a son's daughter or that he should exclude his own sister. I therefore propose in class I, these three should be put in one entry to be numbered (2). As to the proportion in which they should take amendment should be made in Clause 7. These should also be called simultaneous heirs.

Clause 7.—The present clause should be numbered 7(1) and another clause 7(2) should be added as follows if my suggestion re. amendment of Clause 5 is accepted.

7(2). The distribution of intestate property among the simultaneous heirs in entry 2 of class I shall take place according to the following rules viz.

(a) Each "Daughter's son" of the intestate shall take one share.

(b) Each "Son's daughter" of the intestate shall take one share.

(c) Each "Daughter's daughter" of the intestate shall take half a share.

Clause 13(b). I should like entries (4) and (7) to be deleted from this clause and the other entries renumbered (1) to (7). My reason for this is that most of the other property not covered by clause 13(a) will come to a female from her parents' side. It is but natural that such property should revert to that side (in the same way as the property coming from the husband's side reverts to the husband's heirs) in case the female has no children of her own. This will be only possible if entries (4) and (7) are deleted. I would strongly press for this, as otherwise

there is danger that fathers may make wills and deprive their childless daughters of all share in the inheritance for fear that the property might go to the husband and her heirs.

District Judge, Meerut

It appears to me that the present time is most inopportune for proceeding with the codification of the Hindu Code. The age long traditions' religious conceptions of the Hindus are vitally affected by the new principles incorporated in the bill. Owing to the exigencies of the war the provisions of the bill could not even be discussed in the public press owing to the paucity of space in newspapers for that purpose. A large number of people, who would be affected by the bill, are serving in the Army and probably most of them do not know that fundamental changes in their family law are contemplated. The war will bring out revolutionary changes in the construction of the Hindu society. The ideal thing is to have a civil code governing Hindus, Muslims, Christians and other communities. This ideal cannot be accomplished till some years after the society has settled down to new conditions after the war. The hopes and desires pulsating through the intelligentsia and masses in the new order after the war cannot be adequately appreciated at present. I suggest that the legislative interference with Hindu family law should be postponed till 10 or 15 years after the termination of the war to enable the Hindu society to discuss its provisions publicly in a calm atmosphere. I, therefore, do not express any opinion on the provisions of the Bill.

Registrar, Chief Court of Oudh, Lucknow

I am directed to say that the Hon'ble Chief Judge and the Hon'ble Mr. Justice W. Y. Madeley have no suggestions to make on the draft bill. The Hon'ble Mr. Justice J. R. W. Bennett, I.C.S., is generally in favour of the provisions of the bill. The opinion recorded by the Hon'ble Mr. Justice Ghulam Hasan and the Hon'ble Mr. Justice L. S. Misra as well as the opinions of the District Judges, Bara-Banki, Hardoi, Gonda and Sitapur are forwarded herewith.

Hon'ble Mr. Justice Ghulam Hasan, Chief Court of Oudh

I agree generally with the proposed bill relating to intestate succession under the Hindu Law. I would like it to extend to the Agricultural property as well, else it will lose its object and usefulness.

Hon'ble Mr. Justice L. S. Misra, Chief Court of Oudh

I am in full agreement with the object of the bill, and I think it is time that the Hindu Law of intestate succession in British India is codified. I, however, think that the major modifications, as contemplated by the bill, are likely to offend Hindu sentiments.

It is necessary to draw attention to the following aspects of the bill:—

(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 economic point of view it is, I conceive, desirable to consolidate property than to perpetuate eternal division. In some countries the 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, providing for the Hindu women 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 additional law and by tribal and family customs.

By the operation of the provisions of the contemplated Bill 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 recognised that the additional Hindu Law perpetrated a certain amount of injustice upon Hindu women, 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 women renders in comparison the position of Hindu males rather unenviable. To avoid I would omit daughter from Class I, entry (1) and could place her in entry (2) in that class. I would also rank 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 evolve 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 reservation for reversion of the property after her death on the line of the propositus.

Should it be deemed necessary to confer an absolute state of inheritance upon women as simultaneous heirs, I would suggest that the rule of ordinary intestate succession should also apply to Stridhan property of women with necessary modifications.

District Judge, Bara Banki

India is in the throes of a revolution economically, socially, industrially as well as culturally. In these circumstances the wisdom of codifying the Hindu Law may well be doubted. It is not commonly realised that the reduction of the laws governing a community into set formulae has a tremendous effect upon its progress. It makes the law inelastic and hampers its further development. There is a school of thought which ascribes the present degeneration of Hindus not to a small extent to our Smriti-Kars. The reasons for holding this view apply with much force when a community is undergoing a rapid change. I am aware that there is strong body of opinion in favour of codification. To this school belong two classes of persons, one who want codification because it makes the law easily known and the other who seek to introduce social reform by this mode of legislation. Except for these observations of a general character I have not much to say as regards the provisions of the Bill. It appears necessary however that the expression 'agricultural land' in section 1, sub-section 3, Cl. (1) should be clearly defined. It should be made clear whether it refers only to succession to agricultural holdings or includes big landed estates as well. This expression 'agricultural land' occurs in a number of our statutes and is likely to give rise to much difference of opinion. As regards the expression 'Stridhan' I would agree with the view taken by Mr. Nil Kanth Das and Mr. Baijnath Bajoria in their note of dissent appended to the report of the Joint Committee on the Bill. The definition of 'heir' in section 2 Cl. (c) should

make it clear whether it includes persons who in the absence of the proposed law would succeed under custom.

In Section 5, Cl(1) entry (1) I am against giving dependent parents, widow, son, daughter, etc., and other persons mentioned in that entry simultaneous rights which are not clearly defined.

As regards the effect of change of religion by a Hindu on his right of inheritance I agree with the view expressed by Mr. H. N. Kunzru, Mr. P. N. Sapru and Mr. S. N. Mahitha in their note of dissent.

District and Sessions Judge, Sitapur

Sec. 2(g).—The expression "dattaka son" and other expressions used in this section should be precisely defined.

Sec. 5.—I am of opinion that the parents should inherit whether dependant on the intestate or not. The condition of dependancy is likely to cause difficulties in practical application.

Daughter's son, son's daughter and daughter's daughter should inherit simultaneously as the heirs mentioned in Sec. 5 class I. There is no reason why the daughter's sons should be given preference over the son's daughter or the daughter's daughter.

In class II.—Mother and father should inherit simultaneously. I have already suggested that they should be removed from class II to class I.

In class III, IV and V.—Both the parents should inherit simultaneously.

Sec. 7, class (d).—I am of opinion that the unmarried daughter should receive a larger share than the married daughters. The unmarried daughter should receive a share equal to a son. The extra half share being towards the marriage expenses and the dowry. Then it will not be incumbent on the sons to pay for the marriage expenses.

Sec. 10.—The preceptor, the disciple, and the fellow-student should be excluded. In the absence of a cognate the property should be escheat. It would be desirable to hand over this property to a Provincial Hindu Endowment Fund.

Sec. 13(b).—Daughter's son, daughter's daughter, sons son and son's daughter should be placed together. Similarly mother and father should be made simultaneous heirs and mother's heirs and father's heirs should be made simultaneous heirs.

Sec. 16.—It should be made specific that a person born within 280 days of the death of an intestate shall be deemed to have been in the womb.

Apostasy should be made a positive bar to succession.

The male heirs should be given a right to pre-empt all immovable property allotted to any female heir within 3 years of the distribution of the assets. For proper valuation recourse to the courts may be permitted. The right to pre-empt should also be allowed whenever the female heir sells the property during her own lifetime. It should be specifically provided that in no case will a female inherit a share in the parental dwelling house. The female heir will be entitled only to a share in the value thereof.

The principle of representation applied to male issues should apply to females as well.

Otherwise, I am in favour of the Bill as amended by the Select Committee and am in full agreement with the necessity for the codification of the law.

District Judge, Hardoi

Although I fully agree with the bill in so far as it recognizes the right of a son's widow to get a share in the inheritance of her deceased father-in-law, I beg to express my strong disapproval with such of its provisions as provide for the simultaneous inheritance of sons and daughters, do away with the restrictions imposed by the existing Hindu Law on the powers of disposal possessed by a female heir and give a death blow to the entire joint family system. Apart from the objection that the giving of a share to the daughters simultaneously with the sons would bring about disintegration of the family property, I think it will also tend to embitter the relations between brothers and sisters without giving any real advantage to the latter. The existing rule of law, if, on the one hand, debars a daughter from getting a share in her father's property does, on the other, help her in retaining the entire

property of her husband for herself and her sons, for the daughter of one family is the wife of another. Besides this it is common knowledge that parents and brothers have to spend large sums of money in the marriages of their daughters and sisters which in many cases far exceed the value of the share which they would have got had they had a right of inheritance according to the provisions of the bill in question. To give them a share over and above these expenses would be most inequitable to the sons. The Bhatiya Strimandal Bombay, has in paragraphs 2, 3 & 4 of the memorandum submitted by it to the joint committee given good reasons for retention of the existing restrictions on the power of alienation possessed by a female heir and I fully agree with those reasons. In clause 21(b) of the bill, two or more heirs succeeding together have been stated to take as tenants in common and not as joint tenants. This means that there will be no joint family and no survivorship between brothers succeeding to their father's separate property or between a son, a predeceased's son's son and a son of a predeceased's son or a predeceased's son simultaneously inheriting the property of their paternal ancestor. I do not at all appreciate this abolition of the entire joint family system.

The fact that the provisions of the bill have received a warm support from many of the Women organisations of India is of little or no value, for these women organisations represent only an infinitesimal portion of the country's Hindu women, most of whom have not even heard of any such organisation. As a matter of fact, these organisations cannot claim to represent even the majority of the educated Hindu Ladies of this country.

District Judge, Gonda

I have the honour to state that the bill to amend and codify the Hindu Law relating to intestate succession has my whole-hearted support. It has been long overdue. The sooner it is passed the better it will be for the Hindu Society. Female heirs must be given absolute ownership in the property inherited by them like their Muslim sisters. I am also of opinion that a Hindu renouncing his religion should not get any share under the Hindu Law.

The Central Bar Association, Lucknow

The bill proposed for intestate succession amongst Hindus introduces far reaching and violent changes in the Hindu Law, which, it is feared may prove a remedy far worse than the disease which, it is the object of the bill to remedy. It appears to be a suggestion for improving the position of the fair sex with vengeance. It is true that the present position of women is answerable for many evils prevalent in the community. No one will deny that there is need for certain modifications here and there, and the only way to introduce such modifications is by statute law. We are not prepared to agree with the critics of the bill, when they question the desirability of any legislation in the domain of Hindu Law. But, to say this is quite different from uprooting the very foundations of the law, and the spirit which has pervaded amongst the Hindus for centuries past and which has stood the test of time.

The Hindus have all along regarded the joint-family as unit. Here, separate individual existence is an exception to the rules of corporate existence of a family. Perhaps the prosperity of Hindus, inspite of so many onslaughts against them, is due far more to this peculiar feature of the law laid down by ancient sages than any other element possessed by them. It will not be wrong to say that by removing this feature from the law applicable to Hindus, you will be breaking the Hindu Law to pieces. In face the pride of the past traditions will have gone, and we shall be left to look upon our system of law as if we have started our existence from the date this proposed legislation comes into being. The process of creation of joint families in future will cease, because the property of the last male survivor will be cut into pieces, enjoyable separately by a new species of survivors called "enumerated heirs". The grand-son's right, hitherto known as a right by birth, is reduced in value to an unenviable extent. The daughter is entitled to divide the family property; and just consider the practical results. There will always be searches for concealed wealth and disputes over family jewels, for looking to human nature, as it is, who would like to part with these things and give

them over willingly to a family different from his own? These disputes and litigations will bring about ruin, even apart from the loss consequent on the division of property due to inherently conflicting interests, conflicting, because, if our present marriage is retained, the daughters of one family are bound to be married to persons of different and distant families, indeed more distant than hitherto, thanks to our present endeavour to break the caste and sub-caste restrictions. The fear of division of family property stares us in the face on every occasion. The consequence on middle class families, which form the bulk of the Hindu society, will be simply disastrous. The family house, which may and often is the only house for residence, and even the only family asset, will always be subject to fear of disruption, and division into small pieces, thus making the entire family assets valueless. Transfers and alienations of shares in family property will be very frequent, and ruinous litigations will become the order of day. Conversion to other faiths will henceforward be accompanied with an expectation of inheritance, and Hindu social order will begin to face a fierce crisis.

More dangerous will be the psychological effect of the introduction of this foreign element in the body politic of the Hindu society. Law is simply the exponent of the established order of society. It cannot be imposed from without, and any such attempt is naturally bound to be resisted, if not by bold straightforward successful opposition, then by suppressed attempt at evasion. Thus, if per chance the bill becomes law, the ordinary individual will try, in order to maintain the solidarity of the family property to devise his property by will. Indeed the effect of this law will be so fundamental, that hereafter, no Hindu can afford to die intestate. Hindu Law will cease to be a source of inspiration and the object of pride. It will become an object of fear, to be got rid of somehow. Such is the superficial analysis of the provision in the bill relating to enumerated heirs, but a consideration of the heirs beyond the enumerated ones leaves no room for doubt that the framers of the bill have not acted with a broad vision e.g., the agnates however distant have been preferred to cognates other than those enumerated. Some relations have been omitted, e.g., the brother's widow and the brother's son's widow and so on, even though they lived jointly with the deceased. If we have to make provisions absolutely protestant in nature, there is no reason why we should not consider such cases. We might as well convert the law of maintenance into one of inheritance. But such suggestions are really besides the mark. We have to look to the bill as framed, and it is clear that it cannot be accepted by a great majority of Hindus.

We may say that we agree generally with the criticism offered by Mr. B. D. Kathalav, Advocate, Nagpur, printed in the journal Section of A. I. R. 1944 pages 18 onward.

It may be mentioned that we are not opposed to a right attempt at improving the lot of women or to introduce reforms in any branch of Hindu Law, in order to effect improvements in Hindu Society as a whole, but we are definite that the present attempt in the form of the intestate Succession Bill has utterly failed to bring about the object in view. What other forms the desired reforms should take need not be discussed here.

For the aforesaid reasons we are of opinion that the bill should be rejected and should not be allowed to become law.

Bar Association, Fatehgarh

Resolved that this Association records its strong opposition to the Bill to amend and codify the Hindu Law of Succession as published in U. P. Gazette of January 22, 1944, Part VII at page 3 and is emphatically of opinion that it is not only not warranted by Hindu Law, usage and custom, but only is an unwarranted encroachment on the cherished rights and religious practices of Hindus, and is repugnant to the Hindu conscience, and respectfully requests the Government to drop such piecemeal legislation, which will only disfigure the statute book and prove a bane to Hindu society.

Among other things this Association points out the following defects in the Bill—

1. The definition of Stridhan has been improperly widened. In fact, it could only be said that it included all kinds of property, the preceding words are at best redundant.

1. The worst thing about inheritance is that it abolishes the Hindu Law altogether even in its principles. It is incomprehensible on what principle the classification is based. Does the legislature mean to apply Mohammedan Law or some other system of law to Hindus? Hindu Law of Inheritance is based on certain principles, and no one who reads any book on Hindu Law, say Sarvadatikari's law of Inheritance, can not feel to be impressed with the wealth of vision and soundness of principles displayed therein. The Rishi Law Givers have left legal principles at least equal to any great system of jurisprudence. There is no justification for bidding good-bye to jurisprudence and principles of law, and introducing haphazard and arbitrary changes.

Bar Association, Bareilly

In our opinion the Bill for Codification of the Law of Succession is in the main opposed to the age old notions of the Hindus as well as the fundamental principles of the Hindu religion and, therefore, we are of the opinion that the Bill should not be proceeded with in the present circumstances as this is not the time for legislating upon such an important and controversial matter.

Bar Association, Basti

That in the opinion of this house the effect of the Bill being the disintegration of the Hindu Society and the destruction of the traditional status and position of the Hindu family. The Bill is not required under the present condition and circumstances.

The provisions regarding the grant of shares to daughters along with sons within the opinion of the house create bad blood between brothers and sisters and instead of unifying the Hindu Society it will divide it. Further the provisions regarding succession to property being closely interlarded with these of the law of marriage and the marriage between near relations being prohibited by Hindu law it is necessary to exclude daughters from inheritance. The definition of Stridhan in the present Bill is too wide and against admitted interpretation of the word go far, for example the property inherited by a female from a male is not Stridhan at present in the opinion of this house, therefore, the present Bill to amend and codify Hindu law should be dropped.

Bar Association, Kanauj

1. "In the opinion of the Bar Association, Kanauj, neither the Central Government nor the Provincial had or has any right to interfere in the personal Laws of the Hindus. It is therefore unconstitutional on the part of the Central Government to codify Hindu Law not in keeping with the real spirit of the Shastras."

2. In view of the above resolution it further opines (1) that the appointment of Hindu Law Committee by the Central Government, is unwarranted and uncalled for.

(2) That the proposed Hindu intestate succession and marriages Bills are contrary to the spirit and principles of Hindu Dharma Shastras and against the long established practice prevailing in the courts of British India in administration of Hindu Law.

3. It therefore requests the Government not to interfere with the personal law of the Hindus as contained in the Dharma Shastras and withhold its assent to the proposed bills.

Bar Association, Sitapur

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 Dharma Shastras. Hindu Law derives its sanction from the Hindu Dharma 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.

Advocate General, United Provinces

I am in favour of the codification of Hindu Law regarding this subject. At the risk of being called a conservative and old-fashioned man, I am not in favour of giving daughters a share in the estate of their father along with the sons, nor am I in favour of allowing absolute estate to

the females succeeding to the property of their male relations. In my opinion, the existing rule of Hindu Law of not allowing any share to the daughters in presence of the sons has had a very healthy effect in Hindu society. By allowing a share to the daughters the same confusion and minute partition of the property will follow as in the case of Muslims. There will also be constant quarrels between the daughters' husbands and the sons of the family and in most cases the brothers will obtain deeds of release from the daughters by exercising undue influence or adopt other devices defeat their shares as it has often been observed in the case of Mohammedans. Moreover, the Hindu sentiment revolts against the passing of the ancestral family property into other families absolutely. The daughter once married passes into another family and has her rights there. She is very often given good deal of dowry, even by the poorest Hindu to compensate her deprivation of the patrimony. It will also effect the harmonious and affectionate relations now existing between brothers and sisters. It will be natural for the sons not to part with the property and, as a result, strained relations will come in; thus disturbing the peace and harmony of Hindu families. I am, therefore, opposed to daughters being allowed any share when a son or sons of the deceased are alive.

The safeguard in Hindu Law which exists at present of allowing females only a limited estate has worked very well during the past century and to my mind there are not sufficient reasons for abolishing it. Whatever might be said of the equality of sexes, I do not think that female education has spread so far in India that it can be said of every Indian woman that she is capable of managing the estate or understanding the machinations of unscrupulous persons dealing with them. We have to look to the majority of women in India and not simply to some of them who have received English education. The literacy among Indian women is microscopic and the influence of purdah system has rendered them quite helpless. To give such women absolute right of property would be to afford sure means of temptations to unscrupulous relations or other persons of taking out the property from their hands. I am afraid that in most cases the result will be that the property in the hands of females will pass out of their hands either without consideration or for highly inadequate consideration leaving those females utterly destitute and without any means of living. It was to prevent such happenings, and to ensure a source of maintenance for their life that the power of females over the estate inherited by them was kept limited. At least the present state of Hindu society does not warrant this violent change in the system of Hindu Law of succession I will, therefore, submit that the present rule of a limited estate being granted to females in inherited properties should remain untouched.

With the two exceptions noted above, I am in favour of the Bill for Intestate Succession which has been amended by the Joint Committee. I welcome the concise Rules which have been enunciated in the Bill for finding out the heirs and for giving preference among them. The clauses laying down the succession are also according to the Hindu Law and prevalent notions.

I will advise the deletion of clause (12) of this Bill and instead of it a clause should be inserted that a woman shall have a limited right over the property inherited by her from the male, that is a right to enjoy the income of the property without the power to alienate it, except for legal necessity. The term 'legal necessity' may also be defined in the Bill. In any case, this term will have to be defined in the case of alienations by *karta* of a joint Hindu family or by the guardian of a minor. Therefore, I see no difficulty in giving an exact definition of the word 'legal necessity' so as to avoid much litigation which now centres round the alienations by females.

In all other respects I agree with the clauses of the Bill.

Mr. Pearey Lal Banerjee, Advocate, Allahabad

I have no particular opinion to offer and accept the amendment adopted by the Joint Committee.

Dr. Kailash Nath Katju, Advocate, Allahabad

I confess that a perusal of the Select Committee's Report with its formidable notes of dissent has engendered a very uncomfortable feeling in my mind. The Select

Committee had before it a body of opinions received from the various provinces. A consideration of these opinions also shows unmistakably the divergence of opinion which prevails on the very important questions which are the subject matter of this proposed legislation. I further apprehend that the masses of people mostly affected by the Bill have not had an opportunity of fully appreciating the great changes which are contemplated. This is not a mere matter of reform of an admittedly existing social evil or remedying an admitted defect in legislation. The Bill attempts to introduce almost revolutionary changes in the existing Hindu Law of Succession. It is true that the subject matter is in the concurrent list. Therefore the centre can legislate in the province. But the Bill professedly deals with property other than agricultural land. That is a subject outside the legislative powers of the Central Legislature. The property in India mostly consists of agricultural land. It would be obviously most unsatisfactory if there were any diversity in the law of succession in relation to different kinds of property. The Hindu Law of succession must be uniform and must govern all kinds of property. The law making power unfortunately resides in the two legislatures, the Central and Provincial. It is essential that both the legislatures should move together and at the same time legislate on precisely the same lines on this important matter. Several provincial legislatures are under suspension. I doubt whether the Governor would agree to legislate on his own authority on this question at the present day in the exercise of his powers under section 93 of the Constitution Act. Provincial legislation must await the resumption of normal legislative machinery. And general elections both in the provinces and at the Centre are over due. I see no possibility of a provincial legislature embarking upon this kind of contentious legislation before a general election. In my opinion, moreover this is essentially a matter which requires a clear mandate of the people vitally affected thereby. It is true that advanced opinion as voiced by several women's organisations favours the Bill, so do other advanced reformers, but I doubt whether these bodies truly reflect public opinion in this matter. My first point, therefore, is that it is exceedingly desirable that this legislation should await a general election and should be introduced and considered after the newly elected legislatures both in the provinces and at the Centre have begun to function. The labour already undertaken will not be lost. If so desired, the Bill as it has now emerged can be introduced both in the provinces and at the Centre. Meanwhile the general elections will give all parties concerned to educate public opinion on this matter. The people will have an opportunity of expressing and influencing legislative opinion also. Even if the present Bill is passed with or without modifications, I venture to say with all respect that it will not command ready assent. It is well known that all parties in the legislatures are not co-operating. The Hindu community may have a legitimate grievance if the Bill is rushed through in the absence of Hindu members of the Central Legislature and also because these members cannot be said to possess a mandate from their electorate on this important question. Furthermore I am not quite sure that the lead given by the Central legislature, if this Bill is passed, will necessarily be followed by the provincial legislatures in regard to Hindu Law of Succession relating to agricultural lands, and as I have said above a diversity of this matter is absolutely unthinkable.

The second point which occurs to me is that this piecemeal legislation is a very unsatisfactory process. You cannot split up the body of Hindu Law into water-tight compartments. Each branch acts and reacts upon the other. If there is a general opinion in the country that Hindu Law should be modified, it is essential that the legislature should have an opportunity of considering the picture as a whole and not in parts. This was recognised by the Rau Committee itself and they have now prepared a draft Hindu Code. The Hindu Law of maintenance as well as of adoption has an important bearing on the Hindu Law of Succession. I, therefore, suggest that consideration of this Bill should be postponed till the Hindu Code in its entirety is before the legislature.

Coming to the merits of the Bill I am rather struck with the artificial nature of its provisions, particularly the table of heirs. The Hindu Law of Succession as it prevails to day in different provinces is the product of thousand of years. You may try to discover its source in a particular

ancient text in the Vedas or in the Smritis, but the truth is that all along the revolving centuries the law has been fashioned by the customs and usages of the people. I doubt whether there is in any part of the world a system of law which so truly reflects the growing and changing public opinion as the Hindu Law. The advent of British authority and the administration of justice in courts have, to the regret of many, introduced an element of rigidity in the law. But the courts have albeit, within limits, valiantly struggled to prevent this rigidity and have taken note of the changing needs of time and fluctuating social conditions. I think the Privy Council and various High Courts deserve great credit for preventing the Hindu Law from becoming so to say iron-bound by ancient texts. The custom of the community has been allowed to have a prevailing voice. The whole fabric of Hindu Law rests upon well settled principles. The law of succession is no exception. It is logical and once you grasp the fundamental principles upon which it is based, they can be easily worked out. That merit the proposed Bill does not possess.

The main purpose of the Bill seems to be to confer heritable rights upon female heirs. The provisions of the Bill draw their aspiration obviously from the Muslim Law of Succession. I am not going into the discussion of comparative merits of the two legal systems. But the fact remains that the Hindus have become accustomed to their own law. Social custom has grown up on the basis of that law. Take for instance, the question of the exclusion of the daughters from succession in the presence of sons. This is a noticeable feature. Every reformer seizes it and exploits it, but it is forgotten that in actual practice I doubt whether the daughters suffer so very much at all. Ignoring recent developments, the marriage of all Hindu women was a common feature of Hindu society. There were no old maids. Parents were fully conscious that the daughter was excluded from succession by her brothers. That disability was sought to be made good by giving her a substantial dowry at the time of her marriage and I know of many families in which women almost got as much as a brother in the shape of ornaments and cash dowry. Furthermore on her marriage she goes to another family. There she becomes the wife. In her husband's family, her husband's sisters are also excluded from succession. The property which her husband retains is enjoyed by her. I do not forget that she does not own the property which her husband retains, but in all well-related Hindu households the family including wife and children all benefit substantially from the property possessed by the husband. My point is that what you give to a woman by the law of inheritance in her father's estate, to that very extent you deprive her of the property of which she may get the usufruct in the lifetime of her husband and after his death in his family. The whole problem is many-sided and must be considered as a whole.

Then again it would not be proper to draw upon the principles of Muslim Law in this matter. It is well known that prohibited degrees of marriage in Muslim Law are worked out upon principles quite different from that of Hindu Law. In ordinary practice one finds in Muslim families that marriages among first cousins are fairly common and are sometimes resorted to for the purpose of keeping property in the family. The situation under the Hindu Law is quite different. It is a legitimate comment to say that if a daughter is recognised as an heir along with the son or that if she is given an absolute interest in the property which she inherits from her father, then the result will be the passing out of the property from the family for all purposes. I am not suggesting that that would be an undesirable end, but the fact remains that it would be totally inconsistent with the sentiments now prevailing in Hindu society.

In this connection I sometimes think that the important part which the exercise of testamentary power now possessed by Hindus plays in the modification of law of succession to meet the needs of any particular individual is not adequately recognised. Under the old Hindu Law wills were almost unknown. Wills have come into vogue with the advent of British courts and are now becoming fairly popular. No matter what the general law may be, in any particular case, it is open to a testator to depart from the law in order to benefit any particular individual. The harshness of the law of succession may thus be very much mitigated. On the whole, therefore, I am not prepared, without a clear mandate from the electorate, to favour the innovation now proposed in this Bill. These remarks

apply with greater force to many of the heirs enumerated in class (2). In passing I may observe that no test has been laid down for the purpose of defining a dependent heir. "Dependent" is a relative term and unless some tests are laid down by the legislature the courts may find themselves in difficulty in interpreting the statute.

Cases of succession to persons born out of lawful wedlock sometimes come before the court. I am doubtful whether the Bill provides for such cases. Courts have held that there is no sapinda relationship between a son and his putative father and such a father is no heir to the son. An unmarried mother has, however, been recognised as an heir to her son born out of lawful wedlock on the strength of special texts. See the case of *Jugannath Gir vs. Sher Bahadur Singh* [I. L. R. (1935) 57 All. 85]. It is desirable that it should be made clear whether the present law would be applicable to such individuals or not.

Section 13 prescribes two different rules of succession to the stridhan of a woman. The rule as framed is ambiguous. The property inherited by her from her husband or his ancestors is to devolve upon her husband's heirs. But would that rule also apply to property acquired by a woman with the rents and profits of such property, or would such subsequent acquisitions follow a different rule? Again would the rule apply to property acquired by giving in exchange her husband's property and so on? Section 17 of the Bill also requires careful consideration. Cases of recognition of right of collateral succession is a questionable doctrine.

Section 16 as it stands at present would seem to make it compulsory that a husband must if he seeks to disinherit an unchaste wife either do so by a will or should in his lifetime by some legal process not defined get a declaration of her unchastity. To any one conversant with sentiments of the Hindu community in the slightest degree, the latter course would seem to be most repulsive. To my knowledge it is never adopted. On the other hand steps are taken to hush up the whole matter.

On the whole I confess that I am not impressed either with the suitability or expediency of many of the changes proposed.

Ch. Ram Bharosey Lal, Advocate, Lucknow

The Bill purports to be the first step in furtherance of an intention to amend and codify, in successive stages, the whole of the Hindu Law now in force in British India. I am emphatically opposed to the idea that the Hindu Law should be codified. My reason for the opposition is that the Hindu Law, in its present form, and, in almost all its branches, is based upon certain theories having their origin or their background in certain religious principles. These religious principles have, from time immemorial, been interpreted and applied in certain respects differently in different localities. To try to lay down one uniform rule of law applicable to the whole of India would be (a) to sever the Hindu Law from its past altogether, (b) to take away the flexible religious theory underlying the rule of law prevalent in a certain locality and applicable to a certain section of the people altogether, (c) to give to the people a rigid rule of law with no theory, religious or otherwise, behind it. It should be borne in mind that the Hindu Law of Succession is peculiar in one important respect. It is that succession is based upon and, at any rate, is materially affected by considerations of how the soul of the deceased is to be benefited by the religious acts which the heir is regarded as qualified to perform in relation to the soul of the deceased from the moment of death onwards. In other words, the property is regarded as devolving, at least, in a certain sense, as a consideration for religious services to be performed by the heir to the soul of the deceased. Is time ripe to take away this basis of the law of succession? I submit, not. Even at the present day religion permeates every phase of the life of a Hindu, from his birth up to his death, and even thereafter. Another important respect in which the Hindu Law appears to offer a peculiarity is that relationship continues after death with the soul of the deceased. That is what accounts for the feeling against remarriage of widows. Even today this feeling persists to a very large extent. A third peculiarity is that marriage in the Hindu Law is not a contract, but the creation of a new status through religious ceremonies. This consideration constitutes not only the

reason, but also the justification, for the rules now in force in relation to rights of females. Again, may I ask, is the time come when these ideas don't hold the field? I submit, not. The whole law of intestate succession is, roughly speaking, based upon three considerations:—

- (1) the theory underlying the relationship of marriage
- (2) the theory as to life after death, and
- (3) the theory as to performance of religious service to the soul of the deceased.

These theories have been differently interpreted and differently applied in different localities, and such interpretation and such application of these theories has been accepted by the people from time immemorial, and no hardship has been pointed out as a consequence thereof. Further, these theories and their interpretation and application have not been shown to be detrimental to the growth of society, or to be in conflict, in any manner, with the present-day notions of citizenship of the highest order. Where then is the justification for the change which is suggested? So far as rights of the females are concerned, they might be brought into accord with the popular demand. But, that means only amending the law with regard to females, and that too should be done so as not to be incompatible with the essential features and the background of the Hindu Law. I personally think that it is easily possible to give higher and better rights to females so as to satisfy the popular demand on the subject without, in any manner, coming into conflict with any principle of theory of the Hindu Law.

I would, therefore, strongly oppose the idea of codifying the Hindu Law, and would suggest the drafting of a new Bill to amend the Hindu Law with regard to the rights of females.

Rao Raja Shyam Behari Misra, Lucknow

The proposals in the amended Bill appear to me and to most persons consulted by me to be too sweeping to be at all acceptable to the majority of even the advanced section of Hindus. I am prepared to agree to a 25 per cent. share to sisters as compared with brothers, and that also for life, the principle of "Stri Dhan" should entirely go.

British Indian Association Oudh, Lucknow

The Taluqdars agree that it would be an advantage to have the Hindu Law of Succession codified and made uniform, since this would result in their being greater certainty and there would consequently be less danger of litigation. They are, however, doubtful whether this is a proper time at which to undertake to measure of such importance when the Legislature is an old one and many of its members are absent. Further they cannot agree to all the principles embodied in the Bill as modified by the Select Committee and they consider that some of the modifications mark a revolutionary departure not only from the Hindu Law in letter as well as in spirit but from all legal systems. They cannot however go into the details of the Bill but would like to emphasise certain principles. They do not agree with those who advocate the total exclusion of women from inheritance but that, at the same time, they do not agree that the rights proposed to be given to women under the Bill are either expedient or just.

They note that, at present, the Bill is not intended to apply to Agricultural lands and that all customs of single heir succession are to be preserved intact. This is only because of the Constitutional position and they have no doubt that the provincial Legislatures will soon be called upon to legislate in the same direction.

The Taluqdars think that the definition of Stridhana is too extensive and that immovable property received by a woman by inheritance or at a partition or by way of maintenance, otherwise than in those cases in which the donor makes an absolute gift, should not be included in Stridhana. The words "or by any other, mode whatsoever" are too wide and should be deleted.

They think that, while in movable property inherited by females, they should acquire absolute rights, they should only have a life estate in immovable property as they have at present. The widow, daughter and widowed daughter-in-law are made heirs simultaneously with the son and not after him as at present and they are given

large shares. The Taluqdars think that the share of the widow and the widowed daughter-in-law should be equal to half of a son's share. They also think that the daughters should only succeed in the absence of a son and that son's daughters whose fathers are dead should be placed in the same position as the daughters. Further they object to the females mentioned being able to divert portions of the property to their own families or to strangers even when the last owner has left sons, who might thus find themselves deprived of the larger share of the family property and might find undesirable strangers co-sharers with them in undivided properties, even in the family residential house.

The general principle of law is that the right to maintenance is not transferable and the Courts presume that it is only for life, yet the Bill is making a complete departure from this well-settled principle and making right of every one possessing a claim to maintenance both heritable and transferable. It must not be forgotten that women inherit both in their father's families as daughters and in their husband's families as widows, while men inherit in their father's families but have no share in their wife's families. Further it falls to sons alone to uphold the traditions of the family and to maintain their own relatives and dependents. It would be grossly unfair if a widow or widowed daughter-in-law gets for herself alone what a son gets for the maintenance of his whole family. Thus the right given to women should, in fairness not be co-extensive with those given to men. The fact that women have so far been unfairly treated, does not necessitate the unfair treatment of men in the future, and Taluqdars would record their most emphatic protest against those provisions of the law which have that effect.

gra Province Zamindars' Association, Allahabad

I have the honour to say that the matter was placed before the Managing Committee meeting of the Association on the 21st March, which appointed a Sub-Committee to consider the whole matter and submit its views on behalf of the Association on the proposed Hindu Intestate Succession Bill. A meeting of the Sub-Committee was held on the 27th April 1944 and it is definitely of opinion that the Bill introduces a new type of succession which is deadly opposed to the spirit of the ancient Hindu law and will create havoc in the Joint as well as separate Hindu families. The Committee think that the Bill is intentionally and deliberately introduced to ruin the entire structure of the Hindu society and their long standing civilization and culture. It is therefore definitely of opinion that the Bill should be summarily rejected and thrown away and should never be brought on the Statute book.

Oudh Provincial Hindu Sabha

The Oudh Provincial Hindu Mahasabha hereby accepts the opinion of the Sub-Committee appointed by the Sabha on the 24th February 1944 on the Hindu Code Part I (Intestate Succession) Bill. The opinion of the Sub-Committee is dated the 5th March 1944. The Sabha considers the provisions of the Bill on the Stridhan and Succession to daughters as particularly objectionable and does not like the doing away of the present Hindu Law provisions on the Hindu Widows' Estate along with the application thereof to the female heirs as at present prevails in the Hindu Law. The extension of Stridhan and the provisions for inheritance for the same are also very objectionable. Stridhan inheritance should in any case be regulated as though the woman owner concerned were an intestate male.

Report of the Sub-Committee, dated the 5th March 1944

We believe the Bill introduces too many radical changes in the Hindu Law against the General desire of property owners and seems to have been introduced mainly to help females against the existing Hindu ideas in almost every way and it pays scant attention to the deep-rooted religious, moral and engenic ideals of the Hindu Society extending over centuries. It will lead to undesirable fragmentation of property, practical break up of the Joint Hindu family, and quarrels among near relatives by introducing too many new claims. It does not as it should

incorporate in its provisions apostasy as a disqualification for succession. Apostasy should not of course be extended to conversions to creeds or sects of Hindu origin such as Buddhism, Jainism, Sikhism, the Brahmo Samaj, the Prarthana Samaj or the Arya Samaj. Apostasy should be taken to mean conversion of a Hindu to Islam, Christianity, Zoroastrianism or any other religion of a non-Indian or non-Hindu origin. The definition of Stridhan has been improperly extended to beyond what it means in the present Hindu Law. The limited estate of the woman under the Hindu Law has been improperly abolished and simultaneous heirship of daughters and similar other females improperly introduced.

The Committee feels that no new shares to daughters, widows, daughters-in-law, etc., should be given beyond what stands provided under the current Hindu Law, but it wishes to make it a liability of the deceased grandfather's assets to provide for the pre-marriage maintenance and marriage of a pre-deceased son's daughter and for a suitable maintenance allowance to a widowed daughter-in-law out of the assets of her deceased father-in-law. The Committee also feels that females should under no circumstances get by inheritance any rights beyond a Widow's Estate as exist at present, but it wants this to be clearly enacted that the existing rights of daughters and other females as propounded under the General Hindu Law should not any how be abrogated under the authority of any local custom as does happen now at many places.

Arya Pratinidhi Sabha, U. P., Lucknow

We are opposed to the proposed Hindu Code pt. I (Intestate Succession) Bill and deem it highly detrimental to the best interests of the Hindus on the following main grounds:—

1. Secularization of the Personal Law of the Hindus based on Shrutis and Smritis by a meagre Assembly constituted of a few Hindus and some Non-Hindus, is highly objectionable.
2. Piece-meal Legislation regarding the most comprehensive and complicated personal law chiefly based on Shastras, is most likely to undermine the very roots of the culture founded on Vedic Religion.
3. The proposed bill is likely to result in fragmentation of properties and increase litigation amongst the Hindus.
4. Creation of new rights under the proposed Bill is not supported by an recognised Shastric Authorities.
5. No attempt seems to have been made to obtain the opinion of the specialists well-versed in the Vedic Literature or to exclude those who are not expected to know much about the Shastras of the Hindus.
6. Social, religious and Cultural Laws of Hindus need not be made a pawn of Politics.
7. The removal of apostasy and other accepted disqualifications is likely to multiply detrimental activity amongst the people affected by the new enactment.
8. A great number of the Elected Members of the Central Legislatures are not in a position to participate in the consideration of the proposed Bill.
9. Hindus in general never demanded the enactment of the personal law into a secular code to be framed by some Hindus and Non-Hindus.
10. The flagrant breach in the case of this Bill of the salutary convention that in consideration of social measures affecting our community only members belonging to other communities should not take part, is extremely regrettable.

For the reasons noted above it is strongly urged that (1) the Rap Committee be dissolved. (2) the Intestate Succession Bill be not passed into law.

Principal, Govt. Sanskrit College, Benares

I have the honour to invite your attention to the views expressed by me in my letter No. S/599/III-2, dated 1st September 1942 and to say that while the amendments make some improvement in the original Bill, it is, from the orthodox point of view, open to the same objections as the latter. Indeed the number of dissenting minutes appended to the Bill, itself proves that the Bill in the present form is agreeable even to very few of the minorities and although many of the objections raised cannot each other, the enactment of the Bill will cause wide-

spread dissatisfaction in the orthodox Hindu Community, so form the majority of the Hindu population.

The report of the Committee quotes a certain number of Vedic passages which prove that women as a class were excluded from inheritance in the Vedic times but consider that such passages 'at most may be taken to have laid down a rule of exclusion from participation in the Soma Juice', they hardly support the theory of exclusion from inheritance. This is strange reasoning when the passage of Satapatha Brahmana (IV-4-2-13) quoted by the Committee expressly mentions Dāya (inheritance) from which women should be excluded: *Nātmanas canesata na dāyasya canesate*. When it is remembered that the literature from which the passages have been quoted are sacerdotal books not concerned with legal rights of the community, a mere paucity of such passages cannot be taken to imply that the Vedic seers contemplated a Society in which women had equal rights with the men. Even one such passage is sufficient to give an indication of their view and the orthodox Indian opinion cannot contemplate the modernised section of the population to legislate on matters, which did not form an issue on which they were elected to the Legislative Assemblies.

The Bill purports to lay down one law of inheritance for all Hindu of British India, but British India is not the whole of India and presence of seven hundred and odd of Indian states with their varying laws and customs create a diversity which will be always detrimental to unity, if this sort of uniformity is considered a *Summum Bonum*. It is therefore better if the people are allowed to be governed by rules which they understand well and with which they have been made familiar by the law as administered by local Courts. The Hindu lawgivers have always recognised unity amidst diversity and a broad spirit of accommodation to local needs and ideal evolution has ever been considered as quite consistent with Hindu culture. The Hindu Society as such has never been disrupted on account of such diversity and unification of the type suggested is not at all desirable.

The Committee recommends that the local Governments should take up the devolution of agricultural land by an enactment similar to the present Bill. As there is no constitutional Government in some of the most important provinces at present and as a general election will be necessary before the proposed act is placed before them, there is no guarantee that the majority of popular representatives in all provinces will be uniformly favourable to the proposed legislation and the provincial acts that might merge from the legislatures may be as diverse as the number of provinces themselves. Unity of this type will therefore always remain problematical and the Central Legislature as at present constituted cannot be considered competent to give a lead to the provinces, especially as the system of land tenure differs from province to province.

As regards the most important aspect of the Bill viz. the attempt to remove disqualifications of women in the matter of inheritance, it might be stated that even in England sex equality in this respect has been only very lately introduced. Indeed the Administration of Estate Act, which abolished the ancient preference of the male over the female in England was passed in 1925 and this as done when the standard of intellectual capacity in the female had been raised beyond anything possible in this country by a long history of compulsory and universal education. As this has not been so far possible in India, legislation of this type is only putting the cart before the horse and placing rights in the hands of women which they are not only incapable of exercising, but which will make them victims of scheming men resulting in ruin to themselves as well as their male relatives. Some of the Roman Catholic countries in the West and many of the States in America have their own laws of succession and inheritance and their diversity is not inimical to their national and cultural unity and it is doubtful if anything will be gained by the present legislation except a phenomenal increase in the amount of litigation, which these distressful times will certainly bring ruin to the country-side, although it may swell the income of the lawyers.

The Joint Committee as well as some individual members thereof have brushed aside the difficulty of taking

up such codification piece-meal, but have not been able wholly to shut their eyes to the necessity of amending the Bill in the light of other sections of the Hindu Law when they come up for codification. The Joint Committee however think that before this enactment comes into force the whole of Hindu Law will have been codified and the bearing of one section upon another properly understood and amending legislation introduced. This is too optimistic and it would be better if the present legislation is held in abeyance till the whole body of Hindu Law is codified and the completed Act is placed before a legislative assembly especially elected on this issue and non-Hindu representatives who would not generally have much knowledge of Hindu Scriptures, manners and customs and whose reverence for them would be non-existent, excluded from casting their weight by their votes.

As regards the rights of the daughters to inherit from her parent as his agnate, I must firstly say that to class a married daughter as a *sagotra* of her parents is obnoxious to the Hindu Law and even though such a definition is confined to inheritance only, it will lead to lots of anomalies and difficulties in other sections of the Hindu Law and should therefore be removed.

The Hindu Jurists have always provided for the maintenance and marriage expenses of an unmarried daughter, on the ground that it was the duty of a sister's brother to see that she was properly married, but have never countenanced the granting of inheritance rights to married daughters. For one thing the daughters especially those married several years before the intestate's death will find it very difficult to assess the total value of the moveable estates of the deceased and suspicions about the amount of property left would lead to prolonged and complicated litigation, which will do no good to either party. As regards landed and housing property the danger of excessive fragmentation as each generation dies out will only add to the economic distress of the people, instead of making the position of women any the better. If the present act confines itself to the granting the right of succession to the unmarried daughter, even to the extent of half the share of her brothers and similar rights conferred on the widow, the mother and the widowed daughter-in-law provided that these heirs would only enjoy the usufruct of the properties granted to them in lieu of maintenance and the corpus to return to the family of the intestate after their deaths, the present needs will be amply fulfilled and the danger of unending litigation, which the present act will surely bring in its wake will be easily avoided.

As regards granting of right of inheritance to a son in his mother's *Stridhana*, such a legislation is both gratuitous and unnecessary. No section of Hindu population has ever agitated for the granting of such rights and does not consider it either fair or necessary to take a right from women which they have been enjoying for generations with perfect good will and consider this as an instance where an abstract sense of justice makes it necessary to introduce legislation which is wholly unnecessary.

As regards other points, I am in general agreement with the objections raised by Messrs. R. P. Mukherjee, Lal Chaud Navalrai, Nilakantha Das and Baijnath Bajoria, who have ably presented the orthodox point of view and consider that the present legislation should be dropped if for not all time, at least till the majority of Hindu women in the country are educated and able to understand their own rights and liabilities.

Shri Bharat Dharma Mahamandal, Benares.

The Intestate Succession Bill is a legal movement affecting the fundamental beliefs and religious sacrament of the Sanatani Hindus who form the bulk of the Indian population and as such this All-India Representative Association of Sanatani Hindus, believing in Vedas and other Hindu Scriptures register its strong protest against the Bill and request you to kindly submit this protest before the Government for favourable consideration.

2. With a view to place before those participating in the passage of the Bill the far-reaching disintegrating effect on the socio-religious fabrics of the Hindus, it is very necessary to give rather a detailed though brief description of the time-honoured Dharma (Religion) and Creed (Belief)

of the Sanatanist Hindus according to their Dharma-Shastras (Scriptures) because it is a misfortune that they are innocently doing something they know not due to their lack of knowledge of the principles of the hoary Dharma and culture of the Hindus, while this Bill—the Intestate Succession—decisively affects the after-life of Hindus—the safeguarding of which is one of the essential objects of the religious sacraments and the very life of the Sanatan Hindu.

3. 'Dharma' according to the ideology of the Sanatanist Hindus is that Divine Might of the Almighty which holds the universe and helps it—both microcosm and macrocosm, and the individuals or nations—to make an ordered progress in this as well as in the next world and to reach the realm of Heaven. Every rule of Hindu Dharma-Shastra and mode of conduct prescribed by the same has this main object in view. It is universally accepted that the Hindus are in fact the pre-historic race of humanity and have always regarded their Dharma-Shastra to have been revealed from the above to the Rishis—the holy Sages of yore and not as 'man-made Laws' subject to changes by human agencies and secular powers. They regard their Dharma to be Sanatan (Eternal) which cannot be subjected to modifications by human agencies or secular authorities.

4. The Vedas and Shastras generally make two divisions of human Dharma—the one the ordinary, i.e., the Sadharana Dharma; and the other i.e., the Special or the Vishesh Dharma. The Sadharana Dharma helps equally all human beings, all creeds, all nations and all communities through its various aspects. For examples—acts of Dana-Dharma, i.e., charity, Tapo-Dharma, i.e., austerity, Yajna-Dharma, i.e., sacrifices, Yoga-Sadhana, i.e., devotional practices, Jnana-Sadhana, i.e., acquiring knowledge of self, and other pious actions of body, mind and inner feelings, such as truth, justice, mercy, love, unpretendedness, rectitude, self-control, ten kinds of Ahimsa, absence of egoism, dispassion towards objects of the senses, paying reverence to the seven classes of elders, service to the Guru, purity of mind and the body and Bhakti, i.e., devotion to God; all these come under the category of the Sadharana Dharma. These principles of Sadharana Dharma can be practised by, and are beneficial to, people of all nationalities, irrespective of caste, creed and denomination all over the world.

5. The Vishesh Dharma (Special Dharma) means a particular Dharma which is applicable to sex (male and female), caste (such as the Brahmins, the Sudras etc.), stages of life (such as Sanyas, Garhasthya, etc.) and sub-creeds such as Shaiva Dharma, Shakta Dharma, Vaishnava Dharma, etc. of the Varnashrami Hindus who believe in the Vedas and Shastras. The Special Dharma of the non-believers of the Vedas, i.e., Avidic Dharma, also comes in the category of the Vishesh Dharma—these are such as the Jaina Dharma, Bauddha Dharma, Christian Dharma, etc.

6. As for the Vishesh Dharma of the Sanatan Hindu which is the oldest Religion of the world, it consists, among others, of the following:—(1) They believe in the Varnashrama (caste and stages of life) order of their own particular sociology protected as it is by the four impregnable forts. The Hindu religious sociology called Varnashrama Dharma is perfectly guarded and fully protected on all sides by the steel walls of the four impregnable forts of (1) Achar-Vichara Dharma, i.e., the rules of conduct relating to mental and physical purity and inner spiritual culture; (ii) Varna Dharma, i.e., the birth right of the caste system, (iii) Ashrama Dharma, i.e., the rules of conduct relating to the four progressive religious stages of life and (iv) Satitva-Dharma, i.e., chastity of womanhood of an extreme nature. It stands on the granite rock of the marriage ceremony—rituals and life-long religious conduct of the married couple. (2) They believe in the Vedas and other scriptures, i.e., Smriti, Purana etc., as direct revelations from the occult world, (3) They believe in the existence of the mighty occult world, its government and occult office-bearers such as Rishis, Devas, Pitris, etc. (4) They believe in the Divine Law of Karma, i.e., actions and reactions of the material body, Mana (mind) and Buddhi (consciousness faculty), as well as Sanskars, i.e., the seed of Karma. (5) They believe in re-birth and the importance of Shraddha and other ceremonies like Tarpana, etc., in order to help the departed soul, and so on. No King, no Government and no outward or inward force has hitherto

been able to overpower it since Satya-Yuga—the beginning of the first cycle of the Yugas. Even in the Buddhist period when Emperors of India like the Great Ashoka and the Mighty Sudhanwa embraced Buddhism—even then, the most scientific Religious sociology of the Hindus, based on the unchallenged Vaidic philosophy, remained as intact as ever. When, however, Buddhism tried to interfere with the authority of the social order of the Hindus, it was banished from its motherland. Even for centuries during the autocratic rule of the Mohammedan conquerors, the Mohammedan kings failed to cause any palpable harm to this socio-religious organisation. The Jainism which is altogether a separate creed and has no faith in the Vedas has accepted this social order and become a part and parcel of Hinduism. But in the present British period of Godless education, social disruption, moral degradation and spiritual downfall, some revolutionary spirit has sprung up within the Hindu fold itself as a result of the influence of western thought and has led to the bringing forth of a group of ungenerous, unjust, rabid and reckless reformists.

7. If the present day administrators of justice find it difficult to comprehend the philosophical basis of the Hindu Dharma Shastras, it is no fault of the laws themselves. On the other hand, it is the fault of the so-called educated Hindus who generally know nothing about their own Dharma and culture. It is because of the material, outlook of the civilization in which they have been bred, brought up, educated and trained all their life. This cannot be, therefore, a valid reason for forcing upon the oldest and spiritually most advanced race of humanity a code of law on the lines of that possessed by other Nations of the world. The Reformists express contempt at what they call the 'Pitiable plight' of Hindu women with regard to their right of succession, full ownership and divorce. But in fact, as has already been remarked in the beginning, they in doing so only betray their lamentable ignorance of the Hindu Dharma religion, sociology, ideology and culture. It is only amongst the Hindus that the women are worshipped as Goddess in all stages of life. No other nation of the world with all the women's rights of equality, freedom, succession, ownership, divorce, etc., etc., has ever shown so much respect to woman as to install her at the venerable position of Goddess. The position of Hindu women in married life is far superior to that of their sisters in other Nations of the world, nay, the lot of Indian women inspite of their so-called disabilities is enormously better than that of their sisters in other Nations who enjoy the rights of property, succession, freedom and divorce, etc. If statistics of the nations of the world with regard to the various rights enjoyed by women and their consequences could ever be available, the above statements could be amply supported. Any reform against the established practice in the religious, social order of the pre-historic Hindu Nation by means of sanction of law is therefore bound to have its bitter reaction both for the Rulers and the ruled.

8. The Government should carefully take into consideration the Religion and the time-honoured Vaidic culture of the Hindus, so the Bill relating to intestate succession of the Sanatanist Hindus require first the careful study of the Siddhant (Belief) of the nation about the occult government and the occult law and order as proved by their philosophy of rebirth and life after death. They believe that the Vedas and Shastras become revealed in our Bharatvarsha, i.e., mortal world of ours, the former directly and the latter indirectly from occult world for the good of humanity. Behind the Bharatvarsha—the material world of ours, within it and on all sides of it exists the mighty occult world and its divine government. The Vedas and Hindu Scriptures disclose that each Brahmand (universe) including its solar system and different abodes has its own separate occult organisation and government. Each Brahmand has its creative, preservative and destructive high occult agencies. These Godheads respectively are Bhagwan Brahma, Bhagwan Vishnu and Bhagwan Shiva who are the direct representatives of the Supreme Lord. They are three highest Godheads and are indestructible. The government of the occult world has three big departments and occult High Office-bearers of several grades and several classes for maintaining law and order in both microcosm and macrocosm of creation.

10. Bhagwan Manu is one of the important high office-bearers of the occult government who is considered to be the Time-keeper of our universe, and the principal Law-giver of the Hindus and by His will the Dharma Shastras are revealed in the hearts of the Savants in the early period of the creation. Bhagwan Yama—Dharma-Raj—who is another occult High Office-bearer has direct control over Pitri Loka—the ordinary Heaven, Naraka Loka—the Hell and occult control over our mortal world, the Bharat-varsha. Bhagwan Dharma-Raj is the Record-keeper of the Karmas (actions of body, speech, mind and intellect) of the jivas. He sends the departed jivas to several sections of Naraka Loka (Hell) which is a kind of jail of reformatory institution of a mortal king for undergoing suffering as the adequate punishment for their misdeeds, or to various grades of Swarga (Heaven) for enjoying merited rewards for their good deeds in form of pleasure and different grades of happiness in those abodes. Bhagwan Dharma-Raj is practically the central authority and organiser of the Awagamanachakra, i.e., the cycle of birth and death—of coming into the mortal world and again going to the occult world. All Office-bearers and governors of the occult world including these two are replaced by a fresh set of personalities in every Manwantara, i.e., the cycle of 306720000 human years.

11. The mortal world, the Bharatvarsha is the centre of the Awagaman-chakra, i.e., coming and going cycle maintained under the Divine Law and order. It is the place of better state of progress for the jivas. Here Karma can be freely performed by the human being to improve his or her lot as well as to help the Naimittik Pitris or the departed ancestors in their onward march. Such Karmas as help the departed ancestors are known as Shraddha Karmas. They can be performed only by certain direct male descendants, i.e., who are in close blood relationship to the departed. They are clearly described in the Dharma Shastras (Scriptures). And it is on them that the right in property of the departed devolves in order of closeness of the direct blood relationship.

12. Thus the creed of Sanatanist Hindus regarding Rebirth and Shraddha deserves a careful consideration with reference to the most scientific Religious Law of Succession that the Varnashrama sociology can boast of as being their own and most superior to all other laws of succession prevalent in other nations of the world. The guiding principle is the advancement of the Jiva, the Soul from humanity through the help of Dharma and the performance of religious sacraments that lead to the propitiation of the Occult Governors with whose direct or indirect help alone the onward march can be maintained. All possessions and property therefore of an individual are accordingly inherited by one who is nearest next to him in seed and blood relationship and who can according to Dharma Shastras perform the Shraddha ceremony for the peaceful comforts of the deceased in the Pitri Loka—Ordinary Heaven, Narak Loka—Hell and Preta Loka—Ghost world. It is with this double criterion that the order of succession has been laid down in the Hindu Dharma Shastras with only limited rights over property for women who as part and parcel of their husbands have no separate ownership of their own. The ownership in the property of her deceased husband, therefore, in the absence of certain nearer heirs rests in the widow for her life time only. Then it reverts to the next in the seed and blood relationship to the last full owner (deceased male) as it is the latter who is closer in blood relationship and who is consequently competent to perform the Shraddha sacrament in favour of the deceased—the last male owner of the property and other departed ancestors.

13. Similarly daughters and sisters who are married and consequently whose Gotras have thus according to the Religious rights and Divine Law of the Occult Government of Pitri Loka become merged with the Gotras of their husbands have little chances of succession except for the reason of blood relationship in the absence of any other nearer blood relation who is competent to perform the sacred Shraddha ceremony for the deceased last male owner or other ancestors. The Hindu Dharma Shastras have evolved a most scientific law of succession based on consideration of not only worldly happiness but also comfort in after-life and also of spiritual advancement of the owner of the property. In fact the whole life of a Hindu is according to Dharma-Shastras so moulded as to

help him to achieve the highest spiritual attainments, and anything that deters him from this onward march is a Sin. The whole social structure of the Hindus, the duties enjoined for them to be performed during the various stages of life, in fact every routine of their life and actions whether mental or physical, the laws of their marriage sacrament, those of succession, and even the rules relating to obsequies—all aim at helping them onwards in their progress for spiritual attainments.

14. The Bill relating to Intestate succession has not taken the above principles into consideration and has attempted to introduce a novel and un-religious order of succession. Besides, if this kind of law is enforced on the Hindus, their whole social structure will be shattered, the happy family life of the Hindus will be upset, instable, restless, unspiritual and utterly miserable. The so-called law-made new heirs will tear the property into pieces and doom the financial status of the Hindu family once for all, giving rise to factions and frictions as well as introduce outsiders to share the family property. The Bill will thus cut at the very root of the Hindu Religion (Special Dharma) by legalising inter-marriages between persons of different castes and creeds and thereby undermining the purity of the spiritual race of humanity. No outrage on the Dharma of the Hindus would be more shocking than the enactment of this kind of irreligious law contemplated by the Bill.

15. Lastly, such enforced enactment would be a direct violation of the most solemn Royal Proclamation of Empress Victoria of Blessed memory in the matter of religious neutrality to be strictly maintained among the different and various subjects of India which bears repetition as often as occasions arise. Runs Her Most Gracious Majesty's sacred assurance:—“* * * Truly relying ourselves on the truth of Christianity, and acknowledging with gratitude the solace of religion, we disclaim alike the right and the desire to impose our convictions on any of our subjects. We declare it to be our royal will and pleasure that none be anywise favoured, none molested or disquieted, by reason of their religious faith or observances, but that all 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 subjects on pain of our highest displeasure”. The same solacing and impartial sentiment found an echo in the Imperial Message of Her Gracious Majesty's worthy son King Edward VII to Princes and Peoples of India in 1908 which is still ringing throughout the length and breadth of this Holy land:—“No man, among my subjects, has been favoured, molested or disquieted by reason of his religious belief or worship. All men enjoyed protection of the law. The law itself has been administered without disrespect to creed or caste or to usages and ideas rooted in your civilization; it has been simplified in form, and its machinery adjusted to the requirements of ancient communities slowly entering a new world”. * * *. “Ever since the welfare of India was confided to us it has been held as a sacred trust by our Royal House and Line. In 1858, Queen Victoria, of revered memory, solemnly declared herself bound to her Indian subjects by the same obligations of duty as to all her other subjects, and she assured to them religious freedom and the equal and impartial protection of the law”. * * *.

16. In conclusion, the Bill aims at striking at the very root of the Sanatan Dharma, Varnashram Dharma and their religious sociology. If passed into Act, the Bill will play untold havoc and cast unforeseen misery on the Sanatan Hindus. Moreover the present times hardly warrants such drastic changes disrupting the loyal, God-fearing and a peace-loving society and throwing it off its gear. It is the passing of such few acts in the past few years that has been responsible for the estranged relation between the Sanatanist Hindus and the Government and it will only be stating the bare fact that the true Sanatanist Hindus who regard religion dearer than their lives will from the core of their heart hate and consider as their bitterest enemy the so-called Reformer, Leader, Political Society or an Authority that will lend any support to the passing of such an act which to all intents and purposes are meant to stunt the nation's onward progress by undermining its religious and social order. For the reasons above, I am desired to register a most vehement protest against the Bill and respectfully

submit that it will be for the good of both the rulers and the ruled that the Bill be rejected before discussion on the floor of the Assembly.

Secretary Stri Samaj, Lakhimpur Kheri

As authorised by the Arya Stri Samaj, Lakhimpur Kheri, I hereby beg to convey the opinion of the said Stri Samaj as embodied in the following resolutions adopted in the special meeting of the said Samaj, held on 29th April 1944 in the Arya Samaj Mandir, under the presidency of (Mrs.) Sushila Devi Johri, B.A., T.D. (Dublin) F.R.G.S., (London).

1. That the Arya Stri Samaj of Lakhimpur Kheri, is of opinion that The Rao Committee should continue to work till Hindu Intestate Succession Bill and Hindu Marriage Bill are passed into Law by the Central Legislative Assembly.

2. That the Arya Stri Samaj of Lakhimpur is of opinion that the aforesaid enactments are necessary for the advancement of the Hindu Society.

For the aforesaid reasons the Stri Samaj requests that the bills be enacted into law.

Resolutions against the Bill

The following identical resolutions were passed at One thousand and twelve (1012) public meetings held at various places in the United Provinces which are specified in Annexure A.

Resolution No. 1.

This meeting resolves that as in its considered view neither the Government of India nor any of the Provincial Governments does possess or has at any time possessed any right to legislate upon matters of private laws of the Hindus, the present policy of the Government of India of modifying Hindu Law through the agency of the Central Legislature specially under its present form and constitution is most reprehensible and its contemplated action thereon *ultra vires*.

Resolution No. 2.

This meeting further resolves (a) that without prejudice to the contents of the first resolution, the action of the Government of India in constituting the Hindu Law Committee for the preparation and drafting of the Hindu Code is fully unwarranted and unjustifiable; (b) That the Hindu Intestate Succession Bill and the Hindu Marriage Bill contain so many provisions quite opposite to the spirit and letter of the Dharmashastra and detrimental to the Hindu culture and civilisation, that Government should be asked to withdraw both of these bills and abandon any further attempt of legislating upon any subject of the Hindu law.

ANNEXURE A

Hajipur, Mirzapur; Chauk, Mirzapur; Hiwalai, Mirzapur; Lawa, Mirzapur; Talab Adhal, Mirzapur; Shahabad, Farrukhabad; Gorakhpur; Muttra; Lebhi, Benares; Tikarna, Meerut; Radhal, Aligarh; Tejopore, Azamgarh; Gursanya, Jhansi; Chandausi, Muzaffarnagar; Bhamhathar, Allahabad; Saggi, Banda; Sadhi, Banda; Binnai, Benares; Sharie, Gorakhpur; Kasila, Gorakhpur; Muttra; Brindaban, Muttra; Palia, Azamgarh; Jainsai, Azamgarh; Khajinabar, Azamgarh; Khangpur, Maghahi, Azamgarh; Jalalpur, Azamgarh; Kakrayan-korn, Azamgarh; Jhamalpur-Gaoutipur, Azamgarh; Narayanpur, Azamgarh; Haripur, Azamgarh; Jagali, Azamgarh; Salipur, Azamgarh; Kharikotha, Azamgarh; Sitalpur, Azamgarh; Ashurali, Azamgarh; Muttra; Jubbulpore, Shahjahanpur; Madhuna, Azamgarh; Lalapur, Azamgarh; Usakhyrwa, Azamgarh; Harkhapura, Azamgarh; Gadarua, Azamgarh; Piparte, Azamgarh; Janiumpari, Azamgarh; Sayonara, Azamgarh; Bazar Goshali, Azamgarh; Nazarbani, Azamgarh; Kakriherdikar, Azamgarh; Golkhapur, Azamgarh; Lakura, Azamgarh; Behrampur, Azamgarh; Aunti, Azamgarh; Paryagpur, Azamgarh; Parsampur, Azamgarh; Sikora, Azamgarh; Paripatanpur, Azamgarh; Meharu Bareilly; Rai Bareilly; Shambhi, Muzaffarnagar; Paharapur, Aligarh; Kaduli, Aligarh; Simerdhari, Aligarh; Udembra, Aligarh; Jaswant Nagar, Dist. Etawah; Kankhel, Saharanpur; Saharanpur; Tejsingh Khers, Unao; Banspa, Gorakhpur; Bardalganj,

Gorakhpur; Swari, Gorakhpur; Bhanpar, Gorakhpur; Lehna, Sultanpur; Daunkaghat, Faizabad; Sawarudwar, Faizabad; Benares; Assi, Benares; Kotana, Meerut; Sohanganj, Gorakhpur; Laukher, Muzaffarnagar; Benares; Nehyan, Benares; Bastan, Aligarh; Ombali, Gorakhpur; Kedera, Meerut; Narusaina, Aligarh; Badhura, Behraich; Bargaadhi, Behraich; Basudhambairapur, Behraich; Nagwa, Ballia; Hadhi, Gorakhpur; Shitalagali, Benares; Bania Para, Meerut; Padana Para, Meerut; Meerut; Moripara; (Meerut); Khurkaun, Meerut; Bim Kuan, Meerut; Thatuara, Meerut; Meerut City; Bahadurpur, Azamgarh; Nematad, Azamgarh; Katbanrao, Azamgarh; Pivapur, Azamgarh; Hasanpur, Azamgarh; Sekhpur, Azamgarh; Nemraj, Azamgarh; Sukalpatti, Azamgarh; Gurneta, Azamgarh; Pachma Ballia; Sameri, Ballia; Muhmadpur, Ballia; Taplipur, Azamgarh; Bhallai, Azamgarh; Chehta, Azamgarh; Khanpur, Bhagatpatti, Azamgarh; Kabasoth, Azamgarh; Bibuni, Meerut; Meerut Cantt.; Mawana, Meerut; Satocha, Bulandshahr; Champabat, Almorah; Golagoparn, Khiri, Golagokarn; (Khiri), Barhaganj, Gorakhpur; Jasraua, Almorah; Pohila, Gorakhpur; Barhaganj, Gorakhpur; Sanauli, Bara Banki; Merwara, Barabanki; Kanhawapur, Bara Banki; Fatehpur; Dampur, Bulandshahr; Jamtha, Gonda; Kherahatana, Meerut; Kirthal, Meerut; Bhatripur, Gorakhpur; Najababad, Bijnor; Benares; Benares; Vindhachal, Mirzapur; Singhai, Khiri; Chatia; Bhawana, Kalan, Meerut; Nisagar, Bareilly; Manikpur Bisu, Etawah; Talwara, Hoshiarpur; Chulaha, Bareilly; Palia, Azamgarh; Shivoanj, Cawnpore; Latushi Road, Lucknow; Shatangherpur, Allahabad; Arjunpur, Banda; Lubarsera, Meerut; Banja Bazar, Gorakhpur; Nakanja, Gorakhpur; Barha, Gorakhpur; Bilaspur, Gorakhpur; Karmaha, Gorakhpur; Maharaj Ganj, Gorakhpur; Amrunia Bazar, Gorakhpur; Chaunpat, Almorah; Japnagar, Gorakhpur; Khumbar, Jhansi; Gora, Gorakhpur; Matoun Chauhali, Gazipur; Behrampur, Azamgarh; Shiy Ratanganj, Rai Bareilly; Jaisinghpur, Azamgarh; Devgarh, Gorakhpur; Matipra, Gorakhpur; Ghughuli, Gorakhpur; Ghughali, Gorakhpur; Syarli, Bulandshahr; Basanpur, Gorakhpur; Banhata, Behraich; Behgam, Behraich; Sarsa, Behraich; Gurdania-pur, Behraich; Lalpur, Behraich; Chhitkehna, Behraich; Sarbehta, Behraich; Barlia, Behraich; Kamolia, Behraich; Savera, Behraich; Brahmnal, Benares; Laha, Gazipur; Dewpur, Gorakhpur; Nani, Gorakhpur; Assi, Benares; Sirsaganj, Manpuri; Tajpur, Gazipur; Kunjalpur, Muttra; Jaiti, Muttra; Sadabad, Muttra; Kursanda, Muttra; Jasur, Muttra; Bagiguni, Hardoi; Goria, Ismailpur, Azamgarh; Dashashatmedh, Benares; Angarsauli, Ballia; Nasititi, Muttra; Benares; Sarurpur, Meerut; Kampur, Dehra Dun; Aruna Bazar, Gorakhpur; Sikandpur, Basti; Lalganj, Basti; Gola Gorakhnath, Khiri, Bhati, Azamgarh; Shakaipur, Gazipur; Ramgarh, Gazipur; Sirsi, Basti; Patanganh, Jaun; Pala, Aligarh; Jaiganj, Aligarh; Sahuakol, Gorakhpur; Jogina, Gorakhpur; Devkali-Vishnupur, Azampur; Shehroj, Azamgarh; Takali-pur, Azamgarh; Barsthan, Azamgarh; Sidha, Azamgarh; Jarkhi, Agra; Pipalmandi, Agra; Tirha, Farukhabad; Ajyora, Farukhabad; Chundhkapur, Farukhabad; Tirbhukha, Farukhabad; Phagush, Farukhabad; Fatehpur, Kashpur, Farukhabad; Pala, Farukhabad; Mahilapur, Farukhabad; Kaluhaspur, Farukhabad; Sisi, Farukhabad; Tibi, Farukhabad; Bhuma, Farukhabad; Khaniagram, Gazipur; Sitapur; Nisithi, Meerut; Barmita, Meerut; Nawabganj Unnao; Bara, Azamgarh; Adri Gaumb, Azamgarh; Sonadihi, Azamgarh; Rurda, Azamgarh; Bhujli Mirzapur; Jakhan, Dehra Dun; Jakhan, Dehra Dun; Pennapur, Gorakhpur; Bhasedahar Bazar, Gorakhpur; Gaurya Ghat, Gorakhpur; Berlapur, Faizabad; Kedera, Farrukhabad; Dhivda, Farrukhabad; Khama, Farukhabad; Sarda, Farukhabad; Nunari, Farukhabad; Sakholi, Farukhabad; Bahadurpur, Farukhabad; Kinora, Farukhabad; Bisalpur, Pilibhit; Ghorya, Pilibhit; Khargajpur, Azamgarh; Lucknow; Bajpakhira, Bareilly; Kalyanpur, Sultanpur; Kalyanpur, Sultanpur; Tarkeshwar Bazar, Hughli; Jotipur, Faizabad; Jainapur, Faizabad; Malipur, Faizabad; Mitejhabad, Agra; Fulkhi, Farrukhabad; Beharapur, Farrukhabad; Alhar, Farrukhabad; Salabuddinpur, Faizabad; Murhamb, Faizabad; Kurniani, Faizabad; Sikanderpur, Farrukhabad; Shiri Nagar, Basti; Kataundh, Basti; Tejeshwar Nath, Basti; Sherusa, Basti; Sikrita, Basti; Tendannaphi, Basti; Niha, Basti; Kakarhi, Basti; Kolhalapur, Basti; Yopava, Basti; Parodia, Basti; Chanderhar, Basti; Githini, Basti; Pakman, Basti;

Deveriyaganj, Basti; Koni, Basti; Nathmar, Basti; Jashor, Basti; Bisrapur, Basti; Mukhilpur, Basti; Dohara, Basti; Gajpur, Basti; Karari, Basti; Ghugali, Gorakhpur; Mahasin, Basti; Mahuli, Basti; Ghorahi, Basti; Pannapur, Gorakhpur; Thusna, Basti; Katka, Basti; Korari, Basti; Delwan, Basti; Aonbi, Basti; Balhi, Basti; Sarhara, Basti; Mirzapur, Azamgarh; Manduri, Azamgarh; Jagdishpur, Basti; Mundekha Bazaar, Basti; Munkauri Kalan, Basti; Maissa, Basti; Mandok, Basti; Seun, Cawnpore; Beranib, Mirzapur; Kamisia, Cawnpore; Sultanpur, Farrukhabad; Bahri, Muzaffarnagar; Basirpur, Farrukhabad; Jumba Hari Ram, Azamgarh; Kuson, Etah; Bashali, Aligarh; Shyamari, Aligarh; Gorakhpur; Govardhan, Muttra; Govardhan, Muttra; Chhorpur, Gazipur; Kundeshar, Gazipur; Lordimpur, Gazipur; Birpur, Gazipur; Sherpur, (Chotta), Gazipur; Shamir, Gazipur; Jamna, Meerut; Mahabastur, Meerut; Baraut, Meerut; Baraut, Meerut; Sampur, Unao; Basia, Mirzapur; Bahiyapur, Farrukhabad; Banpur, Basti; Tirha, Farrukhabad; Tilohi, Gorakhpur; Ram Nagar, (Suras), Gorakhpur; Gur Sahajanji, Farrukhabad; Dhimiapur, Farrukhabad; Nai Basti, Farrukhabad; Palta, Mirzapur; Sarai Miran, Kanauj; Badaun; Sameri, Badaun; Bahraha Badaun; Asadpur, Badaun; Rajapur, Badaun; Karaundikalan, Banda; Tajpur, Farrukhabad; Ranbar Nagar, Farrukhabad; Kusha, Jaunpur; Kushaha, Jaunpur; Ghansyampur, Jaunpur; Basepur, Jaunpur; Kabilan, Jaunpur; Besada, Muzaffarnagar; Bhedevra, Jaunpur, Unapur, Azamgarh; Nausapur, Azamgarh; Tilhar, Shajehnpur; Kurki, Saharanpur; Mandola, Meerut; Jhadina, Meerut; Jasoi, Muzaffarnagar; Januani, Gorakhpur; Duboli, Gorakhpur; Manihari, Gorakhpore; Chera, Gorakhpore; Kishreganj, Gorakhpore; Echanna, Gorakhpore; Kauria, Gorakhpore; Marauvi, Gorakhpore; Santrao, Gorakhpore; Haria, Gorakhpore; Pakra, Farrukhabad; Kucha, Farrukhabad; Nangapura, Farrukhabad; Rasulpur, Farrukhabad; Baniani, Farrukhabad; Tehardhu, Farrukhabad; Bargrub, Farrukhabad; Larpur, Farrukhabad; Gauria, Mirzapur; Tendu, Gorakhpur; Jagier, Cawnpore; Kaithawa, Etawah; Ladaona, Bulundsher; Kandhala, Muzaffarnagar; Sahalpur, Bulundsher; Daraha, Bulundsher; Janglas, Aligarh; Chandauli, Benares; Kulpahar, Hamirpur; Biharghat, Bulundsher; Haridwar, Saharanpur; Sarurpur, Meerut; Gharhmukteshar, Meerut; Khera, Mainpuri; Kot, Muradabad; Ramphi, Benares; Kohara, Aligarh; Shikarpur, Bulundsher; Manduri, Azamgarh; Manduri, Azamgarh; Brindabazar, Azamgarh; Barampur, Azamgarh; Molnapur, Azamgarh; Devrasalpur, Azamgarh; Jandhai, Azamgarh; Jamthuan Harimam, Azamgarh; Golabazar, Gorakhpur; Gopalpur, Pratapgarh; Mianganj, Farrukhabad; Samera, Azamgarh; Sinhi, Azamgarh; Rasama, Azamgarh; Hanumangarh, Azamgarh; Bhupalpur, Azamgarh; Gumarat, Azamgarh; Mohallakot, Azamgarh; Bari Hari, Azamgarh; Dhawari Sarai, Azamgarh; Chandamanpur, Azamgarh; Meha, Azamgarh; Rasulpur, Azamgarh; Matsari, Azamgarh; Manda, Azamgarh; Apesherpur, Gorakhpur; Bhawanpur Kal, Azamgarh; Shiwal, Benares; Benares; Panchgam Ghat, Benares; Chitragahanti Galli, Benares; Yamuna Ghat, Etawah; Keutra, Etawah; Chhaprauli, Meerut; Kacheri, Ghat, Agra; Sahagra, Gorakhpur; Jahuriya, Etawah; Bijwara, Meerut; Rajya Mallapur, Sitapur; Rikhauli, Sultanpur, Sukdevji, Muzaffarnagar; Hussain Ganj, Lucknow; Sunderbagh, Lucknow; Hewet Road, Lucknow; Sakarajya, Mainpuri; Uresar, Mainpuri; Tamkudhi, Girakhpur; Kadulah Sarsar, Azamgarh; Bhedevra, Jaunpur; Bhedwar, Jaunpur; Hardwar, Saharanpur; Ura, Jhansi; Malawan, Hardoi; Ghughli, Gorakhpur; Bajhazar, Nainital; Tumundi, Gorakhpur; Basudevripuri, Mainpuri; Sarsa, Gorakhpur; Surdarparsukal, Gorakhpore; Sarai Dadigi, Allahabad; Gauri Gokeshwar, Almore; Hathras, Aligarh; Bandipur, Faizabad; Aheripur, Etawah; Nisar, Aligarh; Salemganj, Gorakhpur; Mujhundpur, Gorakhpur; Madhonagar, Gorakhpur; Kamiparganj, Gorakhpur; Pachrakheva, Ballia; Dokali, Ballia; Chetia, Basti; Chutihar, Mirzapur; Bidhasher, Unao; Sanfer, Etawah; Umrigungunji, Gorakhpur; Buthapur, Sultanpur; Gamberpur, Gorakhpur; Rambagh, Gorakhpur; Ganeshpur, Gorakhpur; Fazilnagar, Gorakhpur; Pakribash, Gorakhpur; Kohza, Gorakhpur; Kura, Muzaffarnagar; Bahabari, Muzaffarnagar; Muzaffarnagar; Hanumanseroi, Gonda; Amdehipur Atlad, Gonda; Pakriour Duhe, Gonda; Parasuradiva, Gonda; Gonda; Pakriour Duhe, Gonda; Purkha Nand Ram, Gonda; Gonda; Gonda; Karamalganj, Gonda; Dahi, Gonda; Durgapur, Gonda; Khanpur, Gonda; Andehi, Gonda; Bhagohar, Gonda; Bhabadhar, Gonda; Josila, Gonda; Gadauli, Gonda; Dhanauk, Gaunda; Pohila, Gorakhpur; Shahpur, Ballia; Rampur Pautar, Gorakhpur, Tela, Allahabad; Mau, Basti; Palkina, Ballia; Garbia, Bulandsher; Lashimpur, Bulandsher; Channari, Bulandsher; Dargapur, Bulandsher; Bulandpur Kalan, Bulandsher; Ichhawafi, Bulandsher, Khanpur, Bulandsher; Shekhpura, Bulandsher; Gurahali, Bulandsher; Kirtan Bhawan, Muzaffarnagar; Laukh, Muzaffarnagar, Narhi, Ballia; Chachpra, Ballia; Lillia, Farrukhabad; Barahpur Bankhet, Farrukhabad; Hathras, Aligarh; Baudchakra, Gorakhpur; Bulandsher; Bulandsher; Gosariganj, Mirzapur; Ganjarganj, Mirzapur; Sukalija, Mirzapur; Jaghat, Mirzapur; Rampur, Mirzapur; Laldit, Mirzapur; Mahant Kasinal, Mirzapur; Bahada, Mirzapur; Mehroli, Mirzapur; Damsanj, Mirzapur; Tanidhim, Mirzapur; Gajia, Mirzapur; Danjighat, Mirzapur; Purani Bajarja, Mirzapur; Bashi, Mirzapur; Bahara, Mirzapur; Ranubalas, Mirzapur; Saipur, Mirzapur; Madiran, Bharatpur, Mehdan, Bharatpur; Damalganj, Mirzapur; Marwa, Bharatpur; Gojnad, Mirzapur; Gajanad, Mirzapur; Katra, Mirzapur; Ganram, Mirzapur; Ratangaji, Mirzapur; Ramepur, Mirzapur; Chamra, Bharatpur; Gharnak, Bharatpur; Damalganj, Mirzapur; Gopalpur, Mirzapur; Dharnai, Mirzapur; Mirsagali, Mirzapur; Matakamli, Mirzapur; Gharsar, Mirzapur; Sahari, Mirzapur; Dadram, Mirzapur; Buranath, Mirzapur; Chelganj, Mirzapur; Durgadani, Mirzapur; Bhawanipur; Mandir, Benares; Baudham, Mirzapur; Bundelkhand, Mirzapur; Gurhiti, Mirzapur; Bantabad, Mirzapur; Ganeshganj; Mirzapur; Ganghat; Mirzapur; Pasara, Mirzapur; Bariaghat, Mirzapur; Ganghat, Mirzapur; Saketmochan, Mirzapur; Malahitima, Mirzapur; Ramipati, Mirzapur; Fatabi, Mirzapur; Amghat, Mirzapur; Pari, Mirzapur; Jashor, Mirzapur; Rantali, Mirzapur; Khaniria, Mirzapur; Dharsuwar, Mirzapur; Puceaghat, Mirzapur; Tuls, Mirzapur; Sakethaghat, Mirzapur; Faizabad; Faizabad, Jhauri; Nempur, Faizabad; Grambhihpuri, Faizabad; Dinkarpur, Faizabad; Bhujga, Faizabad; Bhilifurapur, Sultanpur; Alihi, Faizabad; Sidhipur, Faizabad; Gaidpur, Faizabad; Bihadpur, Faizabad; Sultanpur, Faizabad; Mandarpur, Faizabad; Tikri, Faizabad; Nautawa, Faizabad; Akhalpur, Faizabad; Umarah, Farrukhabad; Melihu, Faizabad; Jalalpur, Faizabad; Nabal, Shajahanpur; Sakit; (Etah); Jalalpur, Faizabad; Shajahanpur; Atrauli, Aligarh; Glinghli, Gorakhpur; Jaswantnagar, Etawah; Shikhar, Mirzapur; Shiker, Mirzapur; Shikher, Mirzapur; Benares; Rai Bareilly; Bulundshahr; Maholi, Sitapur; Benares Hindu University; Gopalpur, District Gorakhpur; Karahya, Rai Bareilly; Gola Gorakhpur; Baghat, Meerut; Chetia, Basti; Singhi, Kheri; Inqota, Hamirpur; Kapoganj, Azamgarh; Garhmukteshar, Meerut; Pratapgarh; Oudh; Musanagar, Cawnpore; Tundla, Agra; Meerut; Madle House, Lucknow; Khurja, Bulandsher; Kaderganj, Etah; Maghwa, Ballia; Harhapur, Basti; Sipshachandair Pratapgarh; Jadipur, Sultanpur; Mahanpur, Sultanpur; Malaksher, Allahabad; Pokrolli, Sultanpur; Mararipur, Sultanpur; Bhabhhoragan, Sultanpur; Kabirpur, Pratapgarh; Sipshachandair, Pratapgarh; Panua, Sultanpur; Parkhuli, Sultanpur; Chakiya, Sultanpur; Kabirpur, Pratapgarh; Madhavpur, Sultanpur; Dharwali, Sultanpur; Mahjuda, Benares; Sadabda, Sultanpur; Sasrokhard, Azamgarh; Nevada, Azamgarh; Manuja, Azamgarh; Subolingdshpur, Azamgarh; Suholi, Azamgarh; Kusba, Azamgarh; Leharpat, Azamgarh; Chawanta, Azamgarh; Frana, Azamgarh; Pasipur, Azamgarh; Mangalpur, Azamgarh; Bhinehra, Azamgarh; Ranipur, Azamgarh; Mustafabad, Faizabad; Pokariya Faizabad; Misrolia, Azamgarh; Mathbarpur, Faizabad; Murakhpur, Azamgarh; Chaurpogoti, Faizabad; Kahlpur, Faizabad; RatBalepur, Faizabad; Naktaha, Faizabad; Madhupur, Faizabad; Kachipur, Faizabad; Tapna, Faizabad; Diegi, Faizabad; Terhi, Azamgarh; Kashedganj, Azamgarh; Jicima, Azamgarh; Samera, Azamgarh; Ghawanpur, Azamgarh; Khiridila, Azamgarh; Gopalpur, Azamgarh; Benares; Gheri, Mirzapur; Badanath, Mirzapur; Ankaripur, Faizabad; Bantepaunkali, Faizabad; Khera, Faizabad; Chhaprasai, Sultanpur; Kuchomuch, Sultanpur; Kaserta Mirzapur; Gaura, Mirzapur; Jhinjura, Mirzapur; Bisnupur, Mirzapur; Bhinzurah, Mirzapur; Hornagali, Mirzapur; Taldargah, Mirzapur; Dankingani, Mirzapur; Ganeshgani, Mirzapur; Mohanagar, Mirzapur; Dharmar, Mirzapur; Lohiabhad, Mirzapur; Raipur Pokhata, Mirzapur; Hasan-ganj, Mirzapur; Balkhristapur, Mirzapur; Chanderaria, Mirzapur; Benares; Chachikpur, Faizabad; Medapur,

Meerut Canttment; Shekhpur, District Bulandsher; Hoshdarpur Garhi, District Meerut; Amberha, District Meerut; Doloha, District Meerut; Moodi Nagar, District Meerut; Begamabad, District Meerut; Seekrikalan, District Meerut; Bādhana, District Meerut; Post Katana, District Meerut; Village Dabthiria, District Meerut; Baraut, District Meerut; Kotam, District Meerut; Ghandi Pathshala, Hapur, Meerut; Mudafra, District Meerut; Sahri, District Meerut; Tatarpur, District Meerut; Khanpur, District Meerut; Mulhera, District Meerut; Khorkhim, District Meerut; Bhatiyana, District Meerut; Giridharpur, District Meerut; Achheja, District Meerut; Bhadsona, District Meerut; Lohari, District Meerut; Mohamudpur, District Meerut; Meerut; (Gali Tatanay); Moti Bhatwas, Meerut; Biru Well, Meerut; Raghumathpur, District Meerut; Faganta, District Meerut; Shympur, Hapur, District Meerut; Ghanshympur, Hapur; District Meerut; Pansa P. Nivari, District Meerut.

Opinions against the Bill.

I am opposed to the attempt of the Government to radically modify the age-long customs and traditions of the Hindus in the name of codification of Hindu Law and urge upon the Government that the Rao Committee be done away with and the Hindu Intestate Succession Bill and the Hindu Marriage Bill now pending before the Central Legislative Assembly be dropped.

For these reasons, among others, I pray that the bill be not passed into Law.

ANNEXURE B.

Arya Samajas' (161) of:—

Arya Samaj (101) of:—
Lalkurti Bazar, Meerut Cantt.; Bahasum, Meerut;
Kalandi, Meerut; Gazabad, District Meerut; Meeru:
City; Utrale, Dist. Goa; Bahranpur; Bareilly; Sahas-
man, Dist. Badoun; Khakara, Dist. Meerut, Terajaket;
Garwar; Ballia; Barmukhpur, Faizabad; Bulandshehr;
Mainpuri, Dist. Karbal; Fatehpur, Dist. Atrauli; Bjnor;
Farrukhabad; Gorakhpur; Mahabirganj, Lucknow; Sam-
bhal, Dist. Moradabad; Budhansi, Aligarh; Sikhar, Dist.
Mirzapur; Hansipur, Dist. Mirzapur; Dist. Moradabad;
Moth, Jhansi; Hathras; Alalpur, Chitor, Dist. Mainpuri;
Jhansi; Jaipur; Saidabad; Lucknow; Turipur; Tulsipur;
Mawana, Dist.; Meerut; Khatauli, Dist. Muzaffarnagar;
Mawana, Dist. Meerut; Bazir Gat Got; Chandausi;
Aliganj, Bareilly; Dist. Meerut; Dist. Muzaffarnagar;
Purni Mandi, Saharanpur; Haldeo; Malroni; Pardi
Gud; Askaripur; Bjnor; Cawnpore; Gorakhpur; Ballia;
Bedapuri; Cawnpore; Rampur (State); Fatehgarh; Bhat-
pur Ram; Naini Tal; Ghazipur; Bishmeer; Azimabad;
Rampur; Bareilly; Pilibhit; Ramgarh; Sultanpur; Faiz-
abad; Ghazipur; Ghazipur; Jaunpur; Jaunpur; Basti;
Chowk, Lucknow; Benares Hindu University; Dhampur;
Farrukhabad; Moradabad; Anandabad; Moradabad;
Moradabad; Moradabad; Moradabad; Moradabad;
Moradabad; Agra Cantt.; Badoun; Badoun; Badoun; Kturiya;
Chandausi; Kanungaj; Shahabad, Hardoi, Dist. Muzaffar-
nagar; Etawah; Orai; Orai; Sitapur, Dist. Gorakhpur;
Gorakhpur; Muzaffarnagar; Dist. Bahraich; Nawabganj;
Gonda; Managpur, Dist. Gonda; Dist. Bjnor; Bjnor;
Bjnor; Mirzapur; Muzaffarnagar; Muzaffarnagar;
Dist., Barabanki; Mainpuri; Mainpuri; Mainpuri;
Dehra Dun; Dehra Dun; Azamgarh; Azamgarh; Garh-
mukteshwar; Mendu, Aligarh; Aligarh; Aligarh; Aligarh;
Dist. Aligarh; Sibdol parhar; Bulandshehr; Bulandshehr;
Bulandshehr; Bulandshehr; Bulandshehr; Bulandshehr;
Bulandshehr; Bulandshehr; Bulandshehr; Allahabad;
Etawah; Kalwari Basti; Ballia, Dist. Bareilly; Ba-

Bareilly; Lalgaon, Rae Bareilly; Baduon; Banda; Jwalpur; Saharanpur; Shahjehanpur; Shahjehanpur; Saharanpur; Saharanpur; Chikaur, Saharanpur; Gangoh, Saharanpur; Chilkana, Saharanpur; Chilkana, Saharanpur; Jalabad; Shahjehanpur; Shahjehanpur; Etah; Dist. Etah; Sultanpur; Sadar Bazar, Meerut; Gorakhpur; Gonda; Lucknow;

Various Associations (14):—

Sri Arya Samaj, Gaziabad; Meerut Kendra Vidwat Samiti Hapur, Dist. Meerut; S. D. Mahabir Dal, Meerut Cantt.; Shri Sanatan Dharama Aushadhalaya, Meerut City; Meerut Bar Association, Meerut; Sri Hari Nam Bankian Mandal, Meerut; Civil Bar Association, Muzaffarnagar; U. P. Zamindar Association, Muzaffarnagar; Arya Uvak Sabha, Baduon; Arya Up-Pratinidhi Sabha, Allahabad; Arya Pratinidhi Sabha, Ballia; Arya Ula Up-Sabha, Sikohabad, Mainpuri; District Arya Up-Pratinidhi Sabha, Gorakhpur;

Individuals (97):—

Attar Singh, Navada, Meerut; Pura Chand, Dharam Shala Compound, Gaziabad; Meerut; R. C. Mithal, Durga Bhawan; Meerut Cantt.; Sagar Mal, S. D. High School, Gaziabad; Raghunandan Lal, Advocate, Gaziabad; Shri Ram Sharma; S. S. D. High School; Hari Mohan, B. I. Street, Meerut; S. S. Mithal, Advocate, Kabari Bazaar, Meerut Cantt.; Bharam Prakash Agrewal, Education Superintendent, Municipal Board, Ghaziabad, Meerut; Madan Gopal Singhal, Editor Adesh and Vaish Hithkari, Meerut Cantt.; Lakshman Swarup, Triplani, Municipal Commissioner, Dal Mandi, Meerut Cantt.; Amar Nath, Banker, Meerut Cantt.; Shakti Prasad, Municipal Commissioner, Meerut City; Kundan Lal, Pleader, Meerut Cantt.; Dr. Krishna Gopal Mithal, Meerut; Dayaprakash Mithal, Proprietor Hindustani Pharmacy, Meerut City; Nathu Ram, Ex-Hon. Magistrate, Meerut City; Shanti Prakash, 96, Topiwara, Meerut City; Ramji Lal, No. 171, Banker's Street, Meerut Cantt.; Kunwar B. Lal, Minto Road, Meerut; Candra Dutta B. Vyas, Budhana Gate, Meerut City; Ramchandra, Assistant Engineer, Tube Wells, Meerut; Om Prakash Gupta, Meerut; Anandi Sahai, Government Pensioner, 1109, Bhatwara Street, Meerut; N. N. Chaturvedi, Western Kutchery Road, Meerut; Dr. Vidya Nath, Meerut; Shyam Sunder Lal, Rais and Landard, Meerut City; Kanhya Lal, 190, Bhatwara, Meerut; Nutan Lal Gopal, Lalkurti Bazar, Meerut Cantt.; Mangat Singh Sharma, Advocate, Meerut; Indra Vati Gupta, Headmistress, Kanya Vedic Vidyalaya, Ghaziabad, Meerut; Hem Chandra, Mechanical and Electrical Engineer, 18, Qanungoyan Street, Meerut City; Dr. Jahabir Prasad Jain, Dental Surgeon, Meerut; Dr. M. C. Arori, Meerut; Mahesh Prasad Bhatnagar, Lalkurti Bazar, Meerut Cantt.; Chotey Lal Pandey, Principal Heshwar Sanskrit College, Meerut Cantt.; Ramchandra Bhastri, Government High School, Hapur, Meerut; Shyam Sunder Bajpai, Bajpai Aushadhalaya Meerut; Akshmi Chand Yadava, Pleader, Meerut; Kali Das Vadho, Gaziabad, Meerut; Mool Chand, Gaziabad, Meerut; Sinha Prasad, Hony. Magistrate, Meerut; Jagdish Chandra Goel, Gaziabad, Meerut; Krishan Lal, 16d, Overseer, Gaziabad, Meerut; Janardhan, Gaziabad, Meerut; Abhi Narayan, Vaidraj, Gaziabad, Meerut; Bhagwat Sarup Goel, Bhishgacharya Dhanwantry, Gaziabad, Meerut; Nahur Singh Jain, 217-18, Bankers Street, Meerut Cantt.; Jawahar Lal, Westend Road, Meerut; Ramji Lal, Hony. Asst. Collector, Gaziabad; Ant Ram, Zamindar, Village Nasirpur, Gaziabad, Meerut; Mohan Lal Swami, Meerut; Harbans Singh Akil, Meerut; Harish Chandra Vidyarthi, Meerut City; Ikam Singh, Vakill, Meerut; Vijay Pal Singh, Pleader, Meerut; T. R. Rana, Vakill, Meerut City; Lakshmi Banker, Eye Specialist, Meerut; Brijnath Mittal, Advocate, Meerut; Pattan Lal, Vakill, Meerut; Shanti Srayan, Advocate, Meerut; Raj Narain Saksena, Meerut Cantt.; Hari Swarup Shastri, Teacher, Jain High School, Sardhana, Meerut; Mawana Kalan, Dist., Meerut, (with 118 signatures); Bishambar Sahai Dikshit, andhi Nagar, Meerut; Nem Singh Sharma, Bulandshahr; Jagat Prasad Agarwal, Vakill, Muzaffarnagar; Am Chandra Singh, Vakill, Muzaffarnagar; Kundan Lal Agarwal, Pleader, Muzaffarnagar; Gulab Chand Gupta,

Pipraich; Surya Prasad Sinha, Pipraich, Gorakhpur; R. N. Jupta, Hony. Magistrate, Khurja; Mohan Murari, Lala Ka Bazar, Meerut; Mool Chand Gupta, Pleader, Meerut; Prakash Chandra Gaur, Government High School, Saharanpur; Bhai Singh, Honorary Magistrate, Khurja;

Opinions against the Bill.

The following identical opinion against the Bill has been received from the twenty persons from different districts of the United Provinces whose names are given below:—

Pt. Kali Prasad Missar, Oriental College, Benares; S. Akilanand Ji, Bulandshahr; Sri Nityanand Ji Kavishwar, Cawnpore; Godavri Bai, Central Hindu Girls School, Benares; Mahant Mangalpuri, Benares; Pt. Gopi Nath Kaviraja, Retd., Principal, Government Sanskrit College, Benares; Radha Krishna Gupta, Cawnpore; Chirka Swami Shastri, Hindu University, Benares; Pt. Sabhapati, Principal, Birla, Sanskrit College, Benares; P. Banerji, Central Hindu School, Benares; Nand Kishore, Unao; Sri Raghav-Acharya, Bareilly; G. S. Misra, Librarian, Benares Hindu University; Raja Durga Narayan Singh, M.L.A., Tirwa Raj; Sethi Gopri Shankar Goenka, Benares; Prof. J. S. Jainik, Benares Hindu University; Thakur Prasad Sharma, Executive Officer, Municipal Board, Benares; Shrimati Rani Sahiba, Tamkahi Raj, Dist. Gorakhpur; Raja Indrapet, C.I.E., Tamkahi Raj, Dist. Gorakhpur.

In my humble view as neither the Govt. of India, nor any of the Provincial Govts. does possess or has at any time possessed any right to legislate upon matters relating to the private laws of the Hindus; (a) the present policy of the Govt. 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 unstatesman like; (b) the action of the Govt. of India in constituting the Hindu Law Committee for the preparation and drafting of the 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 letter of the Dharmashastra and are detrimental to the Hindu culture and civilisation.

I have the honour to request you to communicate to the Government of India, my above opinion on these Bills (though my opinion on the Law of marriage Bill might be held as premature) and to recommend to the same for their rejection.

Protests against the Bill

The following identical protest has been signed by one like four thousand, two hundred and eighty four (1,04,284), persons belonging to the various districts of the United Provinces.

We, the undersigned pray to the Central Government that they should not interfere in any manner in our religious and social life. The Hindu Law Committee which has been constituted for codifying Hindu Law be abolished and the Hindu Code Part I (Intestate Succession) Bill and Hindu Code, Part II (Marriage) Bill be withdrawn.

NO. 11. BOMBAY

Government of Bombay

I am to state that the Government of Bombay, refrains from commenting on the proposed Bill. The question is mainly for the members of the Hindu Community to decide.

2. The Bill as reported by the Joint Committee was published in the *Bombay Government Gazette*, in English on 3rd February, 1944, in Kannada, on 20th April 1944, and in Marathi on 11th May 1944.

3. The Gujarati translation of the Hindu Code, Part I (Intestate Succession) Bill has been published in the *Bombay Government Gazette*, Part IX, dated the 22nd June 1944.

The Commissioner, Northern Division.

I have consulted the District Magistrates of Thana and Surat and offer my remarks on the Bill. The proposed Bill reflects the progress of social opinion amongst the advanced classes in the Hindu community. The orthodox section of the community may be against it but to the general public it will probably be accepted as it furthers social justice.

2. I do not agree with the view of the Collector of Thana that apostasy should be a disqualification for inheritance. Abandonment of religion and conversion to another religion should not in my opinion be made a ground for disqualification from succession.

Commissioner, Southern Division

The Bill seeks to codify Hindu Law by giving legal effect to the following three principles:—

- (1) Provision of a uniform law of inheritance all over India, by the abolition of the several systems of successions obtaining at present under the Hindu Law.
- (2) Removal of disqualification of women and placing them on the same footing as males in the matter of inheriting property, and
- (3) Abolition of (what is commonly known as limited estate or widow's estate) Hindu women's limited estate and the conferring of absolute dominion over property inherited by them.

The main object of the Bill is to provide a common law of succession for the whole of British India. But the proposed provision altogether leaves out of consideration the following schools of Hindu Law, viz., the Bombay School, the South Indian Hindu Law, the Hindu Law prevailing in the Hindu States etc. It applies only to non-agricultural lands which are within the jurisdiction of the Central Legislature and leaves the question of agricultural lands which by far constitute the bulk of the heritable property in the country to provincial legislatures: there will thus be a lack of conformity between the two sets of legal provisions applicable to non-agricultural and agricultural lands. Further, the Bill excludes from its purview other co-related branches of the law such as the law of maintenance, marriages, partition, reunion, adoption etc., for being dealt with later on. Consequently the proposed enactment would be piecemeal effort to deal with a big problem and even, if passed into law, would have to be amended as and when other co-related branches are taken up for codification.

I feel that too much is being made now as regards the disabilities of women in respect of succession. What is far more important is a codification and modernization of the law regulating family relations viz., marriages, divorce, separation and maintenance allowances. A comprehensive Hindu Code is what is needed, and it will, of course, suitably provide for the rights of a widow in relation to the property of her husband and her father. An earnest effort should therefore be made to bring out, as early as possible a comprehensive (draft) Hindu Code. The present attempt to deal with only one small topic, piecemeal, seems to me particularly inopportune and is calculated to make the present position still more complicated.

Bombay Advocates Association

My Association has carefully considered the provisions of the above Bill and my Association finds that the bill as amended by the Joint Committee is no doubt a distinct improvement on the Bill as originally drafted. My Association however feels that there are one or two clauses of the Bill which should be amended and to that end my Association begs to offer the following suggestions:—

My Association thinks that the Legislature that makes any law for a people ought to state definitely to which class or classes of that people the said law shall apply. It ought not to be left to the people to find out to whom that law shall apply. My Association would therefore like to amend Section 1, Clause 3 of the Bill in the following manner:—

(3) It shall apply to—

(a) any person who professes the Hindu religion;

- (b) in the absence of any custom to the contrary, any dissenter from the Hindu religion, such as a Sikh, a Jain, a Brahmo Samajist, an Arya Samajist etc., etc.;
- (c) An illegitimate child born of parents both of whom are Hindus or of whom at least the mother is a Hindu and the child has been brought up as a Hindu;
- (d) Any person who is converted or reconverted to the Hindu religion;

*Explanation:—*A Hindu minor shall be taken to follow the religion of his father till he attains majority. But it shall not apply:—

(i) to agricultural land except in the Chief Commissioners' Provinces; or

(ii) to any estate which descends to a single heir by a customary or other rule of succession or by the terms of any grant or enactment.

By section 12 of the Bill the right of absolute property of a Hindu woman over her Stridhan howsoever acquired is recognised so much so that she is allowed to dispose of the same by transfer *inter vivos* or by will during her life time. That being the case, my Association does not see any reason why preference should be given to the husband's heirs over her own heirs if a woman dies intestate in respect of property obtained by her by inheritance from her husband or from any ancestor of the husband. My Association thinks that such a preference in favour of the husband's heirs is inconsistent with the right of absolute property of a woman over all kinds of Stridhan as recognised by Section 12 of the Bill. My Association would therefore like to suggest that Section 13 of the Bill should be amended in the following manner:—

The first para. of Section 13 should read as follows:—

13. *Order of Succession to Stridhan.*—The Stridhan of a woman dying intestate, in so far as it consists of heritable property, shall devolve upon the following relatives of the intestate in the order mentioned, namely:—

- (1) son and daughter;
- (2) daughter's son and daughter's daughter;
- (3) son's son and son's daughter;
- (4) husband;
- (5) mother;
- (6) father;
- (7) husband's heirs in the same order etc., etc.;
- (8) mother's heirs in the same order etc., etc.;
- (9) father's heirs in the same order etc., etc.;

Clause (a), Explanation and Clause (b) of the said section should be deleted and Clause (c) should be re-numbered as clause (b).

Bombay Incorporated Law Society

I have the honour to inform you that my Committee have considered the Bill and I am desired to inform you that the Committee are in favour of the amended Bill and are in entire agreement with the opinion and suggestion expressed in the minute signed by Messrs H. N. Kunzru, P. N. Sapru & S. N. Mahtha, published at page 27 of the Government of India Publication of the report of the Joint Committee.

My Committee submit that the recommendation and suggestion contained in the said minute be adopted.

Advocate General Bombay.

My views are the same as those embodied in the report of the Bombay Bar Association of which I am the President and in the deliberations of which I took part.

The Registrar, His Majesty's High Court of Judicature (Appellate Side), Bombay

I am directed by the Honourable the Chief Justice and Judges to say that as this is a matter of social legislation Their Lordships do not desire to express any opinion on the provisions of the Bill.

The replies of the District Judges consulted in the matter are attached hereto.

Remembrancer of Legal Affairs, Bombay Castel.

have no remarks to offer.

District Judge, Ahmednagar

I have the honour to state that after consulting the Bar Association and the Subordinate Judges in the district I am of the opinion that no changes are required in the Bill as it has come out from the Joint Committee to which it had been referred. The main principles of the Bill as mentioned in the note of Messrs. P. N. Sapru, H. N. Kunzru, Mrs. Renuka Ray, Messrs. S. N. Mahtha, G. B. Nairang and H. Imam are (1) that there should be a uniform code of succession for all Hindus in British India, (2) the removal of the sex-disqualification for inheritance, and (3) the abolition of the limited estate for women. The Bill proceeds to achieve these objects admirably though on a basis of compromise. It is arguable for example that the daughter should have the same share in her father's estate as the son. But it is impossible to expect a reform of that kind to come at once, and what she gets under the present Bill will be a convenient half-way house towards ultimate progress. Among the opinions which I have received there have been some proposing minor modifications e.g., that the daughter should get 1/4th the share of the son or that where the deceased person dies leaving more than one widow there should be some limitation upon the total portion of the deceased's estate which is to go to the widows between them, because otherwise if there are a large number of widows the son will get a very insignificant fraction of the estate of his deceased father.

2. These are all however minor suggestions, and logically it is impossible to justify the grant of any particular fraction 1/2, 1/3rd or 1/4th, of the share of the son to the daughter. The question is therefore essentially one of compromise, and as in my opinion the daughter should get exactly the same share as the son the present can be accepted as a half-way house. With regard to the question as to what would happen to the share of son when there is a number of widows, I do not think in the first instance that a Bill of Intestate Succession can provide for all sorts of abnormal cases. Then again if a person does marry a number of wives, it may not be the fault of some of the wives that he does so; and it is after all permissible for him, if he wishes his son to have a greater share in the estate than what he will get under the Bill, to make a will leaving the son such a greater share.

3. There has been some opposition to the Bill on the ground that these are abnormal times and the Hindu community have not had sufficient opportunity or the peace of mind necessary to express their opinion upon the Bill. That has been particularly the view of the Bar Association whom I consulted in this matter. But in my opinion there is no further necessity of circulation or consideration. The question has been before the country for quite a long time. And even if these are war times and some leaders of the Hindu community are in jail, others are out and it is impossible to accept the position that the Hindu community have not had the peace of mind necessary for considering the question of this kind. In my opinion the real position is that like all reforms the Hindu community have chosen to allow this particular reform to be the responsibility of the reformers, and I have no doubt that how-so-many years are allowed to them to consider the subject they will continue to leave the subject to the reformers thereafter. It can hardly be contended that we should wait until they cease to do so.

District Judge, West Khandesh, Dhulia

It seems to me desirable to have in the first instance an exhaustive Model Hindu Code covering all the branches of Hindu Law. I am of opinion that after a complete model code is drafted it will be possible to know on what points and to what extent the new legislation changes the existing law. If necessary for this purpose as a preliminary measure to preparing the Model Code, an attempt to codify the law as it now stands may also be made. Without furnishing the necessary material to know and understand the full implications of the changes proposed to be enacted, it will be unwise and even dangerous to expect the Hindu public to express any considered or intelligent or useful

views on such complicated questions of law. In my opinion even after a model code is drafted and approved by the legislature, it should not be made operative immediately and wholesale throughout India or in respect of all Hindus wherever they may be. In order to allow for local opinion and variation each important geographical or administrative unit may be allowed option to adopt and bring into force the model Hindu Code either wholesale or piecemeal and with or without modifications to suit local customs or conditions etc. It will be wasteful and even unsafe to rush through any legislation of this kind without giving ample time and opportunity for Hindu public opinion to be roused and peacefully settled by discussion and general agreement. In view of what I have stated above I am of opinion that at this stage it would not be of much use to formulate any definite views regarding the suitability or otherwise of each of the detailed provisions of this Bill which deals with only one section of the Hindu Law. However, I may also add that before enacting or at least before bringing into force any such legislation it is necessary in the interests of all concerned, that the party affected *vis.*, the Hindu Community in general should be allowed and even made to express its definite approval of the material changes in law that are being proposed. In this view of the matter what should count most is public opinion and not the views of individuals however learned they may be unless the views of such individuals are typical and embody the views of large or important sections of the Hindu public which will be affected by the new legislation. I am afraid that personally I am at present not in a position to hold or ascertain any typical views on the provisions of this Bill.

District Court, Poona

I am in general agreement with the provisions of the Bill such as it has emerged from the Select Committee. I think, speaking generally, the Bill is a step in the right direction and the Select Committee has done what may be called the best of a bad job. I think Hindu Society must "get on" and I welcome the Bill as a genuine effort to pull it out from the quagmire of age-old orthodox rules and conventions. I think it will be impossible to obtain uniformity amongst Hindus on any question connected with Hindu Law. Nor is it wise or practical to wait for uniformity, and I think the Select Committee which consists of members of different shades of opinion (among whom it is significant three are non-Hindus), has evolved a Bill which may be said to reconcile, as far as is humanly possible, all differences.

I enclose copies of reports received from two Judges in the District who have considered the proposals in some detail. The Extra Assistant Judge (Mr. Vaze) thinks we must wait (for a dozen years), and that the present Hindu Law which has governed Hindus for centuries, is good enough for another twelve years; he also thinks there is no sanction behind the reforms suggested in the Bill as most of the Hindu legislators are in jail. I can only hope that arguments such as these will not weigh with the Legislature. I think Hindus have waited long enough and if they do not bestir themselves they are likely to become an anachronism in civilisation. I think piecemeal legislation is better than no legislation and the day will never dawn when there will be "uniformity" on this subject. I think there certainly is public sanction behind the proposals made by the Select Committee and the vast majority of those members of the defunct legislatures who are not free to speak their minds, are not known for their enthusiasm to reform Hindu Law. I would however suggest that there should be no objection to circulating the Bill even to them and elicit their views.

The other view on the Bill, *viz.*, that of Mr. Khade (Subordinate Judge, Khed), proceeds on the theory that what has been in existence for centuries should be allowed to hold away indefinitely. I do not agree with this view. What Hindu Law badly needs is a severe shake-up and the sooner piecemeal reforms, if not whole-sale reform, are effected, the better.

I think the proposals of the Select Committee are generally in keeping with modern Hindu opinion and should be accepted.

Sub-Judge, Khed

I have the honour to report that it appears from the provisions of the proposed Act that it seeks to recognise the right of women as a class to inherit and give them absolute ownership over the property acquired by them either by inheritance or by partition. In this the Act makes a wider departure from the Hindu Law that is in force for hundreds of years and there is no justifiable reason for this departure.

2. The right of women to possess and inherit the family property would necessarily depend upon the organisation of the family to which they belonged. Among polyandrous tribes of the promiscuous or Nair type, the head and visible centre of the family was not the father, who was unknown, nor the wife, who had not begun to exist, but the mother. The home was the home of the woman and the children. Exactly the reverse took place in the ordinary undivided family of the Aryan type. The whole property vested in the males and was managed by the head of the family for the time being. The women were merely dependents upon their husbands and fathers. So long as there were males in the family, no woman could possibly set up a claim to inherit. The early texts represented women as absolutely without independent rights. (Manu VIII 416; Baudhayana, II 2.27). Baudhayana expressly states on the authority of a text of the Vedas that women have no right to inherit. The text on which Baudhayana relies may be interpreted as to give no support to his assertion; but, of course, this does not detract from the weight to be given to his statement as evidence of the then prevailing usage. The usages that were prevailing during the times of Baudhayana and Vashitha did not recognise the right of women to inherit or their capacity to hold property.

3. The same causes, which led to the break up of the family union, introduced women to the possession of the family property. When partition took place, the fund out of which the women had been maintained would be split up into fragments. The natural course would be, either to give an extra share to any member of the family who would make himself responsible for their support, or to allot to them shares out of which they could maintain themselves. Similarly, upon the death without issue of a male owner who was the last survivor of the coparcenary, or who had been separated from the other members, or whose property had been self-acquired, it would be more natural that his property would remain in the possession of the women of his family for their support, than that they should be handed over with the property to distant members of the family, who might be utter strangers. In this way their right as heirs, properly so called and not merely sharers, arose. But that right would not extend beyond the reason for it viz., their claim to a personal maintenance. In early Smritis daughter, mother, widow, and sister were not mentioned as heirs. They were mentioned as heirs in later Smritis. But the right to inherit was allowed to them in lieu of maintenance. It is only in the Bombay School of Hindu Law that a daughter and a sister are allowed to take an absolute estate in the property inherited from her father and brother respectively. But this was in virtue of custom prevailing in this Presidency for hundred of years. The other females such as widow and mother are given only limited interest in the property that they take on partition or by inheritance. The wide departure that the Act seeks to make in giving all females an absolute estate in the property that they would inherit is opposed to the principles of Hindu Law and not sanctioned by texts. The law that obtains at present is in force for several centuries and on the principle of stare decisis it should be allowed to remain undisturbed especially when the change that is proposed to be made is not sanctioned, at any rate, by early texts.

4. The practice of offerings to the dead was connected with that Ancestor worship, which was common to all the leading Aryan races. Those offerings would necessarily be made by the direct male descendants of the deceased in the order of their nearness. The devolution of the property would naturally be exactly in the same line, partly because the whole organization of the family would be broken up if its property were allowed to pass through females to persons of a different family or tribe; and partly because the direct males had a double claim, as being not only the descendants, but the worshippers of the deceased. It

appears, therefore, improper that widow, daughter and widow of a predeceased son would be simultaneous heirs along with son or son of a predeceased son, as proposed in Sec. 5 of the Act.

5. If the property of a Hindu dying intestate is allowed to be inherited by simultaneous heirs as mentioned in entry 1 of Class I in Section 5 of the Act, then there is the evil of the fragmentation of the properties. The preamble of the Act says that the Act shall not apply to an agricultural land except in the Chief Commissioners' Provinces. It is evident from this that it will apply to all the immoveable property except agricultural lands. Barring agricultural lands immoveable property generally consists of house property. Many of the houses in cities are just sufficient for the accommodation of the owner's family. The same is the case with regard to practically all the houses in villages. The effect of allowing distribution of inheritance among simultaneous heirs will be that the houses will be divided into small shares and no one heir will be able to use his share for residence. Many times this matter of distribution will give rise to a considerable amount of litigation. So the provisions of the Act instead of causing any benefit or convenience would work a great mischief.

6. If simultaneous heirs are permitted to inherit as proposed in Sec. 5 of the Act and if the female heirs mentioned therein are given absolute estate, then the property that the female heirs will take will be lost to the family. People in India are proverbially poor and an overwhelming majority of families own very small property. These properties will be divided into parcels if this principle of distribution of inheritance among simultaneous heirs is followed and there will be nothing but abject poverty prevailing in India. So in the state of society as it obtains in India the proposed Legislation is not beneficial.

7. Section 7 of the Act says that intestate's widow shall take one share, each of his daughters shall take a half share, and the widow of a predeceased son, if she has no son or son's son surviving shall take half the share which her husband would have taken if he had been alive at the time of his father's death. The intestate's widow would get a half share in her father's family. The intestate's daughter would get a share equal to that of her son in her husband's family and the widow of the intestate's predeceased son would also get a half share in her father's family. Each of them will thus get a larger share than a son or a great grandson or a great great grandson would get. It is opposed to the spirit and all canons of Hindu Law that female members of a family who were originally considered as having no independent rights and having no capacity to hold property or to become heirs and who were in course of time introduced to inheritance of property only in lieu of maintenance, should in the result take a larger share than male members of a family.

8. There is another objection to the Bill passing into Law. A right-minded Hindu who bears affection to his daughters will make a provision for his daughters and will give a part of his property to them. He will make an adequate provision for the maintenance of his wife. Apart from it, under the present Law a widow possesses a right to get maintenance out of her husband's estate and a right of residence in her husband's house. She can enforce these rights in a Court of Law if they are denied to her. The Act does not deprive a Hindu from making testamentary disposition of his property. So if one means to defeat the rights of his mother, daughter, and wife he can make a will of his property in favour of his son and defeat the provisions of Law. So it is better to rely upon the good sense of an individual than to pass law which he would be actuated to defeat.

9. So in the state of circumstances as they obtain I do not think that the Act will do any good. On the other hand it will work mischief, cause inconvenience and will give rise to an amount of litigation. It will badly tell upon the peace and harmonious relations of the member of families.

Extra Assistant Judge, Poona

1. The Bill seeks to give legal effect to three principles
(i) Abolition of the several systems of succession obtain under different schools of Hindu Law and provision for common law of Intestate Succession for all Hindus

British India. (2) Removal of sex disqualification by which Hindu women in general have hitherto been precluded from inheriting property from various parts of India. (3) Abolition of women's limited estate and giving absolute rights of property to women over all inherited estate.

2. The great jurist Mayne expressed the opinion "It is difficult to expect a Code of Hindu Law which will satisfy the Punjabi, the Bengalee, the Pundits of Benares, Rameshwaram, of Amritsar and Poona. But a Code can be imagined which will produce much more dissatisfaction and expense than the law as at present administered". One of the minutes of dissent has expressed the opinion that this will be the result of the present Bill.

3. The foundation of Hindu Law as at present administered consists of the Smritis and the various commentaries modified only partially by judicial interpretation and in some places by Acts of legislature. The present Bill however makes a radical effort to change the very foundation.

4. I do not dispute that time has come when a bold step ought to be taken if that is necessary. But it cannot be gainsaid that such an effort ought to be made by Government which is responsible. That day is not far distant and therefore the criticism which says that the new Code should be deferred by a few years, ought to be respected. It is not that every good enactment is popular. But what is necessary is that there should be sanction behind every social enactment.

5. The present Bill is circulated for public opinion. But the leaders of Hindu public opinion who are the elected representatives of the Central Legislature are in a majority of cases unable to express their views. Therefore it is more than clear that the present effort will be always regarded as hurried-through without popular approval.

6. There is at present a great constitutional defect namely that the present Central Legislature is incompetent to legislate in matters of Succession where agricultural lands are concerned. Therefore the present Bill has excluded from its operation agricultural lands. In a country like India it is difficult to make a useful enactment in matters of Succession which does not apply to agricultural lands. Supplementary legislation will be necessary if the Central enactment is to be enforced. In many provinces, the Provincial Legislatures are not functioning and no one will desire that the supplementary legislation should be brought into effect by Governments as at present functioning.

7. Another feature of the Bill is that it tries to compromise the various systems of Hindu Law which are at present prevalent in India. While doing so, it has hit hard Dayabhag System of Hindu Law. The present Bill has excluded from its operation property received by a Hindu in a joint family. Naturally a criticism is forthcoming because of this distinction.

8. A third feature which can be prominently noticed is that the codification of Hindu Law is being undertaken piecemeal. Law regarding Intestate Succession may be an important part of Hindu Code, but it is not proper to legislate on one part of Hindu Law without even deciding the principles applicable to any other parts of Hindu Law. For instance, one is not aware as to how the Code is going to be in matters of marriage or adoption. Until that is done, it is impossible to adequately legislate in matters of Succession. It would be obviously better to have the whole Code at the same time. After all, Hindu Society is being governed by the present Hindu Law for centuries. Therefore a delay of about a dozen years cannot be regarded as long. A new legislation, if it is to be popular, should not be enacted under the present conditions.

9. It appears that "Rao Committee" was appointed just to suggest amendments in the legislation introduced in 1937 and 1938 in order to improve the rights of women to property. There was that limited object when the committee was set up but during their investigation the Committee's scope was enlarged to cover a wider field. It was a very good thing that the committee devoted its labours over the greater field but the point of criticism is that if that was the initial object, the committee would probably not have been set up under the present circumstances.

10. It appears from the detailed provisions of the Bill that certain ideas have been incorporated from the other systems of inheritance. It is very doubtful whether it is a

very wise course to follow. I refer to fractional shares given to certain heirs. The idea of giving fractional shares prevalent in other systems of inheritance was probably a compromise in those systems in olden times. It is not too late to adopt those ideas and introduce them into Hindu system of inheritances and that will satisfy nobody and the object of the reform will be frustrated.

11. If female heirs are to be given shares in inheritance they ought to be given equal rights. It would not be much wrong if the female heirs are limited in number but whichever female heirs are given rights of inheritance, they ought to be given rights equal to those of corresponding male heirs.

12. I do not think that any useful purpose will be served by offering remarks on details of every provision. There will be probably as many opinions as there are individuals. So I will content myself by referring to only a few provisions:—

(A) I do not think that parents should be brought in Class I along with widow, son and daughter. Their present place is remote and there is no reason why they should be brought nearer. At any rate I do not agree that their succession should be conditional on their being dependent on the son. If nearer succession is to be given at all, it should be unconditional. Otherwise there will be unnecessary litigation as there will be always a dispute as to whether the condition is fulfilled.

(B) Section 17 shows the defect of legislating in matters of inheritance before the principles regarding law of marriage are established. This section will have to be recast if the principles of marriage which are to be hereafter decided are not in consonance with the ideas in this Section.

(C) The disqualification of widow who was unchaste during her husband's life-time is provided for in Section 18. I do not think that it is necessary to have this provision. The provision postulates a legal proceeding between the husband and the wife during their life-time and provides for exclusion of the widow from inheritance if the husband dies intestate. I do not see why the legislature should go out of its way to disqualify the widow, if in spite of a legal proceeding between him and the wife because of wife's unchastity the husband does not choose to disinherit her and dies intestate. This provision is a half hearted effort to show that the old idea of Hindu Law is kept intact although it is widely different from the original.

(D) While defining "Son" a reference is made to the three kinds of adoptions (Dattak, Dvya Munshyayna and Kritrima). I doubt whether the new Law of Adoption will recognize all these types of adoptions.

13. To sum up:—

(a) I entirely agree that a liberal system of inheritance ought to be introduced as early as possible so as to provide for increased rights to women.

(b) But codification of Hindu Law ought to be founded on popular sanction.

(c) Any legislation without that sanction will defeat the object of the measure although that measure on merits may not be so very bad.

(d) A codification of Hindu Law will not be effective unless it is brought into existence by a responsible Central Legislature.

(e) No codification should be undertaken unless simultaneous provincial legislation is agreed upon or by a suitable amendment of the constitution, the Central Legislature is empowered to make laws for the whole country.

(f) The codification of Hindu Law should not be undertaken piecemeal. Amendments will be necessary off and on under those circumstances.

(g) The present Bill requires very important amendments.

(h) The larger number of female heirs is brought in. Instead, a smaller number of female heirs should be recognized and fuller rights should be given to them as are given to corresponding male heirs.

District Judge, Satara

2. The Joint Committee has avoided defining the term 'Hindu' and left it to be interpreted in the light of the law hitherto prevailing. In my opinion, the effort at codification would be incomplete if the law is left in a nebulous

state, particularly in relation to the individual to whom it applies. No doubt, the task would be difficult, but it does not appear to me to be inachievable. Likewise, the Committee does not appear to have taken into account the strong feeling among the Hindu public that apostasy should be considered a dis-qualification for inheritance to a Hindu. The Caste Disabilities Removal Act of 1850 deserves to be repealed at the present day, if the sentiment of Hindus, educated as well as uneducated, for whom the legislation is intended is to be respected.

3. As the Central Legislature cannot legislate in respect of agricultural lands, the Committee appears to have exempted such lands from the operation of the proposed Act. But as much of the litigation regarding the property of a Hindu intestate usually relates to agricultural lands, suitable provision could have been made in section 2 for the application of the Act to Provinces that may choose to avail themselves of its provisions. I am afraid, the exemption of agricultural lands by section 8(1) might lead to legislative difficulty in the matter of extending the application of the Act to Provinces.

4. In section 5, among the enumerated heirs of Class 1, the widow of a pre-deceased son of a pre-deceased son should have been mentioned in entry (1) along with the son of a pre-deceased son of a pre-deceased son. That would, in my opinion, be quite just and equitable and would be respecting to some partial extent the wishes of Hindu Women's Associations in Western India. I believe women in the rest of India would appreciate the inclusion of such a widow; and there should be no objection to bringing the law in other provinces into line with the law obtaining in Bombay Province in this respect. Clause (f) of section 7 will have to be suitably amended if this suggestion is accepted.

5. Hindu sentiment is still, to a great extent, opposed to the idea of a Hindu male's property going by inheritance to a married daughter. The inclusion of a married Daughter among simultaneous heirs would not, therefore, be received by them cheerfully. I would therefore suggest a married Daughter to be placed in entry (2) in section 5, before the Daughter's son. An unmarried daughter may be classed as a simultaneous heir. This will, of course, necessitate a suitable amendment to section 7 (d).

6. The provision in section 10 for devolution of an intestate's property, on the failure of cognate heirs, on his preceptor, disciple and fellow-student appears to me unsuitable to modern trend of thought. The estate had better go by escheat to the State, in such cases. I do not propose, however, any modification to the proposal of the Committee contained in section 11.

7. The Committee's amendment specified in section 13 for devolution of property inherited by a woman from her husband and his three immediate agnates on her husband's heirs is much to be commended, as it meets the prevailing Hindu sentiment which is strongly opposed to the idea of property going out of the husband's family.

8. But with respect to "other property" of a woman provided for in clause (b) of section 13, I would urge that Daughter's son and Daughter's daughter should be placed in the same item along with the Son's son and Son's daughter. The Committee has been liberal enough to make an advance on the existing law in placing the Son along with the Daughter in entry (1). On similar grounds, I would suggest their issue, whether male or female, to be placed on par in the matter of succession; and I would omit the expression "a son, daughter's son or son's son taking half as much only as his sister" after the words "shall take together" in clause (c). That would give equal shares to sons and their issues with daughters and their issues. With all respect to the members of the Committee, there appears to me no justification on grounds of precedent or policy to make the difference in the quantum of shares. I am conscious of the fact that the Committee has allowed only half a share to a daughter in section 7 where it has provided for distribution among simultaneous heirs of a male Hindu. But it appears to me an enough advance on the existing law which the Committee has made in that the daughter is placed on par with the son.

• 8. With respect to the proviso to section 19, it is common experience that Hindu husbands even if aware of the unchastity of their wives seldom have recourse to a

criminal prosecution for adultery. They usually abandon such a wife. The proviso, in my opinion, need not be there, as it appears to me not compatible with the actual state of the society. I am aware, no doubt, that there have been proceedings in which wanton defences on this ground of unchastity to the widow's claim to property have been made to defend her. But instances in which such claims have succeeded have been, in my experience, few and far between. Courts have been very vigilant as to the poor widow's rights and nothing short of very cogent proof has satisfied them in order to arrive at a finding of unchastity.

District Judge, Ahmedabad

I have the honour to state that the Hindu Law at present in force in British India does require amendment and codification in one comprehensive enactment. The proposed Bill, however, aiming as it does at the abolition of certain systems of succession and introduction of certain new principles, is perhaps likely to be not quite agreeable to the notions of the Hindu community. The local Bar Association, who was consulted on the subject, is of the opinion that the Bill in so far as it proposes to make a statutory provision for succession to the property of an intestate Hindu may not prove beneficial to the Hindu society in general.

Mrs. Jankibai Joshi, President, All India Hindu Women's Conference, Poona 2

In my memorial dated the 11th March 1943 to His Excellency the Marquess of Linlithgow, *Ex-Viceroy* and Governor General of India, I had clearly stated that the question of introducing such Bills as the present one, Intestate Succession, Hindu Code part I, was really the work to be taken in hand during normal times and requested His Excellency to postpone consideration of such Bills to the normal working of the Indian Administration after the war. The Working Committee of All India Hindu Mahasabha also requested the Government by passing a resolution to this effect in its meeting held at Delhi on the 9th May 1943. Not only that but in the annual conference of the Hindu Maha Sabha, held at Amritsar during the last days of December 1943 and attended by over a hundred thousand Hindus, a resolution was passed to the effect that the Session of the All India Hindu Maha Sabha deprecates any attempt to deal with any matter connected with Hindu Law and urges that the question of codification be postponed till the new constitution has been introduced in India. Similarly at the session of all India Hindu Women's Conference held at Amritsar on the 27th and 28th December 1943 under the presidency of the undersigned and attended by seven to eight thousand Hindu Ladies, a resolution to the same effect was passed. In spite of all these efforts on the part of responsible bodies representing the Hindus of India, Government insist on passing these measures during these abnormal times, as if, by enacting these laws the Hindu men and women will give more help in prosecuting the present War.

(2) In this connection I would invite a reference to the English weekly "Hindu Outlook," published at Delhi on the 20th April 1943. It will be seen from its page 6 that the officials such as secretaries of the provincial Government of Central Provinces, Assam, Bengal, Berar, Bihar, etc., have expressed their opinion against introducing such measures during these abnormal times. Number of High Court Judges and District Judges had also expressed their opinions against these measures. Mr. Susil Kumar Roy Chowdhary has remarked in his minute of dissent attached to the proposed Bill that the Bengal Legislative Council has very appropriately passed a resolution that the consideration of this Bill should be postponed till after war. The Government of India still intend introducing these Bills in the present Legislative Assembly.

(3) In my second memorial dated the 27th July 1943 I had raised an objection to the nomination of one of the women members of the All-India Women's Conference Mrs. Renuka Ray of Brahma Faith as a representative of women of Hindu women of India. The Brahma religion does not believe in Vedas, because in Vedas the idol worshipping

is preached but the Vedas are the very foundation of the Hindu Religion and as already explained in this memorial the Hindu Law relating to intestate succession as a religious law and the right of property is dependant upon the observance of the tenets of the Hindu Religion. It is, therefore, with formal protest against the haste during these abnormal times and the nomination of a Brahmo Lady to represent the cause of Hindu women of India in the Legislative Assembly, I, on behalf of crores of Hindu Women of India beg respectfully to submit the following opinion on the proposed Bill of Intestate Succession.

(4) The Hindu Code part I (Intestate Succession) Bill as amended by the Joint Committee is circulated for public opinion as per resolution passed in the Legislative Assembly in November 1943 on the motion of the Law Member. The first Bill that was introduced in the Assembly was referred to the Select Committee and the same was not approved by the Select Committee as introduced, therefore the first Bill lapsed and a fresh one prepared by the Select Committee is circulated for public opinion.

(5) As the Bill has now been circulated as a Government Bill the public must consider the following questions:—

(1) Whether it is necessary and advisable to codify the Hindu Law?

(2) If so, whether it should be done as a whole or piecemeal in successive stages?

(3) If it is to be done in successive stages, then, whether the Bill passed should be put in force at once as they are passed or the effect be given to them after the whole code is passed.

(6) The Joint Committee says in its report that the intention of amending and codifying in successive stages the whole of the Hindu Law is approved by them. With respect to the difficulty in dealing with particular topic of Law, it says that it would be difficult to deal with that topic without having before them a complete picture of all the proposed reforms and that their task would have been simplified if the whole picture were before them, but the Committee says that it was not impracticable to proceed with one topic as in the meantime Government should take steps to resuscitate the Hindu Law Committee and to encourage the formulation and enactment of the remaining parts of the projected code in the interval and such readjustment and amendments as may be necessary might be made in the light of decision taken in connection with the other branches of the Hindu Law. But Joint Committee is silent as to whether the Bill would be put in force before the whole Hindu Code is before them. It is pertinent to note that the Law Member did not give an undertaking of not putting in force the Bill of the Law of Intestate Succession even to the Advocate General of India, Sir B. L. Mitra.

(7) The Law of succession as well as family rights are parts of the religious tenets of the Hindu and any change in these affects the intimate relations of the family inter se. It has been a policy of British Government, both in England as well as in India, not to interfere in religious as well as family rights. The British King, as a King, cannot interfere with the Catholics and when interference was made in the Protestant Religion the King did so, not in the authority of a Monarch but as a Defender of Faith. The same principle has been followed in India from the time of East India Company. A change was suddenly made on the 18th July 1935 when Lord Meston proposed that the two sections referred to were merely formal, obsolete and should therefore be repealed and Section 301 of the Government of India Act 1935 stated as follows:—

"Section 18 of the East India Company Act 1780 and Section 12 of the East India Act 1797 (being obsolete enactments containing saving for Native Law and custom) are hereby repealed."

Since then it is for the first time that the Bill which touches religious and family rights has come before the public as Government Bill. It is necessary to oppose the Bill now on the general ground that the Legislature as comprised now ought not to be given the power to pass Bills affecting our family rights. Unless it is clearly laid down that in such matters affecting the family or religious rights of any community members of other communities might not vote. It is observed from what appears in the Joint Select Committee report that the Bill as it is

drafted has come in this form by votes of Non-Hindus who have broken the convention. The Joint Select Committee has approved of the proposal of the Rao Committee to amend and codify the Hindu Law. The use of the word "Amend" is not appropriate. The Hindu Law is not enacted by any Legislative Assembly, therefore, there can be no amendment by the Legislative Assembly.

(8) The Rao Committee in discussing the necessity of a Code in paras. 36 and 37 of their report say in paras. 37 and 38 that:—

"Nor on the other hand can we believe that the Reformer will wish to lay violent hand on the ancient structure of Hindu Law except for proved necessity. It is a specious structures with many Schools and by 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."

"It is a code of this kind that we contemplate, a code which shall base its law of succession on the idea of Jaimini rather than Boudhayan and its law of marriage on the best parts of the code 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 of the various schools of the Hindu Law, a code which shall be simple in its language capable of being translated into the vernaculars and made accessible to all. Such code will doubtless take time and many minds will have to collaborate in its preparations, but there must be 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 200 million of people."

We say Amen

(9) Does the present Bill satisfy the last condition? Even the Committee seems to be of the opinion that many competent men and women of India must collaborate in the execution of this task as it affects the personal law of 200 million of people. On this the only comment necessary to be offered is, where when and all the collaboration of competent men and women is sought for? The whole proceeding would show that the reverse has been the case. Such a gigantic task which would involve the personal law as well as family stability is attempted to be hurried up in the abnormal times through which the country is passing. Taking, therefore the Committee's last words quoted above it is suggested that the matter be left to a committee the members of which should be chosen from the various Provinces and Schools as well as from four principle seats of Shankaracharyas, from the various communal and other associations which are in touch with the public life, and such a committee should consider and decide whether enactment of law codifying the Hindu Law was necessary. But no power ought to be given to amend the Law. It need not be said in plain words that to amend the ancient and spacious structure with many schools a committee of handful of persons chosen without definite principles would not be the sort of committee that should be entrusted with this work.

(10) If at all it is thought necessary to codify and amend the present Hindu Law it should not be done by the Assembly as constituted now where the Hindu elements have got a very small representation although the Hindus form the Majority Community. The majority community ought not to be forced to accept a Law relating to their personal rights enacted by the Assembly wherein Non-Hindu Representatives are in majority.

(11) The mischief that is being done for over a century to the Hindu Family and Property Law and that might be in store for the community by clause 801 of the Government of India Act 1935 is best illustrated from the Joint Committee's report itself. The Caste Disabilities Removal Act of 1850 affects mainly the Hindus and by that Act upto now a person who renounces Hindu Law is enabled to take share of the property of the Hindus. No other community has got such an anomalous, situation to face. The Rao Committee did not include apostasy as a ground for exclusion, but in my second memorial dated the 27th July 1943 to His Excellency the most Honourable the Marquess of Linlithgow, the then Viceroy and Governor

General of India, it was pointed out that clause (2) (b) of the Rao Committee Bill read with this Act of 1850 would enable a daughter who is willingly or forcibly converted to Mohomedan Religion to inherit to her parents. From the Report of the Joint Committee it is observed that there were 18 members in this Committee. Out of these 18 members three Mohomedans, 1 Christian, 1 Parsee, 1 Brahmo and 12 Hindus. Out of these 12 Hindus 11 Hindus definitely stated in their minutes of dissent that Apostasy should be made a disqualification to inheritance. In connection with clause 20 of the proposed Bill it is stated by the Committee that "We consider whether the abandonment of the Hindu Religion and Conversion to another Religion should be made a ground of disqualification from inheritance. We decided against upsetting the position established by the Caste Disabilities Removal Act, 1850". In their minutes of dissent, Mr. Amarendra Nath Chattopadhyaya stated that "Our Chairman who was a Mohomedan could not be replaced by a Hindu who might deal with the matter in a better spirit. He was quite competent and our Moslem and Parsee Colleagues were quite competent. But I did not like our Chairman to break the convention. The convention is that Moslem or Non-Hindu should not vote on matters relating to Hindu Law and Hindus and Non-moslems should not vote on matters of Moslem law. In this Committee that convention has been broken. In my opinion this procedure has vitiated the Bill as it has emanated".

Mr. V. V. Kalikar stated that "Secondly the convention that has been so far observed in the Central Legislature that the members of the other Community should not take sides in the measures relating to the personal law of their Sister Community, was broken in the deliberations of the Committee by the Muslim Members".

Mr. Susil Kumar Roy Chowdhury stated that "Many of the clauses of the Bill have been passed in the Joint Committee through the help of Non-Hindu votes. Would the Muslims like a Bill affecting their community to be passed with the help of non-Muslim votes?"

Babu Baijnath Bajoria and Pandit Nilkanth Das stated that "Lastly we note with extreme regret the flagrant breach in the case of this Bill of the salutary convention that in consideration of Social measures affecting one community only, members belonging to other communities should not take part. But in this case the non-Hindu Members taken into the Committee took part in deliberations on controversial questions and influenced the decisions of the Committee, and that in almost all cases against the wishes of the majority of the Hindu Members".

Mr. Chattopadhyaya stated that the Chairman who was a Moslem broke the convention. Mr. Kalikar stated that this convention was broken by the Muslim Members, Babu Bajoria and Pandit Nilkanth Das stated that the Non-Hindu members influenced the decisions of the Committee in almost all cases against the wishes of the majority of the Hindu members and Mr. Chowdhury put the question directly to Muslim members whether they would like a bill affecting their community to be passed with the help of non-Moslem votes. With all these things clear as a mirror the Joint Committee stated in the report that "we decided against upsetting the position established by the Act 1850". Any man would easily say as to who this "We" is. But the question is and I humbly beg to put it to Your Excellency to say whether this is the way the British Government want to deal with the Hindus, a majority Community of India.

(12) This illustration shows that in the Assembly as constituted now, Hindu interest affecting their personal law would not be safeguarded. Therefore on any Code or any Law affecting the Hindus' personal interest members of no other community should be allowed to vote by a provision to that effect and it should not be left to convention. If that is done then only it may be considered whether such a Law should be passed by the Assembly.

(13) If a codification of Hindu Law is to be thought of, a Commission of enquiry, as in the matter of Sarda Bill, should be appointed and they should be asked to make enquiries in the Provinces with reference to various proposals made and the whole Hindu Code may be passed as one Law instead of piecemeal.

If this piecemeal legislation is to be resorted to, then at least the marriage law which affects the Succession should be taken into consideration first, then the law of succession. Clause 17 of the proposed bill would be an instance of the difficulty that would arise if the law of succession is considered first before the law of marriage.

(14) In this connection it may be pointed out that the Rao Committee itself was not in favour of piecemeal legislation and said that where fundamental changes have to be made it is wisest to survey the whole field and enact a code, if not of the whole of Hindu Law, at least of those branches of it which are necessarily affected by the contemplated legislation and this would justify that the marriage law, law of succession and the law of joint family should be taken into consideration together with the Bill.

(15) With these preliminary remarks it is worthwhile to consider some other fundamental points of principles that arise when the Bill proposed by the Joint Committee is considered on its merits. The first departure from Hindu Law is in accepting the principle of simultaneous succession. The principle of Hindu law is as follows:—The property of deceased goes to the son (and by son here is meant son, grand-son and great-grand-son). In default of son, inheritance is to go according to Badha-Kram or enumerated series of heirs in order as they are mentioned on the principle that the nearest in blood takes the inheritance. This principle has been totally changed and no reason was assigned as to why this fundamental change is accepted by the Joint Committee. Even the Rao Committee assigned no reason for it.

(16) Upto 1937 the principle of simultaneous succession has never been adverted to. It was for the first time introduced by the Deshmukh Act for the limited purpose of giving relief to certain females apparently coming into the family by marriage. The effect of this innovation has never been considered from different aspects by any body in fact. It has never been discussed before the Assembly and as that act was for limited purpose and the right given to the females concerned was only a widow's estate perhaps it was not thought necessary to oppose it on various grounds. Now that the whole Hindu Law or at least the Intestate Succession, is being codified, it is necessary to consider the fundamental change from various aspects. Some of those aspects appear to have been put before the Rao Committee in answer to questionnaire. In para. 22 of their report they referred to this question at page 15 thus, "On the other side we have to bear in mind such facts as these, that under the Hindu Law the son is under legal obligation to maintain amongst others his aged parents while a daughter is not, that the daughter is better placed than the son as an heir to her mother's estate, that the daughter also inherits to her husband and even his father and grand father by virtue of Acts 1937 and 1938 while the son has no corresponding rights in respect of property of his wife or her father or her grand father; 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 man's estate amongst the widow, the sons, the son's widow, the daughter, the mother, as well will inevitably result in the dissipation of such little property as there is in the country. Whatever may be the ultimate solution of this problem, we feel that it can be investigated adequately in an inquiry embracing the whole of law of succession."

(17) This report was made in June 1941 and the proposed Bill was first published in June 1942. Whether any inquiry referred to in para quoted above, was made in the meantime about the problem we do not know and such problems cannot be investigated in the short period of one year. If at all any such enquiry has been made one might expect a reference to it in the explanatory note to the Bill, but we find none. All that was found in the Bill is in clause 5 of the Bill regarding enumerated heirs in clause 1 widow, son, daughter son of pre-deceased son son of pre-deceased son of pre-deceased son are mentioned in brackets thus "Heirs in this entry being hereinafter in this Act referred to as simultaneous heirs". In explanatory note to clause 5 nothing is said about this new principle. Thus it will be clear that the Rao Committee has not considered the economic aspect of the dissipation of the property referred to in para 22 quoted above. It is

noted that the question before the committee while framing the Bill was to codify the Hindu Law of succession and not to make a new Law for the 'Intestate succession of Hindus. It was therefore necessary to keep the principle intact while codifying the law, that principle has been quietly ignored. The principle says that he who is liable to offer a pind inherit." Their offering is only illustrative of the obligation.

(19) The law of succession is based on the natural desire of the natural instinct to keep the property in the family, ensuring thereby only such persons who would take care of the owner till his death living with him throughout the life and carry on the duties and liabilities laid on him by personal law. It is on this principle that the females have been excluded by the Hindu Law. The Vedic Texts clearly explain this point of view.

न जायते तान्मो दिव्य भारेकं चकार गन्तुं सविनुविधानम् ।

यदि मातरो जनयन्त वदिमन्त्यः कर्ता सुकृतोऽन्यः कल्पन् ॥

A son born of the body does not transfer (paternal) wealth to a sister, he has made her the receptacle of the bryo of the husband; if the parents procreate children (either sex), one is the performer of holy acts, the other, to be enriched with gifts.

The Sayanacharya has the following comments:—

शशि तयोः (पुत्रदहित्रयोः) मध्येयः पुलङ्गः सुकृतोः शोभनस्य पित्रदानादेः संपादः कर्ता भवति । अन्यः खिलक्षयः कल्पन् दत्तालंकारदिनी कल्पमानं दत्तं भवति । पित्रदानादि कर्तृत्वायुक्तोः दायार्हः तथापि सा तु केवलं परमै दीयते ।

However in between these two (i.e., between a son and daughter) one, possessed of male sex, becomes the holder of meritorious work such as the offering of pind, oblation and the like. The other, possessed of the female sex, is only entitled to be bedecked by beautiful things, such as wearing apparel and jewellery and the like. A son being authorised to perform meritorious actions, such as the offering of the pind, oblations, 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).

The translation is taken from the book "Dharmastra and the proposed Hindu Code Book" of Prof. V. Deshpande.

This point was never considered by the Rao Committee or by the Joint Committee although the matter was specially brought out in some of the dissenting minutes. The Joint Committee did was to add parents if the deceased son. In their explanatory note to clause 5 they do not advert to any reason for this departure from Hindu law rules.

(19) It may be urged by way of objection that the Mohamedan law, the Parsee law, and Indian Succession law have accepted the principle of simultaneous succession. If so, why it should not be accepted by the Hindu law. The Rao Committee or the Joint Committee does not refer to this fact in support of their proposed departure but the answer to that reason if advanced is to be found in the fact that marriage in the family is allowed amongst them and one of the reasons namely a desire to keep estate in the family is satisfied by the inter-marriage; addition to this the Mohamedans have the law of usufruct and they have a Legislative sanction to that law which they can keep the property in the family if there is no inter-marriage. In the case of Mohamedan law it has got to be remembered that it was made principally for the Arabic people who had not completely lost their nomadic habits and character. At that time the property of Arab was of a simple description. Camel, sheep, tents, clothes and few utensils usually formed the bulk of his possession (Abdul Rahim Mohamedan Jurisprudence page 346). Even in the case of English law till 1880 females had no right to property. Not only that but on marriage all her property went to the husband and it is only by enactment of statutes after centuries ending in the real property act of 1925 that the equality of rights has been given. It has got to be remembered also that England is not mainly an agricultural country and up to 1925 the real property could go by inheritance by the law of Primogeniture i.e., only the eldest son succeeding. The experiment of giving equal rights to males and females is under trial and not even a

generation has passed after that. Further in England the land belonged to the Crown and all others held the land under subordinate tenure. The economic aspect of departure in England is yet to be seen and therefore that instance cannot be followed in the agricultural country like India. In any case no experimenting ought to be allowed in such matters.

(20) Summarising therefore the points which go against acceptance of the principle of simultaneous succession are as follows:—

(1) Vedic text is against it. (2) The purport of law of inheritance being to keep the family property intact is violated owing to the strict rules against in-breeding laid down by the Hindu Law. (3) The economic factor. In agricultural country like India it will result in dissipation of property.

(21) The Rao Committee as well as the Joint Committee apparently take the principle of simultaneous succession to have been accepted by the Assembly in passing Deshmukh Act of 1937 and 1938, but that was only for the limited purpose of giving relief to certain females and the want of opposition or the silence on this point ought not to be taken as acceptance of this principle. The Deshmukh Act was enacted to give relief to certain women in Joint Hindu family whose position was deplorable in the present condition of the Hindu Society. Owing to the prevalence of individualism and personal liberty, the existence of joint family became precarious and some cases came before the Court in which widows of earning members were reduced practically to drudgery of life. To remove such anomalous position that the Act was enacted and it was confined to giving right to widows and widows of sons, grandsons, etc.

(22) It is worth while here to see if provision can be made for such cases without accepting the principle of simultaneous succession. So far as the Mitakshar Provinces are concerned for the purposes of considering their rights women may be divided in two classes, (1) women coming into family by marriage and (2) women born in the family. So far as the Bombay Province is concerned women born in the family while so inheriting take an absolute estate and in the rest of India their right is limited called widows estate. Taking the class of women coming in family by marriage they have no right except to maintenance in a joint family but if any of them had sons they were entitled to an equal share along with their sons at partition when made, but they could not claim partition by themselves as of right. The deplorable condition of these women really occurred when they had no son and that was due to the doctrine of survivorship in the Mitakshar. In Bengal the law of survivorship does not exist and therefore in the case of a person dying without son the property is inherited by widow and cases of hardship like that of a widow of pre-deceased son could be provided for by will. It should be noted that the cases where a son dies before the father are very few and therefore for such cases it is not necessary to enact a law which will affect the Hindu Society generally. A way to accomplish the purpose of giving relief to the widows can be found in accepting the interpretation of the word Daya given by Bengal lawyers. The interpretation of that word "Daya" by Mitakshar is:—

यत् पत्न्येन स्वामि सम्पत्तयः दत्तं निमित्ता अन्यस्य स्व भवति तत् दायः इत्येव कथ्यते ।

i.e., Daya is that property which becomes the property of another by reason only of that another being related to the owner; therefore mere relationship to the owner would constitute an heir and therefore the right arises in the life time of first owner. Whereas in Bengal Daya is interpreted as being that property which becomes the property of another by reason of relationship as well as the death of the previous owner. It is mentioned as

स्वामि सम्पत्तयः स्वामिना दत्तः ।

If therefore while codifying the law this interpretation were sanctioned by law as the meaning of the word Daya the reason for applicability of doctrine of survivorship would disappear and even in the case of Joint Hindu Family the widow of sonless brother will inherit his property. In the case of mother and grand-mother their rights are already provided by law by recognising their rights to a share equal to that of a son, the only disability

cases of hardship except that of a widow of a pre-deceased son. Her case be left to be provided for by giving her a definite share by way of maintenance or she should be allowed the same share, which her husband would have got if he were alive, as a limited estate.

(23) In the case of women born in the family there need not be any special provision for them, as they are already provided for in their husbands family and the same rules may be applied to them. The only women born in the family that would have to be provided for by legislature are unmarried daughters and provision is necessary for them. A Text in Yadvavalkya Smriti provides that brothers should get their sisters married. Such an unmarried girl, we suggest, should be given maintenance equal to the share of her brother for her life with limited interest or till marriage. Thus there is no injustice in the case of daughter. Such a simple provision would have removed the so-called disabilities of women in general.

(24) In order to provide for such cases the right of simultaneous succession is given to them in the proposed Bill as well as the old Bill. That would have the effect of dissipating the family property in an agricultural country. It should be noted that brothers inheriting the property may continue to remain joint as one unit for generation, whereas if a daughter is given right to share, there would have to be partition at once and the disruption of the family would be accelerated.

(25) To secure the end of providing equal right for women the Bill accepts the principle of simultaneous succession from Mohamedan and Christian systems. These systems are not applicable to an agricultural country like India as observed above and therefore this principle of simultaneous succession ought not to be accepted and that portion of the Bill must be changed as also clause 8, sub-clause 4, which lays down that a woman shall be entitled to inherit as an agnate of her father and his agnates and shall not by reason only of her marriage be entitled to inherit as an agnate of her husband or his agnates. This clause should also be deleted. In making this provision the psychological effect on the mind of a woman has altogether been ignored. Under the present law she goes into her husband's family and is a permanent member of that family. Her rights, interest and obligations are all centered there, her children being in that family her natural love also would be in the same direction. Under the proposed Bill she goes there only to give children to that family and revert back again to her father's family. She would be drawn by love and affection to her children in her husband's family as well as to her husband but for her pecuniary interest she would go back to her parents, so she would be looking to two families for different purposes. Such a condition of mind would hardly create a family life in her husband's family and for these reasons it was laid down in Vedas that she would not be entitled to inherit and it is only as a recognition of her relationship that she is given a right to inherit in the absence of a son and widow.

(26) As stated above we object to the use of words, "Amend" and "in successive stages" especially even when the Advocate General of India, Sir B. L. Mitra, made the modest suggestion that the legislature even if passed should not come into force before the other relevant chapters, was not accepted by the Law Member. This would show that if the Bill is passed it would be leaving other chapters to their fate. We are not in favour of making any experiment on the Hindu Society.

(27) *Clauses 4 and 5 of the proposed Bill.*—We are opposed to the acceptance of principle of simultaneous heirs for the reasons already stated. Even the Joint Committee excluding the non-Hindu members numbering five plus one Brahmo Lady nominated by the Government, did not accept this clause by majority. The Bill as it goes to the public is signed by all giving the false impression of unanimity. That impression must first be removed by stating clearly that the clause was put in the Bill in spite of majority being against it and that goes against the basic principle of the Hindu law as stated above.

(28) If it was thought that the principle of simultaneous succession was to be introduced it was not necessary for a special provision in the Hindu Law. One Section abrogating the personal law of the intestate succession of Hindus would have sufficed and in that case the Succession Act would provide for all these things.

(29) Clause 13 provides that the property inherited by any woman from her husband should go to the male heirs of her husband. This may be retained for reasons already stated for excluding the daughters from inheriting jointly along with son and widow. In this connection we may suggest also that the definition of Stridhan contained in clause 2 (h) should be amended by deleting the words "by inheritance or devise, or at a partition."

(30) *Clause 17.*—The Joint Committee had said that they have made no change in the original clause because they had not the marriage Bill before them. We say clause 17 ought to be recast altogether or deleted for the present until the marriage Bill is before the Assembly and passed. If the present marriage Bill which was circulated in 1942 is to be taken to be the marriage Bill we suggest that the spouses of marriage validated by Clause 7 of the proposed marriage Bill under the doctrine "Factum Valet" should be disqualified to inherit. This is one of the reasons why we oppose codification of Hindu Law in successive stages.

(31) Clause 20 should definitely contain the words that Apostasy should be a ground of exclusion from inheritance and for that purpose either the Caste Disabilities Removal Act 1850 should be repealed altogether from the Statute Book or atleast should not be made applicable to Hindus. We have already noted above that this suggestion has been approved by majority of Joint Committee who are Hindus and it is only the vote of Non-Hindus that this clause is retained as it is.

(32) Clause 22 provides that the property in the absence of qualified heir should go to Crown. We do not agree with this. In this connection I would invite a reference to my letter dated the 11th December 1942 submitted through the Government of Bombay. In the last para. of this letter I had clearly stated that the Hindu Mahila Sabha insists that the provision should be made that the estate of a person dying without heir should go to the Crown as trustee of the Hindu Community and it should be obligatory on the Crown to apply it for the benefit of the Hindu Community alone.

(33) *Clause 23.*—The following enactments should be added in the schedule.

Cast Disabilities Removal Act, 1850.

Widow Remarriage Act, 1856.

Liabilities of sons for debts, 1867.

Special marriage act so far as it is made applicable to Hindus in 1923. Section 18 of 1937 and 1938 Acts otherwise called the Deshmukh Act and various Acts made to change the course of succession.

Copy of a letter from His Holiness Jagadguru Shankaracharya, Sharda Pith.

As desired by His Holiness Jagadguru, Shankaracharya Maharaj, Sharda Pith, President of the mammoth mass meeting of the Hindu of Bombay, I have the honour to submit herewith the Resolutions passed unanimously at the said meeting under the presidentship of His Holiness, held at Madhavbag, Bombay, on Friday, the 21st April 1944, a request that Your Excellency would do the needful to safeguard the legal rights of the 25 millions of orthodox Hindus of all India which are now sought to be destroyed and mutilated by means of the above abnoxious and reformist Bill which is opposed to the Hindu scriptures of Hoary antiquity and immemorial custom, with a request that Your Excellency would be pleased to forward the same to the Government of India for favourable consideration and due action."

RESOLUTION No. 1

This meeting resolves that as in its considered view neither the Government of India nor any of the Provincial Governments does possess or has at any time possessed any right to legislate upon matter of private laws of the Hindus, 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 and its contemplated action thereon *ultra vires*.

RESOLUTION No. 2

This meeting further resolves (a) that without prejudice to the contents of the first resolution, the action of the Government of India in constituting the Hindu Law Committee for the preparation and drafting of the Hindu Code is fully unwarranted and unjustifiable (b) that the Hindu

Intestate Succession Bill and the Hindu Marriage Bill contain so many provisions quite opposite to the spirit and letter of the Dharmashastras and detrimental to the Hindu culture and civilisation, that Government should be asked to withdraw both of these Bills and abandon any further attempt of legislating upon any subject of Hindu Law.

Bombay Presidency Women's Council

My Council has considered the Amended Bill and we feel that unless we have the whole picture of all the recommendations of the Rau Committee on the various sections of the Hindu Law, we cannot give our opinion on the report of the Joint Select Committee.

The Hindu Residents of Rajkot

A meeting of the Hindu Residents of Rajkot (Kathiawar) was held in the Panchanathi temple on Sunday, the 16th April, 1944, under the Chairmanship of Shriman Ranchhoddas Vandravandas Patwari, B.A., LL.B., Ex Dewan of Palanpur, Gondal and Morvi States.

The following Resolutions were unanimously passed:—

Resolution No. 1.

This meeting resolves that as in its considered view neither the Government of India nor any of the Provincial Governments does possess or has at any time possessed any right to legislate upon matters of private laws of the Hindus, 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 and its contemplated action thereon *ultra vires*.

Resolution No. 2.

This meeting further resolves (a) that without prejudice to the contents of the first Resolution, the action of the Government of India in constituting the Hindu Law Committee for the preparation and drafting of the Hindu Code is fully unwarranted and unjustifiable. (b) That the Hindu Intestate Succession Bill and the Hindu Marriage Bill contain so many provisions quite opposite to the spirit and letter of the Dharmashastras and detrimental to the Hindu culture and civilisation, that Government should be asked to withdraw both of these Bills and abandon any further attempt of legislating upon any subject of Hindu Law.

P. N. Dave, L. M. & S. A., F. A. I. C. A., The British War & Victory Medalist, Patalipol, P. O. Nadiad (Distt. Kaira) and four others

In my humble view as neither the Government of India nor any of the Provincial Governments does possess or has 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 unstatesman-like; (b) the action of the Government of India in constituting the Hindu Law Committee for the preparation and drafting the 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 letter of the Dharmashastra and are detrimental to the Hindu culture and civilisation.

Dharmaveer Vishwasrao B. Davre, President, Special Conference, Poona City

A special Conference of orthodox Hindus was held on 23rd and 24th March 1944 at Nasik under my Presidencyship. In addition to the members who were present in the Conference, learned personalities, Pandits and Shastres from Nagpur, Dhulia, Satara, Pandharpur, Sangli, Hyderabad, Ahmedabad, Bombay, who could not attend the Conference in person, have expressed their strong opposition to the above Bills.

The Conference has unanimously passed resolution emphatically opposing the Bills and has also resolved to intimate the Government to dissolve the existing Special Law Committee. I have, therefore, the honour to request you, on behalf of and for all the Sanatanists from Maharashtra, to inform about this opinion i.e., the opinion of all

the Sanatani (Orthodox) Hindus from Maharashtra to the proper authority of the Government of India, as soon as possible.

The present war is in its full swing and recently Japs have invaded the borderline of India itself. And if these irreligious Bills will be oppressively and stubbornly converted into Acts at this juncture, that will promulgate a deep sense of grief and unrest not only in the Sanatani masses but in the Hindu public as a whole and all will be required to undergo the ill-consequences arising therefrom. We take it to be our duty to give timely warning to the Government about the serious and disastrous consequence that may befall and we do call upon the Government to note them and to drop the idea of converting the Bills into Laws.

Mr. Gangabisa Ramgopal Agawal, ex-Vice President, Maharashtra Varnashram Swarajya Sangh, Ahmednagar and 210 citizens of Ahmednagar

The undersigned Citizens of Ahmednagar City most humbly and respectfully submit their say in respect of the above said Bills.

We most humbly beg to state that the said Bills will be the cause of destruction of the Hindu Religion, the management of the Hindu Joint Families and sources of their maintenance. Our humble opinion is that the Legislative Body or any-body else has no right to pass such Bills and they may not be passed under any circumstances. This is our earnest and sincere prayer to our Benign British Government, Legislative Bodies and to those who govern us.

Nobody should ever interfere in any way with the matters of any Religion, because Religion is the Command of the Almighty and that Command has been in progress from time immemorial. So interference in anybody's religion means disobedience of Laws created by the Almighty. It is well known that how one has to suffer a great deal if one disobeys the Laws of Government.

We clearly see from History and Shastras that one who will disobey the Commands of the Almighty has to bear serious consequences and suffer much, whether he be an Ordinary man, a man of Power or even the Governing Authority. For the above-stated reasons we humbly request that Laws or Bills which will interfere with any religious matters may not kindly be passed.

We further most humbly request that the Laws or Bills which have already been passed before, on some misunderstanding or authoritatively, may kindly be cancelled.

This is our most humble, earnest, sincere and hearty request.

Messrs. P. V. Davre and P. H. Joshi, Poona

We oppose the Bills being riped into Acts. There are no circumstances existing to call for the vital changes which the Bills propose. The existing Hindu Law is not proved to be disastrous to the Hindu Community.

2. Unmarried daughter is already provided for by the present Hindu Law by making provisions for her maintenance, education and marriage out of the father's estate and hence no need of proposed Bills.

3. There is nothing in the proposed Bills which will really benefit the Hindus; on the contrary they unnecessarily create complications in the Succession of Hindu and their properties.

4. As a matter of fact Indian Succession Act, Caste Disabilities Removal Act and such other Acts have already created sufficient disputes with regard to properties and successions of Hindu and the present Bills will add more complications.

5. The contemplated Acts will enable non-Hindus or Hindus of different caste to succeed to the properties of deceased Hindus and will destroy the joint family System which is the most unique and important position under Hindu Law. Joint family system consisting of community of interest and unity of possession is the best system which is not to be found elsewhere in the world and the same is highly essential to be maintained even under the present circumstances of the world and especially of India. The joint family system will surely save India from the post-war economic circumstances. The efforts of the present Law Makers will endanger to the Hindu generations to come. We therefore highly object

to the Bills in toto and pray that those should be disregarded and dropped.

6. Many Lakhs of literate Hindus are on war front and will not be able to express their opinion on these Bills. The effects of the Bills are likely to hamper their property and future generations and the Bills should not be considered behind their back and until the Hindus non-front are consulted with.

The present Legislative body contains no real representatives of Hindus. The present members do not know what are the real principles and spirit underlying the prevailing Hindu Law. They want to bring Hindu Law on the lines of English and Mahomedan Law. Rights of female were sufficiently considered by Jaynyavalkya and Apasthamba. The Laws standing at present should not be changed by persons of less competency than Jaynyavalkya and Apasthamba and we dare say that the present movers of the Bill cannot stand in competition with the genius of learned sages like Jaynyavalkya and Apasthamba.

We therefore strongly oppose the Bills in toto and earnestly request the Government to drop them.

His Holiness Shrimat Jagadguru Shree. Shankaracharya Maharaj, Karvir

"The memorial of His Holiness Shrimat Jagadguru Shree Shankaracharya Maharaj, Math Sankeshwar, Karvir, respectfully sheweth:—

The whole Hindu community is profoundly perturbed over the Intestate Succession Bill and the Hindu Marriage Bill which the Government of India have sponsored and which is being referred to Joint Select Committee of the Indian Legislature. The Bills interfere with Hindus. It is sure to destroy the family system which is the sheet anchor of Hinduism. It is wrongly conceived. It will adversely affect Hindu culture. It goes against the grain of Hindu Society and constitutes affront to the traditional Hindu Religion.

We have particularly to bring to His Excellency's notice the following facts:—

(a) That in the matter of religious rites, the usages and customs, the only authority that can ever be recognised and acted upon, is that of the Shruties, Smrities, Puranas Agamas and other Scriptures of Sanatana Dharma and

(b) That in case of any question or doubt arising in respect of the correct interpretation of any particular text or other portion thereof, it is the special province and jurisdiction of Dharamacharyas of the land to declare what is true, correct and proper and that other authority Legislative or administrative or otherwise has no moral or even legal right or power to assume any jurisdiction in the matter for deciding such questions.

We have further solemnly to intimate to and impress on the Viceroy and the Governor in British India, as well as the Ruling Chiefs of India that not merely in view of the afore-described fundamental doctrines of Sanatana Dharma but also according to the pledges repeatedly given by three successive Sovereigns (Queen Victoria, King Edward VII and King George V) of England and necessarily implied in Chapter XV of the India Penal Code too, any interference whatsoever whether by administrative or by executive orders or by legislation or otherwise, is in the nature of clear breach of pledge, that no political legislature can claim the rights to adjudicate on and decide questions of religion and faith, and that any countenancing of any such endeavours by Government will be fraught with serious, any deplorable consequences not only to the peace and happiness of the people of this land but also to the Government itself; we therefore fervently look to the British and India Governments in India to put down, with strong hand, all attempts, calculated or likely to subvert religion and promote anarchy in this land of peace and good will all round.

We do not think it necessary to point out the defects in the Bills. We are fundamentally opposed to all interference by the Government and any Legislature into the Hindu Religion. We firmly believe that it is the most important right of the religious heads in India to modify Hindu practices and lay down principles which should govern those principles.

We have to submit to His Excellency that, in spite of all the opposition of the religious-minded Hindu Society,

the Government press on with the Bills, there will be wide spread commotion and discontent among the Hindu people. It is for the Government to consider whether it is desirable to invite such a disturbance of the Hindu public mind in these days of war when every attempt should be made to promote war efforts and nothing ought to be done that is even remotely likely to distract the public mind.

We, therefore, most respectfully urge on His Excellency the Governor General of India not to press on with the dangerous Bills but to withdraw them altogether. Such an act we assume His Excellency will be hailed with deep gratitude by the whole Hindu populace and also by all the Heads of Hindu Religion."

District Judge, Belgaum

I have nothing useful to add to the detailed remarks which I submitted under this office No. 2143, dated 8th August 1942. My views on the principles and the important changes embodied in the Bill remain unaltered. In matters of details I find that the Joint Committee have, to a certain extent, accepted the suggestions made in my report. I have no objections to urge against the other minor or consequential changes made by the Joint Committee, and mere drafting amendments require no comment.

Shree Shukla Yajurveda Madhyandin Maharastra Brahman Sabha, Poona

This meeting of Shree Shukla Yajurvedi Madhyandin Maharastra Brahman Sabha requests the Government of India not to proceed with the "Bill to amend and codify the Hindu Law relating to Intestate Succession". The said Bill is against the basic principles of Hindu Law as enunciated by Vedic Shastras and Smritis. It has disregarded the age-long Hindu customs and rights. The said Bill, if passed, will completely destroy the present system of Joint Hindu family which is the very basis of Hindu society. It will also disintegrate the landed property of the various agriculturists who form 70 per cent. of the Society, by permitting the females to inherit the landed property and thus encourage the fragmentation of the agricultural lands. It will also give opportunities for properties to be transferred from the Hindu families to families of persons belonging to different religions in case females inheriting properties in full ownership or other heirs are converted into another religion. For the present Bill has removed Apostasy as a bar to succession and inheritance which is recognised not only by the present Hindu Law, but also by all other Communal laws.

It will also encourage mixed marriages by legalising such marriages. It has unnecessarily widened the scope of widow's property and made it into a property of full ownership in the case of females succeeding to their husbands. It has unreasonably done away with the disabilities of persons to inherit property on account of lunacy etc. and allowed them also to inherit. All this is bound to create chaos and confusion in the management of property amounting to waste, and to encourage a class of persons in the Society whose livelihood depends on such kind of unwholesome business. It will also encourage severance of joint family system and create individual smaller units in the Society.

The Committee, therefore, strongly condemns the present Bill and requests the Government to withdraw the said Bill immediately as it is wholly destructive of the present Hindu Society.

Gujarati Hindu Stree Mandal

The Mandal having considered the Amended Bill, is in favour of the same subject to the following remarks:—

Clause 1 (3).—The Mandal would like to make the matter more clear by the addition of the words 'namely the Hindus, the Jains, the Sikhs, and the Buddhists' after the words 'by the Hindu Law' and before the words 'but it shall not apply'.

Clause 2 (1) (d).—The Mandal agrees that the proposed amendment would remove the doubts that would have arisen otherwise.

Clause 2 (1) (h).—The Mandal is in favour of the proposed amendment as it would put an end to all likely disputes in relation to the term 'Stridhan'.

Clause 5, Class (1) (1).—The Joint Select Committee has amended this clause by adding the words 'Parents if dependant on the intestate' and 'the widow of a pre-deceased son' to the list of simultaneous heirs.

The parents in order to come within the class of simultaneous heirs according to the proposed amendment must be dependant on the intestate. This requirement would lead to unnecessary and unpleasant disputes and complications. The main idea of codifying Hindu Law is to simplify the law and to discourage disputes and litigations. Furthermore, the Mandal has favoured the inclusion of a daughter and a widowed daughter-in-law among simultaneous heirs not on the ground that they are entitled to maintenance, but on the ground that by virtue of their status, they are by their very right entitled to a share. The Mandal is of the opinion that a right to maintenance is not the proper test for determining the right to be an heir. If there are aged parents who are dependant on the intestate, provision could be made for them while dealing with the subject of maintenance and moreover to safeguard their rights even a charge could be created on the whole of the estate of the intestate. Hence whoever may inherit the estate of the intestate, provision should be made for the maintenance of the aged parents irrespective of their being dependant or not on the intestate, in a proper place. The Mandal therefore is not in favour of the inclusion of 'parents if dependant on the intestate' among simultaneous heirs.

Clause 5, Class I (2) and (3).—In the opinion of the Mandal, son's daughter should precede daughter's son as the son's daughter is related to the intestate through an 'agnate' (Gotraja) while the daughter's son is related to the intestate through a cognate (Bandhu).

Clause 5, Classes III, IV, V.—Father's sister's son, Father's father's sister's son and mother's sister's son are respectively included as (6) but father's sister, father's father's sister and mother's sister have been omitted though they are nearer than their sons. The Mandal would therefore suggest that 6th place in classes III, IV and V should be given to them respectively and the 7th place should be given to their sons respectively.

Clause 7 (e).—As shown above the Mandal is not in favour of including parents among the simultaneous heirs and therefore suggests that the sub-clause (e) should be deleted.

Clause 7 (f).—The Mandal is of the opinion that as the widow of a pre-deceased son comes in as the surviving half of her husband, she ought to get the same share as her husband would have got if he were alive. There is further no reason why a differentiation should be made on the basis whether she has or has not a son or son's son surviving. Hence in all cases she should get the same share as her husband would have got if he were alive. In case she has a son or son's son surviving he would share in the inheritance on the basis that his father or grand-father was alive and he was sharing the inheritance along with him.

Clause 20.—From the minutes of dissent appended to the Report, the Mandal however find that the majority of the members of the Joint Select Committee are in favour of the view that 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 ground of disqualification for inheritance in the case of a Hindu. Hence the Mandal suggest that this clause should be amended accordingly.

Commissioner, Southern Divisions

I enclose herewith copies of the remarks of the District Magistrates of Nasik and Satara and the four subsequent objections received to the Bill by the District Magistrate, Satara. Like the District Magistrate, Satara, I have no remarks to offer. These would demand a more thorough examination than I can give.

District Magistrate, Satara

I enclose a copy of the District Government Pleader's remarks for information. I have nothing to add.

Collector of Nasik

Public opinion.—The vast majority of Hindoos in this district whom this bill affects are against the principles embodied in the bill. The orthodox Hindoos of Nasik City held some meetings protesting against the bill.

A few progressive and educated men and women are in favour of this bill in this district.

I support the bill, which is an improvement on the previous position of women in Hindu Law. The entire Hindu law requires to be brought up-to-date and codified.

If this bill is passed there will be no serious agitation or unrest though the orthodox elements may protest vehemently.

Mr. V. S. Bakhale, District Government Pleader, Satara

Clause (1).—It is unfortunate that the definition of 'Hindu' has been dropped. The provision now made is that the Act should apply to all persons who, but for the Act, would be governed by the ordinary Hindu Law. There are several sects, which are not Hindus but are nevertheless governed by Hindu Law; there are also others about which doubts as to the law which should govern them are rightly entertained. Further those Hindus who have been married in accordance with the provisions of the Special Marriage Act, and succession to whom would under the present law be governed by the Indian Succession Act have not been included in this bill. The result in respect of such persons will be that those who are permitted to marry as Hindus under that Act, will, in spite of it, continue to be non-Hindus for purposes of the application of a comprehensive Hindu Code.

Another change made by the Joint Committee is the exclusion of agricultural lands. The exclusion is justified in view of the Federal Court's ruling which lays down in effect that the Indian Legislature is not competent to enact a law regulating succession to agricultural land in a Governor's Province. A province may or may not accept the provisions of this bill; and the object of codifying Hindu Law will be entirely frustrated if succession to agricultural land is regulated by one set of rules and succession to other property by the proposed Hindu Code Part I. Unless, therefore, the Indian Legislature is competent to enact the Hindu code for the whole of British India either as a result of a revision of the relevant lists of subjects in Schedule 7 of the Government of India Act or as a result of a special authority conferred on it by Parliament to codify the Hindu Law as applicable to the whole of British India, the provisions of this bill, if passed into law, will only serve to make the prevailing confusion worse confounded.

Clause 2.—The change proposed by the Joint Committee is unexceptionable, so far as it relates to sub-clause (1) clause (d). In clause (g) of sub-clause (1), the words "Dattaka Son" etc. should preferably be defined. It will not do merely to say that these words will have the same meaning as in Hindu Law. The definition of Stridhan has been amended by inserting the clause: "by way of absolute gift"; and the Joint Committee add that they have taken the wording from a Madras Case. The word "absolute" which qualifies "gift" can better be deleted. The qualification proposed may be justified if the limited estate known as Hindu Widow's Estate had found a place in the bill.

Clause 1.—This is the most important clause in the bill; and although its provisions incorporate the decisions of the Joint Committee after prolonged discussion, a few suggestions will not be out of place here. The uniform treatment accorded to a married, unmarried and widowed daughter can hardly be called fair. Even on the assumption that the daughter has a right to a share, otherwise than in lieu of her right to maintenance, an unmarried or indigent daughter especially would be entitled to a preferential treatment. Hindu Law has so far distinguished between a married and unmarried daughter; an indigent and well to do daughter; and a stronger case must be made out for the complete removal of that distinction.

The rest of the changes effected by the Joint Committee in the original bill are both necessary and proper and I have no remarks to offer about them.

It must be observed, however, that although codification of Hindu Law is highly desirable, the piecemeal codification which the Hindu Law Committee has undertaken and of which the present bill is an illustration, is not likely to improve the present state of affairs. The objection which applied to piecemeal legislation on Hindu Law of which we have had many examples during the last decade, apply with equal force

to piecemeal codification of the nature proposed in this Bill. If Hindu Law is to be codified, as I feel it must be, it is no use codifying the law of intestate succession only, leaving it to the future to codify the law in relation to other connected matters. The various problems which Hindu law reformers have raised are so inter-related that they cannot be tackled one after another. If as has been reported the Hindu Law Committee has been re-appointed and is again functioning, the enactment of provisions for intestate succession can await the comprehensive proposals of the committee on all topics of Hindu Law. The piecemeal codification as proposed is bound to add to the chaos which, alas, prevails today as a result of the patchwork legislation as a result of proposals put forward by zealous Hindu reformers.

Bombay Bar Association

We find that in the amended Bill, no change is made in the preamble which expresses the intention of amending and codifying, in *successive stages*. The whole of the Hindu Law now in force in British India, and the Select Committee in their report while appreciating the difficulties of such piecemeal legislation, say that they have not found it impracticable to proceed with such codification in successive stages. With all respect to the learned authors of the said report, we do not agree with that view. We do feel that no proper justice can ever be done to one particular topic of that law without having before us a complete picture of all the proposed reforms. We therefore have to reiterate our view that we do not welcome such piecemeal legislation and suggest that only a comprehensive Hindu Code should be placed before the Legislature. However, as stated in our opinion on the original Bill, we are in entire agreement with the main features of this Bill, *viz.*, to have a uniform law of intestate succession throughout British India, to recognise women as heirs, and to abolish the Hindu widow's estate.

We had suggested in our previous opinion that to avoid the difficulty about succession to agricultural lands the Central Legislature must acquire the necessary powers to legislate for such lands by obtaining the requisite amendment of the Government of India Act, 1935. This suggestion, we find, has not been considered by the Committee at all in their report. We therefore have to repeat the said suggestion and to say that that would be the only effective course to secure uniformity of legislation in the whole of India.

Further, we also feel that the Hindu Code should be self-contained and no words should be so defined as to require a reference to the previous Hindu Law.

With these preliminary observations, we offer the following comments on the provisions of the Bill:—

Clause 5, Class I (i).—We feel that the qualifications of the word "parents", *viz.*, "if dependent on the intestate", is not a very happy one. The word "dependent" does not bear a definite meaning and this is bound to create practical difficulties in ascertaining in almost all cases whether parents are entitled to any share or not. The learned authors have included the parents with the qualification mentioned because, as they say, it is but equitable that parents who have a right to maintenance should, like the daughter, receive a share. We do not agree with this consideration. The reasoning that all those who are entitled to maintenance should receive a share in lieu thereof is a very wide one, and even the learned authors themselves have not extended it beyond the case of parents as qualified above. Several others, who otherwise are entitled to maintenance, are not included as heirs, and we do not think that the principle should be so extended to include parents herein. If they are otherwise not provided for, they can always count on their right of maintenance out of the son's estate.

Further, the widow of a predeceased son, *i.e.*, a daughter-in-law, is included amongst simultaneous heirs; but it is not thought fit to give that right to a daughter of a predeceased son. We feel that this omission is not justified. We suggest that a daughter and a son should both have a simultaneous right of inheritance at every stage. The principle of representation has long been recognised in Hindu Law and there is no reason why it should be ignored here. We suggest therefore that it should be provided that the share which a son would have

taken if alive when a succession opens should go to his heirs, as if he had died intestate in respect thereof.

Clause 7 (e).—Here we find that any property inherited by a parent is to be, in certain contingencies, something in the nature of "a Hindu widow's estate" with incidents of revisions. This means that though the learned authors are in favour of the abolition of Hindu widow's estate, they want to introduce a new form of estate under the present clause. By such provision, even though the nature of the property so inherited by a parent is absolute in his hands and the parent can bequeath it by will in any way he likes, his heirs cannot get it, if he dies intestate, and that the same would revert to the heirs of the son from whom the parent inherited. We do not agree with this restriction and suggest that the word "but any property . . . parents' should be deleted.

Clause 13 (b).—We do not see any reason why the principle of simultaneous right of a son and a daughter is not adopted with respect to (2) and (3) as also to (5) and (6). We also draw attention to our last opinion and suggest that the husband and children should be made simultaneous heirs. We therefore suggest that the order mentioned should be as follows:—

(1) Husband, son and daughter.

(2) Daughter's son, daughter's daughter, son's son and son's daughter.

(3) Father and mother.

(4) Husband's heirs, etc., and the rest as in the Bill.

Clause 13 (c).—We find that this clause is amended whereby a son, daughter's son of son's son is to receive half as much only as his sister. We do see the reason why. Under the present law, Mitakshara prefers a daughter to a son in succession to stridhan, while Mayukha gives preference to a son over the daughter. We therefore suggest that in this case male and female should be given equal shares.

Mr. B. S. Rao, Government, Pleader, High Court Bombay

1. I approve generally of the provisions of the Bill to amend and codify the Hindu Law relating to intestate succession. It is gratifying to note that equal rights are secured as far as possible to females under this Bill which is quite in consonance with the modern times when women have proved themselves worthy of enjoying equal rights with men.

2. Clause 5 of the Bill deals with enumerated heirs, and it speaks of succession of simultaneous heirs which means fragmentation of the corpus of the estate which may in some cases be quite unfair and unjustifiable. Suppose the corpus is small and it is to be distributed between the heirs who inherit simultaneously as enumerated in clause 5 of the Bill the share which such heirs would get would be quite small. In such cases the better plan would be that the inheritance should be restricted to a definite number of heirs mentioned in the aforesaid clause, preference being given to males as far as possible.

3. I am also of opinion that apostasy from religion should be considered as a ground of exclusion from inheritance.

The Seva Sadan Society, Bombay

The Council of the Seva Sadan Society is in full agreement with the main principles of the Bill, *viz.*, 1. There should be a uniform Code of Succession for all Hindus in British India; 2. The removal of sex disqualification for purposes of Inheritance and 3. The abolition of the limited estate for women.

The Council agrees with the addition of parent if dependant upon the deceased and the widowed daughter-in-law in Clause 5.

In Clause 5, Class II, sister should be placed in the preferred. 1. Daughter, 2. Son, 3. Daughter's daughter, 4. Daughter's son, 5. Son's daughter, 6. Son's son, 7. Husband, 8. Mother and Father if dependent on the deceased, to get equal shares.

In Clause 5, Class II, sister should be placed in the 5th place before brother's son's son.

West Khandesh Bar Association

The Association appreciates the need of codifying the Hindu Law and in that respect welcomes the introduction of the Bill under consideration.

It however feels that the codification of the law in a piecemeal manner is not helpful and that it should extend to other topics under the Hindu Law such as Marriage, Maintenance, Partition etc. and the simultaneous codification of all these topics is further essential to secure the approach to the subject from one single idea. The codification in a piecemeal manner would be making the various topics, appear as patch work only pieced up together.

The Association marks with great pleasure the features of the present bill regarding succession and particularly the recognition of the rights of the Hindu women, in that behalf and absolute nature of the estate allotted to them. Now to turn to the consideration of the bill in its various clauses the following observations are submitted for consideration.

Clause 2 G:—Dasiputra is sought to be excluded from the definition of the term 'son'. If Dwya and Kritim son with their peculiar characteristics are included in the definition of the word 'son' there does not seem to be any valid reason for excluding the 'Dasiputra' as that 'son' cannot be regarded to be responsible for the manner of birth, and when the question of succession is to be considered, the procreator of such a 'son' should have specifically the idea of opening a succession to him even by this method of procreation. As in the case of natural born son after the adoption of another boy, there may be some difference in the extent of the share to be allotted. It may be that, having regard to the treatment of the question of the validity of an adoption particularly in the Joint Hindu Family and the vexed topic of vesting and divesting of an estate incidental thereto the idea of adoption may come to be abhorred and one may not be surprised if the same comes to be discouraged even on that account as well on the account of the influence of the other civilizations with which we have come in contact. The other two forms of 'son' included in the term should better be excluded from the nature of the idea underlying the recognition of such 'son' in Hindu Law.

2 (2):—It is better to define the term domicile in the Act itself rather than leave the same to be determined under the provisions of any other act like the succession Act.

Clause C:—This clause is not necessary as it only restates the effect of such relationship which may very well belong to other topics of Hindu Law, viz., sonship.

Clause 5:—Clause 1 (i) This clause recognises simultaneous succession with the necessary fragments of shares to be taken by each one of those mentioned therein. It does not seem to be necessary to include parent as a dependent. The widow of predeceased son in this clause should have a right of maintenance, parent should have an unqualified right of succession.

If would be sufficient if a widow and a son or son of a predeceased son or a son of the predeceased son of a predeceased son are only deemed entitled to simultaneous succession. This would surely prevent fragments of property in a large measure and the normal extent of property to be divisible is not ordinarily expected to bear any more further fragmentation to afford decent consideration of claims of persons to be recognised as heirs. The claim of a daughter may be in the first instance in the nature of a maintenance till marriage and thereafter as heir in default of 'son', son's son, or son's son's son. So also the son's daughter and daughter's daughter may be deemed entitled to maintenance till marriage and thereafter recognised as heirs in default of persons recognised as heirs named earlier to her in the list. It is thought advisable that mother and father may be regarded as heirs independently of the consideration of the dependance or otherwise on the intestate and be placed above the son's daughter.

Clause 2:—Sister should be placed immediately after the brother. This would be keeping with the sentiment of the intestate and as a sister is nearer in kinship by blood than the brother's son.

Clause 3:—It is submitted that the claim of the father's sister may also be considered, and a proper place in the list should be given to her in view of the recognition of her son as heir in the list. It is submitted that clauses 5 and 4 may be interchanged so as to place person in class 5 in class 4 and vice versa. It is submitted that No. 5 in class 5 may be omitted on the ground of remoteness. It is further submitted that the recognition of heirs in

present class 4 is unnecessary as the relationship therein is rather remote.

The list of heirs should be revised in the light of the above observations.

Class 7 (d): In view of consideration of the claims of the daughters as above the question of quantum of shares need not arise.

Clause A:—No reduction of share be made. It is also submitted that the clause as to the estate devolving on the parent should devolve by heirship to the deceased intestate rather than be an item in the property to devolve by succession as his own property.

Clause F may be deleted.

Clause 8:—It would be much better if the order of succession be described by relationship rather than classing it as agnates and cognates and then by giving extraordinary meaning to these terms, such as in sub-clause 4 of this clause. This may also avoid the definition of the terms agnates and cognates. Clause 9 also may not be necessary if we name the heirs in order by virtue of relationship and this would also simplify the law of succession as such. The working of these rules as mentioned in clause 9 makes the affair complicated. Simplicity should be the prima virtue of any legislation.

Clause 10:—The recognition of heirship by such relationship as preceptor and disciple and follow students should be discouraged and hence the clause is unnecessary. So also any reference to such rights further in the bill should be omitted.

Clause 11:—There should be no need to consider the question of succession to hermits etc. as they should be deemed to be incapable of holding property and their property if any should go by escheat. In case of intestacy, if necessary, some provisions as regards the use of such property for some public or charitable purpose may be made in the Act relating to administration of such intestate property.

Clause 13:—It should be deemed unnecessary to draw any distinction with regard to heirship to the stridhan of a woman according to the source of its acquisition by the woman and the same rule of heirship should govern every kind of stridhan. So also it is submitted that the simultaneous succession should be discouraged and the succession should be determined with a view to give priority to a female over a male mentioned in the clause as 1, 2, 3 in clause b. Sub-clause C—This would be unnecessary in view of the above observation.

Clause 14 also would be unnecessary.

Clause 17:—There would be no need of this clause if such marriages are validated by some provisions under the topic of marriage under Hindu Law.

Clause 18:—The unchastity as disqualification should not be confined to the widow alone. It should govern all female heirs. It is also submitted that it may be desirable to consider whether any immoral course of conduct on the part of male heirs such as debauchery should not be regarded as disqualification and whether proper provision in that regard should not be made. The proviso to the clause also requires to be revised and the question of unchastity should not be made to depend only on the finding of the Court in a proceeding as between the husband and herself.

Simple list of heirs should be as under:—

1. Widow and son or son's son or son's son's son.
2. Son's son.
3. Son's son's son.
4. Daughter.
5. Daughter's son.
6. Mother.
7. Father.
8. Son's daughter.
9. Daughter's daughter.
10. Brother.
11. Sister.
12. Brother's son.
13. Brother's son's son.
14. Sister's son.
15. Father's mother.
16. Brother's daughter.
17. Sister's daughter.
18. Father's father.
19. Father's brother.
20. Father's sister.
21. Father's brother's son.

22. Father's sister's son.
23. Mother's mother.
24. Mother's father.
25. Mother's brother.
26. Mother's brother's son.
27. Mother's sister's son.

Mr. G. N. Katre, Assistant Judge.

In Section 1 sub-section 4 it is stated that the Act shall come into force on the 1st day of January 1946; sub-section 3 (i) provides that the Act shall not apply to agricultural land except in the Chief Commissioner's Provinces. In the majority of the Provinces, the normal constitutions are not functioning and there is no likelihood that they will begin to function in the near future. It is not at all desirable that one law of succession should apply to the agricultural property and another should govern the devolution of other than agricultural property. The distinction between agricultural property and non-agricultural property is made for defining the spheres of the Provincial and Central Legislatures. To introduce that distinction into the law by succession is fraught with undesirable consequences and in no system of jurisprudence this distinction is made. In my view, the Central Legislature must be free to pass laws relating to succession to both agricultural and non-agricultural property. The Provincial Legislatures may be empowered to pass Tenancy Laws and laws affecting transfers of agricultural land. If this result is to be achieved, the Government of India Act will have to be amended.

5. There is no likelihood that the Provincial Legislatures even when they will begin to function, will agree to pass supplementary Acts making the provisions of the Bill applicable to succession to agricultural land. The Congress Party had once exercised Governmental authority in no less than 7 Provinces. That party has been out of power since 8/4 years but considering the results of the recent elections to several Local bodies, one feels that the Congress is likely to sweep the Polls and establish itself into power in the same 7 Provinces. The Muslim League, another strong Political Party, claims that it has established its Ministries in 5 Provinces. There is no love lost between these two Political Parties. If the proposed Bill becomes an Act, the chances are that the so called Congress Provinces will refuse to pass supplementary legislation governing succession to agricultural land while the Muslim League Provinces will not fail to pass supplementary legislation not because of any interest felt in the Hindu Community but simply to score a point over the rival Political Party. The object of codification is to ensure simplicity and uniformity in the administration of law but neither of these two things will be achieved by passing this Bill affecting only non-agricultural property and leaving succession to agricultural property to be governed either according to the present Hindu Law or according to the provisions of this Bill.

6. Again the distinction between British India and States India exists only from a political point of view. Laws affecting succession and family rights of any community should be based upon the habits and customs and ideals of that community. At present, the traditional Hindu Law as explained and modified by judicial precedents is in force throughout Hindu India. It is true that certain enactments have been passed by the progressive Hindu States like Mysore and Baroda affecting some branches of Hindu Law but those enactments have not made radical changes in the law of succession. The proposed Bill will not affect succession to property in States India and that will certainly cause much inconvenience to the Hindu community.

7. Apart from the unsuitability of the present times for undertaking this sort of highly controversial legislation, I do not approve of the passing of the Act affecting intestate succession as Part I of the proposed Hindu Code. If at all a Hindu Code is to be passed, all its parts should be passed simultaneously. I think it should await till Federal constitution is established in India. A Hindu Code if passed by the Federal Legislature will come into force in the Provinces of British India and at least in

the majority of important Native States simultaneously. The smaller States will automatically follow suit and in a short period uniform law of intestate succession will prevail throughout India. Unless law of marriage, maintenance, wills and adoption is settled it is most inconvenient—if not futile—to make radical changes in the matter of intestate succession. The constitution of a family is determined by the laws affecting marriage, and adoption and until these laws are first made in accordance with the prevalent views of the majority of the Hindus, the rights of succession of the various members in the family cannot be considered on a satisfactory basis. Marriage between cousins is allowed in Christian and Muslim societies and there succession of females does not lead to much disintegration of family property. Among the Hindus, on the other hand, even sagotra marriage is forbidden. A Hindu woman on marriage ceases to be a member of her family of birth and this has greatly contributed to the permanence of the marriage tie and consequent happiness of married people in the community.

8. I feel that this Bill will prove a greater handicap in arranging marriage of Hindu girls than the dowry system.

9. The proposed Bill makes drastic changes in the Hindu Law as applicable in Bengal. By including property acquired by inheritance or partition or devise in the definition of Stridhan and thus doing away with the limited estate of the woman as familiar to the Hindus, the Bill is introducing a most radical change in the personal law of the Bengal Hindus. That Province has only recently gone through the deepest distress due to the food scarcity. The Muslim League Ministry is in power in that Province and as observed by me already the present Legislature of that Province is very likely to make the Act applicable to succession of agricultural property in Bengal whether the Hindus there like it or not. The danger of that Province being converted into active theatre of War is not yet completely passed. Unless there is unmistakable evidence to show that the majority of the Hindus in Bengal want to do away with the limited estate of their women, it will be nothing short of cruelty to force this unwelcome law on them at this time.

10. Even outside Bengal, the minds of the public are greatly worried by the prevailing high prices and scarcity of food grains.

11. For all these reasons, until the peace and prosperity of normal times is restored to this country, this sort of legislation should not be undertaken.

12. Coming now to the Provisions of the Bill the first thing one notices is that it does not affect the property which passes by survivorship. The traditional Mitakshara joint family is not affected by the Bill and the courts will be therefore confronted with intricate problem in determining the heritable property of a Hindu. In most Hindu families, even married sons continue to live jointly with their fathers and in the case of agricultural and commercial communities, sons assist their fathers from their early age in the acquisition of family wealth. The Bill does not do away with the fundamental Mitakshara principle of son's interest by birth in the joint family property and hence so far as Mitakshara Provinces are concerned, the Bill will have little scope for its operation.

13. Stridhan is defined as property acquired by a woman by inheritance, devise or partition or by any other means. This definition of Stridhan is not in accordance with Hindu sentiments. The traditional Hindu idea is to preserve the family property intact as far as possible and hence widows in the family are given limited estates. The Hindu Law makes a distinction between *Swamitra* and *Swantantra* over the family property. Even when father is given limited powers of disposal, it must seem strange to the Hindu mind that a woman should acquire absolute estate in the property inherited from her husband or her father-in-law. The love of a woman for her relations in the family of her birth will always induce her to take her husband's or father-in-law's property to her relations. A large percentage of woman in this country is still uneducated. Lack of education and want of experience are great handicaps in the way of efficient management of property and I do not think that absolute estate given to a Hindu widow will in the long run prove

beneficial to her. It will however surely lead to the disintegration of the family property. Laws of succession should as far as possible be in accordance with the sentiments of the intestate as to the objects of his bounty and I do not think that the Hindu community as a whole desires that widows in the family should be given absolute estate in the property inherited from her husband or father-in-law. Every enlightened Hindu desires that a widow so long as she remains chaste should be comfortably provided for during her life time and for that purpose it is sufficient if she is given a limited estate in the immovable property of her husband or father-in-law and if the law of maintenance is liberalised by making it obligatory upon the brother-in-law or the father-in-law to maintain the sister-in-law and the daughter-in-law. The Hindus would not object to the considerable liberalisation of the law of maintenance in addition to allowing the widow to enjoy the share of her husband in the joint family during her life time but I think the Hindus will not favour the inclusion of property acquired by the widows by inheritance or partition in the definition of Stridhan. It would surely lead to uneconomic sub-division of immovable property besides promoting litigation.

14. Section 5 mentions enumerated heirs and they are divided into five classes. Parents, descendants and the widows of the descendants are placed in class one. Of these, parents if dependent on the intestate, widow, son, daughter, son and widow of a predeceased son, are called simultaneous heirs.

15. Daughter's son, son's daughter, and daughter's daughter come next in order in Class I. I am opposed to the simultaneous succession of daughters with sons. The traditional Hindu idea is that a daughter is completely severed from her family of birth on her marriage and she should not have any interest in the property of her family of birth except when she succeeds as a daughter or sister. Simultaneous succession of daughters with sons will create much bad blood between brothers and sisters as well as between the families united by marriage and I shall not be surprised if difficulties are created in arranging the marriages of daughters. The brothers will not consider it obligatory on them to arrange the marriages of their sisters and the thought of inheritance which a daughter would bring for her parents will not fail to influence the selection of brides. The Hindu society is deeply attached to the Mitakshara compact series of heirs which ends with brother's son. The Bill places son's daughter and daughter's daughters above the brother and his sons. Daughter's daughter was never considered a heir and the Bill gives her a far higher place which is not in accordance with the sentiments of the Hindus. According to Hindu Law the enjoyment of property carries with it certain obligations to the deceased and his family. These obligations may be in the nature of conferring spiritual bliss on the deceased by performing Shraddh or the continuance of the family and its traditions. A daughter's daughter and for the matter of that even a son's daughter will not share any of these obligations.

16. It is difficult to understand what is meant by "parents if dependent on the intestate". How is the dependence of a parent to be determined? The Bill places parents not dependent on the intestate in Class II i.e., they come even after a daughter's daughter. This is indeed the most curious feature of this Bill. I think the compact series of heirs should be preserved. After the brother's son should come in sister and sister's son and thereafter should come in such relations as son's daughter, sister's daughter, brother's daughter, etc.

17. I am in favour of abolition of the distinction between agnates and cognates and the Legislature should complete the table of heirs by enumerating the cognates and agnates according to the nearness of the natural tie and providing for escheat in the absence of the enumerated heirs. The intestate's widow or widows are given one share, when the estate goes to simultaneous heirs. This is another instance of the desirability of codifying the entire Hindu Law simultaneously. It should be made certain whether a Hindu should be competent to take a second wife when the first is living. The Hindus would have no objection to recognise divorce and judicial separation within certain limits. The intestate's widow or widows are given one share, when the total prohibition of a second wife to a Hindu when the first is living.

18. I do not agree to the provision in Section 7 (e). Firstly the share given to a parent is too small. Secondly the provision that the share taken shall go to the heirs of the son from whom it was taken is not at all just. It would come to this that the father's or mother's share would not go to his other children but would go to a daughter's son or daughter's daughter of the son from whom the share was taken.

19. The provisions in clause (f) of Section 7 constitute a radical departure. It is not necessary to constitute a widowed daughter-in-law as a simultaneous heir. She will succeed as daughter and it is sufficient if provision is made for her maintenance if the inheritance she gets as daughter is insufficient for her maintenance.

20. The scheme of simultaneous succession and the order of enumerated heirs appears to be inconsistent with the normal sentiments of a Hindu proposition.

21. I am not in favour of succession of cognates beyond a certain specified number and the succession of agnates should be limited to descendants and ascendants upto three degrees.

22. The provisions of Section 10 which provide for succession of Acharya, Shishya and Sabrahmchari should be deleted. It will be difficult for the courts to determine who these worthy persons are.

23. So also the provisions relating to the succession to Vanaprastha and Naisthik Brahmachari should be deleted. One can fix a Vati or Sanvasi but it will be a very difficult task for the courts to fix a Vanaprasthi or Naisthik Brahmachari. Why these archaic remnants should be introduced in the modern Hindu Law of Inheritance is not clear to me. One could have understood these provisions if the Bill had defined the terms Vanasprasth and Naisthik Brahmachari.

24. I do not approve of the provision that the property of a hermit shall go to his Sacchisya. This is introducing a confusion in the administration of law. The spectacle of the worthy disciples of hermits fighting in law courts for property of their Guru is not very edifying and in any attempt to reform the Hindu Law provision should be made for elimination of such litigation. The provisions in the Bill for succession relating to a hermit's property seem to be antiquated. The best course seems to do away with Vanaprasths and Naisthik Brahmacharis and recognise only the Sanyasis. In the case of a Sanyasi, his heirs should be (2) his Guru who initiated him into the order and (1) his own nominated disciple or (3) the nominated disciple of his Guru. In the absence of these, the property should go to the Math of the Order to which the Sanyasi belonged.

25. Coming to the succession of Stridhan, husband and parents should have been considered as simultaneous heirs on the analogy of the simultaneous succession of the widow, daughter and sons. At any rate the preference given to daughter's children and son's children over parents does not seem to be in accordance with principles of justice and fairplay.

26. The provisions of Section 17 as to the validity of intercaste marriages for the purposes of succession is another instance of the danger of piecemeal codification of Hindu Law. The section appears to be cumbrously worded. It will be sufficient to state that intercaste marriages shall be considered valid for the purpose of determining the interest of the surviving spouse and descendants of the intestate. If the prevailing sentiment of the Hindu community is in favour of intercaste marriages, then there is no reason why only the surviving spouse and descendants should be held to be not affected by the Bill. It is more logical to say that for the purpose of succession no distinction shall be made between marriages within the caste and those outside the caste.

27. Section 18 provides that unchastity of only the widow of the intestate shall be a bar to inheritance and that too when a court of law has held her to be unchaste in a proceeding between her and her husband. I do not see why the unchastity of daughter-in-law should not be a bar to her inheritance.

28. Section 20.

Apostacy from Hindu Religion should be a ground for disqualification.

Ahmedabad Bar Association

1. The Preamble of the Bill mentions that the Bill is for the purpose of amending and codifying the Hindu Law relating to intestate succession. There is a fundamental objection to the introduction of the Bill on the Preamble mentioned and a distinction should be drawn between amending the Hindu Law and codifying the Hindu Law. Codification may mean putting together in a codified form the law as it exists at present and is being administered; while amending means and includes provisions changing the law as hitherto administered.

2. So far as amending the law it is submitted that the Legislature has no right or even power to amend the law of succession which has been agreed to be a personal law and the interference with which was never contemplated even by the Government authority at the time of assuming Government of India. Personal law, religion, and social customs, are by the Queen's Proclamation kept outside the pale of the duties or rights of Government and the Legislature being no more than a part of the secular Government has no right to amend any personal law of the subject.

3. The Bill as proposed does not only codify the existing law but tries to amend the same by introducing provisions which shake the very fundamentals and foundations of Hindu Social fabric. Even on this count alone the Bill should be rejected.

4. Hindu Law is so much mixed with Hindu religion that it is difficult almost impossible to separate religious precepts from purely moral or religious precepts. The function of the administration if law deduced from these precepts is the real function of Government and is carefully done by Judicial Tribunals administering the law and the same was applied to the Hindu Subjects as personal law. The sources of Hindu Law are the Vedas, Smritis, Commentaries and judicial decision arrived at on interpretation of these. No executive or legislative Government body was laying down any personal law and hence it is that different localities are governed by different schools of thought and interpretations.

5. The occasion for amending or codifying the Hindu Law has not arisen because there has been no demand for any amendment or even codification by the Hindu population in general or any important sections of the Hindu population in particular.

6. Assuming that the Legislature may have power or right to sponsor any such legislation dealing with the personal law of a section of the subject, viz., Hindus the present legislature is not at all proper or even competent to pass any such legislation inasmuch as the present legislature never contemplated before its constitution or the election any such measure and as such it can never be said that the present legislature has got any mandate or authority from the people whose law it is going to get changed. The present Legislature consists of other religionists and even Hindu members are not elected on a Hindu electorate. This ground when fully considered will show clearly that no such amendment changing the law could be introduced or passed. With great deference to the sponsors of the Bill it may be said that if any attempt were made by the present legislature to amend the personal law of Mussalmans, Jews or Parsees or any other religionists in India against the precepts of the Holy Koran or other respective religious tenets the whole populace affected by the proposed legislation would rise against any such motion. On the contrary we find that the aid of legislature was invoked to legalise the Waki-ul-Aulad, a Waki valid under the Islamic tenets, but invalid under law as pronounced by the P. C. When therefore in other cases law is made to conform to religious tenets, here in case of Hindu Law, Law is sought to trample down and metamorphose the religious tenets. This should never be allowed.

7. The Hindu Law has been administered in the various provinces under different schools and it is one of the fundamental doctrines of Hindu law that custom overrides the law even propounded by the Holy texts. With this position regarding applicability of certain tenets of law to certain areas, it is impossible to have one law for the whole of British India and when it comes into conflict with the law prevailing since centuries, the action is tantamount to a wholesale reversal of established customs

and canons of law and will prove to be a revolutionary measure which cannot and should not be undertaken.

8. The time selected for sponsoring the legislation is absolutely inopportune. The country is passing through a crisis and the world war is progressing. War has actually entered the soil of India; at this juncture when people are actually worrying about their daily ration, and various handicaps and hardships nobody would wish that such an important piece of legislation be taken on hand. People would not be even in a position to have their say or put forward their objections in a right manner and within the prescribed time. The Hindu population is going on with the existing laws of intestate succession since centuries without any difficulty and it will not be worse off if the question about the proposed legislation is dropped at present to be taken up if and when necessary and expedient after the close of the war. The persons seeking legislature also will not be in a frame of mind suitable for deep and detailed consideration of the effect and implications.

9. The Bill is not proposing to only codify the existing Hindu Law but seeks to change the law altogether simple. Codification of existing law is a matter which can be done by eminent Hindu Jurists, Pandits and lawyers, with a set idea before their mind, not to change the law but put it in a codified form only. The Bill thus deserves to be rejected *in toto*.

10. Coming to the merits of the Bill in regard to the various provisions, the Bill is opposed on every count. In the first place the whole scheme of the Bill is to cut off from its very root the system of coparcenary or joint family system. Individual property is the law of the West. Joint and undivided family is the law of the East. A Hindu obtaining separate property and dying, property devolves on his sons and sons take the same as inherited property in their hands with respect to their male issues. Every property therefore becomes a joint family property in the hands of a male within a generation under Hindu Law. The Bill intended to be introduced gives a death-blow to the system of the joint family and joint family property, without considering sentiments of Hindu community. The fabric of Hindu life dependent upon joint Hindu family system is intended to be destroyed by the proposed Bill. Absolutely ignoring the joint and undivided Hindu family system which, as a matter of fact, has until now helped the Hindu community to a great extent and prevented most of its members from starvation and introducing simultaneous intestate succession absolutely ignoring the existence of a joint family or without considering the sentiments and feelings of Hindu community is an attempt which would ruin and destroy Hindu community at large.

11. The scheme of the Act is to substitute as it were the scheme of the Mahomedan Law of inheritance for Hindus while continuing some provisions absolutely unchangeable. The under-current running through the Bill however is a complete and absolute change from one type of social polity and scheme to an absolutely alien and contrary scheme. The institution of a family unit continuing in perpetuity like a corporation and the succession going on from father to son (in preference to a daughter) from generation to generation has as its background a religious principle of Shrādh, the merit for the next world which the Hindus believe as a sentimental and religious duty. According to Hindu Law only those who can offer spiritual benefit to the deceased are entitled to succeed. The fragmentation of property by division amongst daughters on succession will really militate against that fundamental basis and is going against all tenets social and religious as daughters are not entitled according to religion to grant spiritual benefit to the departed soul.

12. Another fundamental objection to the Bill is the provisions of clause 19 which disqualifies only a murderer from inheritance. We think that apostasy also should be made a disqualification to succeed. It is natural to understand that a person whose intestate succession gives property to an apostate, son, or daughter would himself if alive not like such a succession at all. Apostasy therefore before the succession opens up must be made a disqualification to succeed. Provision should be made for reversion of the estate to the other heirs of the intestate in cases of apostasy after the succession open up.

13. If by the amendment regarding apostasy it is necessary to repeal the Caste Disabilities Act or the Freedom of Religious Act there is no objection to repeal the same.

It may be noted that apostasy is a disqualification even according to the Mahomedan Sheriat Law also and there is no reason why the same principle may not be adopted here and hence in case of necessity the enactments aforesaid should be repealed.

14. The further objection to the scheme of the Bill is that it absolutely does away with the idea of a limited or widow's estate. The nature of the widow's estate is inborn in Hindu males as well as females. The idea is there predominantly since centuries and with a stroke of pen the whole idea is brushed aside. It may be that powers of alienation by a widow may be necessary to be enlarged which may be done by liberal interpretation of the party but an absolute estate is an intestate succession to a widow without any restraint about reversion, even in case of remarriage or apostasy, is revolting to a Hindu mind and cuts at the root of the Hindu social fabric. The allowing of absolute estate to a widow would be most detrimental in case of big Zamindaries and other properties.

15. Giving of absolute estate to a widow would naturally discourage the practice of Adoption, and in course of time will put an end to the system of adoption by widows because no widow would like to curtail her own rights in favour of any other person and no boy or his father would like to be adopted without any property coming to him and his losing rights in his own family. The cessation of the Practice of Adoption will be tantamount to depriving the departed soul of the spiritual benefit that is believed to accrue by the theory of adoption and the adopted son performing the Shradha, etc., conferring spiritual benefit.

16. Coming to the various sections the objections are shortly summarized as under:—

(a) Section 2(a) Definition of "Agnate" is too wide. It should be restricted to the degrees of Sapindas and Samanadaks and not further.

(b) Section 2(d) Definition of "Cognate" Apostasy should be regarded as a disqualification from claiming the relationship of Agnate or Cognate. Suitable amendment be made accordingly.

17. Section 4; Vritt right to perform any religious ceremony, worship or duties and the right to receive emoluments pertaining to any religious or priestly office should be excluded from the definition of "Heritable Property" and devolution thereto should be governed under the existing Hindu Law.

18. Section 5 Enumerated Heirs:—

The compact series of heirs as existing under the prevailing Hindu Law should not be disturbed. Simultaneous succession is fundamentally opposed to the old tenets of Hindu Law and it would disturb the entire integrity of the estate. The Principle of "Nearer excluding the one more Remote", should not be lightly brushed aside. With the changed social conditions unprovided and needy female heirs may be suitably provided without causing detriment to the underlying principle of Hindu Law of Succession based upon the confirmation of spiritual benefit and performance of other social monetary obligations by the male heirs only.

19. If however, the daughters, son's daughters, daughter's daughters and females other than the widow of the Intestate are to be held entitled to share in the inheritance, then such inheritance should be restricted to moveable property only remaining after the payment of debts of the deceased inasmuch as and dividing immoveable property by metes and bounds to respective heirs including daughters will result in Disintegration and Fragmentation of the said property which will be consequently detrimental to the Fundamental Hindu idea of a Hindu family with respect to the share remaining in the hands of the male issue and will annihilate the idea of a Hindu family unit.

20. The Bill as proposed by making daughters and other female heirs simultaneous heirs of the Intestate is fundamentally opposed to the Principles of Pious obligation of sons, to pay the debts of the father other than illegal and immoral which obligation under Hindu Law does

not seem to be extended to Females inheriting the property of the Intestate.

21. If simultaneous heirs are to be retained the restrictions on parents as "if dependent as the intestate", should be omitted.

22. Section 7(d) Add the following Proviso: Provided that if the daughter dies without any issue, natural or adopted, the residue of the property so inherited, shall, at her death, revert to the heirs of the person whose property he has inherited.

23. Section 12: The prevailing rules about Inheritance to Stridhana Property, should not be altered as by the proposed amendment that type of Stridhana over which the husband has got a right in times of distress will also be at the absolute disposal of the woman, and that would be taking away the right of the husband more so in cases of property given by the husband himself.

24. Section 13: No departure from the existing law is desirable and the line of succession should not be disturbed.

25. Section 15: No distinction need be drawn between heirs of Full Blood and Half Blood specially in case of sons of the same father but by different mothers.

26. Section 17: The clause is closely connected with the principles of validity of marriage along with the question of Inheritance and should therefore be deleted herefrom.

27. Section 18: It is a flagrant violation of the Hindu Law and Moral Code and should be therefore deleted and the disqualification of widows inheritance as existing at present, should be maintained. It practically removes the disqualification on the ground on unchastity prior to the death of the husband inasmuch as cases would be rare, in which the conditions of the proviso are satisfied and it absolutely removes the disqualification of unchastity after the death of the husband. The doctrine "the wife or widow shall take the property of the husband so long as she is faithful to her departed husband" is brushed aside altogether.

28. The Council is of opinion that the Bill should be rejected *in toto*.

The Chitpawan Sangh

1. Main questions of principle to be considered are:—

(1) Whether it is necessary and advisable to codify the Hindu Law?

(2) If so, whether it should be done as a whole or piecemeal in successive stages?

(3) If it is to be done in successive stages then whether the Bill passed should be put in force at once as it is passed or effect be given to it after the whole code is passed.

Two other questions of policy as well as Powers of Legislature in this matter have got to be considered.

(1) The Bill is not an ordinary Bill dealing purely with secular matters but it affects the religious rites of the Hindu community in matters touching their family relations.

(2) The Government of India Act has given concurrent power to all the Provinces to pass Bills with respect to succession, marriage, etc. In the case of Hindus, the Central Government is also given the same power except with respect to agricultural lands.

(3) The Central Legislature as at present constituted cannot pass laws binding all Hindus whether in British India or Native India and there is likely to be a confusion of the provisions of Hindu Law prevailing in British India as well as in Indian India. Therefore there is a possibility of the Law governing the Hindus in British India *via* 2/3, and in Indian India composed of several States. All the 11 Provinces of British India under the new Provincial Autonomy would be independent states with power to make laws for domiciles therein and as a result the Hindus who form a majority of this country would be divided into so many different nationalities so to say in addition to castes and sub-castes that already exist. It is not desirable and necessary to do so.

These 3 questions being matters of principle are to be discussed first.

2. As a matter of policy from the time of the East India Company the Act of 1780 and of 1797 do not give power to the Company to legislate for these matters. Those two sections *viz.* section 18 of the East India Co., Act of 1780

and Section 12 of the Act of 1797 have now been repealed by the Government of India Act Section 301, which runs as follows:—

"Section 18 of the East India Co. Act 1780 and Section 12 of the Act of 1797 (being obsolete enactments containing savings for native law and custom) are hereby repealed."

It can be said that there is no prohibition to the legislatures to enact laws relating to these matters, but there is no positive rule empowering them to pass such laws but along with this has got to be considered the effect of the oath by the King at the time of the Coronation. The King takes his Holy Bible in his hands and promises to give freedom of religion to his peoples in the following words:—

"Archbishop: Will you solemnly promise and swear to govern the people of Great Britain etc. and of your Empire in India according to their respective Laws and customs?"

The King: I solemnly promise so to do."

In pursuance of this promise the King has limited his own power by proclaiming publicly as follows:—

"We do strictly charge and enjoin all those who may be in authority under us to abstain from any interference with the religious body, place or worship of any of our subjects on pain of our highest displeasure."

The Legislature derives its authority from the Crown as part of a Sovereign Power and the extent of its power must be determined by reference to the limitation of that power contained in the proclamation as well as the oath. It could therefore be seen that if the proposed Bill for intestate succession has the effect of interference with the religious beliefs then legislature would not have the power to pass the Bill.

3. As the Provinces have powers to pass law relating to these matters concurrently with the Government of India and have the sole and exclusive powers of passing laws dealing with agricultural land, it is desirable that these matters should be considered by the Provincial Legislatures with respect to all kinds of property. This will have also another convenience viz., the provinces would get good representation of lawyers in that particular province which may be governed by its own school. No doubt of uniformity may not be there, but uniformity is not the only essential to be considered but peoples' interests and beliefs also have got to be considered. Therefore the Bill may be recommended for consideration to the Provincial Councils themselves and it may be left to them to pass or not. This should obviate also the necessity for the Provinces passing laws for agricultural lands in addition to the Government of India Act.

4. The third objection was that it created confusion of laws in British Indian Provinces as well as Indian India. It is desirable therefore to postpone consideration of this Bill until federation is established and a legislature competent to pass laws for both Indias come into existence. This would prevent complications of any international nature in the administration of the laws relating to status as well as inheritance to property.

The three points stated above are essential matters of principle and they have got to be considered at the time of the first hearing of the Bill.

5. The Assembly as at present constituted was elected about 10 years before. Since then much water has flown under the bridge, the public opinion has considerably changed and the members of the Assembly could not be said to be real representatives of the people and should not therefore take up this duty of passing such laws.

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 Mahomedan and the Christian constituencies whose religion is of proselytising nature, the interest and duty are likely to conflict and therefore their opinions as their votes are likely to be affected by that 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 3/4 of the community concerned must be obtained to pass the bill. No doubt there is a convention upto now observed to that effect but the very bill under examination 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.

6. 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 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.

7. The first question viz., whether it is necessary and advisable to codify the Hindu Law would be taken up now. If it were a mere matter of codification of that Law so that any one who wanted to know the Law on that point could refer to the section pertaining to it and get a definite statement of Law. If that is the only end to be arrived at there would be no objection to such codification alone but the Rao Committee as well as the Select Committee intend both to amend and codify in successive stages the whole of the Hindu Law and my Association is opposed to the amendment for reasons to be considered below:—

8. 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 fact to abrogate certain parts which it thinks to be unreasonable, that is objected to by my Association. What the Rao Committee proposes to do in this connection can be best understood by the following portion in paras. 87 and 88 of their report which are quoted below:—

"87. 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."

88. 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 Code 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."

9. 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 recognise 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 particularize 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 4 persons only selected without any apparent principle is not exactly the sort or 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 and which would be considered later on in detail.

10. 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 my Association suggests: 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 seat 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 of 4 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.

11. It has already been stated above that the present Assembly where Hindu element is not properly represented should not be entrusted with such work. This statement is amply borne out by the procedure of the Select Committee with respect to this particular Bill. In the Select Committee a proposal was made to amend clause 20 of the Rao Committee Bill by inserting apostasy as one of the grounds of exclusion from inheritance. Out of the 18 members of that Committee 3 were Muslims, 1 Christian, 1 Parsi, 1 Brahmo and 12 Hindus. Out of these 12 Hindus, 11 Hindus definitely stated in their minutes of dissent that apostasy should be made a disqualification to inheritance. With respect to this suggestion the report of the Committee states, "We considered whether the abandonment of the Hindu Religion and conversion to another religion should be made ground of disqualification from inheritance. We decided against upsetting the position established by the Caste Disabilities Act, 1850. Some of the members in their minutes have expressed as follows:—

Mr. Chattopadhyaya stated:

"That the Chairman who was a Moslem broke the convention". Mr. Kalikar stated that this convention was broken by the Muslim members; Babu Bajoria and Pandit Nilkanthdas stated that the non-Hindu members influenced the decisions of the Committee in almost all cases against the wishes of the majority of the Hindu members and Mr. Chowdhury put the question directly to Muslim members whether they would like a bill affecting their community to be passed with the help of non-Moslem votes. With all these statements appearing in the dissenting minutes, the Joint Committee Report states as follows:—"We decided against upsetting the position established by the Act of 1850." Who is this "We"?

12. 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

connection 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 opinion of my Association 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.

13. It follows that even if these bills are passed in the opinion of my Association effect ought not to be given to them. If piecemeal legislation is to be resorted to then at least the marriage law and the law of maintenance should be taken into consideration first before this Bill is taken up. Clause 17 of this Bill would be an instance of the difficulty that would arise if the Law of Succession is considered first before the Law of Marriage. In this connection it may be pointed out that the Rao Committee itself was not in favour of piecemeal legislation and said that where fundamental changes have to be made it is wise to survey the whole field and enact a code if not of the whole of Hindu Law at least of those branches of it which are necessarily affected by the contemplated legislation and this would mean that the Marriage Law, the Law of Succession and the Law of Joint Family should be taken into consideration together with this Bill.

14. With these preliminary remarks, it would be worthwhile to consider the basic principles of Hindu Law violated by the Rao Committee and approved by the Select Committee. In their explanatory note to the Bill the Rao 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 heirs 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 Badhakra 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 upto now is not to look on an individual in his isolation but to look at him in connection with a group or family or collection of individuals drawn together by relation and bound together by ties of common blood.

This system recognises the family as semi-corporate body as the unit of society. In contrast with this system you have in the western countries 2 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 this 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; (2) 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.

15. Upto 1937 the principle of simultaneous succession has never been adverted to in all the successive acts. 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 widows 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 para. 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."

16. This report was made in June 1941 and the proposed bill was first published in 1942. Whether any inquiries referred to in the para. quoted above were made in the meantime, it does not appear, and such problem 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 para. 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.

17. 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 is the performer of holy Acts, the other is to be enriched with gifts."

The Sayanacharya has the following comments:—

"However in between these two (i.e. between a son and a daughter) one, possessed of male sex, becomes the author of the meritorious religious work such as the offering of Pind obligation 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 authorised to perform meritorious actions, such as the offering of the pino, oblations, 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)".

(The translation is taken from the Book "Dharma Shastra and the proposed Hindu Code book" by Prof. V. V. Deshpande).

18. This point was never considered by the Rao 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.

19. 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. Kulikar remarked as above on this point.

"In recommending the revolutionary changes in the Hindu Law of succession the Rao Committee have shown lack of grasp of the fundamentals on which the Hindu Society is based. It is generally recognised that law of succession is closely inter-related 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."

Nilkandha Das and Baijnath Bajoria state as follows:—

"It is generally recognised that the law of succession is closely interrelated to the law of marriage. The prohibited degrees in marriage recognised 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 degree 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 Christians and Muhammadar 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."

20. 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 those communities. Further the rules of Mahomedan 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 upto 1890 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 is 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.

21. 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 dependant are proposed to take together as simultaneous heirs without the right of survivorship and, if 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 depended 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 purpose 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. (3) The economic factor. In agricultural country like India it would result in the dissipation of the property.

22. The Rao Committee as well as the Joint Committee apparently have acted on the fact that the principle of simultaneous succession has been accepted in the Assembly in passing 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 have induced the Government to see the injustice done to the daughter in 1939, except the claim made by certain section of the ladies. Even the Rao Committee was not at first prepared to include daughter as one of the simultaneous heirs but in their note the Rao Committee says that they have changed their opinion in view of the weighty opinions received.

23. It would thus be clear that in making this departure from the Hindu Law principle both the Rao Committee as well as the Select Committee have not given their reason 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.

24. To remove the sex disqualification by which the 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 the Hindu family my Association is of opinion that 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 dependant 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 injunction, equality and justice demand that the daughter should not be 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 rejection of the wife's interests in the father's family.

25. 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. The Rao Committee as well as the Select Committee have proposed to change this by providing that on marriage the woman would still continue to be the agnate or gotraia of the father. Therefore the position would be that the woman on marriage would go to her husband's place to give children to the husband who would be in the husband's family, she herself would be in her father's family and might inherit to her husband by special rule only. 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 Vedas that she should 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. My Association therefore is against the removal of sex qualification as proposed by the Committee. The right of a daughter is recognised only in the absence of a son and my Association is not prepared to go beyond that stage. In making the provision that after the marriage a woman would still continue to be the agnate of the father the Committee have given a go bye to the various texts.

26. The third main feature of the Bill is the abolition of the Hindu women'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 recognised even in the case of self acquired property of a male.

27. In giving their reasons for including the daughter along with the son, the Committee has arrived upon certain text from Manu and Yagnavalka but these texts go Putika which have the technical meaning, the meaning being Putrika is 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.

28. The third special feature of the proposed bill is the abolition of the Hindu Women's limited estate. The conclusions of the Rao Committee are:—

"But on the whole it seems safe to state that Smriti authority for the doctrine of the Hindu Women's limited estate is not unequivocal. The same view is corroborated by Select Committee based on the same reason. They held in the Mitakshara this theory of limited ownership had no place at all. All property however acquired by the woman becomes a 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 so that the same point has been made by the Rao 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 Yagnavalki. In its second line as the word "Adya" after the word Adhivedanika and Mitakshara interpretation of the word "Adya" is all kind 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 Rao 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 dominion or the course of devolution of the property.

29. 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.

30. "The text of Narada which declares a dependence of women is not compatible with their acceptance of acceptance of property even admitting their dependence. In other words 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 power of disposal over certain kinds of Stridhan and they further express their opinion that the Law has become complicated because we have departed from the Vignaneshwara and the solution is once more to be found in a resort to his ideas." Now this portion has got to be examined. 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 Yagnavalka 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 Yagnavalka. Instead of the word Adya Aparaka one of the earliest commentaries of Yagnavalka, writes Chaiva instead of the word Adya after Adhivedanika. Jimutvahana contends that the correct reading is Adhivedanikam-Chaiva and not Adhivedanikad-yancha.

31. The second reason in corroboration of the theory that the original word was not Adya is to be found in the gramatical 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 Yagnavalka. 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 Daya-Bhaga 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 Aparaka has 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.

32. 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 families or otherwise, in the first case all property inherited from males she inherits in her capacity as the surviving 1/2 of her husband and therefore she takes it as representing the estate which is burdened with obligations and therefore she is bound by those obligations. The obligations do follow the nature of the property inherited in her hands. The Rao Committee further says that Vidyaneshwar nowhere lays down any limitation on her domination over it, nor does he give her absolute domination over the same. If this silence of Vidyaneshwar is read with his own general theory of restricted ownership the conclusion would have to be that Vidyaneshwar 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, Vidyaneshwar 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 be simply due to the fact that he tacitly accepted the general principle that women are limited heirs. A principle which was approved even by Brahaspati the most well-known advocate of women's rights."

Quote Page 315. Notes 1 & 2. Altekar.

Then further the word Adya which means *et cetera* the word etc., or Adya if at all is used by him must have been obviously intended to include items like, bride-price, gifts from relations and presents received after marriage which are mentioned in the immediately following line. If, therefore, the basis on which a theory is based is doubtful and the inference drawn by Vidyaneshwar's non-mention of any limitation on her domination is still weaker especially when it is read in connection with the other portions.

33. Then the third reason given is the text of Narada which declared the dependence 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 domination 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 domination over it, nor property like real property in English which vests absolutely in the Crown can be the subject matter of full domination. Therefore, in using this argument about the tutelage of women not being incompatible with their acceptance does not help his deduction held by the committee.

34. It is not only the Dayabhaga, Brahaspathi, Katyayana but later writers like Mitra-Mishra are not in favour to give absolute power to the widow and it is worth while to refer to Dr. Altekar's Summary of the position in reply to the query whether widows powers to be enlarged at page 321 and he says the disability is that her powers in this connection are not restricted. 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 utilize 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 was not in the interest of the widows as a class that they should have unrestricted powers of alienation."

35. 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 absolutely ownership over property they acquired either by inheritance of 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 say nothing about right or domination over property, but merely state that they are entitled to inherit in the absence of sons. One other argument used is that the widows alienation is a frequent source of litigation. Therefore, it should be done away with, and the reasoning is:—

No. 1.—"The most serious aspects of this disability are one that it is one of the most fruitful source of litigation in our Courts today.

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 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 but 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 what is 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 but together, it 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 upto now. So the mere existence of litigation in such matters is not a sufficient ground for the serious departure from the Hindu Law texts which have been followed for centuries even by advocates of women's rights. If they wanted to change it they should have given other reasons than the ones advanced in justification of their theory in their proposal.

42. 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 the same opinion and gives practically the same reasons for his opinion in his trace of the Law of Hindu Intestate Succession.

43. While discussing the daughter's rights my Association has mentioned above that the daughter is not entitled under the text to be a co-heir with the son but it may be in the present day daughters might remain unmarried, in that case she is without any support. My Association therefore is of opinion that a daughter should be given a right to inherit along with the brothers, when she is unmarried and my Association agrees with the suggestions of Dr. Altekar on page 298 of his book which are quoted below:—

"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 1/2 that of her brother if she remains unmarried; she should lose this share on her marriage.

(2) She should have the right to demand that an amount from her patrimony equal to 1/2 the share of her brother and not equal to 1/4 such share as laid down in the Smritis should be spent on her education and marriage.

44. The genesis of the Deshmukh Act of 1937 was the present situation which was unfair to certain women entering into the family by marriage which should be enacted as Law that in case the husband deserts his wife 1/3 of his property should be given to her from his property. vide Verse No. 76 in Chapter 1 of Yashwantrao and if this provision is made into Law much of the disabilities and unfair treatment to the widows and women were to exist might be minimised. It would not be necessary for this purpose to overhaul the whole spacious structure of Hindu Law.

45. Adverting therefore to the proposal of the Rao Committee with respect to the nature of the code in paras. and quoted above, my Association is of opinion that in the Bill as proposed the distinct characteristics of Hindu Law have not been preserved whether the needs of the progressive society whatever they are are satisfied is a matter of opinion.

46. It should be remembered that once the code is enacted and good parts and bad parts are separated according to the Committee's opinion the codified statute would be the final word in the matter, and no part which though good is not in the opinion of the Committee to be good could be referred to in any subsequent litigation. The Bill therefore as drafted is against the whole trend and root ideas of Hindu Law and should not be passed but as stated above codification is thought to be necessary a codification may be based on the lines of proposals.

approved of by a Committee representing different schools, professions, the Peetha or Shankaracharya and other public men should be taken as the basis for a new Bill.

47. In addition to this, the clauses have to be criticised in detail which would be done in a later supplement to this question but generally it may be said that my Association accepts the comment of Diwan Bahadur Brahma on the several clauses.

48. The difficulty of making laws for British India alone has been already adverted to. Therefore as Diwan Bahadur Brahma says Hindu Law should not be made territorial law but kept personal law as it is so that the complications of an international character might not be so frequent.

S. K. Bahulekar, President of the Public meeting held at Karad

I have the honour to inform you that the public meeting of the Hindu citizens of Karad was held under my presidentship at Karad on 16th April 1944 to discuss and express opinion on the Hindu Intestate Succession Bill. Mr. L. M. Deshpande (M.L.C.) initiated the discussion and was followed by Mr. N. B. Budhkar, B.A., LL.B. and Mr. G. S. Altekar, M.A., LL.B. The resolution, translation of which is enclosed, was moved by Mr. S. R. Dhavlikar former Sub-Government pleader and was seconded by Mr. Tavre, pleader.

I then summed up the discussion and put the resolution to vote. The resolution was unanimously carried. After thanks-giving by Mr. N. A. Deshpande, B.A., the meeting terminated.

I therefore request you to be kind enough to forward the copy of resolution to the Central Government. I further request you to forward the accompanying copy of a representation to the Government of India. The representation was signed and submitted direct to Secretary Legislative Assembly, Delhi.

RESOLUTION

Intestate Succession Bill has been introduced in the Central Assembly, Delhi and the same is published together with the amendments and report of the Joint Committee for eliciting public opinion. This meeting is of opinion that Government should now withdraw the Bill for the following reasons:—

(1) Owing to war condition the public is not in a mood to consider the Bill of a far reaching character. Further sufficient publicity is not given to the Bill and the Marathi translation of the same is not available.

(2) This Bill has introduced the new form of simultaneous succession which is detrimental to Hindu interest and which is against the Hindu scriptures.

(3) This Bill will instead of diminishing litigation on the contrary undoubtedly increase it.

(4) It is stated that the present Bill is the first chapter of the proposed Hindu code. Some clauses in the other chapters of the Bill, are directly connected with some clauses in the other chapters of the Bill are directly connected with some clauses in this Bill and such interdependent clauses are included in this Bill on the assumption that the interdependent clauses in the other chapters have been passed. It is therefore wrong under the circumstance to consider this piece meal legislation.

(5) This Bill is not applicable to agricultural lands still it is recommended that the Provincial Government should make it applicable to agricultural lands. The Legislative Bodies of the Bombay Province are not now working. If this Bill is passed it is to come into force from the first January 1946 that means that it will fall on the Governor to pass the required legislation. This is contrary to pass the required legislation. This is contrary to the fundamental principles of Democracy.

(6) The Ryotwari system is prevalent in the Province of Bombay, so the divisions of the lands are reduced to the area of gunthas. The present Bill will further dissipate the agricultural lands and will cause great economic loss to Hindu Society.

(7) This Bill allows daughters to succeed to the Hindu property even though they (daughters) have willingly or forcibly gone out of Hindu religion.

8. This Bill has done grave injustice to the widows of Gotraja Sapindas in Bombay Presidency by taking away their right to inherit the property of a Gotraja Sapinda.

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'Land-owners' Association.

We sincerely request not to pass the Bill for the following reasons:—

(I) 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 as 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.

(II) 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.

(III) 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 agriculture 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 fragmentations and increase not only civil litigation but will add to criminal litigation also. It is therefore of the utmost need to the agricultural land-owners that further passage of the Bill should be immediately stopped.

(IV) 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.

The Resolution passed by Shastries' and Pandits' Meeting at Ahmedabad.

This meeting of the Shastries, Puranics and Sanskrit Pandits of Ahmedabad raises its strong opposition and protest against the two Bills named Hindu Code Part I (Intestate Succession) and Part II (Marriage) and declares publicly and before the Government of India its following considered opinion:—

(1) This meeting regards the whole movement of transforming the Hindu Law based on the Dharma. Shastras into a new Hindu Code in the name of Reform and uniformity, as against the ideals, usages, and scriptures of the Hindus and insists that the Movement and the Law Committee appointed for it should be abrogated.

(2) The two bills beginning the new and wrongly styled Hindu Code are plainly against the injunctions of the Dharmashastras which can be properly explained and interpreted only by religious Shastric experts and this meeting does not recognize such fitness either in the Law Committee or the Central Legislative Assembly.

(3) The Hindu Law is based on Sacred Sanskrit Works and to render and consolidate it in a foreign language like English is, in the opinion of this meeting, an open insult to the culture, languages and people of the country.

(4) In the Hindu Shastras, the whole position of Woman in Society centres on the ideal of chastity of Life and therefore under the Hindu culture she is enjoined to be under the protection of the father, the husband or the son. This meeting therefore regards the move to give more liberty or absolute rights of property to women as against the Hindu ideals and as likely to be very harmful to the people.

(5) The four-fold caste system, the ideal of Womanly chastity, the Joint Family system, infunctions of Shradha, and certain other time-honoured usages are the fundamental ideals of the Hindu Aryan Culture, and it being the object or tendency of these bills to break down or sabotage these ideals, this meeting regards the bills as dynamiting the Hindu Culture.

(6) By sanctioning marriages with non-Hindu communities, by giving rights of inheritance to women who become converts to other religions, by formulating a strange new standard of dealing equally with the unmarried, married and widowed females (which by some counts would pass out 70 p. c. of family property over to other families within a period of three generations), the Intestate Succession Bill deals a mortal blow to the Hindu Joint Family system.

(7) Without entering into the advisability or otherwise of forming a similar law for dissenting reformers this meeting holds and declares that such persons have certainly no right to transform or change any part of the Hindu Law; that such changed law cannot be called Hindu Code, that the Hindu people have never asked for such a code and they do not need it at all. That in the laws of a community like the Hindus any but its recognized Pandits and especially non-Hindus can at all justly interfere passes beyond the comprehension of every ordinary general common sense. Inheritance and Marriage are fundamental matters of our Religious culture, and the Principle of Religions—Non-interference should be strongly adhered to in the matters of the Majority community should be protected and safeguarded by it, just like the minority communities believing in other sacred Books. This meeting holds the proposed legislation as not within the proper competency of the present Central Legislative Assembly and strongly urge upon the Government to stop the whole move as harmful both to the rulers as well as the ruled by its consequences of spreading the sense of wrong and discontent among the whole Hindu people.

Sanatan Vedic Dharma Sabha, Surat.

The Sanatan Vedic Dharma Sabha of Surat, observe with deep regret that the amended Bill, as it has emerged from the deliberations of the Joint Committee entirely ignores almost all the objections which had been raised by the Sabha in its report on the original Bill, dated 28th July 1942. The Joint Committee, not only proposes to grant to Hindu women rights to become simultaneous heirs with the males, but it also proposes to abolish totally the Hindu woman's limited estate, and grant her absolute rights of property over all inherited estates. These are revolutionary changes which seek to set at naught the fundamental principles of Hindu Law and Hindu usage and society of hoary antiquity which are followed by millions of orthodox Hindus, all over India. The Joint Committee has thus not only not paid any regard for the religious susceptibilities of the Orthodox section of the Hindu Society, but to add insult to injury they propose to grant rights of inheritance to Hindus who have discarded their religion and become converted to non-Hindu religions. It is however a matter of some satisfaction that some of the Hindu Hon'ble Members, who have recorded minutes of dissent are strongly opposed to the grant of equal rights to Hindu converts, but their dissenting opinions have been overruled by the Joint Committee. Under these circumstances the Sanatan Vedic Dharma Sabha strongly protests against the amended Bill on the following grounds:—

(1) The said Bill ignores the basic principles of Hindu Law as derived from "Shrutis and Smritis" and approved and followed from times immemorial by various sects and sections of Hindus all over India.

(2) Apostasy must be made a disqualification for succession. If this is not done, impetus would be given to non-Hindus and especially to Mahomedans, to convert Hindu to their religion. This contingency or possibility should be checked by Government who are wedded to a policy of strict neutrality in matters relating to religion.

(3) Absolute estate should not be given to female whether widows or otherwise. A female is not entitled to an absolute estate in an inherited estate, as she has no liability or obligation to discharge. According to Shastras,

male is entitled to perform the "Shradha" ceremony of the deceased to the exclusion of the female and so it naturally follows that the male heirs should succeed to the property of a deceased, excluding the female heirs, who are entitled to maintenance only.

(4) For the above reason daughters should not be given any share if there are sons living. When a daughter is married, she becomes a "Gotraja" of her husband's family and as such she loses all her interest in her father's family. According to S. 4 of the proposed Bill, a daughter will inherit from (i) her father, (ii) from her father-in-law and (iii) from her husband without any obligations to discharge and simply to enjoy the property herself as she chooses. This goes against the fundamental principles not only of Shrutis and Smritis but also of justice, equity and good conscience and even common sense. In the zeal of showing so-called chivalry the propounders of the Bill have exhibited undue anxiety for giving more to females than to males. In short, daughter should never be a simultaneous heir with the son.

(5) Stridhan means and should mean only ornaments, clothes, gifts, etc., given to females at the time of their marriage by parents and other relations. Stridhan should never include any property acquired by a woman by inheritance from males.

(6) It appears that the opinions of several Women's Associations of India were invited and very favourably considered by the Hon'ble propounders of the Bill. But the same has not been done with reference to lakhs of male property-holders whose properties are sought to be divided. It seems more equitable with reference to such a Bill that the opinion of male property-holders should prevail and preponderate in preference to that of females who are only interested in seeing that they get more share by any means through legislation even if it was contrary to basic principles of Shastras.

(7) It is a matter for regret that in a Bill which is meant only for the Hindus, several non-Hindus should have taken a very active part in the deliberations and influenced the decision of the Joint Committee. In a Bill of social legislation of this type, the voice of Hindu Members only should prevail.

(8) It appears that in considering the opinion of the Women's Associations, opinions of even Non-Hindu Women's Associations have been considered. Again, the several members of many Associations of Women are also Non-Hindus and there are many women who are common members of more than one Association.

(9) The definition of the word "cognate" should be more precise so as to exclude the children of a widow by a previous husband.

(10) Piecemeal legislations on such important subjects and especially those relating to basic and fundamental principles of religion should, in any case be discouraged by Government who should manifest a bold and decisive attitude and not allow itself to be influenced by so-called "benefactors" of Hindu religion, who in fact are out to harm the religion and put to naught the whole Hindu Society and its structure.

2. In conclusion, the Sabha most respectfully suggests that the said Bill should be reviewed and further amended so as to be more in consonance with the religious and moral ideals of the orthodox section of the Hindu Society.

Sanatan Vedic Dharma Sabha of Ahmedabad.

This Sabha is against the Bill and all such measures however modified and strongly doubts the propriety of the present Legislature to interfere in such a matter. This Sabha represents the view of the orthodox millions of Hindus of the country and expects that their opinion shall not be flouted. We propose to express our opposition to the Bill under the following five heads:—

- (i) That the Bill is not wanted.
- (ii) That it is against Hindu Ideology.
- (iii) The Questionable Doctrines behind the Bill.
- (iv) The Bill outside the Legislature's competency.
- (v) Warning and Appeal.

(i) Bill not wanted by the people—

(1) This sort of Legislative interference in the traditional and cultural usages of the people is neither necessary nor is wanted by the people.

(2) It is true that dissenters and interested parties as well as those third parties who are tickled by railway of the

Hindus have often been vociferous in their demands for such measures which sabotage the very basic laws and structure of the Hindu Society.

(3) The mock-fights, mock-heroic persuasions and promises of such people to one another for the recasting of Hindu Society, which are at the bottom of such measures, can deceive no observers of the genesis of such legislation.

(4) The fact is patent that all permissive legislation such as pertaining to Widow-remarriage, Civil-marriage, etc., has been availed of only by an infinitesimal percentage of the Hindu population. These persons find themselves usually cast off from their social groups or castes and it is they who want to force their capricious ideas of freedom on the Hindu Society by positive laws to rehabilitate their status under their shelter. The orthodox Hindus regard this as the most obnoxious treachery for levelling Hindu Society down.

(5) The Hindus are in no way desirous of obstructing the way of those who want permissive legislation for themselves by resigning from the Hindu Society as constituted by the Shastras. Or if they think the title 'Hindu' too catchy to be given up they may constitute, like the Brahma Samaj a separate group of their own to which such reform legislation may be applicable. The unpopularity and the bogus character of such a Bill will be soon exposed by the quantity of the new group.

(6) It is true that such quislings from a culture are very harmful to the whole society, but we have to realize the force of the doctrines of liberty which have run riot in the country and the advisability of giving self-satisfaction to those who have thought it fit to create this row for reform and who have put the Government to the large expenses of a special committee and who, further, have not tarried even to choose this time for thrusting in such a measure when India is in the throes of a great world-war and the full complement of the legislature is absent.

(7) The humour of the situation is that though the legislature is all-Indian legislature it does not dare to dabble like this in the legal system of any other community but it has thought fit to dabble with the Hindu system as if it were a novel untried and unappreciated system fit for any interference.

(8) That the Hindu community as such is wholly against the entire move of codification of Hindu Law and against the two Bills viz. Hindu Code Part I and II is amply shown by the opposition to these of all leading genuine Hindu bodies of light and leading including the All-India Varnashram Swaraj Sangh, the All-India Dharma Sangh and Sanatan Dharma Sabha as well as Hindu Religious Heads all over India. These bodies can be at once spotted out from the reformist bodies by the fact that the Hindu Religious Heads do not support the latter.

(9) Some few reform bodies have manifestly opined for such legislation. The orthodox Hindus, being more religiously minded are not so well-organized for political opposition to such legislative measures and being hence in a minority so far as consultative bodies recognized by the Government are concerned there might appear an apparent majority in favour of the Bill moved by the Committee. It is pertinent to the matter in hand that many of these bodies are mixed bodies of several communities.

(10) The seeming majority of associations of ladies is due to the facts noted above as well as to the fact that in fidelity to the traditions of the Fallen Archangel, this Bill begins its perjury to the Shastric Hindu Law by holding out temptations to Eve.

(11) Some pseudo-believers are misled into partial acquiescence on account of individual or personal advantages accruing from the new proposals, while the great fact is kept shadowed from them that this is a flagrant attempt at throwing overboard the sound and accepted principle of Indian polity that the Hindus shall be governed by their ancient laws with which their whole spiritual, moral and social legacy as well as political solidarity is interwoven.

(12) The hollowness of the whole show can be seen by the analysis of women's support claimed in the committee's report. Their total number is admittedly not shown but where it is mentioned it is ten thousand four hundred in a population which counts by millions. The institutions mentioned are confined mostly to half a dozen places such as Bombay (Dadar, Khar, Vile, Parle, etc.).

Calcutta, Simla, Delhi, Hyderabad and Poona which are reform centres and the bodies include mixed and even Christian Associations to swell the list. The fact is that Hindu ladies usually do not join clubs and associations and fewer still attend meetings even if they join. India has many more cities and towns and villages but the report advisedly keeps mum on their statistics.

(13) Such a huge web is woven round the idea of reforming the Hindu Law that not a few are entangled in its meshes and begin talking about this and that defect or wrong or mischief of the Bill forgetting that in the hands of modern manipulators such criticism would be surreptitiously used to get over the main protest that the whole measure is an unwarranted interference in religion and culture and must be scrapped out uncerimoniously.

(14) The most ridiculous and flimsy portion of the report is that which tries to humbug the people about the Vedic texts which by common consent are few and far between. The explicit and main authorities are the smritis and they are so because they represent the injunctions of the Rishies, gifted with Divine knowledge and vision. The whole difference arises from what the real Hindus and what the dissenters think of the Rishies. It is because the Hindus believe the sacred books to be inspired, that they have never asked for speculative changes by self-sufficient fallible demagogues and it is because they have stuck to them, that they have endured beyond any other nation in history.

(ii) *Bill against Hindu Ideology—*

(15) The Bill and the whole idea of reforming the Hindu Law under the two pretences of codification and uniformity strikes at the very roots of Indian culture as based on the Vedas, Smritis, Itihasas, Puranas and other Shastras.

(16) Under the subterfuge and camouflage of codification, changes are thrust in and under the plea of uniformity one textual injunction, is supplanted by another. At present the Shastric Law is accepted subject to one or the other form of interpretation according to local or other conditions. There is further positive objection to a codification in a foreign language. There is no ground also for a forced uniformity in a subcontinent equal to the whole of Europe *cum* Russia.

(17) This plea of uniformity would be something if it were for all the Indian people but it is not so. So the plea of general public good is a camouflage. The new law is thus neither to remain Hindu nor to be national. It is to be a new hybrid like the reformers' mentality neither Hindu nor national.

(18) Hindu unity lies in the identity of the shastras of the Hindus. Provincial autonomy might ultimately bring in more changes and discordance in different provinces on the principle of such meddling and the very purpose of uniformity may be undone by such tinkering with the established authority. In consequence the integrity of Hindu culture may be broken down.

(19) The Hindu culture like all other religious cultures is based on its own sacred books and there can be no greater treason against it than to deprive those sacred works of their sanctity and authority, and to temper with the Hindu ideology as impacts of the moment dictate.

(20) The ostensible plea for the changes is to assume the status of woman in Hindu Law as unjust and to proceed therefore in amending it by giving her liberty and money. This attitude is the result of misunderstanding the Hindu view on the subject and following the Western clues which have ruined the morals and made the whole institution of marriage unpopular, ridiculed and decried in the western countries.

(21) The Hindu idea of the Status and Dignity of woman depends upon three notions which are fundamental to Hindu culture:—

(a) That woman is the counterpart of man, the left half, the side of the heart, and that on her purity mostly depends the purity and longevity of the race.

(b) That woman being more frail by physique and nature she should be under the protection of her father, husband or son so as to be spared from vicious influences.

(c) That she should hence, be cared for by them and should not be driven to earn her livelihood all alone but should own money through them.

(22) The whole Indian view hinges upon the protection of the purity of woman for the moral stamina and longevity of the race which would otherwise perish as so many

others have perished under the eyes of the Hindu race. And for this are prescribed protection, privacy, pre-puberty marriage and family dependence of woman and the prescription is justified by its fruits.

(23) This vigilance and restraint was and is fondly observed on nation-wide scale not because the Hindus thought less but because they thought more of the great value of womanhood. In this light are to be understood the sacred texts which raise a pure woman, a *suttee*, to the rank of a Goddess.

(24) Not only our social system thus formed is justified by its purity and longevity but the results of liberties in Europe and America are too notorious to be held up for imitation. Hybridization once introduced ruins the purity of the nation for ever. The responsibility of the meddlers is therefore very serious.

(25) It is possible that the sponsors of such measures want the liberties without the deprivities but the common people take count of the direction only. They do not mind the limitation, thus far and no further. The beast in man is too powerful to be controlled without a divine inspiration.

(26) Nobody claims that all is well and good with us because our social system is good. There can naturally be wrongs between men and men on account of a thousand kinds of temperament and moral lapses. But, against these, the remedy does not lie in rebelling against the system but in dealing with the personal factor. No society is perfect; for, its components are many and all are never just and good.

(27) Such a Bill would make woman more antagonized to man and would make her an easier prey to cheats and crooks. Her liberty would soon turn into license in many a case. The juxta-position of man and woman as rivals or enemies or master and servant is wrong and may be the invention of brains whose personal interests lay in promoting and profiting by such a view. The view is wholly ridiculous and in direct variance with nature and human life. The Hindu attitude towards woman has been noble, appreciative and just, perhaps more than any other community. No other nation has even dreamt of *Seeta*.

(iii) *The Questionable Doctrines behind the Bill:*

(28) This longing to reform the Hindus is very common amongst those who are more less 'rebels' in politics and it is amusing to see them calling a thousand names and making insinuations at the foreign rulers and in the same breath acting as their cultural god-sons for promoting western ideology. In fact they are giving like true slaves the greatest compliment to their brain-rulers *viz.*, of imitation, and strangely enough are at the same time eagerly asking them to Quit India.

(29) This is the result of western education and influences which have made them indifferent to their own ideology and impatient of foreign rule. The foreign rule they cannot upset and therefore they are after the easier task of upsetting their own culture.

(30) That their whole view is perverted and poisoned can be easily seen by a little comparison with the attitude of leaders of other communities towards their own religious and social systems. The Moslems, the Jains, the Parsis, the Christians are proud of their faiths. The Hindu system is the most wonderful and of the most unique vitality. And yet while we find the Muslim leader combining the whole community with 'Islam above all', we find the so-called leading Hindus holding up Hinduism to the ridicule of the world. We hang down our heads in shame at such cultural traitors representing the Hindus.

(31) It is well-known that even the League of Nations has accepted the principle of guaranteeing the religions and cultures of minorities. This shows how they evaluate these precious legacies, without which man would soon turn into the worst of beasts. The idea certainly is not that such protection be given to the minorities only and majorities thrown overboard. Perhaps it was never imagined that cultural traitors of the majority can get into power and conditions such as to be able to ruin the majority's culture. The majority's religion and culture should be more sacrosanct for they affect more people.

(32) But in a country like India where there are a number of communities one jealous of the other, and a foreign Government whose main concern is political and which is all too willing to help its cultural-camp-followers, where there is no representation of a community as such, and the prevailing current is to obliterate the communal

factor, it may be equally necessary to provide and guarantee that even the majority's religion and culture are not interfered with.

(33) It need hardly be pointed out that the present condition of European Society and States is the direct result of the spread of the doctrines of the French Revolution of 1789 whose operative slogans have been 'Liberty' and 'Equality'. In fact man has been more enchained to the modern state and equality has become a vocal groan or increasing inequalities. When nature has put down clear inequalities in capacities and qualities it is a crime against man and Nature to pretend that all are equal and not mankind on the wrong clue.

(34) These wrong principles got into the saddle after religion was thrown off as the great formative influence of life. Generally speaking all religions hold up similar **deals of life**, the difference being in their going to this or that length in their principles such as self-control, sex purity, or renunciation.

(35) There are the usual gradations or classes in all developed societies and they form groups either hereditary or tentative. These groups serve to evolve qualities and characters as well as for cultural conservation. The Hindu Society which practically was originally the primary human society, enlightened by God's divine light in a wonderful language, naturally and properly divides men into four groups known as Varnas which would best progress by keeping contacts mainly amongst themselves. They are being recognized as more and more scientific and natural day by day.

(36) Out of these Varnas there have been comparatively smaller groups significantly called *Jnatis* (groups of known ones) which organize and inculcate the society still further. The castes are powerful forces of concentration and cultural co-operation. They refuse to be cowed down by power or pelf, and deal hard blows at cultural rebels and recalcitrants. The reformers of western outlook therefore want to irradicate caste. But finding it rather too strong they want to sabotage it by law. Men of other faiths just by way of a passing kick usually oblige them by corroboration as if they understood any bit of it.

(37) The latest fad to be tagged to the dethronement of God and religion was Democracy, a doctrine much paraded and little understood. It means final and complete sovereignty of the will of the people and hence of the majority thereof. This sovereignty of the people has brought upon them burdens to which the war has made them alive and which few generations with present memories will envy especially when they remember that each dictator was the creation of a democracy. The British constitution in spite of all pretences to the contrary is a religious monarchy guided by aristocracy and modified by public opinion.

(38) In a democracy with sole and final powers in the hands of the majority, no principles can be safe or stable and even morals would be in a continuous state of flux, change and uncertainty. Such a constitution would defeat the very end of the state *viz.* the conservation of an ethical ideal.

(39) The right function of the state therefore can only be the protection of the people's cultural, spiritual and social values as embodied in their stable religious ideologies, from within and without. Thus the protection of religion is not a side affair but the primary function of the state.

(40) It is rather an intriguing situation that the Britishers did not interfere with religion while they governed directly but have given the long rope to their successors to do what they choose against their religions. The Government of India Act of 1935 provides for the Governor-General's or Governor's interference when there is likelihood of breach of public peace but leaves religious interference otherwise quite unfettered. This premium on breaking peace for protecting your religion is certainly not in line with the spirit of Queen Victoria's great Proclamation which began the British Empire.

(iv) *Bill outside Legislature's competency:*

(41) Even taking as granted the misleading doctrines of democracy and equal evaluation of the votes of the worthy and the worthless, the present Bill is outside the function, scope, constitution and competency of the Legislature as at present composed:—

Firstly, because the Legislature does not represent all the people on an adult suffrage,

Secondly because it does not represent the communities as communities through their natural social groupings,

Thirdly, the General Electorates being based on cross-sections of communities, the representatives are naturally not representatives of the communities but are definitely non-communal or anti-communal and elected mainly for their political kicking capacity and rebellious propensities.

Fourthly, the Legislatures are of mixed nature and formed of members of various communities which can be and are used against each other in communal matters (except of course the Moslems who have got their solid blocks through their communal electorates and the Moslem League) and

Fifthly because the political elections were never made on such social or religio-social issues and were never meant to cover them.

(42) The State being for the protection of the religious and cultural assets of the people from within and without and being the embodiment of the machinery of physical force, it is the height of tyranny to convert it into a machinery for social revolution which such Bills tend to make. The test of this truth can be easily made by pointing even a perfidious finger at the Moslems or Sikhs and learning the consequences.

(43) The Hindus are at one with the Moslems in advocating full religious protection to all communities. It is the short-sighted revolutionary who wants the shifting of the inspiration from God to men and from religion to the mob-majority. The history of the French and Russian Revolutions throws a lurid light on the consequences of such a transfer.

(44) Mere material interests without a spiritual and moral inspiration can go only a small way for the sake of the human race, in face of prevailing human passions; and it is therefore only in the real and lasting interests of the human race that Saints, Sages and Prophets of the world have made religion the pivot of social forces and regarded politics only as the instrument of its protection.

(45) It is these religious foundations of our whole social fabric that these miseducated, miscalculating, self-sufficient demagogues want to undermine and sabotage as only the covert fifth-column enemies of a nation would do and it is against them that we raise up our voice. The state is for the protection of the established society and not for its revolution on the whims of majorities.

(46) Out great objection is against the very coercing of Society under the cover of majority. A thousand fools cannot make one intelligent man. These cultural and religious matters are not for the majority to decide. Will the Britishers Quit India or Moslems change their marriage laws on majority vote? The whole push is absurd unless it be a conspiracy in its very inception. Even the famous British controversy on the Prayer-book would have enlightened our reformers on the need of non-interference; and the esoteric side of Hinduism should have taught them greater reverence and less impertinence.

(v) *Warning and Appeal:*

(47) In conclusion we explicitly point out that there may be honest differences of opinion as to what is good for the people, but we depend on higher considerations than nation-planning trial-contracts which can never take the place of the guidance of the Divine inspiration and sacred works, which are far above failing, faltering, changing and divided human opinions. The results of weakening morals, disorganized social life and faltering spiritual inspirations cannot be measured by ostensible statistics and temporary monetary values. They assert themselves in Life and Nature through the hieroglyphics of crime and disease, internecine and international wars and through the falls and extinctions of Nations.

(53) We appeal therefore to all concerned to see that the Bill and the whole move of codification of Hindu Law be withdrawn and stopped; in justice to the Hindu Nation and the greater spiritual interests of the human race.

Syt. Sheth Haridas Achratlal, Mill Agent, President, Hindu Public Meeting of Shahibag, Ahmedabad

I have the honour to send you herewith the following resolution unanimously passed by the Hindus of Ahmed-

abad in public meeting assembled at the Premabhai Hall on Thursday the 12th inst. under the auspices of six orthodox Hindu Bodies of this city, under my presidentship. The resolution was proposed by Syt. Vamanrao R. Dholakia (President, Bar Association), seconded by Syt. Navinchandra Desai (some time professor of the Local Law College) and supported by Syt. J. B. Durkal, M.A. (President, Sanatan Vedic Dharma Sabha), Prof. Hanmantrao Bhide and several other leading citizens.

The Resolution:

"This public meeting of the Hindus of Ahmedabad strongly protests against the principles, contents and implications of the Bill to amend and codify the Hindu Law relating to Intestate Succession brought forward in the central legislature, regards the bill as outside the pale of the legislature and declares its considered opinion that such interference in the established Hindu Law is unauthorized, unwanted, unnecessary and harmful and against the principle of non-interference in religious or socio-religious matters and personal law and rights of the Hindus. The bill contemplates drastic changes in the existing law which militate against the fundamentals of Hindu Society and deserves to be dropped altogether. This meeting therefore requests the Government that the Bill be dropped and the Hindu Law Committee appointed for codifying and reforming the Hindu Law be dissolved."

All India Varnasrama Swarajya Sangha, Bombay

My Association deeply regrets that the Joint Committee has not paid any attention to the several objections raised by my Association to the original Bill dated 23rd July 1942. Not only so but it has made matters worse by totally abolishing the Hindu Widow right of inheritance as the widow of Gotraja Sapendia a right which was enjoyed by her since long time past and giving widow absolute right even to property inherited by her from her husband by abolishing altogether widow's limited estate these are revolutionary changes and which are vehemently opposed by all orthodox Hindus amounting to over 20 millions of persons and women. My association is opposed to the Bill on principle as it seeks to interfere with the religious precepts of law laid by the Rishis and further because the Rao Committee was never representative of the orthodox view point and had no representative number of the orthodox Sabhatis therein so as to consider the orthodox view point. Besides the Bill was never even once published in any of the vernacular newspapers and made known to the bulk of the people, who are affected by it. We therefore submit the proposed Express Trust of Sritis would be null and void and not binding on the orthodox people who should be exempted from the same. The Rao Committee seems to have totally ignored the religious genesis on which the law of Succession is based.

2. Apostasy must be made a disqualification to the right inheritance and non-provision of such a clause would, encourage outsiders to convert Hindu women in greater number than at present. In our opinion the Hindu women's right to property Act of 1937 and 1938 should be repealed as they have proved to be wholly unworkable in practice as found even by Rao Committee.

3. Absolute estate should not be given to women except by old custom as they are not entitled to perform Sradha and right to inheritance is based on one competence to perform Sradha. Besides women being mostly illiterate legislation will not be accepted by the orthodox Hindus so as to bind them. The Joint Committee has not shown any regard for the religious susceptibilities of the orthodox Hindus but has been led away by a very small number reformist section who are incompetent to represent the orthodox view point. Under the circumstances the Sangha opposes the amended Bill *inter alia* on the following grounds:—

(1) That the Legislative body comprises as it does persons of other faiths and several reformers who have no knowledge of the Hindu Scriptures and Dharma Sastra is incompetent to pass the proposed Bill which is of a revolutionary nature, some of the provisions of which even go against the sacred law of the Sritis. We submit that any legislation opposed to the Hindu widows would be made easy prey of crafty persons and induced to lead life of luxury and part with valuable property for a song so as

to bring about their material and spiritual degradation. Hindu law makes ample provision for maintenance of widows which is the only thing required by them, to lead a simple life religious. As well as pious according to the Hindu view of life and to give them absolute right to inheritance would be to give a good go bye to the Hindu view of life and convert them to reformist school of thought. Besides a great injustice would be done to the Aurasa son of the deceased by lessening his rightful share in his father's estate, and allowing widow daughter and parents of the deceased to divide his share. Apart from religious grounds such an innovation is also unjust and inequitable as the son has heavy obligations cast upon him by law *viz.* to maintain and marry his unmarried sisters, sons and daughters as well as to maintain widows and all dependant members of the Joint family to perform Sradha of the deceased ancestors, etc., while women to whom it is proposed to give shares in the property have no such responsibility. The Joint Committee by admitting even parents to share the inheritance with the son widow and daughters of the deceased has reduced the share proposed to be given to the son in the original Bill. Besides by dividing the property among so many shares would bring about a complete disruption of the joint family and its solidarity and ultimately lead to the poverty of the individual members and their ruination within 3 or 4 generations. It would also encourage and stir up litigation in almost all houses when clashes of interest arise by the differences of shares created by the proposed legislation.

4. The proposed legislation also preaches a lesson of falsehood to the Hindus by laying down a novel and fantastic rule that although a girl after her marriage acquires the Gotra her husband she should be deemed to belong to the Gotra of her father for the purpose of inheritance. This is on the face of it ridiculous and is only the result of abject surrender to the wishes of the reformists who have no regard or veneration for the sacred precepts or even the principles of truth. The texts of Manu is misinterpreted to create a right of the daughter. The said text only provides for a share to a daughter who is a brother less and there is not a single provision in any of the Dharma Sastras for a share being given to a girl along with her brother who is full fledged and exclusive heir to the property left by his father. It may be pointed out that if the Bill is passed into Law in which the share obtained by a share would be even lesser than that obtained by his sister, mother and parents. My association opposes the Bill as it apprehends that it would lead to a total disintegration of the family property and also the compactness and solidarity of the Hindu community.

5. As regards the new provisions of Satriadhan property the Rao Committee seem to have misinterpreted the Mitakshera and other texts so as to Sridhan even property inherited by a woman from a husband. The property inherited by a widow should involve a limited estate only as known to Hindu law which should revert ultimately on her death to the heirs of the last male owner.

6. My association further takes strong exception to the flagrant breach of the rule of convention and members belonging to other communities are allowed to take part in the discussion of the Bill and give their opinion on the personal matters affecting the religion of the Hindus. If is submitted that opinions of such persons should not be considered. Further of the several institutions of women supporting the Bill most of them consist of only one section, *viz.*, reformist women who have taken English education and they do not represent the view point of the orthodox Hindus most of whose women are uneducated and have not taken any part in public. My Sangha however begs to point out that about 95 per cent. of the Hindu Community are opposed to proposed legislation, as of a revolutionary nature totally opposed to the tenets of the Sritis and smritis of the sacred memory. My Sangha submits that if the Bill is passed into law it would be nothing short a hopelessly minor section of the Reformists of the Hindu community opposing the major section by medium of legislation and it would lead to a great unrest and disharmony and feuds in their ranks and ultimately their complete disintegration. My Sangha therefore prays that the Bill should not be allowed to be passed into law.

The Bombay Presidency Social Reform Association

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The Association is glad to find that the Joint Select Committee has appreciated the difficulty of dealing with one particular topic of Hindu Law without having before us a complete picture of all the proposed reforms. The absence of any indications as to the reforms that may be suggested in respect of allied subjects such as maintenance, power of alienation, etc., renders the task of expressing opinion on this Bill rather difficult.

At the time of expressing its opinion on this Bill on the previous occasion, this Association had expressed its entire satisfaction at the three main features of this Bill. It is unnecessary to venerate here that the Association has all along urged in favour of the acceptance of those principles.

The Association however feels it necessary to make a few observations with regard to these main principles of the Bill especially in view of the opposition to them from some quarters. It is stated that the inclusion of any more heirs under the group of 'Simultaneous heirs' would result in the uneconomic fragmentation of property. One fails to understand why this plea of uneconomic fragmentation should be put forward only when the heirs sought to be added are females. The very idea of partition of property involves fragmentation and if the opposition on that ground were sincere, the only alternative would be the acceptance of the rule of primogeniture. In this connection it would be interesting to note that when some years back the Government of Bombay proposed to have a legislation preventing fragmentation of land into uneconomic holding, the proposal was stoutly opposed by the public. Moreover in its replies to the questionnaire issued by the Hindu Law Committee this Association had suggested that the male heirs should be given the option of paying the female heir money value of the share to which she would become entitled and thus save the family property from fragmentation. The same view has appealed itself to the Joint Select Committee. If therefore a suitable provision to that effect is made the objection on the ground of fragmentation will cease to have any force in it.

The abolition of the limited estate has also evoked some opposition. Writing about this limited estate, Rao Bahadur Paul Appasamy, in his book—'Legal Aspect of Social Reform,' has observed:—

"Jurisprudence knows about an absolute estate and an estate for life, but an unnatural combination which is given to a widow, which is for some purposes an absolute estate and for others a merely life estate has been the root of all the trouble and litigation relating to woman's property."

One of the objects of codifying Hindu Law is to simplify the law and to mitigate the evil of litigation. If this be so, the abolition of the limited estate is an imperative necessity. Moreover the texts of Yajnyavalkya and Vishnu under which the widow, the daughter and other female heirs are recognised do not appear to make any distinction between the estate taken by them and that taken by the male heirs who come in under the same texts. So far as the Province of Bombay is concerned we find that though the Bombay School of Hindu Law was more liberal to women than the other schools, the judicial decisions made an arbitrary classification of the female heirs under two heads, namely, (1) those females who inherit in the family of their birth and (2) those who inherit in the family which they have entered by marriage. In the case of the former the estate taken is absolute while in the case of the latter the estate is limited. It would thus be seen that this rule of limited estate is a pure creation of judicial decisions. It is interesting to note that the cases which first went to the Privy Council and which led to the imposition of these restrictions on the estate taken by female heirs, were either from Bengal or Madras Provinces where the Hindu Law was not so liberal to females as in Bombay. If the attention of the Privy Council had been first attracted to the more liberal Bombay view, these restrictions might perhaps not have come into existence at all. However now that codification of Hindu Law is undertaken, it is necessary to remove the restrictions which have been engrafted on the Hindu Law though not supported by the ancient texts.

The property which a son would get from his father under this Act, might as between him and his son and/or grandson be joint family property. The Association feels

that the property which a son or any other heir would get under this Act, should be his absolute separate property and should under no circumstances become joint family property. A provision making this position clear should be inserted in the Bill.

On the previous occasion the Association had offered its remarks clause by clause. It is not therefore considered necessary on this occasion to reiterate the objections that the Association had raised then to the several clauses of the Bill which have not been altered by the joint Select Committee. It would be sufficient to state here that the Association still adheres to the opinion it had expressed when the Bill was circulated for the first time to elicit public opinion. Subject to the remarks that follow the Association is in favour of the Bill.

Details.

Clause 1.—The Association appreciates the reasons given by the Joint Select Committee for the amendment made in this clause and is in favour of it. The Association would like to make the matter more clear by the addition of the words 'namely the Buddhists, the Jains, the Sikhs, the Brahmos, the Arya Samajists and the Scheduled Classes' after the words 'by the Hindu Law' and before the words 'but it shall not apply' in sub-clause 3.

Clause 2(1)(d).—The Association agrees that the proposed amendment would remove the doubts that would have arisen otherwise.

Clause 2(1)(h).—Though the words 'by any other mode whatsoever' occurring at the end would have been sufficient to include within the term 'Stridhan' such property as was acquired by absolute gift or in lieu of arrears of maintenance, the amendment made is to be welcomed in as much as it would set at rest all likely disputes in relation to the question. The Association is therefore in favour of it.

Clause 2(2).—It would be more appropriate to deal with the amendment made in this clause when we deal with clause 8.

Clause 5.—This is one of the most important clauses of the Bill and it would be necessary to consider carefully the amendments made by the Joint Select Committee. The Joint Select Committee has amended this clause by adding 'Parents if dependant on the intestate' and 'the widow of a predeceased son' to the list of Simultaneous heirs.

When the Association expressed its views on this Bill previously it had urged for the inclusion of the widow of a predeceased son among the simultaneous heirs and consequently the Association is glad to note that the Joint Select Committee has restored her to the position to which she has been entitled under the Hindu women's Rights to Property Act, 1937. It is however a matter of regret that the Committee could not restore the widows of predeceased grandsons to the positions which they have been enjoying under the Hindu Women's Rights to Property Act, 1937. The Association thinks that the difficulties in determining the shares to be allotted to these widows are not so insuperable as to necessitate their complete exclusion. The Association feels that if the test that they would be entitled to the same share as their husbands, would have been entitled to, if alive, is a satisfactory one and should have been accepted.

The Association would however like to state that it urged the inclusion of a widow of predeceased son among simultaneous heirs not because she was entitled to maintenance out of the estate of her father-in-law but because she was the surviving half of her husband who, had he been alive, would have been entitled to a share in the property.

The Association would further make it clear that when it expressed its views in favour of the daughters receiving a share in the property of her father, it was not actuated by the fact that she was entitled to be maintained out of her father's property and that for that reason she should be given a share in her father's property. According to Mitakshara the right of a daughter to succeed to her father's estate is based on consanguinity and in support of it is quoted Brihaspati's text—'As a son, so does the daughter of a man proceed from his several limbs.'

The Association feels that the enumeration of heirs in the original Bill followed a logical method—first providing for the widow and the descendants of the deceased, then for the parents and their descendants and so on. The inclusion of parents among simultaneous heirs goes against

the scheme followed in the original Bill. Then it has to be remembered that parents in order to come within the class of simultaneous heirs according to the amendment must be dependant on the intestate. This requirement would lead to unnecessary and unpleasant disputes and complications. The main idea of codifying Hindu Law is to simplify the law and to discourage disputes and litigation. It has already been shown above that the Association favoured the inclusion of a daughter and a widowed daughter-in-law among simultaneous heirs not on the ground that they are entitled to maintenance but on the ground that by virtue of their status they are by right entitled to a share. The Association feels that a right to maintenance is not the proper test for determining the right to be an heir. If there are aged parents who are dependant on the intestate, provision could be made for them while dealing with the subject of maintenance and to safeguard their rights even a charge could be created on the whole of the estate of the intestate. The framers of the Bill had considered the question and had come to the conclusion that provision should be made in the proper place for the maintenance of the aged parents of the intestate, whoever may inherit the estate. The Association therefore is not in favour of the inclusion of parents if dependant on the intestate among 'simultaneous heirs'.

As regards the inclusion of brother's daughter and sister's daughter in class II in clause 5, it has to be remembered that both of them are recognised as heirs in Bombay and they inherit as Bandhus. According to the scheme adopted in the Bill, which scheme the Association fully approves, their proper position is the one assigned to them by the Joint Select Committee and the Association agrees with the amendment.

In classes III, IV and V, Father's sister's son, Father's father's sister's son and Mother's sister's son are respectively included as (6) but Father's sister, Father's father's sister, and mother's sister have been omitted though they are nearer than their sons. The Association would therefore suggest that the 6th place in classes III, IV and V should be given respectively to Father's sister, Father's father's sister and mother's sister and the 7th place should be given to Father's sister's son, Father's father's sister's son, and mother's sister's son respectively.

Clause 7.—The Joint Select Committee has added two sub-clauses, namely sub-clauses (e) and (f) to this clause. As shown above the Association is not in favour of including parents among the simultaneous heirs and therefore suggests that sub-clause (e) should be dropped.

With regard to sub-clause (f) the Association feels that as the widow of a predeceased son comes in as the surviving half of her husband, she ought to get the same share as her husband would have got if he were alive. There is further no reason why a differentiation should be made on the basis whether she has or has not a son or son's son surviving. The Association is of the opinion that in all cases she should get the same share as her husband would have got if he were alive. In case she has a son or son's son surviving he would share in the inheritance on the basis that his father or grandfather was alive and he was sharing the inheritance along with him. The Association therefore suggests that this Sub-clause should be so amended as to correspond to the proviso (1) to clause (i) of Section 3 of the Hindu Women's Rights to Property Act, 1937.

The Association is glad to note that the Joint Select Committee has come to the conclusion 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. It may be mentioned that the Association had, in reply to question 14 of the questionnaire I issued by the Hindu Law Committee, suggested to the same effect. The Association would therefore suggest that a provision to that effect should be made in this very Bill though its proper place would be in the part relating to partition. When the law relating to partition is codified and a clause to this effect is inserted therein, the provision in that respect made in this part may be dropped.

Clause 8.—The Joint Select Committee has deleted sub-clause (b) to clause 2(2) and inserted it in this clause as sub-clause 4. While expressing its views on this Bill on the previous occasion, the Association had stated that if it

was considered necessary or desirable that a female born in the family should be included in the term 'agnate', it was difficult to follow, why a female who came into the family by marriage should not occupy after the death of her husband the position which her husband occupied, on the basis that she is the surviving half of her husband. The result of exclusion of females coming into the family by marriage from being an agnate in that family would be to deprive the females in the Bombay Presidency of the right to inherit as a widow of a Gotraja Sapinda which they have enjoyed for more than half a century. The Association has dealt with this question fully in its opinion on this Bill submitted previously and still adheres to the views expressed then. The Association would again urge that females coming into the family by marriage should be included among the agnates in that family.

Clause 13.—This clause deals with the question of succession to Stridhan. Clause (a) as it stood in the Original Bill related only to property inherited by a female from her husband. The Joint Select Committee has amended the clause by extending its application also to property inherited by a female from her husband's father and his father's father. Inasmuch as the widow of a predeceased son has been now included among the 'Simultaneous heirs' the extension of the clause to the property inherited by her from her father-in-law is understandable. It is however difficult to comprehend a case where a female would inherit property from her husband's grandfather especially when the females coming into the family by marriage are not to be agnates in that family by reason of the marriage. Nor has the widow of a predeceased son of a predeceased son of an intestate been recognised as an heir as is the case under the Hindu Women's Rights to Property Act, 1937.

With regard to sub-clause (b), the Joint Select Committee has made an amendment whereby a son would share along with a daughter the Stridhan property of the mother. The amendment is no doubt equitable in view of the fact that a daughter is under this Bill to get a right of inheritance along with a son in the property of their father. The Association had refrained from making such a suggestion on the previous occasion as it involved the taking away from the females rights vested in them for centuries. The memorandum submitted to the Joint Select Committee by the Representatives of the women at Simla put forward the suggestion advocating the inclusion of a son as a simultaneous heir with the daughter in respect of the Stridhan property of their mother. The Association is glad to find that this reasonable and equitable proposal has emanated from Indian women and is in entire agreement with it. The same remarks would be applicable to the inclusion of the daughter's son and son's son. By clause 7(d) a daughter would get by inheritance half of what a son would get in the father's estate and the provision contained in sub-clause (c) is therefore justified and is reasonable.

Clause 18.—In its reply to the questionnaire issued by the Hindu Law Committee, the Association had advocated that unchastity should not be considered a disqualification in the case of women in matters of succession. The said Committee had in the course of its Report observed that that was a subject on which the Hindu opinion was extremely sensitive and suggested as a compromise the provisions contained in clause 18 as in the Original Bill. The Association had accepted those provisions as they were a great advance on the present position under Hindu Law in that matter. The Association is however glad to notice that the Joint Select Committee has been convinced that widows have suffered grave injustice through unfounded allegations of unchastity made against them in testamentary dispositions left by their husbands. The Association is, for the same reason, in favour of the clause as amended by the deletion of the first proviso to this clause which the Original Bill contained.

Clause 20.—The report submitted by the Joint Committee states that the Committee decided against upsetting the position established by the Caste Disabilities Removal Act, 1850. From the minutes of dissent appended to the Report we however find that ten out of the eighteen members of the Joint Select Committee are in favour of the view that 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 in the case of a Hindu. The Association feels that this feeling of the Community should be respected and this clause should be amended accordingly. If anyone feels that apostasy should not work as a disqualification for inheritance, it is open to him to make a testamentary disposition and provide for an apostate who would otherwise have been an heir to his property.

**Santoji Maharaj, President, Public Meeting,
Pandharpur**

RESOLUTION.

This meeting is of the opinion that the action of the Government in tampering with the Hindu Dharma Shastras and codifying the same is unjust and deserves protest. According to the Dharma Shastras Government has no such jurisdiction. It is going to entail unprecedented oppression on crores of people for the mere satisfaction of a handful of so-called "educated" persons. The Rao Committee is made up of members of one School (without exception). The minds of public are clouded with anxiety on account of the War. Lakhs of people have gone to the front to offer their lives for protecting the Empire. The public has not been adequately intimated to about these bills. The Government has not, as required by procedure, published these bills in that native languages. There is no earthly reason to make such an ugly haste in rushing these Bills through the legislature.

Hence we request the Government not to accord its assent to the Bill on Intestate Succession, and to dissolve the partial Rao Committee.

**Sri Deshastha Rigvedi Brahman Sangh,
Belgaum**

Translations of Resolution Nos. 6 and 7 passed at the annual general meeting of the Sangh held on 25th March 1944, in the evening at 5 P.M. at 2846, Khade Bazar, Belgaum:—

Resolution No. 6.—This meeting of the Shri Deshastha Rigvedi Brahman Sangh, Belgaum, records and expresses its opinion on the amended Bill of the Hindu Code Part 1 (Intestate Succession), that the intestate succession among the Hindus is based upon their religious tenets. Neither the Legislative Bodies nor any body else possess any right or power to interfere with the same in any way, the order of succession having been settled from times immemorial. This meeting is strongly of opinion that there can be no change in the order of succession settled by the Hindu Dharma Shastras. This meeting also, repudiates all attempts at any change and strongly urges upon the Government to reject the Bill altogether.

Proposed by Mr. Shrinivasacharya Buri.
Seconded by Mr. Gangadhar Sadashiv Madihalikar Nadgauda.

Passed with only one voting against.
Resolution No. 7.—This meeting strongly protests against any attempts of interference with the Marriage Laws of the Hindus. Marriage is according to the religious tenets of the Hindus a sacrament. Neither the Legislative Bodies nor any body else possess any right or power to interfere with the same. This meeting strongly repudiates any attempts at any change in the Hindu Law of Marriage, as settled by their Dharma Shastras. It urges upon the Government to reject any Bills that may be brought forward for effecting any change in the Law of Marriages of the Hindus.

Proposed by Mr. K. V. Daddikar, B.A., LL.B., Pleader.
Seconded by Mr. N. R. Kulkarni Managuttikar, B.A., LL.B.

Passed with only one voting against.

**Meeting of the Varnashram Swarajya Sangh,
Belgaum**

This meeting of the "VARNASHRAM SWARAJYA SANGH" at Belgaum held on 28th March 1944 strongly protests against the "HINDU CODE PART I INTESTATE SUCCESSION BILL", even in its amended form now pending in the Central Legislature and is strongly of opinion that the question of succession a religious one and that neither the Ruling Power nor the Legislature has any authority to effect therein any change repugnant to the

Dharmshastras. As this Bill is entirely opposed to the Hindu Dharmshastras it is humbly urged that the Government may kindly throw it out.

Poona Bar Association

In the first place the Committee would like to make it clear that it stands for salutary changes and modifications in the existing Hindu Law, if they are necessary to meet the growing needs of the progressive Hindu Community, and it desires that those changes should be in consonance with the culture and true spirit of the Hindu Code. The Hindu Law is closely linked with Hindu Dharma, which denotes a system, an economy or a polity, which binds and holds the elements of the society together. If, therefore, circumstances alter, the forces and factors, the ways and means to maintain the solidarity, cohesion and the integrity of the society may also change. The Hindu Law is not impervious to such modifications but it has evolved and is capable of absorbing and assimilating such changes, as will be seen from the various tests and diverse interpretations placed on the original texts and Sutras, as also the various Acts passed by the Central Legislature and decisions of the High Courts and Privy Council, after the advent of the British Raj. The trend of thoughts and the course of events is to satisfy the legitimate aims and aspirations of the Hindu Society, the absolute needs of the Hindu Womanhood as also to better the lot of Hindu Women in the legal, Social and economic field of life.

2. Some of the members are of opinion that the Central Legislature at present is not truly the representative of the people and that non-Hindus were included in the Joint Select Committee and hence the Bill as emerged from such a body should not at all be considered. But others hold that despite these handicaps the Bill be considered on its merits.

3. The Committee is of opinion that the Bill seeks to give legal effects to three principles, viz., (1) Removal of Sex-qualifications as far as inheritance of property of an intestate is concerned, (2) Abolition of several systems of succession and provision for a Common Law of intestate succession for all Hindus in British India, and (3) Abolition of Hindu Women's limited interest and giving absolute rights of property to woman over inherited estate. The Bill is a step towards codification of Hindu Law.

4. The members of the Committee do not see eye to eye with each other in respect of the Bill that is now on the Legislative anvil. The Committee, however, shares the view that though the existing law may be elastic and capable of adaptation, still time has come to ship-shape and crystalize the scattered provisions and codify Hindu Law. It is difficult, however, to deal with the Law of Succession without a reference to other topics of Hindu Law. The Law of Legitimacy and of marriage, the Law of Partition and the Law of Union and Re-Union, and the Law of Adoption, are not without their reactions and repercussions on the Law covered by the present Bill. The Committee is, therefore, of opinion that though one part of the code be drafted, still the scheme should come into operation and the measure should come into force only when the entire code is ready. Piece-meal legislation is not desirable.

5. The Committee welcomes uniformity of Law of Hindu Succession throughout India, though it would like to give latitude and liberty to provisions to respect their cherished customs, if they want to retain them and if they were so express then at the appropriate forum, say the proper legislative Assemblies.

6. The members of the Committee hold divergent views on the question of giving an absolute estate to a woman. Some of us do think that the Bombay school is sufficiently advanced to meet the present situation; others hold that when a propositus leaves behind him sons and daughters, the daughters should have a right along with the sons in moveable property only, no matter if the daughters be married or unmarried, rich or poor, barren or otherwise, and that daughters should get no share in immoveable property, as it will lead to fragmentation and disintegration of immoveable property. Some of us hold that, that provision in the Bill extending to the Daughter a share equal to one-half of a son's, is salutary, but there should be proviso that the male co-sharer should have a right of pre-emption. Not merely spiritual efficacy but natural love and affection also should be one of the guiding

principles governing succession. The present Bill has unnecessarily widened the scope of simultaneous succession and has in its bosom the seeds of dissection of property. The Bill, therefore, ought to be amended so as to minimise the evil.

The Hindus cannot shut their eyes to Laws of the Muslims, Parsis and other Communities in respect of extension of rights to woman, but they do not blindly copy them and should be aware of the undesirable consequences which have flowed from their systems.

7. The members are unanimous that the apostasy should be a disqualification. And a person abandoning Hindu Faith should in future be disentitled to inherit but conversions to Sects or creeds of Hindu origin, such as Buddhism, Jainism, Sikhism, Brahmo Samaj, Prarthana Samaj or Arya Samaj should not be regarded as a disqualification. The Caste Disabilities Removal Act, 1850, should, therefore, be abolished and should find a place in the Schedule attached to the Bill for repealing certain Laws.

8. Some of us hold the view that Congenital or incurable lunacy and idiocy should be considered disqualification.

9. The Committee moreover is of opinion that when an estate escheats to Government, it should form part of the fund for use and benefit of the Hindu Community, preferably of the caste to which intestate belonged.

10. We have indicated broadly our views on the principles and main provisions of the Bill, but did not think it necessary to give a detailed opinion on clause by clause.

Maharashtra Mahila Mandal, Poona Centre

In the first place the Executive Committee would like to make it clear that it 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 Hindu community. One of the reasons advanced to oppose the Bill is that the Hindu law is part of the religion and the right to property is dependent on the observance of the tenets of Hindu Law. The Committee, however, contends that the word Religion or Dharma is that system of economy or policy, which binds and holds the society together and therefore, if, the circumstances alter, the forces and factors the ways and means to maintain the solidarity and integrity of the Society may also change. The Hindu Law is not impervious to such modifications as will be seen from the various texts and diverse interpretations placed on the Sutras, as also the various Acts passed by the Provincial and the Central Legislatures after the advent of the British Raj. The trend of the legislation is to satisfy the legitimate aspirations of the Hindu Society and the dire needs of the Hindu Womanhood as also to better the lot of Hindu women in the legal, social and economic fields.

The Executive Committee is in general agreement with the provision of the Bill. The Bill seeks to give legal effect to the three principles, i.e., (1) Removal of Sex disqualification so far as inheritance of the property of intestate is concerned, (2) abolition of the several systems of succession and provision for a common law of intestate succession for all Hindus in British India and (3) abolition of Hindu Women's limited interest and giving absolute rights of property to women over all inherited estate. It seems to the Committee that the Hindu Community is now sufficiently advanced so as to be ready for acceptance and assimilation of these principles and the consequences that would flow from them.

It is urged that the present Bill is an attempt of piecemeal legislation. The Committee readily admits that it is very difficult to deal with the law of succession without a reference to other topics of Hindu Law. The law of maintenance, the law of legitimacy and of marriage, the law of partition and union, the law of adoption and of guardianship are not without their reactions on the law covered by the present Bill. But it is not impossible to proceed with the first stage of the big work of codification especially when the new act is to come into operation only in 1946.

An objection is raised that the present Bill extends to daughters whether married or unmarried, a right to property along with the sons and this will lead to disintegration and fragmentation of the property in the family. There is some force in this argument but amongst the

Muslims, the Parsis and other communities, a right to property is conferred on the daughters and there are no serious difficulties in the matter of enjoyment of right over properties.

To minimise the evil of fragmentation, the Committee suggests that the brothers or male co-sharers of the women, on whom new right is intended to be conferred, should be given a right of pre-emption. The male co-sharer should have the first right of refusal to purchase the share of the females if and when the latter intend to do so, so that the disintegration may be avoided and chances of re-unification be enhanced.

It is further urged that the framers of the Bill are not Hindus and therefore the interests of the Hindu Community may not have been well guarded. The Committee does not attach much importance to this objection. The Joint Committee is composed of men of Central Legislatures which are a cosmopolitan body. It has examined witnesses of Scholarship and various persuasions. It has heard representative views and read the memorandum supplied by representatives of Hindu Women in Simla, by the Maharashtra Mahila Mandal, Poona Branch of the All-India Women's Conference and by public spirited bodies and individuals. We ought therefore to judge the Bill on its merits and not necessarily to look to the personnel of the Committee.

The Executive Committee does not profess to examine in minute details the various provisions in the Bill clause by clause. That work may be done by the experts. The Committee, however, wants to make a suggestion in respect of disqualifications arising in a heir. Hindu opinion is strongly against an apostate inheriting property. Change of religion should be a disqualification for inheritance in the case of a Hindu. Men of liberal views like Pandit H. N. Kunzra, P. N. Sapru share this view. All that the Committee desires to urge is that a change of religion should in future disqualify an heir from inheriting property under the Hindu Law, but conversion to Sects or creeds of Hindu religion origin, such as Buddhism, Jainism, Sikhism, Prarthana Samaj, Prarthana Samaj, or Arya Samaj should not be regarded as a disqualification. The property to be disposed of is that of a Hindu intestate and it is natural and rational that it should go to heirs who profess the intestate's religion. The caste disabilities Removal Act, 1850 should be repealed and should find a place in the Schedule to the Bill.

Honorary Secretary to His Holiness Shri 1108 Shri Jagadguru Shankaracharya Shri Abhinaya Sachchidananda Tirtha Swamiji Maharaj Shri Dwaraka Sharada Peeth (Mulbagal and Prabhaspatan).

His Holiness Jagadguru Shankaracharya Swami Shri Abhinaya Sachchidananda Tirthaji Maharaj of Shri Dwaraka Sharada Peeth (Mulbagal and Prabhaspatan), as the Religious Head of the Western India Sanatani Hindus, directs me to express herewith His strong protest against the Bill, as in His Holiness' opinion the contemplated Bill is against the commandments and practice of the Hindu Sanatana Dharma as laid down in the Vedas, Smritis and other Hindu Scriptures.

His Holiness accordingly desires me to request you to kindly move in the matter in the direction of a speedy withdrawal of the Bill in question, so as to avoid the unnecessary creation of wounded feelings among the All-India Sanatani Hindus.

Resolution passed at Sangamner, District Ahmednagar on 29th March 1944 by the male and female Hindu Citizens in a meeting under the Presidentship of Mr. K. R. Rede

RESOLUTION.

The Meeting is of the opinion that the action of the Government in tempering with the Hindu Dharma Shastras and Codifying the same is unjust and deserves protest. According to the Dharma Shastras the Government has no such jurisdiction and the present Assembly, not being the religious representatives of the Hindus generally, it also has no such jurisdiction. It is but just that the opinions of a handful of the so called educated people should not be entailed upon all the Hindus in general or

the strength of law. This will cause unprecedented oppression of course of Hindu public. The minds of the public are clouded with anxiety of the War: Lots of people have gone to the front to sacrifice their lives for protecting the British Empire; the public has not been adequately informed of the contents and results of these bills; the Government has not, as required by the procedure, published these Bills in the native languages. There is no earthly reason to make such an ugly haste in rushing these Bills through the Legislature; hence we request the Government not to accord its consent to the Bills on Intestate Succession; that the All-India Women's Conference is not the Representative Body of All-Hindu Women and that the one sided Rao Committee should be dissolved.

Mr. S. K. Bahulekar, and others of Satara District

We the undersigned Hindus, residing in the Satara District of the Bombay Province beg leave to submit the following petition for favour of consideration.

The Select Committee appointed by the two Legislatures (Central) have submitted their report regarding the Bill to amend and codify the Hindu Law relating to intestate succession. This Bill is very objectionable on various grounds, the following among which are important.

(1) *Inopportune time.*—War is raging throughout the length and breadth of the world and India is no exception to this situation. Unless there is internal peace, it is very difficult to give careful consideration to Bills of such far reaching effects. Government themselves are engaged in War affairs and have no time to look to other things. This being so, Government themselves should not have sponsored such controversial Bills which particularly aim at making changes in the existing Hindu Law in the sphere of social and religious matters. The Hindumahasabha and also the All-India Hindu Mahila Parishad are of opinion that such Bills should not be considered for the present moment. This Bill is not at all wanted by the orthodox section of the Hindu Community and also not wanted at least at the present moment by the Hindu Sabha and the Hindu Mahila Parishad of advanced Hindu views.

The present time is further inopportune as sufficient paper is not available for giving publicity to the objections of the Bill. There are restrictions on holding public meetings and so the effects of the legislation cannot be made known to the public. Even a copy of the report of the Joint Committee which is published in the 'Supplement' part to the Bombay Government Gazette is out of stock. When people are not in a position to know exactly the text, circulation of the Bill for eliciting public opinion has no meaning.

(2) *Incompetency of the Legislature.*—The British Government have adopted the policy of non-interfering with the social usages and religious beliefs of the people of this country. The most famous utterance in point is the royal proclamation of 1858, the relevant portion of which runs thus:—"Family relying on 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 pleasure that none be 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 subjects on pain of our highest displeasure."

This is confirmed by all successive British Sovereigns at the time of their coronation oath. The King with Bible in his hand solemnly swears in the presence of the Archbishop, at the time of the coronation; the Archbishop says "Will you solemnly promise and swear to govern the people of Great Britain, etc., and of your empire in India, according to their respective laws and customs?" The King "I solemnly promise so to do". This oath has a further constitutional significance (Ref. Aulton's 'Constitutional Law'). The Legislature derive their power to enact Laws from the King and the Parliament. It, therefore, follows that when the power to enact such laws does not remain with the King, the Indian Legislature in their turn have no such power.

The present Bill aims at amending and codifying the Hindu Law. A Legislature can amend only an existing law passed by a previous legislation. Hindu Law is a law not passed by any legislature, but it is in vogue according to the Religious Laws and Customs prevalent among various sections of the Hindu community. Hence it is not within the competency of the Central Legislature to pass such a law.

The Central Legislature cannot pass a legislation relating to an intestate succession to the agricultural land, which is purely a Provincial subject. At present there is no Provincial Legislature in the Bombay Province, all the powers of enacting laws now vest in the Governor of Bombay and that there is every reason to fear that if the present Bill before the Central Legislative Assembly is passed into law, the Governor of Bombay will in his turn fill up the ellipses and pass a law making it applicable to the agricultural lands also by a stroke of pen. But the Provincial Legislature is empowered to pass laws on all matters according to Item No. 21 in the Provincial Legislative list read with Item No. 7 in the concurrent legislative list. Thus the Provincial Legislature is the only competent Legislature to pass a law relating to the intestate succession.

The Hindu race is a very ancient one and so is their law. Certain changes have taken place in the laws and usages of Hindus. The origin of these changes is to be traced to the ancient personages who were well-versed in the Shastras and had belief in them. It is only such personages that can change or according to them interpret the existing law. The Legislature is a cosmopolitan body, and non-Hindus of this body cannot have belief in the Hindu Shastras. All-Hindu Legislators also are not expected to be well-versed in the Shastras and have belief in them. The Joint Committee of both the Legislatures was composed of Hindus and non-Hindus. According to convention Non-Hindus should not have voted in shaping this Bill. But it is learnt that some clauses of the Bill were passed with the help of non-Hindus, although the majority of the Hindus did not want them. The reason why the non-Hindus and particularly Muslims vote against Hindus is clearly that their interests conflict with those of Hindus. A further striking instance in point is that the clause giving right of succession to daughter who may have even been willingly or forcibly converted was opposed by eleven Hindus and was supported by two Hindus, three Muslims, one Parsee and one Christian, that is in all seven. No Hindu mind tolerate, the passing of a Hindu estate to a Mahomedan under the guise of giving right of succession to a daughter. But in spite of the opposition of the majority of the members, the clause has been retained. The incompetency of the present Legislature to pass such a Bill is fully proved.

The term of office of the present Legislature has long been expired and they hold office only in extension. The electors had no idea that any such Bill of social and religious changes would come before the Legislature. A distinct vote on matters of such importance is essential before representatives give their vote on such vital points.

(3) *Violation of the fundamental principles of the Hindu Law of Succession.*—This Bill seeks to make the following radical changes among others in the existing Hindu Law.

(a) The Hindu Law is no longer to remain as personal law as hitherto but is to become a territorial law for the whole of British India. And thus when a person dies leaving property both in a native state and British India, the succession to his property will be governed partly by the law of that state and partly by this British Indian Law. There is every likelihood of heirs being different. The Hindu Dharma Shashtra contemplates only one heir for offering oblations and for the perpetration of the family of the deceased.

(b) It seeks to give issues of Anuloma and pratiloma marriages, the right of succession which gives a rude shock to a Hindu mind.

(c) A woman is not to acquire Sapinda relationship with her husband by marriage, nor is she to lose the Gotra of her father. This means that females in Bombay who now inherit as widows of Gotraja Sapindas would lose their rights of inheritance. A step-mother or brother's widow would not be one's relation; nor would of the paternal uncle be any relation. One's cousin sister is one's agnate, but her mother, the widow of the uncle is no-body.

(d) A son though separated from the father is permitted to share the heritage along with the son who continued joint with the father. The distinction now made between sons united, or reunited and separate is done away with.

(e) A daughter is now to share the heritage along with the son and widow. The Hindu Dharm Shashtra never contemplates simultaneous succession. The principle of Hindu Law is successive heirship as opposed to simultaneous succession. The new change will result in the dissipation of the family estate. It seems that such a succession is recommended on the analogy of the Muslim succession. But intermarriages between first-cousins which are prevalent among Muslims prevent further dissipation.

(f) The method of counting degrees has significance according to Hindu Dharm Shashtra. This is now changed (on the analogy of English mode of counting degrees) with giving any reason. The Hindu mode of counting degrees is to count from and inclusive of the deceased. This new mode of counting is likely to cause confusion.

(g) It is said that the present Bill will lessen litigation but simultaneous succession and absolute power given to a widow will increase the litigation rather than diminish it. The estate of the majority of the Hindus consists of a house and small fields. This Bill will increase fragmentation together with litigation and will in no way ameliorate the condition of the masses.

The framers of the Bill observed that the present Hindu Law structure was a spacious one and that no reformer would wish to lay his hands on it except for proved necessity. They promised that the code of Hindu Law which they would produce would be by a happy blend of the finest elements in every school and which would retain the distinctive character of Hindu culture and it will satisfy the needs of a progressive society. But unfortunately this is far from the truth. Diwan Bahadur K. V. Brahma, Advocate has rightly pointed out that "When one examines the changes proposed, one however finds that instead of being a 'happy blend' of the different views held it is a 'Hybrid' of the Mahomedan Law and the Indian Succession Act and it retains the distinctive character of Hindu Law only in the name given to it. The abolition of the limit of Sapindas or Gotraja relationship, the provision that the wife is not to be Stpinda of her husband, the expulsion of the dasiputra and the daughter-in-law, the inclusion of the daughter as a co-heir and making her sharer equal to half of the sons, allowing the sons and daughters to succeed without the present discriminations, the expansion of the idea of Stridhana, the recognition of the issues of Pratiom marriages, permitting all unchaste widow to succeed in spite of her proved or admitted unchastity, the removal of all disqualifications of inheritance, the conferral of absolute estate on all females and as a result the abolition of the joint family is not a blend of the finest elements of the different schools but a ruthless extirpation of all Hindu ideas and all this for no proved necessity, except an undue regard for what is Western and an unmerited dislike of what is Eastern, on the ground of its being ancient, archaic, worn out and useless to the onward march of the Hindu Society..... If one studies the trend of modern sociology it is to encourage men to live and act in group. Partnerships and companies are the order of the day of the West. A joint family is a co-operation brought into existence by national ties. The joint family system, a cherished institution of the Hindus, is given a death-blow and Hindu ideas of sociology are hounded out on the pretext of their being impediments to the progress of the Hindu society.

We, therefore, submit that the present Bill, should not be passed into Law.

Resolution unanimously passed at a public meeting of the citizens of Satara

This Meeting of the citizens of Satara do hereby resolve that the present attempt on the part of the Government through the specially appointed 'Rao Committee' to codify the Hindu Law and thereby to change the sacred, ancient and cherished trend of the old scriptures on Vedic and orthodox customary law of the nation, is unjustifiable and most aggressive and unwarranted. This Meeting protests that this power to amend the present system of administering Hindu Law does not vest in the Legislature:

and that in trying to please a handful of educated men this measure will seriously injure the feelings of the masses of the population of India.

This Meeting further do hereby resolve that the institution called the 'All-India Women's Conference' is not and cannot be a representative body of the Hindu women of India and to consider that institution as so representing, will give great insult to the feelings of women and hence is most objectionable.

This Meeting therefore requests the Government that,

(1) This condemnable step need not be taken by the Government,

(2) The completely partial 'Rao Committee' should be abolished.

(3) No change in the present system of Hindu Law be made and the amendment intended to be introduced as regards Succession and Marriage, being quite unnecessary, should be dropped altogether, and

(4) The 'All-India Women's Conference' should not be regarded as a body representing the Hindu Women of India.

Jyotirmartand Pandit Daivayna Mukutalankara Shankar Shastri, K. I. H., Hosaritti, District Dharwar, and President, Sanatan Mandal, Haveri

The Bill will change the entire aspect of the present existing state of Law. It is opposed to custom and it is further, opposed to Law, Justice, Equity and good conscience. It offends against the principles of the Hindu Dharma Shastras. It interferes with our religion and religious principles. The public are against it. The result of passing the Bill will have disastrous effect on the Society.

The opinion of the Royal Commission and the Civil Justice Committee is that the Legislature has no power to alter the succession now intended to be introduced in the Bill. The public and the Sanatana Mandal are of the same opinion. Moreover it is not the time for effecting such drastic changes in the Hindu Law. Some of the children of the soil are in jail and some are on the battle field. There is no scope now at this stage to have a considered view of those persons. The question of presenting a united front to the German and Japanese menace is of primary importance. In view of this the question of consideration of the present Bill pales into insignificance at this stage and at this time.

Under these and other circumstances it is not safe to launch the present measure in the interest of Law and order. I earnestly appeal that the Government will kindly be pleased to consider my humble request and drop the measure altogether.

The Secretary, The Bombay Prarthana Samaj, Bombay

The Managing Committee of the Bombay Prarthana Samaj are generally in agreement with the opinion expressed by the Bombay Presidency Social Reforms Association, Bombay, which is already forwarded to you.

The Bhagini Samaj, Bombay

Our Committee wishes to inform you that as stated in our previous memorandum submitted to the Select Committee, the Bhagini Samaj supports the main principles of the Hindu Intestate Succession Bill. The Samaj also supports the amendments suggested by various women's organisations, as printed on pp. 9 and 10 of the Report of the Joint Committee of the Bill, published by the Government of India Legislative Assembly Department. The main point we wish to emphasise among these amendments is an equal share for daughter and son in both father's and mother's property.

The All India Hindu Law Research and Reform Association, Bombay

I am directed to inform you that the above Association fully endorses and supports the opinion submitted by the Indian Social Reform Association on the subject.

No. 12. BIHAR

Government of Bihar

1. The opinions received by the Provincial Government now that the Bill is ahead of conservative Hindu opinion in the province. In the ranks of the higher officials there is general support for the principle of the Bill combined with some doubt as to whether this is the appropriate time to proceed with it. Non-Official opinion on the other hand is rather strongly against the Bill.
2. In the opinion of the Provincial Government the Bill should be proceeded with. The reform is long overdue and it is a matter in which the Government may rightly take a lead.
3. I am also to enclose copies of the minutes recorded by the Hon'ble Judges of the Patna High Court on the provisions of the Bill together with copies of representative opinions received both from official and non-official sources.
4. The Bill was republished in English in the Bihar Gazette, dated the 2nd February 1944.

The Hon'ble Judges, Patna High Court

S. C. Chatterji, J.—I adhere to the view which I expressed on 4th August 1942.

I agree with Hon'ble S. B. D. that the Bill doesn't require any comment from the judicial point of view.

Personally, however, I am not in favour of the Bill.

H. R. Meredith, J.—I also. There are two Bills for my opinion. They are both of purely Hindu concern and am not in a position to express any opinion beyond that generally speaking I am in favour of the codification of Hindu Law.

B. P. Sinha, J.—I agree to the principle underlying the Bill.

R. B. Beever, J.—I do not wish to offer any opinion on the general principles which should be adopted in codifying the Hindu Law of intestate succession; and with one exception (to be mentioned later) in which questions of general principle arise. I will confine myself to matters of detail with particular reference to the drafting of the Act.

Clause 2(1)(d).—I have considered the reason given in the report of the Joint Committee for inserting the words "whether he dies leaving male issue or not", but I am unable to see how the insertion of these words will clarify the position which remains entirely obscure to me. I suggest for consideration that perhaps greater lucidity might be obtained by defining the cases in which property will pass by survivorship as opposed to inheritance and in other cases such as absolute debottar property which are to be excluded from heritable property, and then defining "heritable property" as meaning and including all other property. If, however, the definition of "heritable property" given in the present Bill is retained, I think it should be considered whether it is desirable to add a reference to the Mithila School of Hindu Law after the words "Mitakshara School of Hindu Law" in the illustration to clause 2(1)(d).

Clause 2(2)(b).—It should be considered whether there may be repugnancy between this sub-clause and the provisions of the Indian Succession Act, 1925, because sections 6 to 18 of the Indian Succession Act, 1925, fall within Part II of that Act, and section 4 of that Act lays down that Part II shall not apply if the deceased was a Hindu. Perhaps the effect desired could be better achieved by amendment of section 4 of the Indian Succession Act, 1925, by omitting therefrom the word "Hindu" and, if necessary, adding to that section a clause providing that sections 5 and 19 shall not apply if the deceased was a Hindu.

Clause 3.—I suggest that in this clause as drafted the words "dying intestate after the commencement of this Act" may be construed as referring back to "one governed by the Marumakkattayam, Aliyasana or Nambudri Law of inheritance". I, therefore, suggest that the words "dying intestate after the commencement of this Act" should be placed immediately after the words "person to whom this Act applies" and that the word "any" be substituted for the word "a" immediately before the words "person to whom this Act applies".

Clause 5.—The word "dependant" in the description of enumerated heirs, Class I, heading (1) is a misspelling for "dependent". The correct spelling has been given in Class II.

Clause 7(e).—The small share given to each parent combined with the provision that on the death of the parent any property so inherited shall devolve upon the heirs of the intestate son seems calculated to produce great fragmentation of the estate.

Clause 12.—This clause appears to have nothing to do with intestate succession and, therefore, appears to be out of place in the present Bill.

Clause 19.—This clause appears to me to be objectionable on so many grounds that I have attached a separate note on this clause.

Clause 19.—This clause runs as follows:—

"19. *Murderer disqualified*.—A person who commits murder or abets the commission of murder in furtherance of his or her succession to any property shall be disqualified from inheriting such property; and the inheritance shall, in such a case, pass to the heir who is next in the order of succession.

In my opinion this clause is open to very serious objection on a variety of grounds with which I will deal *seriatim*.

In the explanatory note attached to the Statement of Objects and Reasons dated the 27th May, 1942 it is stated that this clause embodies a principle of the existing law resting on considerations of public policy.

Firstly, I am very doubtful whether it is advisable to attempt to give statutory form and effect to a principle resting on considerations of public policy.

Secondly, I think it is clear that a principle resting on such considerations should apply equally to all communities irrespective of race or religion. Even, therefore, if it is thought desirable to give statutory effect to such a principle, the statutory provision so made is out of place in an Act which will apply only to one community.

Thirdly, the principle must apply equally in cases of testamentary succession and intestate succession. Such a statutory provision is, therefore, out of place in an Act which will apply only to cases of intestate succession.

Fourthly, the principle must be applicable equally to all kinds of property and such a statutory provision is, therefore, out of place in an Act from whose purview are excluded various kinds of property, e.g., agricultural land and impartible estates (*vide* clause 3 of the Bill).

Fifthly, the explanatory note cited above gives the impression that clause 19 is merely declaratory of the existing law. Whatever doubt there may be regarding the exact limits of the principle said to be embodied in the clause under consideration and whatever doubt there may be as to the exact meaning of this clause, I think I can show clearly that this clause alters the existing law in important respects.

The leading case on this subject in India is the decision of the Privy Council in *Kenchava v. Girimalappa* (I.L.R. 48 Bombay, 569). Therein the Judicial Committee found it unnecessary to decide whether a murderer would be excluded from inheritance by the Hindu Law but held that the principles of equity, justice and good conscience exclude the murderer. They refused to follow the reasoning of a certain American Judge and stated: "Statutes regulating heirship or descent, or giving force to wills, and to the devises contained in wills should be read as not intended to affect paramount questions of public policy or depart from well-settled principles of jurisprudence." This dictum gives force to my contention that it is undesirable to attempt to embody such principles in a statutory form. The Judicial Committee also stated that "The English Law on this subject is based upon principle and is well settled." But they did not cite any English decisions other than *In Re. Houghton* (1915 2 Ch. 173) and that case is cited only for the purpose of distinguishing it.

The English cases down to 1914 were considered and discussed in an article in the *Law Quarterly Review*, 1914, Volume XXX, page 211, under the title "A testator's bounty to his slayer", and the principles are therein discussed and reference is given to the position under various foreign codes of law. I would refer only to the case "*In the Estate of Julian Bernard Hall*" (1914 P.) decided by the Court of Appeal in England, wherein it was held that in the application of the principle there was no distinction between murder and man slaughter. There appears to be

no case in India dealing with the application of the principle to cases of culpable homicide not amounting to murder, but in view of the Judicial Committee's reference to the English Law in I.L.R. 48 Bombay, 569, at page 575, I have little doubt that the law in India is at present the same as in England on this point. If I am correct in this view, the clause now under consideration, which makes no mention of culpable homicide not amounting to murder, will produce a radical change in the law.

So far as I have ascertained, there is no reported decision either in India or in England dealing with a case of abatement either of murder or man slaughter or culpable homicide not amounting to murder except one case reported in 74 P.R.100, where it appears the principle was applied in the case of an abettor. I have not seen the original report and take the facts from I.L.R. 8 Lah. P.108. It must, however, be noted that whatever may be the position under some foreign courts it seems clear that neither in England nor in India has it ever been suggested that the principle of public policy now in question would apply in any case in which the person whose property is claimed by an inheritance did not die as the result either of a criminal act or an act which would have been criminal had the person causing the death been possessed of legal capacity. (The case in *Re. Houghton*, 1915, 2 Ch., 178, which dealt with a case of death caused by a lunatic is distinguishable on this ground). In India, however, a person may be guilty of abatement either of murder or culpable homicide not amounting to murder even though the principal offence is not committed (*vide* section 116 and other sections of the Indian Penal Code). Clause 19 of the Bill now under consideration disqualifies a person who abets the commission of murder in certain circumstances from inheriting, but does not make such a disqualification conditional on the murder actually being committed. The result will be, if this Bill is passed into law, that, in the case of persons to whom this Act applies, should A, the heir of B, instigate C to murder B, then A will be disqualified from inheriting as an heir of B even though C never attempts to murder B, and B dies a natural death long after the instigation in question and after making up the quarrel which formed the motive for such instigation. This is certainly a radical and, I think, most undesirable change in the law.

On the other hand, clause 19 now under discussion limits the application of the principle by the insertion of the words "in furtherance of his or her succession to any property". Nothing in the Privy Council decision in 48 Bom. 575 suggests that there is at present any such limitation on the applicability of the principle in question. Here, again clause 19 appears calculated to effect a change in the law.

Sixthly, the last part of clause 19 running "and the inheritance shall in such a case pass to the heir who is next in the order of succession" appears ambiguous because it provides no answer to the question whether for the purpose of determining such an heir relationship may be traced through the murderer or abettor. The Judicial Committee of the Privy Council in I.L.R. 48 Bombay, 569 held: "The murderer should be treated as non-existent and not as one who forms the stock for a fresh line of descent". This may mean either that the murderer is to be treated as non-existent at the time the succession opens or at the time the murder takes place, or alternatively, it may mean that the murderer is to be treated as if he never had existed in which case his children cannot claim as heirs of the murdered man. It was not necessary to decide this point in the case which was before the Privy Council. The Lahore High Court has, however, held in I.L.R. 3 Lahore, page 103 and I.L.R. 3 Lahore, page 242, that the sons of a murderer cannot succeed as heirs to the property of a murdered man. On the other hand, the decision of the Calcutta High Court reported in 17 Calcutta Weekly Notes, page 341 (*Nilmadhab Mitra v. Jitendra Nath Mitra*) is a case in which the succession of the murderer's son to the estate of the murdered man was apparently recognised though his right so to succeed was apparently not judicially determined.

If it is considered necessary or desirable to give statutory form to the rule of public policy in question, this question should be clearly answered. It is perhaps unnecessary for me to offer a suggestion as to the way in which it should be answered, but I do think that there is

a great force in the reasoning of Broadway, J. at pages 109 and 110 of I.L.R. 3 Lahore in a passage which was cited with approval by Abdul Qadir, J. at page 253 of the same volume. I also think that there is still great force in the passage from Cicero quoted in a note to the report of the House of Lords decision, *Amicable Society v. Bolland* (*Fauntleroy's Case*). IV Brigh N. S., 194-5 English Reports at the foot of page 75: "Nec vero me fugit quam sit acerbum parentum scelera filiorum poenis lui; sed hoc praeclare legibus comparatum est, ut caritas liberorum amiciores parentes Reipublicae redderet," which may be translated: "The harshness of requiring the crimes of parents to be expiated by penalties imposed on their sons certainly does not escape me; but this has clearly been established by the laws so that affection for their children might make parents stauncher friends of the State."

I, therefore, think that clause 19 should be omitted from this Bill and if it is thought necessary to give statutory effect to the rule of public policy in question, this should be done in a general Act in a manner which will avoid the obscurity above mentioned.

Perhaps it was thought necessary to include clause 19 because it was thought desirable to make clear by clause 20 that the grounds on which a person, to whom the Act applies, may be disqualified from succeeding to property are to be restricted to those specified in the act. I suggest, however, that this result can be achieved by omitting clause 19 and inserting a proviso to clause 20 running as follows:—

"Provided that nothing in this section or in this Act shall affect or restrict the operation of any provision of law or rule of public policy whereby any person may be disqualified from succeeding to property of another person whose death was caused by an act amounting to a criminal offence by reason of any connection with such criminal offence on the part of the person to be disqualified or of any person through whom he or she traces his or her relationship to the deceased."

Rai Bahadur Gunendra Nath Roy, Advocate Dhanbad

1. I am strongly against social legislation, particularly in a matter concerning Hindu Law which vitally affects the traditional status and position of Hindu family. I am also against piece-meal legislation on an important subject like the one in question.

2. I fully realise that it is extremely difficult, if not impossible, to draft a simple code of Hindu Law, but that is no reason why a piece-meal legislation should be enacted which will, in all probability bring about disintegration of Hindu Society which has survived all storms and winds that passed over its head for centuries.

3. In order to understand its main principles, the Bill may be divided into three parts, namely:—

- (i) uniform codification of succession for all Hindus in India;
- (ii) removal of sex disqualification for inheritance; and
- (iii) abolition of limited estates for women.

4. As to (i) namely, uniformity in the law of succession among the Hindus, I am afraid, no such result can be, or will be, attained by this Bill.

5. Different schools of law are in vogue in different parts of India. Having regard to the special conditions prevailing in different parts of India, it is not possible, nor is it desirable to merge all the different schools of law into one.

6. As a matter of fact, though the Bill aims at unification, it does not do so. For instance, it does not touch a joint Mitakshara family, where, as is well known, a coparcener gets by survivorship and not by succession.

7. Again, it (the Bill) will not touch agricultural lands.

8. As to point No. (ii), namely, removal of sex disqualification for succession I regret, I cannot support it.

9. If any share is to be given to a daughter as a "simultaneous heir", a lot of complication is bound to arise.

10. A daughter, if and when married, is bound to act under the pressure and influence of her husband and his people; and sooner or later, it will lead to a partition of all properties with the inevitable result not only of introducing strangers as co-owners but also as co-residents of the same dwelling house. It will also disturb the worship

a family deity and other religious performances and pujas.

11. A daughter should, in my opinion, rank after No. (1) class I of the enumerated heirs, but before No. (2). In other words, her number should be No. (2) of clause I, and the present numbers (2), (3) and (4) should be Nos. (3), (4) and (5) of class I.

12. As to the third point, namely, abolition of limited estates for women, I am of opinion that a female should not get absolute estate in the property she inherits—it would be a Hindu Woman's limited estate only. The underlying object of limited estates for women according to Hindu Law, is to provide maintenance for them. A woman is to enjoy the property for the ultimate benefit of her sons or other heirs who are entitled to confer spiritual benefit on the departed soul of the person from whom the property comes.

13. I also think that apostasy should be a disqualification for successions.

14. While I am for suitable provision for females, which every person having property would wish to do, I strongly feel that the Hindu idea of succession on the basis of religious and secular responsibility should not be lightly brushed aside by votes of a few chosen representatives. If any owner wish to dispose of his property on the lines indicated in the Bill, he is quite welcome to do so by Will; but there should be no legislative compulsion. Let him remain the sole master of the situation. There should be no clog on his sentiment or notion. Let his soul, if he dies intestate, rest in peace.

Secretary, Bar Association, Purulia

My association is against the Bill. We find that out of the 18 members of the Committee, 15 members found it necessary to affix each a minute of dissent; this fact in itself is a sufficient criticism of the Bill; besides, we find that each of these minutes of dissent is quite a weighty document by itself.

We endorse the view of those Hon'ble members who have recorded their protest against the breach of convention involved in non-Hindu members of the Committee voting on controversial points of Hindu Law which is the personal law of the Hindus, so inextricably mixed up with the social life of the Hindus that even the greatest non-Hindu Pandits of Hindu Law as it is should not venture any opinion as to the Hindu Law as it should be. Therefore, the majority opinion of the committee is merely a misnomer.

Apart from the fact that the Bill has miserably failed in effecting its principal aim of evolving a uniform statute for all the Hindus in the country, the Bill is open to serious criticism in various matters of details, some of which have been so ably pointed out in some of the minutes of dissent and it would be useless wastage in these days of paper economy to make out a long list of the others. To mention only one, the Hon'ble members have laid down in the Bill that no widow shall be deprived of her right to succeed to the husband's estate on the ground of unchastity unless there is a finding of unchastity by a competent court during the life time of the husband in an action brought by the husband. We admire the anxiety of the Legislators to save the hapless widow from the cruelty and harassment of unfounded allegations of unchastity, brought by unscrupulous kinsmen of the deceased husband, but we cannot admire their lack of imagination in prescribing for the mortified husband a double dose of mortification in forcing him to wash dirty linens in the public; slavery of the woman to the man is bad enough; but slavery of the man to the woman is worse.

Finally, we fail to understand why the legislators are so anxious to codify only one branch of the Hindu Law even before they have any code in the embryo for the other branches of the Hindu Law, particularly when they are admittedly aware of the fact that some other branches are intimately connected with the branch which is the subject matter of the present Bill.

District Judge of Manbhum-Singhbhum

I agree with the local Bar Association and am not in favour of the Bill at all. The Bill, if passed into law, will in my opinion have a pernicious effect on the Hindu society. It will lead to fragmentation of the corpus of the

Hindu family property involving ultimately disintegration of the Hindu Society—a possibility which should be carefully guarded against. I do not, however, intend thereby to be unfair to the females of the Hindu Society, who should have sufficient provision made for their support and maintenance during their life time. The Hindu Women's Right to Property Act (1937) is, in my opinion, a move in a proper direction, and if necessary a further facility on similar lines should be vouchsafed, including within the range of heirs, other females not covered by that Act, but without abolishing the Hindu Women's limited estate which the Bill under consideration proposes to do away with. I am, therefore, not in favour of the property acquired by a woman by inheritance, on partition, in lieu of maintenance, or by purchase with her husband's money, being treated as her stridhan. I am also not in favour of a married girl in a Hindu Society being given any share in her parental estate because as a result of the marriage, she ceases to belong to the Gotra of her parents and becomes engrafted to another family where she gets a limited interest in the property of her husband under certain circumstances according to the law as it obtains now. Under the present system of the Hindu Society it is the natural care and anxiety of parents of a girl to put her by marriage in a family where she is expected to have a reasonable comfort of living and support. Hence the proposal of giving the married girl a share in her parental property loses its utility. Further it amounts to giving her a double share—one in her father's estate and the other in her husband's estate reducing thereby the son's share to a minimum. The allotment of a share to a married girl is also bound to entail a lot of litigation and bad blood impairing and ultimately breaking the affectionate ties of relationship which otherwise exist in a Hindu family.

On the assumption, however, that the sex disqualification in the matter of inheritance should cease, my alternative view is that change or abandonment of religion should be made a disqualification to inheritance. After inheritance, if a female heir decides to sell her share in the immovable property the male heir should be given the first preference to purchase it on a reasonable price, and the idea of the females' absolute estate should be subject to this restriction, that a female may have an absolute estate, only when there is no son, son's son, or a son of a son's son, consistent with the idea of the Hindu society, to keep as far as practicable, the nucleus of the family property intact.

Darbhanga Bar Association

We have given this Bill our most anxious consideration and we regret to say that we do not find ourselves in agreement either with its fundamentals which we hold as anti-Hindu from the Shastric point of view and unbeforeshadowed and inequitable from the point of view of the Hindu Community as a whole or its details which disclose many defects of draftsmanship making the one part inconsistent with the other or at least likely to prove most contentious and sure to plunge the community into a vortex of insensate litigations by the uprooting of the Hindu Law as we know it and substituting in its place a revolutionary code to be written up and brought into operation by piecemeal legislation undertaken by an assembly from which large number of people's accredited representatives are absent and at a time when so many provinces are being ruled by ordinances and the country is passing through a very critical time brought on by Fascist invasion and political deadlock inside the country and cannot therefore be in a mood to give this Bill a due consideration which it would have given had it come in a more peaceful and normal period. Our reasons for the above observation disapproving the Bill are as follows:—

(1) The Bill is unpopular and there is no chance of its smooth working. Of the 18 members of the Joint Committee, 16 have given their notes of dissent as appear from the asterisk marks shown against their names. The public opinion is still more strong against it and if a referendum be taken we make no doubt that the sponsors of this Bill can have no chance of succeeding in any election fought on the issue of this Bill. Personal Law rooted in the religious sentiments of a nation does not deserve to be drastically altered without an opportunity having been offered to the people to be affected thereby to expose their views and the

only way provided by democracy for expression of views on such vital matters touching the very structure of a society is election and we therefore oppose this Bill as flinging a surprise upon the Hindu Community. The sponsors of this Bill must get their authority to revolutionise the Hindu Law in the manner they seek to be tested and proved in an election, in the absence of which the Bill cannot be sure of its not being an outrage upon the religious sentiments of the Hindus.

(2) The Bill is anti-shastric in its provisions and the arguments given in support of the view that the Vedic literature does not exclude women from inheritance is illogical and forced. The Nirukt and Maiteyari Samhita cited at page 2 of the report of the Joint Committee are dismissed on the grounds that they have not been referred to or relied upon by subsequent writers so they should be deemed not to have any bearing on inheritance. It is difficult to follow the logic of this argument. Authority plain and clear cannot be discarded because some writers did not refer to them. Very likely the position was universally accepted and they saw no purpose in labouring that point and collecting an exhaustive commentary on the same.

The quotation from Taittiriya Samhita (VI-5-8) and Satpath Brahman (IV-4-2-13) are dismissed with the comment that they refer to Some sacrifice and means only exclusion of women from the participation in the Some Juice and in support of this Dr. Jolley, Maxmuller and Dr. Mitter have been cited. But with great respect to these writers it may be pointed out that they have borrowed their opinion expressed above from one Shri Charan Vidyanaya who was a commentator on Parasar Smriti but the latter view has been considered in Vyavahar Prakash (Vir Mitrodaya) at P. 517 (Choukamba series) and its mistake exposed.

If a more direct authority from the Veda itself be needed to show that women were excluded from inheritance, I need cite below the following from Rigveda :—

To female agnates (अग्ने) the son is to give no property because they are meant to be semen bearer (of others).

The Smritis are full of slokas excluding women from inheritance and if they be considered as the orthodox view is, to be true and authoritative interpretation of the Vedas, then the meaning of the Veda about this point is also not in doubt coming as they do from Rishis who are acknowledged to be adepts in Vedas which are written in such a difficult language that they are not easily comprehensible to those who are not adepts. One point more about Taittiriya Samhita.

The argument of Dr. Jolley, Mitra, and Maxmuller is that the Mantra quoted above relates to the exclusion of women from participation in Some Juice, but this is not correct because women are not excluded from taking Some Juice. For example, Some is favourite drink of Indrani, the consort of Indra and the same is offered to her in all sacrifices. Similarly Usha, wife of the God Sun is also offered Some Juice. It being so the above interpretation that women are excluded from participation in Some Juice cannot hold water.

The following mantras from Rigveda would show that the wives of gods were invoked to receive the offering of Some :—

We invite Indrani (wife of Indra), Barumani, (wife of Barun) and Agneyee (wife of Agni) to take the juice of Some and to confer prosperity on us.

Both of you (Aswini) along with Agni, Indra, Barun, Bishnu and the Adityas and the Rudra and Usha (wife of the Sun) and the Sun drink Some.

The plain meaning of that mantra of Taittiriya Samhita is that women could not take pure Some Juice as it proved too powerful a portion for them and so the gods anxious to send their wives to Heaven making the ghee a thunderbolt struck Some which became enfeebled and the juice thus made weak was taken by women. That is to say, to reduce strength of Some Juice to make it fit for women, it was diluted with ghee but women did take it without doubt in this adulterated form. The above interpretation is fully supported by the translation given of the above mantra by Dr. Keith in Harvard Oriental Series Vol. 19 T. Samhita.

Book IV to VII P. 543, Lines 26 to 32.

Therefore the simile is used that as women were found to be weak and not capable of taking Some Juice in its

pure form and as they took it in weakened and diluted condition so they were excluded from inheritance on account of their above incapacity.

The correct view about the position of women under Hindu Law is not what Dr. Jolley, Maxmuller and Dr. Mitter have said but what is stated in Vyavahar Prakash part of Vir Mitrodaya and that view is that women are generally excluded from inheritance but to this general rule there are many exceptions specifically named in the Smritis and other books of Dharmshashtra. In light of this harmonising interpretation there is no necessity to fight for an absolute proposition that women are excluded from inheritance altogether. To this extent there is perfect agreement between the authors of Vir Mitrodaya and Dr. Jolley, Maxmuller and Dr. Mitter, but there is at the same time a fundamental difference between the view of the latter scholars and Vir Mitrodaya and that is where they say that the Vedas do not enjoin exclusion of women from inheritance at all. None of the two rival absolute propositions about women's rights to introduce is correct. Neither women, are excluded from inheritance without exception nor are women given universal right of inheritance like man. The correct position is that women are generally excluded from inheritance and on this general rule exceptions are engrafted which can be collected from Shastras.

It would be untrue to try to seek support of our progressive views from shastras even where none exists. To do so would be to give up the true scientific spirit of research without which truth can never be reached. Let us take the shastras as we find them without giving them any colouring of our personal views and then decide with our eyes open and without any illusion about the position in shastras as to what legislation we are going to have for ourselves. We plead for facing the facts boldly.

(3) We have said in our prefatory observation that the Bill is self-inconsistent. It starts with the object of making women absolute owners, but it incorporates the provision that women inheriting from husbands and father will not constitute proposita and that the properties after their deaths will pass not to their Stridhan heirs but to the heirs of the husbands and the fathers and in all other cases to their own Stridhan heirs. It is not clear as to why this limited discrimination has been recommended. What is to happen when the women inherit as a mother and there is a daughter-in-law living in the family? To oust the latter as to the present provision of the Bill does is to rob the Peter to pay the Paul. Again there is the possibility of the mother disposing of the whole property or re-marrying and going out of the family and leaving the poor daughter-in-law or any other female of the family unprotected.

4. The instances of such injustices are numerous but they have not been exhaustively enumerated and the Bill requires recasting throughout to safeguard against such injustices.

5. Women have been given the right of inheritance both in the family of her father along with her brothers and in the family of her husband with her sons. This is not making her at par with men but is definitely putting her on a superior level apart from the fragmentation of estate and disturbance of family harmony that may very often be caused by it. It would be unfortunate if we surrender judgment to the clamour of a section, be it even of the fair sex. We must not allow feminism to be carried too far.

6. Apostasy is made no ground for disqualification under this Bill. It is said that the position gained under the Act of 1850 should not be given up. But has there been any gain under the Act of 1850? We are of opinion that the ground lost under the Act 1850 be recovered. That Act was passed to favour the Christian Missionaries, at the expense of the Hindu community. In absence of reciprocal laws in other sister communities of India the Act of 1850 or the retention of its provisions in this Bill is a definite hit against the very structure of the Hindu Society in which holes will be created for leakage of the property regularly from its fold to the fold of other religious communities. That is why there is good force in the objection expressed from many quarters that non-Hindus should not be allowed to sit as committee entrusted with the codification of Hindu Law lest Hindu interest may suffer at their hands.

7. To us it seems that there are stronger reasons for the Bill not being enacted. They may be summed up in the fact that the various provinces constitute separate entities with power to legislate for their own people and in different provinces different systems of Hindu Law prevail arising out of their peculiar customs and conditions. The Central Legislature should not encroach upon the provincial field of legislation especially with one which affects the very foundation of the Hindu Society.

8. For the above reasons we oppose this Bill and plead that efforts at codification should be postponed to more normal period.

District Judge of Darbhanga

I do not feel myself competent to express any considered opinion on the proposed legislation, nor in my view could any opinion be ventured without presumption on the subject by anyone who has not made a profound study of Hindu Law and Vedic literature. I enclose however for consideration a copy of the lengthy notes on the subject submitted by Babu Govind Saran, Subordinate Judge, Darbhanga and the District Bar Association, while making it clear that I accept no responsibility for the opinions therein expressed. One point strikes me after perusal of these notes, and that is that under the proposed legislation females will apparently be given preferential rights over male heirs, as they will inherit from their husbands as well as from their parents' side. This appears to be an anomalous position and is bound to create bitter opposition. On general grounds, the present abnormal times seem unpropitious for revolutionary legislation of this nature. It is significant that no less than 18 out of the 18 members of the Joint Committee have recorded notes of dissent.

The Subordinate Judge of Darbhanga

The bill brings in a quite revolutionary change and cuts at the very root of the fundamental principles on which the law of succession among the Hindus is based. One of the objects of the bill appears to be to abolish the several systems of the law of succession obtaining under different schools of Hindu Law, namely, Mitakshara, Dayabhaga and Mayukha and other minor local laws, and provide a common law of intestate succession for all Hindus in British India.

But India is a vast country. The people in the different part of the country differ widely in manners, customs, views, sentiments and ways of life. So the differences in law in the different localities have sprung up by quite a natural process of growth and development on account of the differences in manners, customs, views, sentiments and ways of life. Therefore it will not be advisable and proper to enforce a rigid uniformity in law over the whole country which will be in complete violation of the differences in culture, ways of life, manners and customs obtaining in different localities. In this connection I quote here the view of the celebrated Jurist Mayne on the codification of Hindu Law. "He says—the age of miracles has passed and I hardly expect to see a code of Hindu Law which can give equal satisfaction to the trader and agriculturists, the Punjabi and the Bengali and Pandits of Benares, of Rameshwaram, of Amritsar and of Poona."

Next the bill itself makes exception in case of agricultural lands and Hindu co-parcenary and it has been provided in the bill that the enacted law will not apply to them. In Hindu co-parcenary the property descends in theory by survivorship, but in effect and substance it is a law of succession and this succession by the exception provided in the bill will continue to be governed by the existing law of lineal descent in the Male line and the property will not pass into the hands of females and several heirs as proposed in the bill. The same will be the case with the agricultural lands. The result will be that among Hindus there will be a total confusion of multifarious laws of succession diagonally opposed to each other in fundamental principles, one based strictly on lineal descent in main line, governing the agricultural lands and the Hindu co-parcenary and another system with diagonally opposite principles governing other properties and introducing there the large set of females and other heirs quite opposed to lineal descent in the Male line.

The second object of the bill is to remove sex disqualification by which Hindu women in general have been precluded from inheriting properties in various parts of India. With this object the daughters have been made heirs simultaneously with sons and some altogether new heirs, as yet unknown to Hindu Law, have been introduced in section 5 of the Bill. The females have also been given absolute right over the properties.

In this connection reference has been made to a text of Jaimini and with the observation that much of the Vedic literature is lost, it has been said that Vedas did not prohibit the inheritance of properties by women. But this fact has been examined in the note of dissent given by Mr. P. N. Sapru and to certain other members of the Joint Committee. There is a text in the Narad, quoted in the report of the joint committee itself, which very expressly states that a daughter cannot inherit a share in the presence of a son. Moreover institute of Yagyabalkya and other smritis and commentaries which are the principal sources of Hindu Law have explained and elaborated the law on the authority of and from the basic principles of the Vedas. There can be no doubt that these smritis and commentaries allowed very limited right of inheritance to women which have been recognised by courts. So the smritis and commentaries being based upon the Vedas themselves, it cannot be said that from the Vedas there was no sanction of the limited right of inheritance which the women enjoy at present.

But apart from this, it is essential to look to the constitution of the Hindu Society itself. In Hindu Society the family from the remotest time was essentially constituted of lineal descendants and collaterals in the Male line. The daughters after marriage are completely engrafted in the family of their husbands. After marriage they are entirely cut off from the family of their parents and cease to have any kind of moral or social obligation towards them. Next sons have a very high and important place in Hindu social system and there is a very strong religious belief which is still too deeply rooted that no father can attain to heaven unless he has a son to offer the pindas and perform the essential rites prescribed by the shastras. In this state of belief and constitution of the family it can hardly be justified to make the daughters who have no moral or social obligation towards the parents simultaneously heirs along with sons.

Next the Hindu Law of succession is connected most essentially with religion and religious belief and Dayabhaga Law of succession is frankly based on the theory of spiritual benefit by the offer of the pindas. In Mitakshara system theoretically propinquity governs succession. But here also religious efficacy has important place and in many details it is this principle of religious efficacy which determines the order of succession even under the Mitakshara system. So it is true that a body of radical reformers have favoured the introduction of the large body of the female heirs proposed in the bill which is incomplete violation of the essential religious principles upon which the Hindu Law of succession is based. But in the bulk of the society the religious beliefs are as yet too deeply rooted. The revolutionary changes can by no means bring satisfaction in the Hindu Society as a whole and it will not be desirable to introduce those revolutionary changes against the views, sentiments and religious beliefs, still too deeply rooted in the bulk of the Hindu Society.

Next among the Hindus the field of the prohibited degree of marriage is very large. Hence, for example in the Mohammedan community, where marriage of cousin is allowed, it becomes possible to retain the property in the family by inter marrying cousins. But among Hindus marriage between cousin is strictly prohibited and no male Hindu can marry a cousin sister in the family however distantly removed in degree. As a consequence the introduction of the large body of the female heirs will result in the division and fragmentation of the properties and complete disruption of the families among the Hindus that owned properties and occupied important position in society. In effect the introduction of the large body of the females and other simultaneous heirs will mean nothing but an economic ruin of the whole of the Hindu community.

Next the females according to the laws proposed in the bill will inherit properties from the family of their husbands as well as from the family of their parents, whereas the sons will inherit properties only in the family of his parents. This can hardly be just.

So as result of the extreme logical consequences of the principles on which Hindu Law of succession is based some hardship had resulted to women. But much of that hardship has already been ameliorated by Hindu Law of inheritance Amendment Act II of 1929, Hindu women's right to Property Act of 1937 and 1938. So the special cases of hardship and inequities may be easily removed by special legislation. But the bill as proposed is too radical in nature and completely violates the fundamental principles upon which the Hindu Law is based. This legislation cannot give satisfaction to the Hindu society. As a whole it will also mean a complete economic ruin of the Hindu community. The legislation as proposed is not desirable.

Hindu Maha Sabha, Ranchi.

The local Hindu Sabha is opposed to the passage of this Bill into Law, because this bill propose to introduce far reaching and revolutionary changes in the matters of succession of the Hindus. We are not opposed to progressive tendencies manifested in various walks of Hindu life in social reform ardently advocated by women's organisation. We also think that enough security should be provided for the maintenance and comfort in life of Hindu women. We consider that the present law as amended by the Hindu women's rights to Property Act 1937, is quite sufficient for the purpose and no further changes are necessary or desirable. To admit every daughter to share in the moveable property of the father will be introducing something which is foreign to the ideals and organisation of the Hindu society. It will disrupt the ideal Hindu Family system in which a daughter immediately on her marriage enters the husband's family and gets all the rights and privileges in all matters of domestic economy and has also very often a voice in the management of property. Hitherto marriage is generally the only career for Hindu girls and by virtue of marriage they get full interest in the affairs and properties of the husband's family. Very often girls are married at distant places and to legally give them a share in the father's immoveable property will cause a great deal of difficulty in management of such property from distance. The natural result in many cases, we apprehend, will be that the daughter will sell away her share in her father's property and turn it into money which will be very easily squandered. Thus the property may pass to the strangers. The daughter after marriage has her natural place in her husband house and as she gradually becomes mother of children and a matron in her own house, her interest at the place of her father generally fades away. It is the son who has to live and carry on at his father's place, the traditions of the family and has all the burden to bear. It is proper therefore that he should have means to bear the responsibility which falls on his shoulders on the father's death. He has to support all the dependents and maintain the honour and traditions of the family. According to Hindu ideals the proper place for the woman is the home and her highest duty is rearing up of children and love and obedience to her husband. The management of property is best left to males for which by life and experience they are eminently fitted.

Besides these, the proposed bill if passed into law will introduce a new class of needless litigation by reasons of complication and difficulties in practical life. And this will be ruinous to many Hindu families who have already known to their great cost the evils of litigation and do not want that such new complications as have a tendency to increase litigation between the members of the same family should be introduced to disturb the society.

Piece-meal codification also being undesirable in our opinion the entire bill should be dropped.

Bar Library, Bhagalpur.

The Bar Association is of opinion that the Bill to amend and codify the Hindu Law relating to intestate succession should not be passed into law as it is inexpedient and harmful in the interest of Hindu Society in as much as it entails unnecessary and harmful division of property and the consequent disintegration of Hindu Society.

Bar Association, Arrah

I have the honour to oppose the Bill for codification of Hindu Law on the following grounds on behalf of the Bar Association.

(1) Codification of Hindu Law as suggested by the Bill introduced for the purpose will make revolutionary changes in the principles of Hindu Society. The entire link of social order and peaceful relations of Hindu families established by age-long traditions based on Shastric principles, will be seriously disturbed. It will apply to British India alone but the Hindus have their relations in Native States as well, therefore there will be no uniformity of law in the Hindu Society in different countries.

(2) Departure from the established customs and law of Succession followed by different families according to different Schools of law will immensely affect the peaceful living of Hindus leading chaos and confusion.

(3) As regards Succession it introduces ingredients of Mohammadan Law and Indian Succession Act which are quite foreign to Hindu Society, and Hindu families cannot conveniently adopt it for they are not based on any texts or traditions.

(4) Apostasy should be made a bar to inheritance under the Hindu law.

Bar Association, Muzaffarpur

We have the honour to state that the majority of the members of our association is against the Bill. Their main objections are based, upon the following reasons, viz.:

1. That this bill if enacted into law will open a very wide gate of litigation and properties possessed by the members of the Hindu community will crumble into places. Most of the difficulties would arise because daughters married in different families will not be very much interested in the properties inherited from their father, hence such properties will generally pass to strangers and there would be so much disruption that whole family properties may be wasted in litigation. We have the experience of the amendments of Hindu law by Act 2 of 1920. It is only the scheming persons who get the transfer of the properties from the daughters, sisters, daughters' daughter either for price or for no price and put up litigations.

2. That the social structure of the Hindus and the system of marriage is widely different from the members of other community hence the introduction of simultaneous heirs and giving absolute right to the females would be revolutionising the entire social structure by stroke of pen for which the society is not prepared.

3. In Behar, the bulk of the properties possessed by the individuals or families are either Zamindari properties or Kaskhikari lands. The zamindari properties also consists of mostly of agricultural lands. Since the bill does not clearly lay down whether the agricultural land includes only kaskhikari land or they include also zamindari lands hence most of the litigation will crop up owing to this vagueness. If the Bill is to be enacted this point should be made clear.

4. The simultaneous devolution of the property and rules of devolution framed for the said devolution will create fragmentation and will be the source of a very large number of litigations.

Motihari Bar Association

The Bill is injurious to the Hindu society in general. The Hindu conception of social law is that it never emanated from legislative body or king, and the law was conceived as embodying the customs and practices that led to the highest benefit to the society. The whole structure of society is based on such law, and the result is that it is the only race that survived the longest in the world.

The distribution of property to daughters will disturb the economic solidarity of society. A daughter married at a distance part of the country will necessarily sell away her share thereby weakening the economic strength of her father's family.

The suggested change strikes at the root of the Hindu idea of social structure. The attempt to bring Hindu India on the level of European custom and practice is simply ludicrous. The European system prevailing at present in that country has practically destroyed home life and this idea is contradictory to the ideal of Hindu India. To try to imitate this ideal is to commit suicide for the Hindus.

The property inherited by a daughter will never benefit her but would swell the fund of the father-in-law in most cases, and the object of the reform is bound to fail taking

into consideration the special mentality of Hindu women. It cannot be denied that the imitation of European custom in the present time by some girls has done and is doing much harm to the Hindu society.

Commissioner of the Patna Division

I am personally in favour of codification of Hindu Law and of giving rights of inheritance to women. I am, however, extremely doubtful if a highly controversial measure of this kind should be taken up in war time and I think it would be better to spend the next few years in drafting proposals for codifying all branches of Hindu Law which should ultimately be considered as a whole by the Central Legislature after the next elections.

Patna High Court Bar Association.

The recommendation of the Joint Committee as to the desirability of "resuscitating the Hindu Law Committee" for expediting the formulation and enactment of the projected Complete Hindu Code, deserves to be adopted in right earnest. There is as much need for codification of the other branches of the Hindu Law as for the proposed branch of intestate succession. And the sooner it is undertaken, the better it would be for achieving a uniformity or unity of Law in conformity with the inherent Hindu Unity in the religious plans.

The various arguments in favour of putting off this Bill altogether or at least to postpone the operation of the Bill after passage into law are inspired more by sentimental grounds than by practical considerations. At any time the codification would be a job for the experts and however abnormal the time may be, they can be put on to this task without much difficulty. Once it is admitted that codification is desirable, then there is no justification for keeping in abeyance for an indefinite period, the first instalment of the exhaustive Code we have in view.

In spite of the much talked of religious sanction behind the existing law, the Hindu women have had no reason to feel too happy about their disqualifications in matters of succession and inheritance. This Bill seeks to remove all such sex-disqualifications, which is the most salutary aspect of the Bill and as such it should receive the warm support of all who have genuine regards for the real interest of their mothers and sisters.

Whatever may be the force of the conflicting Sanskrit texts, propounding the rule that "women cannot and shall not inherit", such an unreasonable feature of the law of inheritance cannot possibly be sustained in modern times. Those who maintain that Hindu Law is unchangeable by any human institution must be absolutely blind to the indirect modification of the law effected day to day by a series of judicial decisions of the British Courts of our time. The unchangeability of Law in a progressive society is a pure legal fiction.

Coming to the provisions of the Bill it must however be said that there are scopes for improvement in the actual wordings here and there in the light of criticism and suggestions that may be offered by interested individuals or groups.

In clause 1 (3) there should be a positive enumeration of the various classes of persons to whom the Act would apply, something like what Mulla does in S. 6 of his "Principles of Hindu Law" at pp. 5 and 6 of the 9th edition of the same. The Bill as it stands, makes it open to challenge and judicial decision whether a particular person is or is not to be governed by the proposed Act. Thus it might result in an unnecessary amount of litigations for this defect in the Bill. Besides, the applicability or any other incidence of the proposed Act, should not be left to be determined by any thing contained in the existing Law. It is desirable that the Code should be self-sufficient and comprehensive by itself.

In clause 5 class I (4).—Daughter's daughter is given a right to inherit as a class I heir. It would be more consistent with her present status under the existing Law, if she is given a place in class II.

In clause 7 (e).—The divided son stands in the same footing with the undivided son enjoying equal shares of the deceased father's estate. The undivided son deserves a larger share because of his continuous attachment to the father.

In clause 7 (d).—The unmarried daughter deserves a preferential treatment *vis-a-vis* the married daughter. The latter has additional expectations of enrichment from relatives acquired by marriage. The equality of their respective shares in the father's estate is not a fair allocation.

In clause 20.—Whether apostasy should be added as a disqualification or not need to be considered seriously. Voluntary abandonment of the religion results in segregation from the parents' family. As the Bill mainly affects the separate property of the deceased in the allocation of the shares in the estate left by him, some allowance might be made for the state of his feelings for a person when the former was alive. Conversion to some other religion takes place more often against the wishes of the parents and other members of the family. So it would be fair if apostasy entails a partial if not total disability in matter of inheritance.

Bar Association, Saran

The aforesaid bill is intended to ameliorate the general condition of Hindu Women subjected to disabilities due to misreading of the original vedic texts and conclusions drawn therefrom by Courts of Law. There is a School of Jurists which holds that women are incompetent to inherit and that they should not be given absolute estate in property inherited by them or received by them on partition. To the original scheme of the Mitakshara school of Hindu Law, the theory of limited estate was unknown. Every property inherited by a woman was considered to be her Stridhan. It devolved not upon the heirs of the last male holder but upon her own heirs. But the long chain of law laid down by courts has entirely changed the original scheme and has in its place, introduced the theory of limited estate in property received by Hindu women by inheritance or partition. It is with a view to remove this conflict that the author of the Bill has made this attempt to amend and codify the Hindu Law in matters of inheritance. The present Bill has introduced a number of important changes in the domain of Hindu Law of intestate succession. Close and analytic reading of its provisions at once unfolds the good intentions of the author of the Bill. Its main feature is to formulate one law of inheritance for all Hindus of British India. To speak of Hindu Unity without a unity of law of inheritance is a misnomer. There is a school of thinkers which is opposed to any change in the scheme of Hindu Law of inheritance on the ground that there is something religious in the Hindu Law and any change introduced therein will tantamount to a change in religion. But this is an argument which has its origin in mental inertia. They think like this as their mind refuses to dive deep into any move intended to bring about a reform in the existing state of things.

Another feature of this Bill is that it makes an attempt to remove the disabilities of Hindu women in the matter of inheritance. It is only by a freak of nature that "A" is born a man and "B" a woman. The human agency works uniformly in either case. There seems to be no justification why "A" should be vested with all that human mind may conceive of and "B" should be subjected to as many disadvantages as possible. Impartial parents always treat their children equally with a uniform eye irrespective of their (Children's) sex.

This Bill has received a most warm support from all women organisations of India and this is one of the most cogent grounds by which this Bill should be supported by all.

The Joint Committee has considered the original Bill most thoroughly and after a threadbare discussion of all its provisions has moulded it in its present shape. There is a general tendency of revolution in every avocation of human life, and so this revolution in the law of inheritance as administered by Hindu code is not unnatural and untimely. The present bill is giving to Hindu women the least that can be given to them under the existing circumstances. More revolutionary measures may come into being as time advances.

District Judge of Shahabad

There is doubtless considerable local opposition to the provisions of the Code giving a share in the inheritance to

the daughters, but I am in full agreement with the proposed measure. It redresses the inequality in the status of females under the Hindu Law as regards inheritance and is expected to reduce litigation to a considerable extent.

No. 13—Central Provinces and Berar Government, Central Provinces and Berar

The Provincial Government, while approving of the principle of codification, would prefer to offer no other comments, believing the subject-matter essentially one for Hindu opinion to settle.

2. Enclosed is a precis of opinions received together with thirteen complete opinions.

3. The Bill as amended by the Joint Committee was published in English on the 14th January 1944 and in Hindi and Marathi on the 17th March 1944 in the Gazette of the Central Provinces and Berar.

Summary of opinions.

Name	Official/ Non-official	For/ Against	Substance	1	2	3	4
Secy., Dist. Kanya Kubja Sabha, Bilaspur.	N.	A.	A printed pamphlet protesting against codification of Hindu law. Objects to the creation of simultaneous heirs to giving women absolute rights of ownership. Fears that the danger of women being taken away by miscreants would be augmented. Complains that apostasy does not bar inheritance, that the condition of an effective decree to disinherit a wife on the ground of adultery removes a wholesome check, and that the rights given to spruces and their progeny of intercaste marriages will gradually hybridize the Indian Nation and would ruin it.	Mr. B. D. Kathale, Advocate, Nagpur.	N.	A.	family and hence the property remains in the family. But that is not the case with the Hindu girls. The provisions in the Bill disable the male agnates to discharge all responsibilities devolving on them. The property coming in with the daughters-in-law would not form part of patrilineal family property. As apostasy or unchastity would neither divest women of their ownership in the property, a female heir having a husband of a lower caste or even a Christian or Mohammedan paragon may insist on claiming residence in the family house. Legalizing marriages between persons of different castes would hybridize Hindu Society. The bar of inheritance in clause 18 has been made obligatory by the proviso. The majority of the Committee desire that apostasy should be a bar to inheritance but that opinion is ignored. Proposed changes in the law of inheritance expose females to greater danger.
				Dr. D. W. Kathale, LL. D., Nagpur.	N.	A.	Submits a printed pamphlet dealing with all points in detail and making suggestions, and concluding that this is not the proper time to deal with Hindu Law.
				Mr. Dhole, E. A. C., Balaghat.	O.	F.	Submits a treatise dealing with the subject fully, criticising the proposals and concluding that the Code contains no merit but many defects and the Hindus will not get any benefit from it so they should throw it in the water of Yamuna immediately.
D. B. K. V. Brahma.	N.	A.	The Bill makes the law rigid and will deprive the Hindus of their law as a personal law capable of being carried wherever they may go. It is unwise to make one law for the whole of India. This attempt divests several heirs and deprives them without justification of the rights they have enjoyed for centuries past. Proposals to make a daughter a simultaneous heir with the son will result in fragmentation of estates. Double inheritance places a daughter in a position of greater advantage. The change of doing away with the limited estate taken by a woman is to be deprecated. Proviso to clause 18 is impracticable. This is not the proper time to enact such a controversial measure. A pamphlet is enclosed exposing the defects in the Bill in its various clauses.	Public Prosecutor, Balaghat.	O.	A.	Progressive and in keeping with the advanced times. Drafted very carefully. Proposed provisions instead of achieving unity will introduce radical changes in the Society for which it is not at all prepared. The framers of the Bill forget that the Hindu Society is based on patrilineal family from the Vedic times. Giving absolute estate to women will lead to disruption of the property. Apostasy must be made a disqualification for inheritance.
				Mr. Deoras, Pleader, Balaghat.	N.	A.	Dividing property into so many shares and into different families is not in the interest of the state. The stage has not come to give absolute estate to women.
				Mr. Rai Sharada Prasad, Pleader, Balaghat.	N.	F.	In general agreement with the sponsor of the Bill save the following points. Apostasy should be a disqualification to succeed and daughters should not be simultaneous heirs.
R. B. Parande	N.	A.	Such codification was never asked for. It removes the divine sanction from the law. The Bill is inconsistent with Shrutis as well as Smritis. The proposed measures do not justify codification. Such a piece-meal legislation is not advisable. Creation of a big class of simultaneous heirs has given the law of inheritance a non-Hindu character. Right of maintenance ceases with the life of the person maintained and leaves the property unimpaired, but the grant of a share cuts away a slice and reduces the property permanently. Mohammedan girls preferably marry in the	Mr. Bhadang, Pleader Khamgaon.	N.	A.	Thoroughly against codification of the Hindu Law, as the modern tendency of the world is not to codify law as far as possible. Against giving any more rights to women than what are already given. The widow should have no power to adopt. Male may adopt a daughter or sister's son. Suggests minor suggestions section by section.
				Mr. Chande, Advocate, Khamgaon.	N.	A.	Constitution and personnel of the present Assembly lack popular representation to the fullest extent.
				Digby, J.	O.	F.	Number of simultaneous heirs is too large. Offer some further suggestions in the clauses.
				Boat, J. Pollock, J.	O.	F.	See no objection.

1	2	3	4	1	2	3	4
regi, J.	O.	F.	Favours generally. There is nothing repugnant to the principle of the Hindu Law in allotting shares to sons, grandsons, widows, etc. An unmarried daughter is entitled to a quarter of a son's share. Does not agree to give share to the married or widowed daughter. In principle there is no objection to absolute right being given to women.	The Hon'ble Mr. G. S. Gupta, Drug.	N.	A.	Agrees generally with the above. Totally against giving rights to daughters. That won't benefit the daughters also, as they would find it difficult to manage the property inherited from the father. Her husband's share would also be diminished as he has to divide with his sisters. Prefers the total abolition of the joint Hindu family. The bill is most intricate and cumbersome and will lead to much litigation.
Chief Justice	O.	F.	Any measure to clarify and codify Hindu Law is advantageous.				
Chief Justice and Sess. Judge, Nagpur.	O.	F.	In general agreement with the Bill.	Mr. Jha, Pleader, Drug.	N.	A.	Against piecemeal legislation. It is inconsistent with the recognised principles of Hindu Law. It makes execution of will almost universally necessary in the case of the illiterate masses and will entail great hardship on them.
Chief Justice and Sess. Judge, Wardha.	O.	A.	Codification not desirable nor opportune. Only moveables be partitioned to women and then they may exercise absolute right over them. An apostate should not be entitled to inherit.				Protests.
Chief Justice and Sess. Judge, Jabulpore.	O.	A.	Majority of judges consulted were opposed to the measure. Apostasy must be a disqualification. Change in the matter of succession by women should be gradual.	Public Meeting, Drug. Kore, Esq., Pleader, Buldana.	N.	A.	In favour of amendment codification of the Hindu Law. Suggests some modifications. Agnatic relationship should be to the 14th degree. The departure from the existing law regarding the widows of the Gotraj Sapind is uncalled for. List of enumerated heirs should be enlarged. The present personal law of the Hindus is being abolished. This change is not convenient.
Bar Association, Jabulpore.	N.	F.	Partly approves of with the following qualifications (1) Conversion to non-Hindu religion should be made a bar to inheritance, (2) Estates inherited by woman should be limited to her life time, (3) Married daughters should be excluded from inheriting.				Objects to absolute right to a woman and share to married daughters.
Distt. and Sess. Judge, Akola.	O.	A.	The Bill is revolutionary and makes serious inroads on the structure of the Hindu Law as understood by millions of people. Does not think that a common law of inheritance applicable to all Hindus will be conducive to solidarity. Does not like the principle of simultaneous succession of several heirs. The basic idea of the Hindu system is that the property should not go out of the family. Mohammedan Law cannot serve as a guide; amongst them also in the rural areas notions of Hindu Law are prevalent. The idea of bettering women's position appears attractive but is fraught with several dangers.	Gokhale, Esq., Pleader, Khandwa.	N.	A.	Nothing is objectionable except the definition of Stridhan and absolute power giving to a woman. This right of alienation is repugnant to the established principles.
				Public Prosecutor, Khandwa.	O.	F.	Objects to codification.
				Gupta, Esq., Advocate, Khandwa.	N.	A.	List of enumerated heirs and distribution of shares are foreign to the Hindu Law. Objects to daughter's share and absolute right of a woman. Thinks that the definition of Stridhan is too wide.
				Mujumdar, Esq., Pleader, Burhanpur.	N.	A.	Time is most inopportune. This legislation should be shelved.
				Mr. Thakur, Bilaspur.	N.	F.	High time that the Hindu Code be enacted embodying the agreed views of the High Courts and Privy Councils. This Bill meets the demand, removes the disabilities of the women, considers the claims of the remotest heirs judiciously.
Bar Association, Akola.	N.	A.	The Bill results in fragmentation of property, makes calculation of shares very complex, makes inroad in the present system of inheritance as understood by millions of Hindus and in general not suited to the rural population. Absolute estate of women not desirable.	Distt. & Nagar Hindu Sabha, Bhandara.	N.	A.	Protests.
				Bar Association, Bhandara.	N.	A.	The Bill does away with the time honoured law, gives a death blow to the joint Hindu family. Absolute right to women and consequent alienation of property objectionable. The time is inopportune.
Madhya, Esq., Sub-Judge, Drug.	O.	F.	Seeks to carry further the reformative ideas. Some points may be made more specific and clearer e.g. fellow student in section 10 or Hindu marrying out of the Hindu fold in section 17. It will be a matter for congratulation for Hindu womanhood if the Bill succeeds.	Mr. Harane, Hoshangabad.	N.	A.	Codification without a demand is unjust. Principle of simultaneous inheritance is foreign. Absolute right to women objectionable. Proviso to the rule regarding an unchaste wife is revolting to the moral sense.
Dwarkanath Tiwari, Esq., Pleader, Drug.	N.	A.	Interpretation of the original texts of the Dharma Shastras by learned judges is one thing, a stray amendment here and there may be tolerated, but the scheme to wipe off the Shastras and give their sacred place to an enactment is totally repugnant to a Hindu; moreover time is not suitable. Conferring absolute estate on women will lead to great ruin. Simultaneous inheritance to daughters will lead to disruption and disintegration.	Mrs. R. Tambe, Nagpur.	N.	A.	In general agreement with the provisions. Thinks that adoption should be totally abolished or at any rate one uniform form should be allowed.
				Col. Sir K. V. Kukde, Nagpur.	N.	F.	Religion should be completely divorced from a citizen's civil or political rights. Replies to the various objections. Thinks that there should be disinheritance on change of religion.

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Krishna Shastri Ghule, Esq., Nagpur.	N.	A.	Codifying Hindu Law through the Legislative Assembly as constituted at present is repugnant to a Hindu mind. Absolute right to woman would disrupt the family relations. The division proposed is combrous. Economic side is ignored by permitting fragmentation of property. The Code is applicable to the British India only and the relations between Hindus residing inside and out of British India would be affected. Opposes piecemeal codification.	Mr. Chitnavis, Betul.	N.	A.	The provision allowing to take property simultaneously and according to specified shares will bring about rapid disintegration of the family property.
Mr. M. N. Chitnavis, Nagpur.	N.	A.	Society should march with the times and yet retain its fundamental character. The Bill falls short of this test. It destroys the family system and leads to fragmentation of the family estates.	Mr. S. R. Gokhale, Pleader, Amraoti.	N.	A.	Transformed the Hindu Law beyond recognition. Cannot support the provisions regarding women's inheritance. The Bill is unnecessary and unjust. It makes the vast majority abiding by the old law to execute wills. It is doubtful whether the Bill improves the position of the unmarried daughter. Provision to clause 18 makes the clause nugatory. The Bill should be rejected.
Distt. Bar Association, Nagpur.	N.	A.	The Bill is against the whole structure of Hindu civilization and culture, and is untimely and unnecessary. Position of women in the list of succession sacrifices rights of more deserving males. Changes and innovations regarding the rights of women are repugnant to the rules based on Shastras.	Public Meeting by Varnashram Swaraj Sangh, Amraoti.	N.	A.	Detrimental to the best interest of the Hindus and against the injunctions of the Shastras. Uncodified provisions have worked satisfactorily so far with the advantage of adjustability. The Bill will disintegrate the joint family system. Fragmentation of estates will seriously affect the Hindu community. It is inopportune.
Bharat Dharma Mahamandak, etc. Kashi.	N.	A.	Inform that Bengal, Bihar and Orissa Governments suggested postponement of the discussion till after the war, and various bodies adopted similar resolutions. Requests that it should be postponed.	R. B. G. P. Jaiswal, Advocate, Hoshangabad.	N.	A.	Inopportune. Objects to piecemeal legislation and various points in the provision.
Pande, Esq., Pleader, Akola.	N.	A.	Against piecemeal legislation. Finds no justification to some changes and opposes them.	Rai Sahib B. Chatterjee, Advocate, Hoshangabad.	N.	F.	Deserves hearty support. Dowry evil will be countered to a greater extent. Society has not disintegrated owing to the simultaneous succession in other communities. Consolidated bill codifying the other departments of the Hindu Law is required, and a greater enquiry of the public opinion necessary. Suggests improvement in clause 13 B (1).
Athalye, Esq., Advocate, Akola.	N.	F.	In complete favour of codifying but against piecemeal legislation. Suggests that in case fixed series heirs are alive the widow should take a limited estate.	Saastan Dharma Sabha and Hindu Sabha, Hoshangabad.	N.	A.	Legislative interference in the laws of Hindus is undesirable, and members supporting the Bill have not got the sanction of the electorate.
Thakur, Esq., M.L.A., Pleader & Hon'y. Magistrate, Akoti, Barje Association, Basim.	N.	A.	The Bill knocks out the main fundamental principles of the Hindu Law.	Mr. Shyama Charan Dube, Pleader, Narsinghpur.	N.	F.	Approves.
	N.	A.	The Bill is not enacted as law, as it is fundamentally opposed to the letter and spirit of the Hindu Law and culture. It is wise to defer such piecemeal legislation. Exclusion of Hindu subjects of the Indian States would create innumerable difficulties. Abolition of the limited estate of women is highly detrimental.	Mr. N. R. Kekre, Advocate, Harda.	N.	A.	Strongly opposed the Bill as it is not at all necessary.
Mr. Kherdekar, Advocate, Basim.	N.	A.	Time inopportune. The Bill is not complete in itself. As agricultural land and the joint property is left out there would be practically very little property to be taken notice of.	Mr. R. D. Chaudhary, Pleader, Harda.	N.	A.	Definition of "agnates" is defective. Suggests amendment in the order of succession. Fears that fragmentation of the heritage and destruction of the joint family will be the result. Makes various other suggestions.
District and Sessions Judge, Amraoti and Additional District Judge.	O.	F.	Objects to clause 17 as it stands. Suggests that distinction between provided and unprovided daughters should be maintained, that rights of those entitled to maintenance should not be affected and that persons married under special marriage Act should be governed by this Act.	Dr. Moonje and Principal Kayande, Nasik.	N.	A.	No need for the codification of the Hindu Law. The personal law of the Hindus could not be changed. The measure is reactionary and the balanced consideration of the same is not possible in these days. Opposed to the provisions of inheritance of women. Unchastity and apostasy should be disqualification in inheritance.
Chairman, District Council, Yeotmal.	N.	A.	Seriously interferes with the joint family system.	R. S. Wamanrao Wadgaonkar, Nagpur.	N.	A.	Opposed to simultaneous succession and consequent fragmentation of the property. Apostasy must be a disqualification in inheritance.
Jain Sabha, Darwaha.	N.	A.	Protests against such an enactment and against taking the Jains as Hindus.	Gowri Shankar Tiwari, B.A., LL.B., Saugor.	N.	A.	Legislative Assembly is incompetent to legislate in respect of religious matters. This is not the proper time to effect such a big change. Nor the members of Legislative Assembly are competent to alter the personal laws. Opposed to absolute interest of the women.
Jain Research Institute, Yeotmal.	N.	A.	Jains should not be taken as Hindus. Drastic changes in the Bill have no sanction in the Vedic or Jain Scriptures.	Mr. Saraf, Advocate, Saugor.	N.	A.	This is not a proper time. Religious traditions and sentiments should not be slighted by the legislation. Objects to the daughter's share and absolute right of women and piecemeal legislation.
Dr. Baldeo Prasad Misra, M.A., LL.B., Raipur.	N.	F.	Codification is a welcome move, but right of inheritance to women deserves careful scrutiny.				
Bharatiya Dharma Mission, Darwaha.	N.	A.	Lays emphatic protest against the Bill.				

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Mr. Mukandreo Khandekar, Saugor. Nagpur Chamber of Commerce, Nagpur.	N.	A.	Against the codification and absolute right to women.				absolute estate of women and Stridhan. Suggests that right of presumption on the sisters' property be given to brothers; that unmarried daughters' share should be one-fourth only and that the entire code should be before the public for consideration.
	N.	A.	Fundamentally opposed to the codification. It destroys personal nature of the law. Present time is not conducive to its balanced consideration. Unchastity and apostasy should be disqualifications for inheritance. It is not desirable to have one system for the whole of India. The principles of devolution of property is not Hindu in character. Dropping the Dasiputra altogether is unjust. Stridhan need not be enlarged. Unchastity should be a disqualification. Deprives the two changes, viz., abolition of the widow's estate and abolition of the joint tenancy.	Pt. Laxminareyan Bhadupote, Gondia.	N.	A.	This is an interference in the religious matters. Simultaneous succession of daughters will cause disruption.
Mr. G. S. Kher, Nagpur.	N.	A.	Signs a printed form protesting against the legislation for stated reasons.	Public Prosecutor, Mandla.	O.	F.	Does not approve of the measures regarding women's property. Proviso to section 18 be deleted. In other respects agrees with the provisions.
Mr. Haksar and others. Secy., All India Varanashran Swaraja Sangh, Nagpur.	N.	A.	Endorse the above with some remarks.	Dr. Mrs. S. Parmanand, Mandla.	N.	F.	Supports the Bill. Puts forth arguments to meet those advanced by the opposite side.
	N.	A.	As the Hindu Code is not to apply to the Hindus out of the British India, and as many provisions are against the Hindu Shastras, the name Hindu Code is a misnomer. To form a Code to apply to all communities is an impossibility. Provision regarding women are based on wrong notions without understanding the spirit in the old rules. Simultaneous inheritance, allowing intercaste marriages, women's right to property and removal of bar on account of unchastity or apostasy are objectionable.	Mr. Deshmukh, Advocate, Chanda.	N.	A.	There is no demand for such a change. Makes distinction between Hindus in the British India and those out of it. The uniformity for communities in all parts is not suitable. Simultaneous succession not desirable. Objects to the rights to the spouses and issues in intercaste marriages.
R. B. N. D. Wadgaonkar, Nagpur.	N.	A.	Simultaneous succession is a departure from the provisions of the old Hindu Law. The Legislative Assembly being a political body is incompetent to undertake legislation on religious practices. The bill will augment the evil of fragmentation of estates. It is a hybrid measure.	Mr. Dewalkar, Advocate, Chanda.	N.	F.	Approves of the general principles and provisions but objects to the piecemeal legislation share to married daughters, proportion of share to unmarried daughters and absolute estate of widows.
Mr. Marutao Oite, Chhindwara. Public Meeting, Chhindwara. Maharashtra Mandal, Chhindwara.	N.	A.	The bill is against the principles of the Hindu religion.	Mr. Hastak, Advocate, Chanda.	N.	F.	For a long time it is felt that the present law needs modifications. The present law is a judge-made law rather than law contained in Smritis. The Bill is however too sweeping in some respects. Daughters' inheritance must be limited and apostasy must be made a disqualification.
Mr. Poonanchoand, Saugar. Bar Association, Saugar.	N.	A.	Protests against the enactment.	Mr. Samel and others, Nagpur.	N.	F.	Removes undoubted obstacles in the way of Hindu women. Will not in the least affect the social and joint family structure. Sanatanists can evade by making a will.
Messrs Bodheswar N. Nanda and Survesh Maruti, Wardha.	N.	A.	Protests against the enactment.	Mr. G. O. Tambe, Nagpur.	N.	A.	Records emphatic protests. Asserts that no temporal power can change the Hindu law. Questions the representative nature of the present legislature. Thinks interference will be against the Government policy.
R. B. P. C. Bose, Jubbulpore.	N.	F.	Against the Bill.	N. S. Parande, Esq., Nagpur.	N.	A.	Unjust, improper and inopportune. Today the reformers, being usually well educated can experience no difficulty in executing wills distributing their separate self acquired property in consonance with their ideas of doing justice to female heirs. On the pretext of codification most exotic and repugnant innovations are imported or engrafted. The present legislature does not represent religious conscience of the people, nor has it any right to legislate in religious or socio religious matters. That would be ultra vires.
R. B. G. H. Gokhale, Nagpur.	N.	A.	Against the Bill.				
N. K. Mohgaonkar, Nagpur.	N.	F.	It enables the female heirs to assert their rights.				
	N.	F.	The Bill is an improvement on the existing law. It clears various points and sets at rest controversy. Devolves property to the nearest heir, irrespective of sex.				
	N.	A.	Strongly opposed. Hindu Law having divine origin should not be lightly modified or interfered with. It would create widespread injustice in enforcing a uniform system devised supposedly for the people's good. Leads to a greater fragmentation of estates. Why lay an unholy hand on the law of Hindus only?				
V. D. Khandekar, Esq., Nagpur.	N.	F.	Supports uniforms and common set of rules for all Hindus. the provisions of				

High Court of Judicature at Nagpur

Digby, J.

Seen. I have no comments to make, except that I feel that the number of simultaneous heirs is too large, and that many estates will be wasted by litigation. I think it objectionable to make the class in which parents inherit depend on other questions of fact and not merely on relationship; and as regards clause 19 consider that the murder by the persons to be disqualified should be proved by conviction in a criminal court. Otherwise (a) allegation can be made and even proved in a Civil Court without the person being convicted and (b) Civil Courts may hold

that the fact of conviction by a criminal court and the convicting judgment are irrelevant.

Though the Committee conceive of the parents inheriting an absolute estate the words "any property so inherited" in clause 7(e) appear unfortunate. "In respect of which he or she dies intestate" would be clearer.

The question of giving to administrators powers of sale without the intervention of the Court [*vide* section 807 (2)(i)(a) Indian Succession Act] might be separately considered, and generally quicker distribution of intestate estates should be encouraged to avoid the difficulties created by disregard of women's rights and ignorance of the law in the mofussil.

Bose, J.

This is mainly a matter for Hindus. I see no objection to the Bill and welcome all steps to clarify and codify the Hindu Law.

Pollock, J.

My views are those of Bose, J.

Niyogi, J.

I am in favour of the proposed legislation except on some minor points.

The proposed abolition of the so-called schools of Hindu Law and the making of Hindu Law uniform throughout the country is calculated to do away with much that is obscure and anomalous in the Hindu Law and to obviate much litigation.

The main controversy centres round (1) simultaneous succession (Clause 5) (2) enlargement of the definition of Stridhan so as to include property inherited from males including husband (clause 2 and clause 12) and (3) abolition of survivorship (clauses 21 and 6).

As to (1), the apprehended evil of fragmentation of property does not deserve serious consideration inasmuch as the contemplated legislation is not intended to apply to agricultural land but only to property in urban areas which ordinarily is in the form of cash, bank deposits, shares in companies, houses or open sites. The old patriarchal form of joint family has practically disappeared and where it appears to exist it is found rotten at the core. Even in ancient times partition was extolled as conducive to religious merit: see Manu Chapter IX, 111, and Gautama's Chapter XXVIII.

There is no innovation that is repugnant to the principle of the Hindu Law in allotting shares to the propositus' sons or grandsons, widow, daughters and parents. Manu enjoins maintenance of a virtuous wife, infant son and old disabled parents. Widowed daughter-in-law is also entitled to maintenance when the estate of the father-in-law passes into the hands of his heirs: see 22 Calcutta 410, 23 Bombay 608, 4 Lucknow 419 and, 11 Bombay 199. A father is bound to maintain his unmarried daughter: Mulla's Hindu Law page 584, Section 546. All these persons have a charge on the estate. The Bill gives a share to each of them in lieu of his or her right of maintenance a right which is already recognized in the Hindu Law.

An unmarried daughter is entitled to a quarter of a son's share at a partition: see Mulla, Chapter I, Section VII, paragraphs 5 and 6, Ghosh's Hindu Law, Volume II, page 117. The widow of the propositus is entitled to a share at a partition among the sons of the propositus.

In principle there is, therefore, nothing wrong in giving each of these persons a share in property.

I however do not agree to the married or widowed daughter being given a share as the Bill does, since they go out of the family of the propositus.

There is no objection to the son of a propositus' son or the son's son of a propositus' son being heirs along with the son. This is in accordance with the recognised principle of representation: see Mulla's Hindu Law, page 21, 9th edition.

(2) As to the enlargement of the definition of Stridhan it must be noted that the Mitakshara had included the property inherited by a female from a male (not excluding husband) in the definition of Stridhan but that right was taken away by the Privy Council in *Bhagwandas v. Mainabai* 11 M.L.A.487. The subject is discussed at length in Sarkar's Hindu Law at pages 721 to 781 (7th edition). The Judicial Committee has held that a widow is not a mere life tenant: see 84 Cal. 329. In Bombay it is well known that the daughter takes an absolute estate.

In principle there is no objection to absolute right being given to women inheriting from any male relative but as

a concession to the conservative feeling which is particularly sensitive on the point of widow's estate it might be provided that a widow should not be entitled to transfer immovable property devolving on her from her husband without the consent of the nearest heir existing out of those who are included in the compact series of heirs, viz., co-widow, daughter, daughter's son, husband's parents, husband's brother and his son. That would go a long way in curtailing the litigation by reversioners for setting aside widow's alienations.

(3) Abolition of survivorship has in fact already been effected by the Hindu Women's Property Act, 1937. The right of survivorship conceded to surviving coparceners resulted in great injustice to female relations and made them entirely dependent on the vagaries of the male-holder of the property. The principle of Dayabhaga which is followed in Bengal is in accord with the modern times and the Bill rightly extends it to other part of India.

Succession to Stridhan property (clause 13)

Conservative opinion ought to be satisfied with the reversion of property inherited by a woman from her husband or his ancestors, as specified in the Bill, on her death. Another salutary feature is the devolution of other kinds of Stridhan on son and daughter instead of daughter alone.

Removal of disqualification to succession

I am in favour of the removal of disqualifications as the property of such defective persons as are mentioned in clause 20 of the Bill can now be managed effectively by guardians appointed by the Court.

Lastly I welcome the elimination of Dasiputra from the definition of the word 'son' contained in clause 2(g) of the Bill. That is necessary to discourage the keeping of mistresses even among the Sudras.

Chief Justice.

Any measure to clarify and codify Hindu Law is advantageous, but the extent to which reforms should go is in my opinion a question for Hindus alone.

District and Sessions Judge, Jubbulpur

The majority of the Judges consulted by me were opposed to the measure. The consensus of opinion is that if the Bill is to be passed into law apostasy must be a disqualification and it should be clearly defined that renunciation of religion by a Hindu means his conversion to a non-Hindu religion and not to sects or creeds of the Hindu religion.

The Bill proposes a drastic change in the matter of succession by females, which should be gradual. The estate inherited by a woman should not be absolute but she should be given a limited interest in it and after her death it should revert to the family of her parents.

3. The mother and father should not be postponed to daughter's son or daughter and son's daughter. They should be put in Class I and considered as preferential heirs.

4. There should be no change in the Law in respect of Stridhan property.

District and Sessions Judge, Akola

I am opposed to the Bill. It is revolutionary and makes serious inroads on the structure of the Hindu Law as understood by millions of people. I do not think that a common law of inheritance applicable to all Hindus will necessarily be conducive to solidarity, for I have never heard of any friction between Hindus governed by different schools of law. The only point in favour of it is that it will be easy of application.

2. I do not like the principle of simultaneous succession of several heirs. The basic idea of the Hindu system is that the property should not go out of the family. The Bill will lead to fragmentation of property and will disrupt, and cause dissensions in the family. The system of Mohammedan Law cannot serve as a guide. It is our experience that among Mohammedans in the rural areas notions of Hindu Law as regards property are prevalent. The idea of bettering the position of Hindu females appears attractive but it is fraught with several dangers in the present state of Hindu Society. The Courts know how female holders of property fall an easy prey to village

shylocks and ultimately lose their property. In my opinion the Bombay School of Law is sufficiently liberal and the law has been further liberalised by the Hindu Women's Right to Property Act.

Bar Association, Jubbulpur

This Association partly approves of the new proposed Bill with the following qualifications:—

1. Renunciation of the Hindu religion should be made a bar to inheritance under the Hindu Law and necessary changes may be introduced in Act XXI of 1850 also. It should however be made clear by an explanation that Renunciation of the Religion by a Hindu will mean conversion to Non-Hindu religion but conversion to sects or creeds of Hindu Origin such as Buddhism, Jainism, Sikhism, Brahmo-samaj, Prarthna Samaj or Arya Samaj should not be regarded as a disqualification.

2. The estate thus inherited by women should be limited to her for life time. In other words she should not become the absolute owner of it but she should be given only a life interest in it so that after her death it will automatically revert or go to the male survivors of the original family from which she got the property or the estate.

3. Married daughters should be excluded from inheriting any property.

Removal of disqualification of women from inheritance is certainly necessary but the present Bill is a very drastic measure and if it is made into Law it will cut at the very roots of the basic principles of Hindu religion and culture.

District Bar Association, Nagpur

The District Bar Association is of opinion that the Bill is against the whole structure of Hindu Civilization and culture and against the whole fabric of Hindu Social Life. It is inopportune and untimely and there is no necessity for any such enactment. The Bill may work well with the populations living in towns and with families having modern education but the major and vast population being rural it is revolutionary and revolting to their beliefs, religion, sentiments, mode of life and attitude towards life. It is further opposed to fundamental principles of Hindu Jurisprudence and notions of origin of our Laws.

The Bill introduces females in the list of succession even by sacrificing rights of more deserving males and putting them at places very high in the lists. Sons and grandsons have been given shares as simultaneous heirs. An absolute right of equality in holding property inherited from males has been recognized and limited estates have been abolished. These changes and innovation are repugnant to the rules of Hindu Law based on Shastras, expounded and established by high tribunals of the land.

The Bill has attempted to amend the Hindu Law in violation of the spirit and principles of Hindu Law. It is bound to create very far reaching and complicated consequences affecting the very fabric of the Hindu Society and is bound to have repercussions on the Hindu Society as constituted at present. The amendments to the law of succession are not acceptable at all and it is desirable that the legislature confines itself strictly to marshalling the Rules of Hindu Law culled from out of Smritis and Nibandhas and from case law established by the High Tribunals of the land.

The Bill abolishes limited estates.

Having given our proper consideration the District Bar Association, Nagpur, totally opposes the Bill to be passed into law.

Diwan Bahadur K. V. Brahma, C.I.E., M.B.E.,
Advocate—Nagpur High Court.

HINDU LAW OF INTESTATE SUCCESSION.

(A critical examination of the changes proposed)

A code is a systematic and orderly arrangement of principles of Law. Codification ensures definiteness, makes the law available to all at a glance and tends to diminish litigation. It secures uniformity of decision and adds to the security and stability of civil rights of people. It was at one time thought that Hindu Law should be codified from this point of view. In 1937 the Hindu Women's rights to Property Act was passed giving widows and widowed daughters-in-law the right to succeed to

the property of a Hindu dying intestate along with his son. Difficulties were however experienced in the interpretation of the Act and its enforcement. Several members of the Delhi Assembly proposed Bills for the modification of law of succession, residence and maintenance of Hindu females. The Government of India therefore appointed a Committee to advise them on the course they should adopt. The Committee was presided over by Sir B. N. Rau of the Calcutta High Court. A report was submitted by the Committee in June 1941.

It recommended that a complete code of Hindu Law should be undertaken in stages and that a beginning should be made with the law relating to succession and marriage.

To understand the far-reaching character of the changes proposed it is necessary that one should know how this spacious structure has been built with the labours of our ancestors from Vedic times up to now.

(a) *Notions prevalent in the Vedic period* (period prior to 500 B. C.)

We get very little knowledge of the rules of succession prevalent in the Vedic Times—*vis.* in the times when the 'Samhitas' were composed, and the 'Brahmans' written. We gather that the Hindu Society in those days was a society well advanced in civilisation, that it had the knowledge of many arts and crafts, and it had governments resembling those in more modern times. In the matter of Civil Law, we are able to gather that the ancient Aryans thought in terms of a group of persons joined together by close ties of blood and called by the term 'Gotra' or a family. Each family had a head called a 'Griha Pati' गृहपति or 'Sadasaspati' सदासपति, all members of the family were subordinate to him. They drew their nurture as well as their law from him. The effort of everybody in the family was directed towards the stability and growth of the family, and the considerations of individuals forming this group were subordinated to the needs of the group. One more thing we know definitely that the interests of the females of the family were regarded as subordinate to those of the males. Sayings like (Women are weak in intellect and are therefore incapable of inheriting. They are as unstable as untruth) निरिन्द्रिया हि श्रद्धावादाः स्त्रियः अनृत्तं belongs to this age.

(b) *The Sutra Period* (500 B. C. to 100 B. C.)

We now come to the time of the 'Dharmasutra Kartas' which spreads over 500 B. C. to 100 B. C.

There are about 18 Dharmasutrikars whose names we find mentioned, but of these the works of Gautam, Baudhayan, Apastambha and Vashishtha are available to us in their entirety. Gautam, flourished between 600-400 B. C., Boudhayan, between 500-200 B. C., Apastambha, in the Andhra country about 300 B. C. and Vashishtha between 200-100 B. C. The information we are able to gather from their works on the point of the order of succession may be tabulated as below:—

Goutam (600 B. C.)	Boudharyana (500 B. C.)	Apastambha (400 B. C.)	Vashishtha (300 B. C.)
1. Sons पुत्र	Sons	Sons	Ouras Putra पौरस पुत्र
2. Sapindas सपिण्ड	Sapindas	Sapindas	son begotten on a wife
3. Sakulya सकुल्य	Sakulya	Sakulya	Putrika Putra
—	Acharya	Acharya	son of re- married widow.
5. Patni वस्ती	Shishya	Shishya	—
—	—	Dubita दुर्गता	—

Sutrikaras advocated the cause of sons but all sons were not put on the same level. The first born was to be preferred. He was to take the whole heritage and the others were to be satisfied with only maintenance. Then followed the Sapindas and then the Sakulyas. The order was not sufficiently definite. It is worth noticing that females came to be recognised in this period. The widow was recognised by Gautam probably on the grounds advocated by the great Jaimini—the author of the Purva Mimansa Sutra. Jaimini's argument was that a lawfully wedded wife had the right to join with her husband in the performance of Yajnas. She was not incapable of

holding property and as Yajnas were to be carried on after the death of her husband it followed that the wife must be allowed the means to do so after the demise of her husband. In other words she must be recognised as an heir after her husband. *Vide* the (Yagadishur Streepurusayoh Ubhaya adhikaradikaranam) यागादिपुत्रोत्पत्तिविकारिकस्य सूर Jaimini VI-1-3. Apastamba succeeded in getting in the daughter in the list of heirs on the authority of Vedic texts which said the daughter was like the son and that she may be fixed for the purpose of continuing the family. An appointed daughter called a 'Putrika' was thus thought of and the son of a 'Putrika' specially selected or appointed daughter was regarded as a member of the family of the father of the daughter. The point to be noted is that both the son and the daughter were heirs but under limits. The eldest son was to get the whole and it was only the selected daughter who could be regarded to continue the line through her progeny. After a time the rigour of the rule of primogeniture was softened by providing that the first born should only get a bigger share something extra called the (Jyeshthansha Bhag ऋतं भाग) than the younger sons and the daughter was to be the selected or appointed daughter.

(c) *The Smṛiti Period* (100 B. C. to 500 A. D.).

We now come to the period of Smṛitis or metrical codes or treatises written for the guidance of man in all his affairs in this life and in the life to follow. This period ranges from the first century before the Christian era to 500 A.D. or thereabout. In this period the following Smṛitis were composed:—

- (1) Manusmṛiti—Dr. Gour dates the present Manusmṛiti at 900 B. C. Dr. Kane regards the present recension as composed between 200 B. C. to 200 A. D.
- (2) Brihaspati—200 A. D.
- (3) Yajñavalkya Smṛiti—300 A. D.
- (4) Nārada Smṛiti—100-300 A. D.
- (5) Parashara Smṛiti—500 A. D.

The number of Smṛitis is over 100. But the above named are the principal for our purposes. Mr. V. N. Mandlik's introduction to Vyavahara Mayukh p. 14-17 may be seen in this connection.

According to tradition Manusmṛiti is the oldest of the Smṛitis and is supposed to be an abridgment of a bigger work called Brihat Manu or Vridha Manu. It is still respected as the premier guide though in several matters it has given place to later smṛitis. The order of succession is not stated clearly anywhere in the Manu Smṛiti but from Śikṣas 105 to 187 of Chapter IX and the gloss of Kulluka Bhatta on it one is able to construct the following order—

- (1) Jyeshtha Putra—Chapter 9—105 (Auras Son includes other kinds of sons, viz. Kshetrāja—क्षेत्रज, Datta—दत्त, Kritrima—कृत्रिम, Goodhotpna—गुहोत्पन्न).
- (2) Putni Chapter 9—187 Gloss of Kullukabhāṭṭa.
- (3) Putrika (Vidhikṛita Sūta) Chapter 9 — 127
विधिपूर्वा सुता
- (4) Donhitra—दोहित (Putrikaputra) „ 9 — 132
पुत्रिकपुत्र
- (5) Pita „ „ 9 — 185
- (6) Mata „ „ 9 — 185
- (7) Bhṛatara—भ्रातरः „ 9 — 185
- (8) Bhṛatṛija (sons of brothers)
Gloss of Kulluk on „ 9 — 217
- (9) Pitṛv Mata—पितृवमता „ 9 — 217
- (10) Sannikṛiṣṭa Sapinda—सन्निकृष्ट
सपिन्धु (nearest male or female or
male vide Kulluka (Gloss on) „ 9 — 187
- (11) Sannikṛiṣṭa (Samānodaka)
- (12) Acharya } — Vide Gloss of
- (13) Shishya } Kulluka on) „ 9 — 187
- (14) Traividya Brahman for the
Brahman and the king for
others „ 9 — 188

It should be noticed that the original text nowhere mentions the widow as the heir specifically. The gloss of Kulluk says that the widow has a place, is based on what the Smṛitiks who followed Manu stated. Of

the sons the eldest son is the heir and of the daughter the appointed daughter alone is recognised as heir. The Sakulya according to Kulluk Bhatta is the Samānodaka, i.e., distant kindred, viz., persons who belong to the same Gotra as the deceased. It is worth noting that *vy* or cognates, viz., persons who are related through females do not figure in the list of heirs.

As regards sisters it is said in Chap. 9—118 that brothers should give to their (real) sisters $\frac{1}{2}$ out of their shares. One may think from this that the daughter was to share in the inheritance. But this is not so. A careful study of the words employed in the śloka and of the context would show that the assertion relates to the provision of a charge of an unmarried sister on the father's estate for her marriage which was the Sanskara which the brother was bound to do for her sister. The context shows that when making partition the sons are asked to give their sister a share and to provide for the marriage of unmarried sister.

The Yajñavalkya Smṛiti which holds the field today in the whole of India except Bengal was composed in the 2nd or 3rd century A. D. It is the first code which gives a cut and dry rule of succession. It is stated in the verses in the 2nd chapter

पत्नी दुहितश्चैव पितरौ भ्रातरस्तथा ।

तदुक्ता गोत्रजा रक्षु शिष्यास्तन्मन्त्रिणः ॥ २—१२५

यद्यपिमात्रे पूर्वस्य धनमापुत्रोत्तरोत्तरः ।

स्वयोक्तव्य इत्युक्तस्य सर्ववर्णेषु ऋषिः ॥ २—१२६

"In the absence of a son the following is to be the list of heirs of a deceased, viz., the widow, the daughter, the daughter's son, the parents (mother and father), brothers and their sons, the Gotrajas and the Bandhus, the disciple-on or the fellow student. In the list given the person named later succeeds in the absence of the preceding one. This is the rule for all castes". It should be remembered that the daughter's son is not mentioned by name but is supposed to be included in the list by the conjunction 'Ch' (च). The list of heirs from the widow to the sons of brothers is called "the compact series of heirs" or Badha Krama बद्धक्रम. This is the universal rule observed by all Hindus all over India including Bengal and no Smṛiti writer or commentator has modified it save in minor details.

(d) *The Nibandhakars or commentators* (700-1400 A. D.).

We now pass on to the age of commentators or Nibandhakars. It extends from Vishvarup विश्वरूप and Medhatithi मेधातिथि to Jeemutvahan जित्म वहन i.e. from 700 A. D. to 1400 A. D.

These commentators fill an important roll in the development of Hindu Law. It would not be wrong to say that it is they who have given birth to the schools of law. Thus Vijñāneshwar who wrote his Commentary called Mitākshara मिताक्षरा between 1070 to 1100 A. D. has started the Mitākshara school. Mitrāmishra मित्रमिश्र the author of Veer Mitrodaya वीर मित्रोदय started the Benares School. Nīlkaṇṭh नीलकाण्ठ the writer of Vyavahara Mayukh व्यवहार मयूक is the originator of the Maharashtra School. Vachaspati Mishra वाचस्पति मिश्र the author of Vivada Chintamani started the Mithil School, Jeemoota Vahana who lived in the 14th century A. D. gave rise to the Gourseeya School or the Bengal School, and Devanna Bhat देवना भट author of Smṛiti Chandrika स्मृति चंद्रिका gave rise to the Dravida on South India School. The schools arose because a man of great piety or learning thought that Yajñavalkya must have intended a particular meaning when he stated a particular thing and his interpretation appealed to a large number of followers spread over a vast area and this came to be called a school or Sampradaya संप्रदाय or संप्रदाय in Sanskrit. Though Yajñavalkya gave the order clearly it was not definite for practical purposes. Thus by the use of the singular number for Putni (a widow) whether widows more than one were included or not, whether of the daughter, who was to get precedence the married, unmarried, well placed or not well placed, whether of the parents the mother or father has the preference, whether brother's sons included his grandsons, under what limitations and order were Bandhus to succeed, whether when a woman

got the inheritance she got it as her absolute property with free power of disposal or if she got it for her maintenance, whether the description of Stridhan given was exhaustive, and lastly if the widows of Gotrajas have a place in the order of succession. These questions were answered differently by different Nibandhikars. Broadly speaking there are two main schools in India the Dayabhag in Bengal, and the Mitakshara over the rest of India. The Mitakshara School is subdivided into 4 sub-schools (1) the Benares School prevalent in U. P. and round about, (2) the Mithil prevalent in Behar and Orissa, (3) the Maharashtra prevailing in the Province of Bombay and Berar and so called the Bombay School, and (4) the Dravida or the South Indian School.

The schools, the authorities that gave rise to them and the principal books that are consulted with their dates are given in the accompanying table.

Parts of India	Authorities	Authors	Year
South India	Mitakshara Smriti Chandrika is a commentary on Mitakshara.	Vignaneswara Devanna	1150 A. D.
" "	Dayavibhaga	Bhatta	1250 A. D.
" "	Saraswati Vilasa	Madhava	1350 A. D.
" "	Viramitrodaya	Pratapudra	1503 A. D.
" "	Vyavahara Nirnaya	Mitra Misra	1600 A. D.
Mahratta Country.	Mitakshara	Varadaraaja	1600 A. D.
" "	Vyavahara Mayukha	Vignaneswar	1150 A. D.
" "	Nirnaya Sindhu	Nilkantha	1650 A. D.
" "	Viramitrodaya	Kamalakara	1612 A. D.
" "	Vyavahara Mayukha	Mitra Misra	1600 A. D.
Guzerat, Northern Konkan & the island of Bombay.	Vyavahara Mayukha	Nilkantha	1650 A. D.
Benares	Mitakshara	Vignaneswar	1150 A. D.
" "	Nirnaya Sindhu	Kamalakara	1612 A. D.
" "	Mitakshara	Vignaneswar	1150 A. D.
" "	Viramitrodaya	Mitra Misra	1600 A. D.
" "	Madana Parijata	Vishweswar	14-15 century
" "	Nirnaya Sindhu	Bhatta	1612 A. D.
Mithila	Mitakshara	Kamalakara	1612 A. D.
" "	Vivada Chintamani	Vignaneswara	1150 A. D.
" "	Vivada Ratnakara	Vachaspati Misra	beginning of 14th century
Bengal	Dayabhag (a chapter on partition and inheritance) a portion of a work called <i>वर्णन</i>	Chandewara Thakura	1315 A. B.
" "	Daya Tattva	Jimutavahana	1945 A. D.
" "	Dayakrama Sangraha	Raghunandana	
" "	Mitakshara	Shri Krishna	
" "	Viramitrodaya	Tarkalakara	
The Punjab	Mitakshara	Vignaneswara	
" "	Mitakshara	Mitra Misra	
" "	Viramitrodaya	Vignaneswar	
" "	The Punjab customs	Mitra Misra	

The material difference between the two main schools of India viz., the Mitakshara and Dayabhag is this. The Mitakshara recognises the theory of right by birth and consequently the right of survivorship whereas the Dayabhag does not admit it. Under the Dayabhag when two persons inherit together they take as tenants in common, e.g., two sons inheriting together get a separate estate whereas according to the Mitakshara the two sons would inherit separately but would hold the estate as joint tenants with the law of survivorship. The other differences are—under the Mitakshara the son has the power to restrain alienations of immovables by the father. Under the Dayabhag the father's powers are absolute. Under the Mitakshara a joint member cannot alienate his joint share. Under the Dayabhag each co-parcener can alienate his share. A sub-school of Mitakshara viz.: the Maharashtra or Bombay School allows this power of alienation. A widow of the deceased cannot enforce partition of her husband's share under the Mitakshara, but under the Dayabhag she can. The rule of propinquity is the dominating rule in the matter of succession under the Mitakshara whereas the test of religious efficacy is the determining factor under the Dayabhag School.

(e) Two digests (1750—1800 A. D.)

In addition to the commentaries we have two digests, one called Vivadarnavasetu *विवादनावसेतु* known as Halhed's Code compiled at the time of Warren Hastings and Vivadabhangarnav *विवादभंगार्नाव* composed by Jagannatha Tarka Panchanana at the instance of Sir William Jones between 1783 to 1788. This book is regarded as a high authority in Bengal but subordinate to Dayabhag. Sir William Jones was the Judge of the Supreme Court of Judicature at Calcutta, and was the founder of the Royal Asiatic Society of Bengal.

(f) Legislation

From the time the British rule began in India legislation has affected Hindu Law considerably. There are 12 pieces of Legislation beginning from 1850 to 1937 which affect the principles of Hindu Law directly besides others (e.g., the Penal Code, the Guardian and Wards Act) which affect the Hindu Law indirectly. The Twelve Acts are given below:—

- (1) Caste disabilities Removal Act, 21 of 1850. Forfeiture of rights on apostasy, i.e., change of religion is taken away by this.
- (2) Hindu Widows Remarriage Act, 15 of 1856. Allows Hindu Widows to remarry.
- (3) Native Converts marriage dissolution Act, 21 of 1868. Allows a Hindu converted to Christianity to have his Hindu marriage dissolved.
- (4) The Indian Contract Act, 9 of 1872. Supersedes the Hindu Law of Contract.
- (5) The Indian Majority Act, 9 of 1875. Fixes the age of Majority at 18 except as to marriage and adoption.
- (6) Transfer of Property Act, 4 of 1882. Hindu Law of transfer is superseded by this.
- (7) Hindu Disposition of Property Act, 15 of 1916. Bequests in favour of unborn persons are validated.
- (8) Hindu Inheritance (Removal of Disabilities Act), 12 of 1928. Says that no affliction except congenital lunacy or congenital idiocy can prevent a man from inheriting.
- (9) Hindu Law of Inheritance (Amendment) Act, 2 of 1929. Son's daughter, daughter's daughter, sister and sister's son placed after the paternal grandfather and before the paternal uncle in the Mitakshara order of succession.
- (10) Child Marriage Restraint Act, 19 of 1929. Penalises marriages of girls below 14 and of boys below 15.
- (11) Hindu Gains of Learning Act, 30 of 1930. Regulates as to what is meant by gains of Science.
- (12) Hindu Women's Rights of Property Act, of 1937-38. Makes a widow and a widowed daughter-in-law a co-heir along with son.

(g) Judicial decisions

Judicial decisions have played a considerable part in moulding the Hindu Law. It may be said that the decisions of the Privy Council and of the High Courts in India have practically superseded or thrown into shade the Nibandhas or commentaries. The large body of law relating to adoption, the limiting of the pious duty of the son to pay the father's debts and the extension of that duty even during the father's life time, the restricted definition of Stridhan, the recognition of a coparcener's power to alienate his share as it prevails in some provinces, the law of legal necessity and of the Vyavaharika or Atyavaharika nature of debt incurred by a father are some of the instances where Hindu Law is either modified, altered or added to in the name of justice, equity and good conscience.

Even this rapid survey of the growth of the Hindu Law is enough to show that neither the Hindu Law gives nor the Hindus ever thought that civil law was unalterable. They have, from time to time, modified it to suit the changing needs of the Society. They did not hesitate to introduce great changes but never so as to affect the central or the root ideas. Dharma or law, according to Hindu Law gives, meant two things, viz., (i) certain eternal verities which are common to all men, e.g., those rules which concern an individual in relation to the Power behind the creation, and, (ii) rules which look upon an individual in relation to men round him, viz., his society. The former they named as Sadharana Dharma (सारवर्ण धर्म) and the latter as Asadharana Dharma (असारवर्ण धर्म). Vijnaneswar in his Mitakshara illustrates the Sadharana Dharma as non-violence is the rule for all from the Brahman to the Chandala, नहिंसा (सर्वभूतानि ह्येव चिंतयन् नान्यत्वात्). The first central or root idea that has remained unchanged from the Vedic times up to now is not to look on an individual in his isolation but to look at him in

connection with a group or family or collection of persons drawn together by nature, and bound together by ties of common interest.

The second cardinal point which has remained unchanged is that man and woman can not be equal so far as the holding of property is concerned. Nature, the Hindu sages say has made a distinction between a male and a female. The latter is by nature such that she would always seek support of the male and therefore can not be considered as capable of protecting the family or the property of the family. Her power over property is therefore limited. Whether you study Manu or Yajñavalkya or consult the Vedic literature you will find woman is given a second place. Women are to be clothed, fed and even worshipped. She is said to be the compliment of man, but according to the Aryan Sociology she is not such as can be trusted to protect the family property. Even males are restrained so far as their power over family estate is concerned. It should be noted that women were allowed to acquire property; to hold and to dispose it of. But difference was made between a woman's own property called Stridhana and the property of the family. The good of the family required that its property must not be alienated save for its own purposes and hence the doctrines like these are found stressed by Smṛiti writers.

"Immovable property and biped though acquired by oneself are not to be gifted or sold save with the consent of sons. Those who are born, those who are yet to be born, and those who are in the womb all want maintenance. There cannot be therefore a gift or sale".

(स्वर्वादिपदेष्वेव यपरिसंवर्जितं अस्मदं सुतान्स्वर्वा न दानं न च विक्रयः ॥
वेजातस्येयजाता च वेजसम्यक्वास्ताः कृत्वा ते अभिकर्तुः ॥ न दानं न च विक्रयः ॥)

Yajñavalkya is taken to be the strongest supporter of women's rights, but even he in verse 32 of Chapter II (Yavahar Adhyaya) says that proceedings with women as are to be deemed void, indicating thereby that a purchaser from a woman can not specifically enforce his contract and cannot therefore succeed in the King's court. In short, (i) the stability of the family, (ii) the disparity between males and females, (iii) limited ownership, and (iv) successive heirship as opposed to simultaneous succession are the cardinal doctrines on which the law of succession is based by the ancient law-givers of the Hindus, and all reformers upto date have regarded these principles inviolate.

Let us now see the provisions of the new law—The Hindu law of intestate succession. It consists of 28 clauses.

The first clause gives the name of the Bill fixes the 1st January 1946 as the date, from which the law is to come into force and says that the law would extend to the whole of British India which means that all Hindus would be governed by this law.

The 2nd clause consists of definitions. The important definitions which one may take note of are:—

(i) An agnate (Gotraja) has now been defined to mean a person related by blood wholly through males without limit of the degree. Thus a man standing on the 22nd degree and connected with the deceased through males would be an agnate and would therefore exclude a relation connected through females. According to the notions now prevailing the Gotraja relationship which consists of Sapinda and Samanodaka relationships extends only upto 14th degree only. The Privy Council examined the subject in detail and ruled, "upon an examination of available texts of the Hindu Law and the judicial decisions on the subject their Lordships have reached the conclusion that according to the Mitakshara School of Hindu Law which governs the case, Samanodakas include only those agnates whose relationship to the deceased extends from the 8th to the 14th degree from the common ancestor and in the absence of such an agnate the estate devolves upon his Bandhus". (*Atmaram Abhimani v. Bajirao* and others). The dispute in this case was between an agnate in the 22nd degree and the father's sister's son of the deceased. If what is now stated in the definition be accepted an agnate of any degree would be an agnate and would according even to the principles of the Bill exclude the father's sister's son who is only a cognate or Bandhu. In

the order of succession now prescribed in the Bill father's sister's son is named in Class III of enumerated heirs detailed under Clause 5 and as such he would come before the distant agnate. This is because of the special provision. But on the principles laid down by the committee an agnate is to exclude a cognate. An agnate of the 40th degree would exclude a father's sister who would be a Bandhu and not named and who is nearer than the father's sister's son. Such result is hardly warranted and the departure proposed in the Bill is not justified on considerations of logic or convenience or by the law so far accepted by all Hindus.

A cognate is now defined to mean, one who is connected through one or more females. The present notion, that females like daughters or sisters go out of the family by marriage become Bandhus or Bhinna Gotra Sapindas and females who come into one's family by marriage like, the wife, the daughter-in-law or the brother's wife, etc., become Sapindas, is not recognised. What is astonishing is the enunciation in Clause 2 (2)(b). It says that a woman is agnate of her father and his agnates, but she does not become an agnate of her husband or his agnates by marriage. This is entirely contrary to the prevailing notion that the wife acquires the Gotra of her husband and is half the part of his body. The framers say that they are aware of this but that they have dropped it in difference to the wishes of some. But it is interesting to know what the ancient writers say on the point. In commenting on verse 45 Chap. 9 of Manu Smṛiti, Kulluk Bhatta quotes an extract from Wajasaneya Brahmana which bears repetition here.

"A man is only a half of himself so long as he does not take a wife. He continues imperfect till he begets a child. He becomes a complete self when he marries and begets. Hence have the sages, knowing the Vedas, declared the wife is but the husband (i.e., a part of the husband).

“अथो ह एवः आत्मनः तस्मात् यजुर्वानं न विदते ।

नैतावत् प्रजायते असर्वो हि तावत् भवति ।

अथ यदेवं जगौ विदते प्रजायत तर्हि सर्वो भवति । तथाच

एतत् वेदविदो विप्रः बर्हिषो मतां स एव भावोऽस्तु ।”

Bṛhaspati declares as follows:—

पश्चिमदक्षिणमनः सिद्धोऽप्यहोरात्रात् चतुर्धा होमसंविद्यः तद्वन्मांसं हृदयं दिव्यैः

भक्तौ संतुष्यते पत्नी तद्विद्या तेन सा भवेत् ॥

The Panigrahan Mantras deprive a female of the Gotra of her father. With the Chaturthi Homa Mantra the wife gets united with her husband in skin, flesh, heart and senses and so she acquires her Gotra.

Yama says,

नोदकेन न वाचा वा कथायाः पतिरिष्यते ।

पश्चिमदक्षिणमनः पश्चिमं सतते ॥

It is not by offering of water nor by word of mouth that a girl obtains her husband. It is at the 7th step and by the Sanskara of holding by the hand (a woman becomes her husband's wife).

A curious result of the proposed change may be illustrated by an example. "Suppose 'A' is the son of 'B' and 'B' is the son of 'C' and 'C' has daughter 'D'. 'D' is thus the father's sister. She is agnate of 'C'. 'C' is the agnate of 'B' and 'B' is the agnate of 'A', so is 'D' the agnate of 'A' and therefore she should come before her son". But in arranging the order of succession father's sister's son is enumerated in class III and father's sister is not, with the result that the father's sister's son succeeds to the exclusion of the father's sister. But according to the present state of law the father's sister would succeed in preference to the father's sister's son as being nearer. This definition results in a whole sale expropriation of a large class of persons, viz., the widows of Gotraj Sapindas who take their husband's place in the order of succession under the Bombay School as they are the Sapindas of their husbands. Now that they are not recognised as such they must lose the right of succession. The judgments of Westropp C. J. and West J. in I. L. R. 2 Bom. 888 are well worth studying in this respect.

(ii) Son—In defining the son it is said that a Dasiputra is not included in the category of sons. In the Hindu Society a Dasiputra has a recognised place from the time of Yajñavalkya. In verses 133 and 134 of Chapter II Yajñavalkya makes the position of the Dasiputra quite

definite. He is to receive a share from his father during the father's life time at his option and after his death the Dasiputra is to get half share of what the sons of the deceased would get in their father's inheritance. This rule is confined to the Sudras only and the Dasiputra of the three higher castes does not inherit but is entitled only to maintenance. The position of the Dasiputra is thus clear and is well within limits. In a society so widely spread as the Hindu Society is, there are bound to be people who would procreate children from women not lawfully wedded. It is no fault of the children that they are born out of wedlock, and the Hindu Law givers having regard to the various strata of the Society laid down that in the case of the Sudras the law is different from what it is in the higher castes and recognised a Dasiputra, i.e., son of a woman who was not publicly taken as a wife but was a wife in all other respects. However great may be the progress in Education there are bound to be issues out of the wedlock and it is not wisdom to throw the children to the mercies of Heaven for no fault of theirs. This sudden deprivation of the Dasiputras of their rights so far recognised is not warranted on religious or sociological considerations. Let us not forget that people now openly talk for companionate marriages. The lawgivers and judicial decisions have kept the Dasiputra well within the limits and there is no necessity of disinheriting him.

(iii) Stridhan has been defined to mean property acquired by a female in any way whatsoever. According to Manu, Stridhan consisted 6 kinds, viz.

- | | |
|------------------------------|--|
| (1) Adhyagni— | Gifts made before the nuptial fire. |
| (2) Adhyavahanik— | Gifts made at a bridal procession. |
| (3) Preetidatta— | Gifts made by the father-in-law and the mother-in-law and other elderly persons when the bride goes round saluting them after the wedding. This was also called 'Pada-Vandanik' 'Salutation gifts. |
| (4) Pitridatta— | Gifts by father |
| (5) Matri-datta— | " " mother |
| (6) Bhatri-datta— | " " husband. |
| To this later writers added— | |
| (7) Adhivedanika— | Consolation money offered to a wife for taking a second wife. |
| (8) Anvadehyaka— | Gifts by relations whether of the husband's side or the parents' side after the marriage. |
| (9) Shulka— | Means different things, according to different writers, but is generally taken to mean bride price. |

Yajñavalkya's definition of Stridhan is as under:—

पितृमातृपितृश्रावृत्तचक्रान्नुपगतम् ।

आधिवेदिकाश्च स्वात्मं पतिश्रीति ॥ २-२४२

बंधुदत्तं तथा शुल्कं अन्वपेक्षयेत् ।

अतीत्यामप्रजसि बंधुवात्सल्यान्नुयुः ॥ २-२४४

(1) Gifts by father (2) Gifts by mother (3) Gifts by husband (4) Gifts by brother (5) Gifts before the nuptial fire (6) Gifts by husband when taking a second wife and the like (7) Gifts from relatives (8) Shulka all this is Stridhan.

It is necessary here to note the words "अद्वय" in the definition. Some recensions of Yajñavalkya do not contain this word. Instead there is the word "च", (cha) meaning 'and' but Vijnaneshwar—विज्ञानेश्वर who wrote the Mitakshara had a recension which had the word "Adi". Commenting on the verse Vijnaneshwar says that the word 'Streedhan' is not to be understood as a word of art but is to be taken etymologically, i.e., according to the ordinary meaning, viz., the property of the woman and relying on the word 'Adi' in the definition he said property acquired by a woman by inheritance (2) purchase.

(3) partition (4) seizure (5) finding (रिक्थक्यं संनिपागं परिग्रह-विमर्शम्) would also be streedhan. So according to Vijnaneshwar विज्ञानेश्वर there are 13 kinds of Streedhan. Streedhan in the words of the text of Yajñavalkya conforms to the enumeration of Streedhan as understood by other Smṛiti writers but Vijnaneshwar added the 5 kinds mentioned above so as to include all possible ways of getting property.

In defining Stridhan the Bill follows the Mitakshara definition and it says property acquired by a female in any manner is Stridhan. In other words property obtained

by inheritance, partition, maintenance, purchase, self exertions, gifts is all stridhan according to the definition. But this extension of the meaning is not supported by any other Smṛitikara.

The Privy Council examined this question in the cases "Sheoshanker v. Debi Bohaya I", and "Debinimgalprasad v. Mahadcoprasad" and concluded that property inherited by a female or got by her on partition could not be classed as Stridhan. This is the present state of law in India except the Bombay province where by a long course of decisions it is held that property acquired by women by inheritance is not Stridhan if the women fall in the class of women entering a family by marriage, but that it would be Stridhan if the females fall in the class of women who are born in the family but go out of it by marriage, e.g., the daughter and sister. In short the Mitakshara definition of Stridhan is not accepted by other text writers and is not endorsed by the Privy Council and there is no necessity to extend the meaning as is proposed. The framers of the Bill while defining Stridhan go to the extreme length of stating that any property acquired by females would be Stridhan make a distinction between Stridhan when laying down the rule of succession for it. It is said that the property acquired by a woman by inheritance from her husband would go back to the heirs of the husband and all other kinds of Stridhan would go in a special way, viz., to daughter, daughter's daughter, daughter's son, son, sons' son, etc.

Clause 3—Application of the Law—

Clause 3 lays down as follows:—

Succession to property of a Hindu is to be governed by this law if—

(i) the property is movable property and the deceased has his domicile in British India. If it is proved however that the man's domicile is outside British India then this law is not to apply.

(ii) the property is immovable property consisting of houses or building sites and not agricultural land, i.e., fields and gardens, then rules of succession laid down by this law would determine the succession to this kind of property whether the deceased had a domicile in British India or not.

Thus a person living in Marwar where there is a custom that a daughter is not to inherit dies leaving considerable house property in C. P. and Berar but without leaving a widow behind. His property in C. P. and Berar would go to his daughter under this law and his property in Marwar and his movables would go to his brother. This is a strange result. Hindu Law is now understood as a personal law and the merit of it is that all his property wherever situate is governed by that school of Hindu Law to which he was subject prior to his death. The Bill tries to make it a 'lex loci' in the strict sense so that his immovable property would be governed by the law of the place where it is situate and his other property would be governed by some other law. This would create confusion. Hindu law should be personal law as at present.

This clause lays down that the law is not to apply to agricultural land as law relating to succession of agricultural land can be passed by the Provincial Legislatures. It is proposed that the Central Legislature should pass the law and it is hoped that Provincial Legislatures would follow this lead and make this law applicable to agricultural land. But this is a distant hope. With the Provincial autonomy functioning it would not be easy to induce Hindu members to pass such a legislation.

Clause 8—order of succession amongst non-enumerated heirs.—The order of distribution amongst non-enumerated heirs is to be according to the rules given in clause 9 and for this purpose relationship is to be counted by degrees; and the method of counting degrees is to count, from the propositus but to exclude him, downwards and upwards. Thus a man's father is in the first degree of ascent, his son is in the first degree of descent. A brother is on the 2nd degree of collateral, relationship the father being the first and brother (father's son) being in the 2nd degree. An uncle is a collateral of the 3rd degree the father is the 1st degree, the grandfather (father's father) is the 2nd degree and the uncle (father's father's son) is on the 3rd

degree. This is the English way of counting degrees *vide* the Indian succession Act sec. 28 and the table given in Schedule I. The Hindu Mode of counting degrees is to count from and inclusive of the deceased. Thus a father is on the 2nd degree in ascent. This change in the method of counting is likely to cause confusion and as there is no point in changing the method the present method of counting may be continued.

Clause 11—Rules for hermits.

It should be noted that this clause deals with the succession of hermits as individuals. Succession dealt with here is not be confounded with the law relating to the succession of Mohants, of heads of maths, of succession of Shebaita or managers of temples. Maths and temples are institutions and are regarded as "corporations sole". They never die and succession to them is therefore not possible. But there must be an individual of flesh and blood to manage these and succession to a Mohant or to the Shebait (worshiper or Pujari) of a temple is governed by the rules of the institutions, *vide* in this respect, Ghose's Hindu Law Vol. I P. 914-915 and I. L. R. 9 Cal. 766 P. C.

Provisions relating to the order of succession of individuals except to Sridhan are over and we may proceed to survey them and see how they differ from the present situation.

The order of succession as it obtains today is that the son takes first and in his absence other heirs. Distinction is made between a son undivided or re-united and a son separate the former excluding the latter. This is according to the view taken in Bombay and Madras which is based on the principle that the father and united son form a coparcenary (family) and a son separated has gone out of the coparcenary voluntarily and so he should not be allowed to share in the coparcenary property. This reasoning is logical and sound from the point of view of family. The Oudh Court differs from this view. (A. I. R. 1930 Oudh 77) and bases its conclusion on a text of Baudhayana "the male issue of the body being in existence, the wealth goes to them". From the cardinal view point of Hindu Law, namely the interest of the family the united son should have preference, and the Bombay and Madras view seems to be correct. No reason has been assigned why the framers have accepted the Oudh view. The Almadabad High Court view is also with the Bombay and Madras view as may be gathered from I. L. R. 4 All. 427.

A comparative table showing the rank of an heir according to the present state of law and the rank proposed in the Bill is given from which it would be seen that there are vital changes. Notes below the table explain the departures:—

Comparative Table.

Rank under the present law	Heir	Rank according to the proposed law
1	Son	1
	Grandson	
	Great grandson	
	Widow	
	Widow of predeceased Son (daughter-in-law)	
	Widow of predeceased Son's son	now excluded
2	Daughter	1
3	Daughter's son	2
4	Mother	5 Class II
5	Father	6 "
6	Brother	7 "
7	Brother's son	8 "
8	Brother's son's son	9 "
9	Father's mother	12 " III
10	Father's father	13 "
11 (1929)	Son's daughter	3 " I
12	Daughter's daughter	4 " II
13	Sister	10 " II
14	Sister's son	11 " II
15	Half Sister's son	11-A. included in sister Class III
16	Paternal Uncle	14 Class III
17	Paternal uncle's son	15 "
18	Paternal uncle's son's son	16 "
Bandhu	Father's sister's son	17 "
19	Grandfather's mother	18 " IV
20	Grandfather's father	19 "

Rank under the present law	Heir	Rank according to the proposed law
21	Father's Paternal uncle	20 Class IV
22	Father's Paternal uncle's son	21 "
23	Father's Paternal uncle's son's son	22 " IV
Bandhu now takes as Bandhu.	Father's Father's sister's son	23 " IV
24	Brother's son's son's son	30 agnate
25	Uncle's son's son's son	31 "
Now come in as Bandhus.	Mother's mother	24 Class V
	Mother's father	25 "
	Mother's Brother	26 "
	Mother's brother's son	27 "
	Mother's Brother's son's son	28 "
	Mother's sister's son	29 "

Notes—(on the Comparative Table):—

(1) At present as a result of the Deshmukh Act XVIII of 1937 as amended by Act XL of 1938 son, grandson, great grandson succeed simultaneously but with the right of survivorship attached, and widow and daughter-in-law take as co-heirs with the son, grandson and great grandson but get limited estate. Under the proposed law, 5 heirs take simultaneously, *viz.*, son, grandson, great grandson, widow and daughter without the rule of survivorship and get absolute estate.

(2) All sons succeed equally whether any of them is divided, undivided or reunited.

(3) widow—means all widows, *i.e.*, all widows together to take one share.

(4) daughters take each a half share without the distinction of being married, unmarried, rich or poor. Daughter is given a $\frac{1}{2}$ share in deference to weighty opinion.

(5) Daughter-in-law is excluded from heirship now on the ground that she would succeed as a daughter of her father.

(6) Son's daughter and daughter's daughter are given higher place as they are grand children just as much as the son of a daughter.

(7) widows of Gotraja Sapindas are excluded with the exception of the Mother, grandmother and great grandmother who are included in the order given for enumerated heirs.

(8) Grandson's daughter, son's daughter's son, son's daughter's daughter and daughter's son's son and daughter's son's daughter are not now included in the enumerated heirs but the framers are not opposed to the inclusion after entry 4 in class I.

(9) Framers of the Bill, are in favour of providing maintenance for father or mother when they do not succeed as heir.

(10) brother's daughter, and sister's daughter, it is suggested may be included in class II immediately after sister's son.

(11) The Rule of preference of whole blood to half blood is retained (*vide* clause 15) but a relation of half blood would exclude one of full blood if the former is nearer in degree than the latter.

(12) Heirs in Class V who now take as Bandhus would hereafter have preference even over agnates as they are included in the list of enumerated heirs. Thus a brother's great grandson would be excluded by mother's sister's son.

(13) Succession amongst enumerated heirs is according to class, *e.g.*, Class I would exclude Class II, an entry in one class is to exclude a later entry in the same class. Heirs included in the same entry are to take together.

(14) Manner of distribution between heirs in entry 1 of class I is to be as follows:—

(1) Sons to take separately each one share,

(2) daughters to take separately half share each,

(3) widows together to get one share,

(4) sons, grandsons and great grandsons take *per stirpes*.

It is desirable to examine the changes proposed in the order of succession stated above in greater detail so that the practical results of the proposals would be clear before our eyes.

First as to simultaneous succession.

It is true that with the Act of 1937 the following heirs are to take together: viz., (1) son inclusive of Grandson and great grandson, (2) widow and (3) daughter-in-law. But the son, grandson and great grandson take together with the law of survivorship. The widow and daughter-in-law get only a limited estate. Under the proposed law, the son, grandson and great grandson, the widow and daughter take together as simultaneous heirs without the right of survivorship and the widow and the daughter take absolute estate. Under the existing law succession being joint, an heir is compelled to seek partition if he wants to be out of the family. Separation from the members of the family 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 the daughter are given absolute estates. Fragmentation of the heritage is thus made easy as every heir will naturally ask his share to be separated and given to him. The son who was so long depended upon to continue the line now loses the bulk of the estate. The idea of the joint family is thus uprooted.

A very vast majority of Hindus consists of poor people possessing a house and a field or two. To cut up such a small estate into several shares is not to the benefit of the Hindu Society. Amongst the causes of fragmentation, rules of succession are said to be the principal cause. Efforts are on the one side afoot to nullify the bad effects of fragmentation by the passing of consolidation of holdings Acts, laws encouraging fragmentation are on the other hand proposed. This should be avoided. The Dayabhag view is said to support the change now being proposed. But it need not be forced on the rest of India. The Dayabhag view arose under the peculiar circumstances of Bengal at the time. Whatever it may be, the point for advocating simultaneous succession is against the Hindu Spirit, and is undesirable from the point of view of the preservation of property. No necessity is made out to force this on provinces which had not held this view for centuries past.

The inclusion of daughter as a co-heir with the son.—The daughter is now included to succeed together with the son and the widow, and the daughter-in-law who was given the right by the Act of 1937 is now excluded. The reasons for including the daughter are stated to be,

(i) the general opinion of people particularly of women is in favour of the daughter being placed as an heir along with the son.

(ii) Smṛiti authorities are in favour of such a step as they say that at a partition between brothers, the brothers are to set apart 1/4th part for the sister (i.e., daughter).

Taking these in order, the general opinion and particularly that of women that the daughter should be included as a co-heir with the son appears to be based mainly on the ground that a daughter is as much an issue of her parents as the son and there is no point in excluding her on the ground of her sex. A daughter should therefore get a share and though early writers suggested 1/4th share a share equal to 1/2 share of the son is just. The argument that the daughter is an issue like the son was present to the mind of both Manu and Viṇaṇeshwara the author of Mitakshara. Manu says:—

As is the self, so as the son and a daughter is equal to the son. So long as the daughter is like one's own self how can anybody else take the heritage.

वैशाखा तथा पुत्रः पुत्रेय दुहितस्तमा । तस्यात्मनि तिष्ठन् कथमन्यो
धर्म इदम् ॥ २-१३७ ॥

Kulluk in his gloss points out the reference here is to an appointed daughter (Putrika)—पुत्रिका or विप्रकृता ह्यतः and not to a daughter in general. The appointment of a daughter (Putrika) was a device for ensuring the continuity of the family. The appointment was made at the time when the daughter was being given away in marriage. The understanding was expressed in the following words:—

A brotherless girl I am giving you with ornaments on. A son born to her will be my son.

भ्रातृवर्गं प्रदास्यामि तुभ्यं कथमलंकारं ।

अस्यां नो जायते पुत्रः स मे पुत्रो भवेदिति ॥ इतिपुत्रिका कर्यं भितिः

That the appointment of a daughter was a device restored to by a sonless man for securing the continuity of his family and for seeing that he had some one who would be offering pindas to him and his ancestors, would be clear from the verse 128 of Chapter IX and from the gloss of Kulluka on verses 127 to 130 of Chapter IX of Manu. Mitakshara quotes Brihaspati who says,

"A widow takes the husband's wealth and in her absence the daughter as she flows from the limbs of her parents like the son."

भर्तृप्रेमहरी पत्नी तां विना दुःखिताम् ।

भ्रातृगात्रं संभवति पुत्रवरद्विधा नृणां ॥

But both Manu and Viṇaṇeshwara did not put her on the same level as the son. The reasons are obvious. The daughter goes out of the family and starts a family of her own. She is the object of love and affection of some one else and she would not have the same regard or interest of the family of the father as the son would have. She was therefore given the third position in the succession of a sonless man—first the son then the widow and then the daughter. Somehow leaning is more towards the son than a daughter amongst all men in the world. Even the framers of the Bill and the persons who gave opinion in favour of the daughter seem to think so. Otherwise the idea of giving the daughter a share less than the son is unjustified. The Mohammedans regard the daughter's claim inferior as would be seen from the following:—

"In order that the daughter may be a sharer there must be no son surviving the deceased. If there is any son then he, as the nearest male agnate, is the customary heir and the daughter is not nearer than him but in the same line. She cannot therefore get a prior claim to the estate as Quranic sharer but can only rank as a co-residuary with him" (Yahji's Muhamedan Law 2nd edition page 845 footnote 2).

The Jains, whose religion started somewhere in the 4th century before the Christian Era (400 B. C.) place the daughter as the 6th heir, i.e., after the nearest Sapinda of the deceased. Vide Champat Rai Jain's Jain Law page 77. This is enough to show that there has been good reason for postponing the daughter and for preferring the son to her. Even the Government of India was not prepared in 1937 to support the claim of a daughter to be ranked with the son. Dr. Deshmukh in his Bill No. 35 of 1935, clause 4, said that the property of a Hindu dying intestate should first devolve upon his wife, mother, daughter and wife of a predeceased son along with his son and all of them should have equal shares. When the Bill was being referred to the Select Committee, the Law Member of the Government of India said, "we are not agreeable to these rights being extended to daughter. Dr. Deshmukh would be satisfied if the Bill is limited to the rights of widows." Dr. Deshmukh agreed and accordingly the Bill was modified and the daughter was omitted from succeeding to the estate along with the son. Nothing has happened since 1937 when this was said and done to warrant a change. As regards the second ground that the Smṛiti writers are in favour of giving a daughter 1/4th share, it is enough to say that a careful study of the text of Manu and Yajñavalkya does not justify an inference that the daughter was to inherit along with the son. Manu's text runs as follows:—

स्वैयः वक्ष्येऽनु कथाम्यः प्रददुः भ्रातरः एवम् ।

स्वात्स्नीयं श्रद्धां चतुर्भां पतिवस्तुः भ्रतृदत्तः ॥ ३-११८ ॥

"The Brothers should give to the sisters a separate 1/4th share from their share of the patrimony. Brothers not so giving would fall from Heaven." It is to be noted that the verse does not say that the sister is to share the heritage with the brothers, but that the brothers are to provide for the daughter after they got the estate by devolution. Kulluka Bhat points out in his gloss that this is a provision for the daughter's marriage.

The text of Yajñavalkya puts it beyond doubt. It says,

असंस्कृताः तु संस्कृताः आरुमिः पुत्रसंस्कृतेः

अग्नित्येव निजान्दशार्थं दत्वाद्यं तु पुत्रेयम् ॥ २-११४ ॥

"The brothers who have received sanskaras (at the hands of their parents) should see that their sister receives the

Sanskara by setting apart a fourth part of their patrimony." The Sanskar of the daughter means her marriage as stated by manu.

वैवाहिको विविक्तोऽपि संस्कारो वैदिकः स्मृतः ।
परितेना पुत्रीनामः गृह्यादिपरितेना ॥ २-६७ ॥

The ceremony of the marriage is the Sanskara laid down by Vedas for women. Serving the husband corresponds to residing in the home of the preceptor and securing the interests of the family corresponds to going round the fire in the case of males. Vishwarupa, the first commentator of Yajñavalkya translates Sanskar to mean marriage. (संस्कारः परित्वम्) These verses amount to lay down that an unmarried daughter has a charge on the father's estate for her marriage and the charge is to the extent of a $\frac{1}{4}$ share. The anxiety of Hindu fathers and brothers is to see that the unmarried daughter is well placed by marriage, and they do their best for her when arranging for her marriage. The present state of the law is more to the advantage of the daughter than the proposed change. Giving a share to the daughter would make the brothers think that they are no longer responsible to see their sisters married. The change will result in sisters being left to care for themselves a state not desirable from the point of view of the Hindu Society.

Abolition of the preference on the ground of being unmarried or not being well placed (Oodha उद्धा. Anoodha अनूद्धा, Pratischitha प्रतिष्ठित, Apratischitha अप्रतिष्ठित,) is also not well advised. An unmarried daughter has greater need of her father's money than a married one and the distinction suggested by Mitakshara deserves to be retained. Fathers are anxious to see that the daughter is married in time and they go to the length of incurring debts for the purpose. The daughter would thus get a double advantage, viz., being married at the cost of the father's estate and also getting a share along with the son. In spite of his affection for the daughter we do not see instances even amongst the advanced and educated men making wills and giving the daughters a part of their wealth. All fathers believe that their sons are the continuators of their line and that their daughters start a family of their own. An example will make it clear how the proposed provision works to the detriment of the son and the family of the testator. Take the case of a man having 6 daughters and only one son and suppose this man has married after he got these children. When he dies leaving behind him 6 daughters, one son and a widow (the step mother of the children), the estate would be divided in 10 shares. The son would get 2 shares or $\frac{1}{5}$ and four fifths will be in hands on which he can never depend. The step mother may will it away in favour of her brother and the daughters would never think of giving anything to their brother even if he has a larger family to care for than any of them.

If the sentiment that the daughter is really equal to the son is strong for which one sees very little evidence in the conduct of parents let the share of the daughter be equal to the son lest it would be said that the affection of the father was only half in the case of the daughter. Hindu law draws a distinction between succession to the estate of the father who is the founder of the family and the estate of a female which is not the family estate. The former descends to the son, in preference to the daughter and the latter to the daughter in preference to the son. If the daughter and the son are equal the devolution should be the same in both the cases. But the framers retain the provision of the preference of the daughter in the case of Stridhan estate and again wish to provide that she should be a sharer with the son. This position is neither logical nor fair. It is a case of advantage in for the daughter and advantage out for the son.

Exclusion of the daughter-in-law.—The reason given by the framers for excluding the daughter-in-law from the position she now occupies is that she would be better off if she is allowed to succeed to her father as his agnate rather than to succeed the father-in-law. This is on the assumption that her father has an estate to leave behind. But if he has not, the position of the daughter-in-law would be miserable. She would be deprived of her place now given to her and she would be

left to the chance of succeeding to her father. If a widow has a case for being included in the list of heirs along with the son a daughter-in-law has a stronger one.

Son's daughter and daughter's daughter.—A son's daughter and daughter's daughter have been given a place in the inheritance next after father's father and before father's brother by Act II of 1929. The framers have pulled them up still higher and the reason given is that they are as much grand children as a daughter's son and therefore they deserve a place higher than what is assigned to them. But according to Hindu notions, a son's daughter and daughter's daughter do not stand on the same level as the daughter's son, from the point of view of the offering of pindas. The daughter's son offers pindas to his mother's father and for this reason he is placed very high. Hindu Law of inheritance cannot be totally divorced from consideration of religious beliefs.

It won't be right therefore that the beliefs of one class of people should be foisted on another class of people. Religious freedom is the safest way to ensure the progress of a society. It is no use telling a Hindu that a son's daughter and a daughter's daughter are just as much his grandchildren as the daughter's son. He believes that a daughter's son is in a position to confer larger religious benefit on him than a son's daughter or daughter's daughter.

Exclusion of widows of Gotraja Sapindas

According to the Bombay or the Maharashtra school which is prevalent in Bombay and Berar the widows, of Gotrajasapindas are allowed to occupy the place of their husbands for purposes of inheritance. In this connection the discussion of the subject by Westropp C. J. and West J. in *Lallubhai v. Mankuwarbai*¹ may be read. The conclusions based on the consideration of Mitakshara and Mayukha and the tradition or custom prevalent in Bombay may be summarised as follows:

(1) The wife becomes the Sapinda of her husband by marriage and remains so for purposes of inheritance.

(2) The widow of a Gotraja Sapinda occupies the place of her husband. "Upon the whole" says West J. "it would appear, more probable than not, upon the text of Mitakshara and its recognised exponents that it did intend widows to be included amongst Gotrajas."

The point however is one in which actual practice is of the greatest weight in determining which of the conflicting explanations (of texts) is to be preferred.

Words of West J. in this case in the concluding part of his judgment are worth remembering in another connection. He says "in matters of inheritance we must administer to the Hindu community such a law as it has been content to devise for itself—or to accept from tradition". The framers tell us that they at one time thought of retaining this provision but they abandoned it as there was strong opposition to it, from the other parts of India. Is it any argument, one may ask, that if one person is not willing to part with his opinion another must be coerced to surrender his? But this is being supported in the name of uniformity; but uniformity is not always possible nor is it always desirable. If for instance it be said that for purposes of uniformity the big landlords of United Provinces or Bengal should part with their wealth for the poor tenantry of the Central Provinces every one would oppose such a measure on the ground of unwarranted expropriation. It is for the same reason not right to divest a large class of people in Western India of their rights—which have been theirs for centuries past.

Inclusions of the heirs in the clause of enumerated heirs.

The present Badha Krama (or compact series of heirs) ends with 6 relations, the widow, daughter, daughter's son, parents, brothers and brother's son. The proposed Badha Krama consists of 33 heirs. The framers say, that they have no objection to widen the list still further. They are in favour of including the following in the list of enumerated heirs:—

- (1) Grandson's daughter, son's daughter's son, son's daughter's daughter, daughter's son's son and daughter's son's daughter in class I after the last entry, viz., entry (4)
- (2) Brother's daughter, sister's daughter in Class II immediately after entry (7).

This means that the Badha Krama would be of 40 heirs Expanding the Badhakrama in this way and saying at the

same time that Gotrajas are relations without a limit of degrees leads to undesired result. It is proposed as a general principle that agnates should come in only when the list of compact series (Badha Krama) is exhausted. The present Gotraja relationship is taken to end with the 4th degree and a man related on the 15th degree is not a Gotraja and therefore a cognate or Bandhu succeeds. If the circle of agnates is made limitless a man standing on the 40th degree would be an agnate and would not allow Bandhu to succeed though he be nearer in relationship. This is not mere imagination. A case between a man claiming to be descended from the 22nd ancestor of the deceased in the male line and a father's sister's son arose in Berar and the Privy Council held that an agnate so distant was not an agnate, as agnatic relationship was confined only to 14 degrees and so allowed the claim of the Bandhu. The Privy Council added that the rule containing the word Gotrajas to mean relations upto the 14th degree has the result of avoiding uncertainty and is also in perfect harmony with the sentiments of the people. The opposite view would lead to the incongruous result that an agnate related in the 100th degree or even remote degree would be preferred, to the cognate who may be nearly related to the deceased by the tie of blood such as the son of his sister or of his father's sister, *vide Amaram v Bajirao*. Cognates not mentioned in the enumerated heirs would be excluded by agnates howsoever distant. This is not desired.

Abolition of widow's estate.—Let us now consider the proposal of abolishing 'the widow's estate' and giving every female inheriting to a male or female absolute estate in the inheritance with full powers of disposal. The present position in the country may be stated as under. According to the Bengal (Dayabhag), Benares, Mithila and Madras schools every female, whether she be a widow or daughter, mother, father's mother, father's father's mother, who succeeds as heir to the property of a male takes only a limited estate and on her death the estate goes back to the heir of the male from whom she inherited. A son's daughter, daughter's daughter, sister who are now expressly mentioned as heirs in the Hindu Law of Inheritance Amendment Act of 1929 also take a limited estate. The limited nature of the widows estate was reaffirmed by the 1937 Act (the Deshmukh Act) which made the widow a co-heir with the son. A female governed by these schools cannot alienate the property except for legal necessity. This applies whether the property is inherited from a male or female. As regards the Bombay School, female heirs are divided into two classes for the purposes of determining the nature of estate taken:—

(1) Those who come into the Gotra of the deceased by marriage, e.g., widow, wives of Sapindas and Samanodakas and called Sagotra Sapindas.

(2) Those who are born in the Gotra of the deceased but pass out by marriage into a different gotra, e.g., a daughter, sons daughter, daughter's daughter sister, niece, grandniece, father's sister and called Bhinna Gotra Sapindas.

Females coming under class (1) take a limited estate and females coming under class (2) take absolute estate. This is the rule for property inherited by a female from a male. As regards property inherited by a female from a female every female takes the absolute estate. The present state of law has been in existence for centuries past and is supported by the authority of sages.

The reasons advanced for the colossal change may be summarised as under:

(1) Views advanced by Smriti writers are not unequivocal, i.e., are not unanimous or definite. One is therefore free to take an independent view of the matter.

(2) Muslim, Christian, Parsi and Jain women all get absolute estate and these communities are not the worse off on that account. There is no reason to suppose that the Hindu society would suffer if women are allowed to take absolute estate. In the forward march of time Hindu women are now so educated that some of them have become legislators, some lawyers and some ministers of state; and the archaic idea of dependent womanhood must now be scrapped.

(3) Limited estate is a fruitful source of litigation.

(4) It has the result of penalising a woman for when she is in need and has to alienate the estate she is not in a position to grant a clear title and purchasers do not therefore give full value.

(5) There is no alternative to the evil. The suggestion that sanction of a Court should be obtained is not worth consideration as this involves considerable delay which the widow cannot endure. She will be forced to buy off the reversioners which means she must lose a part of the value of the estate.

Before dealing with these let us remember that 'limited estate' is not a feature of Hindu widows alone. Limited estates are found all over India and even in the case of males. The tenants of Central Provinces, the Inamdars of Berar, the Zamindars of other provinces, the Mohants, some of whom style themselves as maharajas in Bengal, have only a limited or restricted estate in the property they hold, and these restrictions are justified by British statesmen on grounds of political economy. These restrictions or limits are warranted, they say, in the interests of those who hold the estate. To quote a familiar example one is the owner of one's own motor car but the ownership is limited or restricted. One cannot run it without a licence and one cannot run it on the public road at any speed one may wish. When limitations are put they are thought to be necessary for the preservation of property for the ultimate good of the owner and his successors. When a person is not in a position to hold his own in the strain and stress of life or is reckless of consequences law steps in and protects the person by limiting his power of disposal. An estate is limited sometimes from the point of view of the holder and sometimes from the point of view of the nature of the estate. Thus a Hindu father's power over ancestral movables is absolute whereas it is limited in the case of immovables. Hindu Law givers have given a good deal of thought to the subject of limiting the power of a female over property inherited by her. The question is approached from all points of view. It is unfortunate that critics denounce it on 'a priori' considerations. A study of the first 90 verses of Chapter IX of Manu Smriti will show that the subject is not treated lightly nor from a prejudice pre-conceived against women in general. The law giver starts from the inherent nature of the female. Her place in the economy of this mundane life is studied. Her dependence on man, her fickleness of mind, and her unsteady affection for men and matters are observed. Her place and duty in a family is ascertained; and in the light of all these her power over family estate is limited. Manu and other great sages of ancient days had a high regard for women. Manu says they are the flames of light in the home fit to be worshipped. They are the wealth of the home. (स्त्रियः शिवश्च गेहेषु न विदेहेति कश्चन) Chap. IX-26.

Yajnavalkya is equally full of praise. He says "woman takes man to eternity through son, grandson and great grandson. She must therefore be served sheltered and protected. लोकान्तर्गते दिवः प्राप्तिः पुत्रपौत्र प्रपौत्रकैः । कुमार्त तस्मात् स्त्रियं देव्याः कर्तव्याः च सुसहिताः २-३८ ॥

It would be wrong to suppose that woman was regarded as incapable of contracting or holding property. The whole chapter of Stridhan would show that she was allowed to acquire wealth, to hold it and to dispose of it, as she wished. There are and were no limitations on wealth or estate acquired by her. But when she came to be the Kulapalika, i.e., the representative of the family, the family estate in her hands was held as much incapable of alienation as it was in the hands of a male Manager of the joint Hindu family. The concept of limited estate of a widow has its root in the nature of the estate and not in the holder of it. A family was conceived to be a little kingdom (compare the saying every one is king in his own house (हरे, हरे गृहे राजा) and the protection of the family estate was like the protection of a kingdom. Even in the 20th century no one trusts woman for the protection of a kingdom. Women are not expected to fill the armies nor is diplomatic service allowed to be run by women. There were educated women in India in ancient days. In fact one reads that a Smritikar has divided women into two classes (1) the Brahnavadinis, i.e., women learned and devoted to the study of philosophy and (2) women fit for marriage and

worldly life. Yajnavalkya advises the selection of brides from the families of the (Shrotrayās) men learned in Vedas. It may be assumed that girls from such families could not be altogether uneducated. Want of literacy is not the cause of the limitation. Want of capacity to manage, protect or preserve is the cause. Let us now realize that the limitation is proposed to be lifted from women without exception, from women of the upper ten to the women of the hewers of wood and the drawers of water. Is it a fact today that women from all over India from Karachi to Calcutta and from Kashmir to Cape-comorin and from all classes of the Hindu society have now so advanced and developed and have their nature so transmuted as to be declared fit to deal with other men's property, i.e., the family property? Census reports do not support this inference and the Government of India did not think so in 1937, when their Law Member insisted on the limited estate clause being inserted in the Deshmukh Act of 1937. What has happened in these 5 years one may ask to warrant a change? There are several instances of limited ownership in the Hindu Law and in fact in all laws. The power of the manager of an infant heir to change the estate of the ward, the power of a shebait or a mohunt to alienate the debutter property and the power of the father or the manager of a joint family over the joint family estate are all analogous to the power of a widow to alienate the estate inherited by her. The preservation of the estate from waste or extinction is the purpose or reason for the restriction. It is best expressed in the classical verses:—

‘Though immovables and bipeds have been acquired by a man himself, a gift or sale of these should not be made without consulting all sons. They who are born and they who are yet unborn or are in the womb require means of support. No gift or sale should therefore be made.’

स्वावरं दिद्वं चैव यदापि स्वयमर्जितं ।
असंभूतं सुतान् स्वान् न दानं न च विक्रयः ॥
ये जाता येयजाताश्च ये च गर्भेऽवस्थिताः ।
वृत्तिर्लोभिकैर्लभिता न दानं न च विक्रयः ॥
“वीरमित्रोदयधृत आस वचनं”

The sole power of an individual to alienate family estate is confined to necessity as stated in the oft quoted verse of Brihaspati:—“A single individual may effect donation, mortgage or sale of immovables in case of distress, in the interest of the family and more especially for pious purposes.”

पक्षेपि स्वावरं कुप्यत् दानाभयनविक्रयं ।
आपकात्ते कुटुम्बार्थं धर्मार्थं विद्वेषतः ॥

No well-wisher of a sustained progress of society would wish to depart from these salutary rules, and let us not be carried away by the glitter of the West and abandon what our ancestors have provided after due deliberation. The limitations are only safe-guards or brakes. A motor can run smoothly and reasonably fast in spite of the provision of pneumatic and powerful brakes. Widows can thrive reasonably with the limited estate.

Let us now examine the grounds advanced in respect of the changes—

(1) Smṛiti opinion is not unequivocal and one is therefore free to take an independent view.

Before examining the Sanskrit texts whether of the codes, viz., the Smṛitis or of the commentators it should be borne in mind that these writers make a distinction between property acquired by women by gifts, etc., viz., Stridhan, and property of the family which goes into their hand by inheritance. As regards, stridhan, i.e., property received by a female by gifts from her relation there is no difference of opinion. All agree that a woman has free power of disposal over stridhan property. But as regards property inherited it is said she gets limited estate. Let us now proceed to study the texts. Manu (800 B. C.) denied power of disposal to women.

(i) A wife, son and slave are ordained to be destitute of property. Whatever they acquire becomes the property of them to whom they belong.

अपार्थ पुत्रश्च दासश्च नृप एव अश्वना स्तुताः ।
यदे समधिगच्छति यस्मै ते तस्य तद्वत् ॥ ८—४१९ ॥

(ii) The father protects a woman in maidenhood, the husband protects her in youth, the son protects her in old age. A woman is not entitled to independence.

वितारयति कोदारे भर्ता रक्षति यौवने ।

पुत्रो रक्षति वार्षके न स्त्री स्वातन्त्र्यं श्रूयते ॥ २—३ ॥

Yajnavalkya (250 A. D.) also says the same thing and denied her the power. The verses in this connection are,

(i) “A woman is not entitled to independence in any period of life. Her father shall protect her when she is maiden, her husband when she is married, her son when she is old, and in their default their kinsmen shall protect her.

रक्षेत कर्मा पिता विना पतिः पुत्रश्च वार्षके ।

अभावे शासतः तेषां न स्वातन्त्र्यं श्रियः कश्चित् ॥ २—३१ ॥

(ii) The following proceedings deserve to be set aside proceedings with persons whose minds are oppressed with force or fear, proceedings with women, proceedings at night full and inside dwellings or outside and proceedings with an enemy.

त्रतोपधिनिवृत्तं चान् व्यवहारात् निवर्तयेत् ।

कीनकामन्तरागारवहिः शुभुक्तात् तथा ॥ २—३१ ॥

Katyayana—400 B. C.

A sonless widow protecting the bed of her Lord (remaining chaste) and observing penance should enjoy the wealth of the husband till her death with forbearance.

अनुवा यवनं मर्तुः पालनीं व्रते स्थिता ।

भूनीतामरक्षत् क्षाता दायदा कथं प्राप्नुयः ॥

Mahabharata.

The inheritance from the husband can be the object of enjoyment only—A widow is not to cause diminution of the corpus in any way.

कीर्णां स्वपतिदावस्तु उपभोगफलः स्मृतः ।

नापहारं श्रियः कुर्वतुः पतिदायाकं कथंचन ॥

Narada Smṛiti—400 A. D.

The dealings of women are invalid, so say the thoughtful. This is particularly so in the matter of gifts, pledges or sales of houses and lands. Women have no authority to gift or sell. A widow has full powers to enjoy so long she lives.

कीर्त्तयानि अग्रमायापि कार्याणि आदु मनीषिणः ।

विशेषतः गृहद्वेषदानाभयनविक्रयाः ॥

नापिकारो भवेत् कीर्णां दानविक्रयमर्जु

कावत् संजीवमानास्वाद तावत् भोगस्य सा प्रभुः ॥

Prajapati Katyayana—200 A. D.

On the death of the husband the widow becomes the protector of the family, and gets the husband's property. But she has no power during her life to gift, pledge or sell.

व्रते भर्तरे भर्तृवं समते कुलपतिता ।

यावज्जीवं न ही स्वात्वं दानाभयनविक्रये ॥

The Commentators declare as under:—

Dayabhag—(14 century A. D.).

A widow can only enjoy her husband's estate. She is not competent to gift, pledge or sell.

पत्नी भर्तृवं भूनीत एव । न तु तस्य दानाभयन विक्रयः कर्तुं श्रूयते ।

Smṛiti Chandrika—(12-13 century A. D.) says as follows:—

“Though the ownership of the wife over the property of her husband is established from the time of her marriage, this ownership is of a dependent nature (but after the husband's death) this ownership is independent. Hence is the word ‘Labheta’ used in the text of Vridha Manu, which says that a Widow who is sonless should keep the bed of her lord unsullied and continuing to be chaste she should offer pinda to the husband and take his entire property”. The prohibition in the dictum of Brihaspati to the effect that—

“A chaste widow keeping the reputation of the family (Vratastha) should get the estate of her husband on his death but she has no power during her life time to gift, pledge or sell it.”

is to be understood to mean this

“that this prohibition is with respect to gifts, i.e., for non-religious purposes since there is direction for making

gifts, etc., for pious purposes, e.g., relief of the blind, the helpless and the aged. In conclusion the widow has liberty to make gifts, etc., for pious purposes (purposes of religion)."

इदानीं धर्मार्थं पवित्रानां अदृष्ट दानविधानम्
तदितरं दृष्ट्यदानार्थं स्वतन्त्रं प्रतिपादनार्थं इति तन्त्रम्
एवं च धर्मार्थदाने स्वातन्त्र्यं प्रति पक्षः.

This shows that Smṛiti Chandrika accepts the limited estate but states an exception that the power may be exercised for religious purposes.

Virmitrodaya—1700 A. D. refers to Smṛiti Chandrika and says—

"Therefore it is established that in making gifts for spiritual purposes as well as in making a sale or mortgage for the purpose of performing what is necessary in spiritual or temporal matters widow's rights do certainly extend over the entire estate of the husband. The restriction is however intended to prohibit gifts to players, dancers and the like as well as sale or mortgage without necessity. Accordingly the word 'Kshanta' (क्षान्ति) (being moderate) is inserted (in the saying of *Katyayana* quoted above). The idea is that on obtaining property she shall not uselessly spend it—*Golapchandra Sarkar's* translation.

तस्माद दृष्ट्ये दाने इष्टादृष्टवस्तुव्यवसायार्थं भार्ये विक्रये च
अस्ति एव पत्न्याः सकलसर्वस्वविषये अधिकारः । नियमः तु
नष्टनतः कादिदानानामवयव काधिक्रिय निवृत्त्यर्थं इति सिद्धं
अत एव क्षान्ति इति उक्तं । द्रव्यं प्राप्नुवती दृष्ट्यं स्वयं व्यवहारिणी
न भवेत् इत्यर्थः ।

Vivada Chintamani—1150 A. D. observes.

The independence of a widow inheriting the property of her husband in making gift or the like does not exist.

एवं च वृत्तस्य पत्युः स्वातन्त्र्यं भार्यासंक्रान्ते न तस्य दानादौ स्वातन्त्र्यं ।

Yajñabhar Mayukh—(1800 A. D.) observes.

As per the text of *Katyayana*—after the death of the husband the widow preserving the honour of the family should obtain the share of her husband so long as she lives, but she has no ownership therein, to gift, to mortgage or to sell, this is for prohibition of gift to bards, Charana and the like. Gifts for religious or spiritual objects and mortgages and the like for that purpose are of course permitted.

V. N. Mandlik pages 77-78.

यत्तु कात्यायनः । पृथेकस्मिन्मन्त्रे लभेत कुलप्राप्तिका ।

यज्ञस्त्री वं न हि स्वातन्त्र्यं दानाभ्यनतिक्रमे इति तत्र बन्दिचारखादि

अर्थं दानादि निषेधपरं । अदृष्टार्थदानं तदुपयोग्यभक्षनादि तु भवति एव ।

Mitākshara—1150 A.D.

We have quoted above the texts of *Yajñavalkya*. They say that females in general are not free and that the proceedings with women are not regarded as valid. There is no mention about the nature of the estate taken by a woman by inheritance from her husband. *Mitākshara* the commentary on this Smṛiti by *Vijñaneshwar* does not say anything directly on the point. The point about the power of the widow, whether it is confined to enjoyment or it extends a free disposal of the same is not discussed. The discussion of the right of a widow to succeed under the head "Patri" is devoted to the determination of the question if the widow has the right to inherit or whether, as contended by some, she has only the right of maintenance; and the conclusion taken is that the right to succeed is established. *Mitākshara* however regards the property inherited by a widow as her stridhan and as a woman possesses unrestricted power over stridhan, it may be inferred that widow's power over property inherited is also unrestricted. In other words the widow gets an 'absolute' estate. Other commentators on *Yajñavalkya*, viz., the author of *Virmitrodaya* and the author of *Smṛiti Chandrika* do not agree with the *Mitākshara*.

Leaving *Mitākshara* whose attitude has to be inferred one may say that so far as the original texts are concerned there is no ground to suppose that there is equivocation any where. The conclusions taken are definite and are acted on for several centuries past. They are supported by good reasons. Taking Indian womanhood as a whole the doctrine would still hold good and no case is made out for departing from those conclusions.

Second ground.—Women of other communities get absolute estate why then deny it to the Hindu ladies—

This is no argument. The simple answer would be that the other communities have not given the thought to the question which Hindu law-givers have given to it. Speaking from a sociological point of view womanhood in other communities is not proved to be better off on account of their possessing absolute power. They may possess the power but they may not be using it independently. We know for a fact that courts of law look askance at a transaction by Mohammedan Ladies. Presence of independent advice is insisted on by courts before transactions with them are given effect to. As regards the statement that women are now sufficiently educationally advanced and some of them are now legislators, lawyers and ministers and so the limitations ought to go, it is enough to say that these are exceptions and exceptions prove the rule. We know an over-whelming majority of women amongst Hindus are illiterate and unable to manage properties. Courts acting in their jurisdiction under the Guardian and Wards Act still hesitate to appoint ladies as guardians of the estates of the minors though they be the closest relation of the words and the ground is said to be that women are incapable of managing property. As already said this is not a reflection on womanhood, as it is no reflection on womanhood to say that a woman is not fit to be appointed a field marshal of an army, although as a matter of fact several women graduate in mathematics and are in a position to calculate ranges of guns and determine the parabolic curve of shots fired.

Third ground.—Limited estate is a fruitful source of litigation.

Even assuming, without admitting, that the provision of limited estate is a fruitful source of litigation it is hardly the reason for its abolition. Money lending is a fruitful source of litigation but no body suggests abolition of money lending. Creating trusts and confiding in trustees is another instance at fruitful litigation and yet no body suggests the abolition of trusts and the dedication of properties to temples or charities. Let it not be forgotten that law does not prevent alienation absolutely. Alienations are restricted to cases of real necessity, but the trouble arises from the fact that the limited owner or widow imagines necessity where it does not exist or creates one when by exercise of ordinary prudence it could have been avoided. The purchaser is anxious to effect a short cut to property and snatches at the opportunity of acquiring property. All litigation is the result of greed of this or that side. But if the ordinary precaution of placing all cards on the table were resorted to, and if circumstances leading to the alienation were committed to proper or documented, nine-tenths of the litigation would vanish. Examine the cases of alienation and in nearly all you will find that necessity as a fact is not stated or a reason is put down which on the face of it can be shown to be untrue. The observations of the Privy Council in the case of *Honumanprasad v. Mt. Baboojee* should not be lost sight of. They apply to the widow as to the manager of an infant heir.

"The power of the manager for an infant heir to charge an estate not his own is under the Hindu Law, a limited and qualified power. It can only be exercised rightly in a case of need, or for the benefit of the estate. But where, in the particular instance, the charge is one that a prudent owner would make, in order to benefit the estate, the bona fide lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded Their Lordships think that the lender is bound to inquire into the necessities for the loan, and to satisfy himself as well as he can, with reference to the parties with whom he is dealing, that the manager is acting in the particular instance for the benefit of the estate. But they think that if he does so inquire, and acts honestly, the real existence of an alleged sufficient and reasonably-credited necessity is not a condition precedent to the validity of the charge, and they do not think that, under the circumstances, he is bound to see to the application of the money The purposes for which a loan is wanted are often future, as respects the

actual application, and a lender can rarely have, unless he enters on the management, the means of controlling and rightly directing the actual application. Their Lordships do not think that a *bona fide* creditor should suffer when he has acted honestly and with due caution, but is himself deceived."

The position of the purchaser is made as safe as it could be only if he is careful to take the minimum precaution, viz., to make *bona fide* enquiries about the necessity and to be reasonably satisfied himself as to the existence of the same. Law expects him to prove the existence of necessity as a fact or at least that he made *bona fide* enquiries and was satisfied. But even this little the purchaser does not wish to do and wants the mercies of the court on his side. The reversioner is not a contemptible creature. He is of the family, may be near or far but still of the family. The widow is given a full power of enjoyment of the income but she must save the corpus. A tenant in C. P. is much in the same position but even small attempts on the part of the legislature to give him absolute power are resented by the people of the C. P.

Fourth Ground—Limited estate penalises women.

It is said that a woman is penalised under the theory of limited estate. She is faced with a necessity but she cannot get purchasers at full value as the title she can offer is precarious. The reversioners do not come to her relief by readily consenting to the alienation. All this in an extreme case may be true. But let us not forget that hard cases make bad law. There is nothing peculiar in this to the widow's estate. Every owner is in that predicament and none in distress realises full value of the estate as he does not possess the required staying power. A change in the law will not stop penalisation for there would be always some who would take advantage of the situation. The necessity of one is the opportunity of the other.

Considering everything one cannot help concluding that time has not arrived when women in general can be given free power of disposal over estates which are family estates. Women legislators, women lawyers, women judges and ministers are exception. The generality of women still conform to the estimate made of them by Manu and other sages in the past.

Clause 12 and 13—speak of Stridhan and the succession relating thereto. While examining the definition we have seen that it is not desirable to widen it so as to include estate obtained by inheritance, partition or maintenance.

For fixing the order of succession to Stridhan distinction is made by the framers between property obtained by inheritance from husband and other stridhan property. In the case of the former property does not go to the heirs of the female owing to the stridhan but it goes back to the heirs of the husband. After having included property in the category of Stridhan such a distinction is meaningless. But the framers of the Bill seem to realise that it would be unjust to allow property of the husband to pass to his wife absolutely and through her to pass to others not of the family. If this be so, it is better to amend the definition of Stridhan and to exclude property acquired by inheritance from it, otherwise the effect would be that law would be inviting the female to dispose of the property during her life or to will it away at her pleasure. Unwittingly the legislature would be party to extinguishing the property of a family. To be logical if clause 13 is to remain with its explanation the definition must be amended.

Clause 13 (b) lays down the order of succession to stridhan with the exception of property inherited by a female from her husband. The order is to be uniform for all other kinds of stridhan and is in the main on the lines of the Mitakshara. A small point should be noted in this connection. Daughters and sons spoken of in the order are daughter and sons born to the female from two different husbands. For example woman 'A' may marry 'B' and get a daughter from 'B'. On the death of 'B' woman 'A' may marry 'C' and get a daughter from 'C'. Both daughters are her daughters though from different husbands and it is therefore desirable to add 'uterine' before the word daughter or son so that in case of stridhan property daughters or sons from different husbands would equally get the estate as both are her progeny. It may also be stated in clause 2 (relating

to definitions) that brothers and sisters when spoken of in connection with the succession to a male mean his consanguine brothers and sisters and not his uterine brothers and sisters. It is true that when one talks of a brother one means the male issue, born of the same father, but Law must be exact as some times difficulties arise in courts of law and even learned judges find it difficult to decide. Such was the difficulty experienced by Shah J. in the case of *Ekoba v. Kashiram*.¹ In this case one Sadi had sons from Jairam. Jairam divorced Sadi. Sadi then remarried and got sons from another man called Parasharam. Jairam died and question arose if the sons of Sadi from Parasharam could claim the estate of Jairam along with the sons of Sadi from Jairam. The Judge decided that sons of Sadi from Parasharam could not claim along with the sons of Sadi from Parasharam. He said "the contention of the appellants (sons of Sadi from Parasharam) seems to me to be opposed to the basic principles of Hindu Law of inheritance. There is no provision in the Mitakshara or elsewhere for treating the sons born of the same mother after her remarriage being treated as brothers born of the same womb for the purpose of inheritance so as to include in the meaning of the word 'Bhratarah' used in the texts. For the purpose of inheritance sons of the same father are brothers But the sons of the same mother by a different father though born of the same womb belong to a different family and as such are entirely outside the category of the class of heirs under the heading brothers."

It is thus desirable that brothers and sisters should be defined in clause 2 to mean sons and daughters from the same father for purposes of succession to the estate of a male. For purposes of stridhan sons and daughters should include sons and daughters born from the same womb of the mother though from different fathers. In other words, for purposes of inheritance other than Stridhan consanguine brothers and sisters would be regarded as heirs and uterine brothers or sisters would be excluded.

Clause 17—Rights of surviving spouse and descendants—

Relationship unless the contrary is indicated is always understood as legitimate relationship, i.e., relationship arising out of marriage recognised by law and when an offspring is the result of marriage not recognised by law it is said to be an illegitimate issue. According to Hindu Law marriage is valid only when the parties belong to the same Varna or caste. The number of Varnas or castes recognised by the Smritikars is four viz., Brahman, Kshatriya, Vaishya and Sudra. Marriage was recommended between parties of the same Varna but marriage was permissible between a boy of a superior Varna and a girl of an inferior but marriage the other way round, viz., between a boy of an inferior caste and the girl of a superior caste was discountenanced. The former were called *Anuloma* दृष्टान्त marriages, i.e., marriages along the grain or natural order and the latter *Pratiloma* प्रतिलोम against the natural order. Yajnavalkya says that the bridegroom must be of the same Varna as the bride in verse 55 of Chap. I and the next verse disapproves exogamous marriages. Yajnavalkya says.

"The boy to be selected should be learned in Vedas, should be of the same Varna and should be possessed of the same qualities as above, viz., he must not be within the prohibited degree, must be of families of repute, and must be of well to do families. He must be young, intelligent and well taken of."

I do not agree that the three upper castes may take their wives from the Sudra class since one is reborn through the female."

पूरेव पुनैवैकः स्वर्गः भोजिवोर

बल्लव परीक्षितः पुंस्त्वे युवा भोजय जनयिषः ॥ २-५५

यदुच्यते विजातीयौ युद्धात् दारोपसंग्रहः

नैवमन मत्त यस्यात् स्वर्गः जायते स्वर्गः ॥ २-५६

On the other hand Manu advised endogamous marriages but did not prohibit exogamous marriages so long as they were 'Anuloma' vide verses 12 and 13 of chapter III. As both Manu and Yajnavalkya disapproved union outside the caste exogamy disappeared so much so that marriages between sub-divisions of the same cast

be looked upon as invalid. The position under the law it stands at present is that marriages between sub-castes are regarded valid *Inderun v. Ramaswamy*.¹ The question of Anuloma marriages is examined by the Bombay H. C.; and these marriages are held valid (48 n. 871). Pratiloma marriages are held invalid, vide All. 458 and 48 All. 670. The special marriage Act 2 as amended by the Act of 1923 has nullified the law as of marriages as stated above. Under this Act a marriage between a Hindu person and a person of the dharm, Shikh or Jaina religion is permissible and so a marriage between the Hindus irrespective of their caste. The distinction between Anuloma and Pratiloma marriages is done away with. But the following disabilities are attached to the marriage probably to indicate that the parties to the marriage have travelled away from the Hindu culture.

- (1) The Indian Divorce Act applies and a party can sue for a divorce if circumstances are made out (Section 17).
- (2) Marriage under this Act has the result of severing the joint family, i.e., the person marrying is regarded as separated from his joint family under the Hindu Law (Sec. 22).
- (3) The person marrying under the Act does not lose his right of succession (Sec. 23).
- (4) Succession to the property of the person marrying under the Act is governed by the Indian Succession Act and not by the Hindu Law (Sec. 24).
- (5) Right of adoption is denied to the person so marrying (Sec. 25).
- (6) Father of the person so marrying may treat the person marrying as lost to him and may adopt another person in the law to which he may be subject would permit (Sec. 26).

his clause is intended to lay down that "Pratiloma" marriages stand on the same footing as "Anuloma" marriages and the husband or wife as the case may be or the sue will inherit according to the proposed law. They would not be ruled out on the ground that the marriage is not according to Hindu Law. How far the Hindu Society would accept this is a question. One may wish that the marriage rules should be relaxed and marriages should be confined to Hindus irrespective of caste. But that would be legislating in advance and that is the reason why in the Special Marriage Act persons marrying under it are denied the peculiar tenets of the Hindu Law, viz., coparcenary rights, adoptions, the indisposability of the marriage and intestate succession according to the principles of Hindu Law.

Clause 18.—This clause says that an unchaste widow cannot succeed to her husband's estate. But this provision is nullified in actual practice by the two provisos added. They amount to say that right of inheritance would be denied to a widow only on two grounds, viz.

- (1) if the husband has deprived the widow of any portion of his property by a valid testamentary disposition, or

(2) if a court of law has found in a proceeding to which the widow and her husband were parties that the widow was unchaste.

But take the very ordinary case. A husband finds his wife leading an unchaste life and he therefore discards her openly and the wife continues to lead her life in unchastity. Even then the widow cannot be prevented from succeeding to the estate of the husband because the husband has not taken the trouble of leaving a testament behind showing his disapprobation of his wife or none has resorted to a court of law to get the wife declared as leading an unchaste life. How many amongst the Hindus take to testaments or how many would like to have their private life drawn into a court of law? These strange provisions appear in the Bill it is said on account of a compromise the framers effected between two rival opinions strongly advanced before them. One set of persons said that the unchastity disqualification should be removed as it is resorted to by unscrupulous reversioners to defeat the right of a widow to succeed. The disqualification ought to continue said others as it is shocking that a woman should get her husband's estate when she was faithful to him and so a compromise

was effected to please both by retaining the disqualification in theory and nullifying it in practice. A strange compromise indeed! The result is that even if a widow were to admit the fact of unchastity she cannot be prevented from getting her husband's estate under the rules laid down. The framers lost sight of the fact that the scope of legislation is to lay down the principles and to trust the courts for giving effect to them in actual practice. The disqualification should have been retained and nothing should have been added to whittle down the principle by contrary provisos. There would be unscrupulous litigants who would go to the length of challenging the right of a son to inherit on the ground of his illegitimacy but for that fear legislators should not be afraid to lay down that the son is the first heir of the father.

Clauses 19 and 20.—Clause 19 disqualifies a murderer. Clause 20 removes all disqualifications to be found in the Smritis. Verses 140, 141 and 142 of Yajñavalkya Smṛiti stand wholly abrogated.

The removal of (inheritance) disabilities Act of 1929 removed all disqualifications except congenital lunacy and idiocy. But the framers go beyond and say that even congenital lunacy and idiocy should disappear. The reason given is that persons can now be found who will manage the estates of lunatics or idiots for them. Is it desirable, one may like to know, that the managers should be permitted to eat away the estate rather than the next heir should get it. The right of maintenance of the lunatics and idiots is reserved to them by the Smṛitikars and this is really all that a lunatic or idiot would wish. It was on this ground that the Act of 1929 retained the disqualification of lunacy and idiocy. The removal of disqualification, viz., congenital lunacy or idiocy is likely to have an effect on the power of adoption. For purposes of adoption, it is said, that the adopter must be sonless in the sense of having no son or having lost his son. It is also held that a son who is affected by leprosy or lunacy is incapable of inheriting and is incapable of performing Shradha. Under such circumstances the presence of a son, grandson or great grandson afflicted with these afflictions is regarded as non-existent and the adoption of a son is taken as valid, vide A. I. R. 1931 Madras 264—54 Mad. 578 and 57 Indian Cases 647 (Nagpur case). If this disqualification is now removed the afflicted son would be regarded as an impediment to adoption. It does not appear if the aspect of the question was considered by the Committee.

Clause 21.—Mode of succession of two or more heirs.—This clause says,

(a) heirs would take *per capita* and not *per stirpes* unless it is expressly so said,

(b) heirs succeeding together, take as tenants in common and not as joint tenants.

The latter means that each heir takes separately but without the right of survivorship. It also means that each heir gets absolute estate and a woman also gets absolute estate. The result is that the joint family system is knocked on its head.

As said in the beginning the framers of the Bill observed that the present Hindu Law structure was a specious one and that no reformer would wish to lay his hands on it except for proved necessity. They promised that the code of Hindu Law which they would produce would be by a happy blend of the finest elements in every school and which would retain the distinctive character of Hindu Culture and yet it will satisfy the needs of a progressive society. When one examines the changes proposed, one however, finds that instead of being a 'happy blend' of the different views held it is a 'hybrid' of the Mohamedan law and the Indian Succession Act, and it retains the distinctive character of Hindu Law only in the name given to it. The abolition of the limit of Sapindas or Gotraja relationship, the provision that the wife is not to be Sapinda of her husband, the expulsion of the Dasiputra and the daughter-in-law, the inclusion of the daughter as a co-heir and making her a sharer equal to half of the son's, allowing the sons and daughters to succeed without the present discriminations, the expansion of the idea of Stridhan, the recognition of the issues of 'Pratiloma' marriages, permitting an unchaste widow to succeed inspite of her proved or admitted unchastity, the removal of all disqualifications of inheritance, the conferral

of absolute estate on all females and as a result the abolition of the joint family is not a blend of the finest elements of the different schools but a ruthless extirpation of all Hindu ideas, and all this for no proved necessity, except an undue regard for what is Western and an unmerited dislike of what is Eastern, on the ground of its being ancient, archaic, worn out and useless to the onward march of the Hindu Society. The joint family system—a cherished institution of the Hindus is given a death blow and Hindu ideas of sociology are hounded out on the pretext of their being impediments to the progress of the Hindu Society.

In discarding the joint family system the framers are doing an irreparable wrong to the Hindu Society. It is a cherished institution of the Hindus and a peculiar characteristic of their Society. If one studies the trend of modern sociology it is to encourage men to live and act in group. Partnerships and companies are the order of the day in the West. A joint family is a corporation brought into existence by natural ties. Let me bring to your notice what Golapchandra Sarkar Shastri, a distinguished student of Hindu Law, says in this connection in his book on Hindu Law. "Those that are called by nature to live together continue to do so with the exception of daughters born in the family who must pass out of it after marriage. The Hindu Shastras enjoin brothers to live together so long as their parents are alive and so give a religious sanction to the usage: Bhratrinam Jeevatoh Pitroh Sahavaso Vidheyate (भ्रातृनि जिवन् विप्रो सहवसो विधेयते.) The Hindu Shastras are unlike the Christian scripture which ordains—'Therefore shall a man leave his father and mother and cleave unto his wife and they shall be one flesh'—This appears to have moulded the structure of the European Society in the individualistic mode. Originating in natural love and affection the joint family depends for its continuance on self control, mutual sympathy and the spirit of self-sacrifice; while its disruption owes its origin to the spirit of selfishness and impatience. The system founded as it is on the virtues of sympathy and self-sacrifice and tending as it does to create a spirit of forbearance and mutual dependence conduces to the law abiding and religious character of the Hindus. The Hindus accustomed to live in joint family do not require the aid of hospitals as the sick are attended to and nursed by the members of the family. The joint family takes care of its young, its orphans and its old and infirm members. It looks after and guards the wives and children of its absent and deceased members. Under this system violence and cruelty to wife and children are impossible. The system exercises a salutary influence on the mind as so many persons cannot live together peacefully without self control, sympathy, patience and forbearance. Suppression of selfishness is necessary. There cannot be a happier mode of life than under this system if all the members work for common good, and the comforts and happiness of all be felt by each to be his duty to secure. The members of a joint family do not feel the necessity it may be added of old age pension schemes. The joint family system when rightly worked is a tower of strength. After a survey in the Bombay Presidency the Bombay Labour office said in its report that the joint family system was largely responsible for keeping the unemployment problem so keen in the Western Countries away from India. It behoves every Hindu therefore to do nothing to cripple this institution. Let it not be forgotten that while the Hindu Shastras encourage the system they do not force it on anybody. One is always free to get out of it. It is a voluntary organisation conceived for the benefit of persons whose interest is, by birth, common. Law at any rate should not lend its hand in disrupting the joint family. But this is what the Hindu Intestate Succession Bill proposes indirectly to do. The framers seem to be influenced in this respect by what is passing in Bengal today under the system of Dayabagh. But it should be noticed that the present Bengal notions are based on mistakes as pointed out by Golapchandra Sarkar Shastri at pages 593—604 of his Book the Hindu Law, 7th Edition. Whatever it may be there is no justification for foisting the Dayabagh views on the other parts of India. A great wrong is being

unwittingly done in this manner to Hindus over the greater part of India.

Let us not be guided by the mistaken notion that law of succession are the cause of the Hindu society lagging behind in the race for power and supremacy. The Mohamedans in India have inheritance laws different from the Hindus and yet they are as far behind as the Hindus. When one reads the history of the decline and fall of the Roman Empire by Gibbon one notices how in spite of the Christian ideas of succession and inheritance the Christians were routed and driven out of Asia and several countries in Europe. The Greeks had Civilization higher than that of the Romans and yet the Greeks had to bend before the Romans and the Romans in their turn were hounded out by the Huns in spite of the Institutes of Justinian. An infinite capacity to work, an incessant desire to forge ahead, courage, enterprise, and a willingness at all times to make the required sacrifices,—qualities like these lead a Society from progress to progress. Let the Hindus cultivate the spirit of 'do and die' and they will be once more at the pinnacle of glory like their ancestors.

The framers have aspired to have one law for the whole of India in spite of the fact that India is a Sub continent and people from one part are bound to differ in minor details, from people in a distant part. A rigid and lifeless uniformity does not make for nationhood. Diversity in non essentials and unity in the very vitals or diversity in unity is the rule in nature. Good farming and a happy tenantry are essential for the continuance of every country, yet no one suggests that there should be one land revenue code for the whole of India. Every one is agreed that local self-government is a preliminary training ground for the management of national concerns and for securing sanitation and public health of areas and yet none has so far suggested a uniform local self-Government Act for the whole of India. Diversity is sometimes unavoidable as would be seen from the fact that the High Courts in India are permitted to have different rules for themselves under the Civil Procedure Code. The different schools of Hindu Law are agreed in retaining the distinctive character of Hindu Law and have differed here and there according to the exigencies of the situation. The ancients in India realised that the rules of intestate succession must be such as an average man would like and would not feel the necessity of departing from them by gifts *inter vivos* or by testamentary dispositions. Government in disposing of a dead man's property amongst his relations should have regard for the views held by men of his society in general, and should not force its own views on men. Death often overtakes a man without notice and therefore the disposal of his property should be according to his general liking so that no relation of the deceased should feel that a wrong is done to him by law simply because it could not be averted by the deceased by making a valid will. Let us by all means have a Hindu Code but a code which is based on Hindu culture and Hindu tradition. The Hindus have succession laws conceived for them centuries ago—Laws which have stood the test of ages and Laws which do not admit of being tinkered with. A new order is on the horizon. Provincial autonomy if not working now would be in working order soon after the war is over. Haste is no speed! Let us wait and see if the Provincial Governments would have succession laws for Hindus modelled on their individual needs, or whether all Provinces would like to unite and have a common law for all Hindus.

Let us not forget what Poet Kalidas so aptly says—

"Whatever is old is not necessarily gold; but whatever is new is not faultless either. The wise discriminate and choose; the unwise follow other people's lead."

परायण मिलेन न साधु सर्वं
न चापि काव्यं नव मिलेनम् ।
संतः परीक्षायन्तस्व भवति
युतः परमत्ययनेन बुद्धिः ॥

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As the Intestate Succession Bill is proposed to form part I of the Hindu Code to be framed by the Hindu Law

Committee, the first question that arises is whether codification of Hindu Law is necessary, desirable or otherwise expedient. Evidently, the Hindus have not requested the Government to take steps to codify their law. Difficulties arose in interpreting and in the working of the Hindu Women's Rights to Property Act 1937 and in dealing with a few Bills introduced in the Central Legislative Assembly relating to certain other rights of Hindu Women. Consequently, the Government appointed a small committee to solve doubts and clarify the nature of rights conferred by the Act of 1937 on the widow, to remove injustice that may have been done by the Act (of 1937) to the daughter, and to examine and advise on two other Bills relating to the rights of inheritance, separate residence and maintenance of Hindu Women. The Committee advised the Government to avoid piece-meal legislation and recommended that the whole of the Hindu Law be codified. The Government accepted the advice and entrusted the work of codifying Hindu Law to the same Committee. The present Bill, and another relating to marriage, have accordingly been framed by the Committee to form the first two parts of the Hindu Code which it has to frame.

2. The first and foremost objection that the Hindus set against this attempt to codify their Law and thrust on them is that in Dharma (socio-religious) matters they cannot accept any law opposed to the injunctions of Dharma Shastra, i.e., the Vedic and Smriti authorities. They are averse to dislodge the Law from the high pedestal in their hearts where they have enshrined it as the Word of God and allow it to be dragged down and mutilated by Legislatures composed of frail human beings, and constituted particularly as at present, where self-interest reigns supreme on every side and conscientious judgment is stifled by strict party-discipline. They are decidedly of opinion that removing Divine sanction from their Law in this way will weaken it, though it may temporarily have the full support of the whole strength of the mighty ruling power. The authors of the proposed Code are arrogating to themselves the authority to accept, or instance, the recommendations of Jaimini and discard those of Boudhayana and to sit in judgment over Manu to decide what is best and what falls short of it. The Hindus are not prepared to concede to them or to any ruling power or Legislature, the right or authority to do so.

3. By stating that "in the old days, the task of codifying the Law from time to time was performed for us by the successive law-givers and Commentators" (vide Committee's report p. 11) and "the main agency for altering the law according to the changing needs of the community must in future be the Legislature," (*ibid* p. 12), it is clearly suggested that the proposed Code is only to be, as it were, a new Smriti; and as Smritis have been framed from time to time there ought to be no objection to such a Code being framed. This analogy is clearly misleading; for, Smritis are not Codes. No Smriti ever claimed a right to depart from the principles expounded in the Shrutis, i.e., the Vedas; and no Smriti ever repealed any portion of the existing law; while the proposed Code is intended to have the effect of repealing all Smritis and even Shrutis inconsistent with it. In order that a new Smriti should be authoritative, it is required to be not inconsistent with not only the Vedas but also with Manu, whereas, the framers of the proposed Code would feel no compunction and would not hesitate to depart from the Vedic principles; and they have openly declared their repugnance to over-ride Manu and to make "fundamental changes in the Hindu Law". The Intestate Succession Bill has been prepared in this frame of mind and cannot be acceptable as a new Smriti, because it is inconsistent with Shrutis as well as Smritis.

4. As shown by Prof. V. V. Deshpande, of the Benares Hindu University, in his book named "Dharma Shastra and the Proposed Hindu Code," the conditions necessary to justify Codification of law are:—

- (a) that the law must have reached a static condition;
- (b) that the society for which the Code is to be framed should be homogeneous; and
- (c) that the society for which the Code is to be framed must be co-extensive with the state which frames it.

I wish to show here that not one of these conditions is present to justify codification of Hindu Law.

5. As regards the first condition, the Committee's complaint is that for some centuries past, Hindu Law has not been keeping pace with the progressive Hindu Society. This means that Hindu Law, as it is, has ceased to suit the needs of the present Hindu Society and hence they think it should be amended or replaced by a new Code. This, it may be noted, is just the opposite of the law having reached a static stage, when it can be codified. The new or amended law would only be an experimental measure and cannot become a permanent Code on the basis of the condition that it has reached a static stage.

6. The second condition also is far from being fulfilled; because it requires no demonstration to show that Hindu society has co-ordinated innumerable communities, differing from one another very widely in culture, capacity, customs, belief, mental and moral development and ways of leading life and so is not homogeneous at all. Consequently, all the communities forming the Hindu society can be properly governed by only such law as is based on general principles having a cohesive force to hold all the communities together but permits difference in details, as are suitable to the requirements of each community. A uniform Code for them all would really be a miracle as Mayne has put it. Those who think that a rigid uniform law would bring about unity amongst the various communities and would thereby strengthen Hindu Sangathan are mistaken in taking uniformity for unity. The Hindu Dharma-Shastra has made ample provision for co-ordinating the activities of different communities for the common weal of the Hindu society and has managed to secure unity in diversity. No legislature can wipe out all the differences and bring about unity by the magic wand of a uniform Code.

7. The third condition is also absent. Hindus are not residing in British India alone. A very large portion of them is residing in States governed by Indian Rulers, and not a few are residing out of India in different countries of the world. Thus the Hindu society is not co-extensive with the state making the proposed Code for them. At present all Hindus, wherever they may be residing, are governed by the same Dharma Shastra which provides personal law for them. Codification for Hindus in British India would bring about a cleavage between them and the Hindus residing out of British India, permanently separating them, or separating them, at any rate, till all Indian States adopt the Code, which they are not bound to do.

The Baroda State alone has, no doubt, codified the Hindu Law and certain innovations have been made in the laws as administered in British India; but this has not failed to produce the injurious effect noted above and cannot, therefore, be urged as a valid plea to widen the cleavage and proceed on disruptive lines.

8. Having so far given some of the reasons why it is not necessary, desirable or expedient to Codify Hindu Law, I would draw attention to the fact that the committee is recommending the very course of having piece-meal legislation which it has advised the Government to avoid. A draft of the whole Code is not ready. We do not know how part I of the Code, based on the present Bill, will fit in with other parts which have yet to come into existence. Although several provisions of the present Bill are based on the assumption that part II of the Code, relating to marriage, would be exactly in the form in which the Committee has put it, there can be no certainty of it, as the Bill on which it is to be based is still before the Legislature for consideration. That this difficulty occurred to the learned members of the Joint Committee itself is clear from the following passage in their Report:—"We appreciate the difficulty of dealing with one particular topic of that law without having before us the picture of all the proposed reforms. It would have materially simplified our task if we had had drafts of the proposals affecting other topics, some of which, for instance, the law of maintenance, the law of legitimacy and marriage, the law of partition and reunion, the law of adoption, are not without their re-actions on the law of intestate succession and might be capable of influencing decisions on some of the points we have had to consider in the Bill." Here the Committee has evidently not given an exhaustive

list of other topics of the Hindu Law (vide the Joint Committee's Report published in the *Gazette of India* of Nov. 13, 1943, part V, p. 185). One naturally expects to find here the method by which the Committee could overcome this difficulty; but one would feel sorely disappointed to see that the Committee has put forth very flimsy and irrelevant reasons, viz., that by the year 1946, when this Bill comes into operation, Provincial Governments may pass laws applying the principles of this Bill to agricultural land and "much further progress may have been made in dealing with further topics of Hindu Law." It is interesting to find that these reasons did not satisfy the Committee and did not help it in solving the difficulty; for, it concludes its remarks on the point by writing: "It may well be found that the present bill will require, before it is allowed to come into operation, re-adjustment and amendment in the light of decisions taken in connection with other branches of Hindu Law." With due respect, I feel constrained to submit that the Committee failed to solve the difficulty. It knew that the reasons given to justify the course it was adopting were only plausible; and yet it persisted to proceed with the Bill while groping in the dark, and gave it the present shape, which, it apprehends, will have to be altered when law on other topics comes into existence. Can there be a better instance of the evils of piece-meal legislation? It is evidently premature to place the Bill before the legislature and ask the general public to express its opinion on it, when the authors of it and the expert legislators who formed the Joint Committee are not certain what shape it may ultimately take. Assuming, though not admitting, that the legislature can make laws inconsistent with the Vedas and Smritis and assuming in the same way, that the Government has authorized the Committee to give Hindu Law any shape it considers fit, the proper course would be to draft the whole Code and place the draft before the Hindu public and then ask for its opinion.

9. In the same connection it may be asked why in clause 1 (4) of the Bill, 1st January 1946 has been fixed for the proposed law to come into force, when it is not certain how much time would be required to prepare all the remaining parts of the Code. In advising the so-called reformers not to be impatient, the Hindu Law Committee has given a brief history of the Swiss Code (vide p. 13 of the Hindu Law Com.'s report). There we find that the Central Legislature took 24 years to acquire power to frame the Code (1874 to 1898). The work of preparing the draft was commenced in 1893, i.e. before full power to frame the Code was acquired; and in spite of the urgency, 'a great jurist,' employed on the work, took about 6 or 7 years to prepare the 1st draft. It was then published and another Commission was appointed to consider the criticisms received and to revise the draft. This Commission consisted not only of Jurists, but also representatives of all sections of thought in Switzerland, and the final draft could not be presented to the Parliament till 1904. The Parliament took three years to pass the Code; but it did not come into force until 5 years after it was passed. Thus from the time the work of Codifying the law was commenced in 1893, till the Code came into force in 1912, the total period was about 19 years. The German Code took more than 60 years to complete and come into operation. In the case of the present Bill which is to be the law, not for a small country like Switzerland, with a population hardly over 4 millions but for the whole of British India, "applicable to nearly two hundred million people" (as estimated by the Hindu Law Committee, vide Report p. 24), much more heterogeneous than the people of Switzerland, the date fixed for the law to come into force hardly allows a period of 3 years and all this haste is being made when a devastating world-war is raging and India is passing through most troublous times. The proper course to adopt, it seems, would be to provide that the law would come into force from such date as may be declared hereafter for the whole Hindu Code to come into force.

10. Codification is sought to be justified on the ground that it makes the Law simple and clear. I cannot, however, believe that the learned jurists who put forth such a plea are unaware of the fact that in spite of the law on

certain topics being codified, the difficulties of interpreting the sections and deducing their true meaning, still persist and would continue to persist; and courts of Law, of the highest grade, in different Provinces, still differ on seven points of great importance, so that we have one law in one Province and another in others. Volumes, already big, of commentaries on several Acts put in clear sections are always increasing in bulk. Nobody is surprised to find a big volume on the question of *res-judicata* alone, the law on which has been clearly formulated in section 11 of the Code of Civil Procedure. The Hindu Women's Rights to Property Act 1937 is a glaring instance on the point. I had to be amended, immediately in the next year; and the Hindu Law Committee itself has pointed out a large number of defects in it but gave up the attempt of enumerating all of them owing to the impracticability of the task (vide p. 10 of the report). It must be noted here that the defects cannot be pardoned on the ground that Dr. Deshmukh was inspired by high motives in framing the Bill, but he, not being a jurist, the Bill was badly drafted. As soon as the Legislature passed the Bill and His Excellency the Governor-General gave his assent to the Act, the responsibility for the defects shifted to the Legislature and the Government and Dr. Deshmukh stands exonerated. The plea, therefore, that codification simplifies the law and makes it clear may win over a layman uninitiated into the intricacies of law, but it cannot appeal to those who know the real condition of codified law.

11. I now turn from the preliminary portion of the Bill which has given rise to the question of expediency of codification, to some of its main provisions; and instead of going into minute details or attempting to be exhaustive, I would confine myself to a few points which, I believe, would be sufficient to show that there are good reasons to condemn the Bill.

12. The creation of a big class of simultaneous heirs after the model of the Mahomedan Law has given Hindu Law of inheritance a non-Hindu character. The simple rule of Hindu Law, consistent with their spiritual and theological beliefs, as also with their scheme to stabilize their society is that male agnates alone, strictly limited to three generations, should inherit the property of a deceased Hindu as simultaneous heirs. In this respect all schools of Hindu Law are unanimous, the fundamental principle being that Hindu families should be patrilineal; the family property should remain unimpaired in the hands of male agnates noted above as the representatives of the deceased and they should form a new joint family (if one does not already exist), offer oblations to their ancestors, carry on the worship and festivals of family idols, continue the traditions of the family, shoulder all responsibilities and perform all the duties that the family owes to the society, to Government and generally to the whole world outside. This fundamental principle was departed from when the first inroad on this class of simultaneous heirs was made, not by a jurist, but by a skillful surgeon of Bombay and he succeeded in persuading the legislature to accept his lead and stray away from the fundamental principle, because the widow of the deceased whom he sought to introduce in this class, was the heir next after the sons, because under the Hindu Law of Smritis, she could claim a share at the partition amongst the sons. Through this breach, skillfully made, the widowed daughter-in-law and widowed grand daughter-in-law got admission into this class that had so far remained exclusive, though neither of them had all the credentials on which the widow of the deceased obtained admission. A bill was then introduced complaining that injustice had been done to the daughter by admitting widowed daughter-in-law and widowed grand daughter-in-law in this class though she (i.e. the daughter) was the proper heir after the widow of the deceased. The Government, therefore, appointed the Hindu Law Committee to solve the difficulty; and this Committee, instead of recommending that all the widows should be excluded from this class and closing up the breach, admitted (in the Bill framed by it) the daughter in the class and excluded the widowed daughter-in-law and widowed grand daughter-in-law. When, however, the Bill was referred to the Joint Select Committee, it thought it fit to allow the daughter and the

widowed daughter-in-law to remain in the class, but expelled the widowed grand-daughter-in-law from it. The credit of admitting the parents, with the condition "if dependent on the intestate" goes entirely to the Joint Select Committee. I have given these details to show that when once the fundamental principle of Hindu Law was given up, the legislature and the Government lost the way and a right, legal or moral, to get maintenance, coupled with the idea of supposed injustice to women, and mere compassion for certain widows were considered sufficient to justify their inclusion in the class, and no one cared to spare a thought over the resulting situation that all this generosity was being shown at the cost of the closest male agnates on whom lie all the heavy social and family responsibilities. It was, without any justification considered easier for a widow or a daughter to obtain property as a share than to get maintenance. It was considered just or expedient to substitute a share with absolute right of disposal over the property in lieu of maintenance, although the right of maintenance ceases with the life of the person maintained and leaves the property unimpaired, while the grant of a share cuts away a slice from the property and reduces it permanently. Even in cases where it is provided that the property should revert to the male agnates, as in the case of a parent, under Clause 7 (c) or of a widow, under Clause 18 (a) the provision is made nugatory by giving the holder of property unqualified right of disposal. The effect of these wanderings, without any possibility to secure spiritual, moral or material benefit to the Hindu society as a whole, has been to create this omnibus class of simultaneous heirs, just from the point when the law of inheritance begins to operate and it is apprehended that when the law of maintenance is ready, this class may swell still further, if such notions and sentiments continue to prevail.

10. In thus imitating the Mahomedan Law and going a step beyond it (as in the case of a widowed daughter-in-law) neither the Hindu Law Committee nor the Joint Select Committee appears to have taken into consideration the fact that amongst the Mahomedans, girls of a family marry in the family even so far that a marriage between the first cousins is not only considered legal but is regarded very desirable, and hence by such marriages the property remains in the family; whereas in case of Hindu girls, they must marry not only outside their family but even outside the gotra of their father, inspite of any law to the contrary that may hereafter be passed in this respect, and consequently property inherited by a daughter from her father must go out from the father's family. Those who think that by allowing every daughter a share "no economic change worth noting would follow" and citing the instance of Bengal where the majority of agriculturists are Musalmans, ask "Is the condition of Musalman agriculturists of Bengal economically worse than that of Hindu agriculturists"? should take into consideration the difference pointed out above and the customary law by which amongst some Mahomedans, daughters are excluded from inheritance (*vide* Appendix I of the Joint Select Committee's Report p. 7).

14. It cannot be gainsaid that fragmentation of property would be the inevitable result of increase in the number of heirs in the simultaneous class, and would lower, economically, the status of every Hindu family. It will disabbe the male agnates to discharge all responsibilities devolving on them, and in many cases, the deceased and his ancestors would be deprived of the spiritual benefit they expected and still expect to receive from the continuation of their line by male agnates. Here, the notions of the framers of the Code and of men and women who have ceased to think and feel like an ordinary Hindu regarding the needs of modern times, may not agree with those of the majority of Hindus. The performance of Shradha, for instance, may not appear to modern legislators a necessity, but the majority of Hindus believe and would continue to believe it to be a permanently recurring spiritual necessity. This social duty is assigned to male agnates exclusively and none of the other heirs arbitrarily included in the class can discharge it. I need not go into the details of similar other duties. All that I wish to point out is that in the class of simultaneous heirs constituted by

the Bill, persons charged with unavoidable social duties are to have their shares of the property reduced, while others who are given shares, without being liable to discharge any such duties, have inheritance accelerated in their favour and get absolute power of disposal of the property, even in cases where they get a share in lieu of a temporary right of maintenance. Creation of such a class, in which heirs and claimants of maintenance, so ill-assorted, are buddled up together, cannot but be fraught with injustice, difficulties and troubles. One should not be misled by the plausible argument that if daughters of a family take away part of the property from the family, girls coming in the family as daughters-in-law would bring property into the family; for, all property which would go out with daughters, and come in with daughters-in-law, would not form part of the patrilineal family property and would not help the Karta of the family in the discharge of his duties. The property going out or coming in with females, would be their personal property as Stridhan (*vide* clause 12).

15. Besides having their shares reduced, the male agnates will have to face insurmountable difficulties in enjoying what is left to them. It is common experience that even full brothers, who ought to be the best friends, cannot pull on together and hence there is partition, separate residence and separate messing. When strangers to the family come in as holders of shares, the difficulties are bound to increase immensely. Each would claim a share in the residential house, family business and every other property. In addition to this, we must bear in mind what further changes the Bill is proposing to introduce. It is proceeding on the assumption that marriage between persons of different castes—proposed by the Marriage Bill (Part II of the Proposed Code now before the Assembly)—would be held legal. The effect of it would be that a daughter of the family may marry a man of any caste and claim to reside in her share of the house with her husband and her children. The difficulties do not end here. As female heirs in most cases would have, according to the proposal in the Bill (*vide* Cl. 12), absolute right of ownership in the property in whatever way it may have been acquired (*vide* Cl. 13) and as apostasy or unchastity would neither divest them of their ownership in the property, nor prevent them from inheriting it (barring a rare case contemplated by Cl. 18 applicable only to the widow of the deceased) (*vide* also clause 20—where apostasy is not included in the disqualifications barring inheritance)—the combined effect of these provisions would be that a female heir having a husband of a lower caste, or even a Christian or a Mahomedan paramour may insist on claiming residence in the family house, in which she gets a share, even when the house has a family-place of worship and family idols in it (in which also she may claim a share) and compel other heirs having shares in the house, to leave their shares, if they cannot pull on with her or tolerate the occupation of her share of the property, along with those that accompany her. This, no doubt, may appear to be an extreme case at present; but if the liberty proposed by the Bill is allowed to be enjoyed by Hindu females, cases of this kind may become of common occurrence. I do not think any reasonable man would consider it fair or just to put the male agnates in such a plight.

16. Legalizing marriages between persons of different castes and giving the progeny the same rights as are enjoyed by the progeny from marriages in the same caste would hybridize Hindu society. This is considered a national calamity in the Hindu Dharma Shastra.

Any amount of calling caste system 'Ugly' cannot efface this conviction from the minds of Hindus and so long as it persists, they cannot agree to such a Bill being passed. Great stress on it is laid in the Dharma Shastra and works like Bhagwatgita which insist on keeping the blood pure. It is sought to be shown that Anuloma and Pratiloma unions are taking place in Hindu society from very ancient times; but it is conveniently forgotten that such unions have always been strongly condemned and it should be evident that, when with so much strictness in the law relating to marriage, they could not be completely abolished, they would obviously become very common (as a

result of the provisions of this Bill being brought into operation) and purity of race and blood which is the pride of the Indian system of the law relating to marriage, would progressively be on the decrease. It is most amazing that in case of race-horses, cattle and even dogs, care is taken to avoid ill-assorted unions, while in case of human beings all restrictions are strenuously attempted to be removed in the name of liberty and equality or bringing about solidarity.

17. The report of the Hindu Law Committee discloses a very interesting fact. The High Court of Bombay held that the effect of section 2 of the Act of 1937, as amended by the Act of 1938 (both Acts called 'loosely Dr. Deshmukh's Acts') is to remove disqualification imposed by Hindu Law upon unchaste widows; but when Dr. Deshmukh himself was asked his view on this point, he wrote to the Committee that "if the widows provided for in the Act are unchaste, they should not inherit." The Committee says in the Report:—"The majority of answers we have received are that the disqualification should not be removed and even amongst women, there is a considerable body of opinion that it should remain," (vide the report p. 5). It may be asked, why in that case, unchastity was not laid down as a disqualification barring inheritance? We find the answer to this question in paragraph 24 of the Report. There the Committee has stated how conflicting views on this point are supported by the advocates of each view and has noted that "This is a subject on which Hindu opinion is extremely sensitive." The Committee, therefore, feared that "a storm of criticism" would be raised on either side if the law were against its wishes. It will be better to reproduce the Committee's own words which show how it got over the difficulty. They are:—"Our own solution of the difficulty presented by these opposing sections of opinion is a compromise which, while recognizing (in deference to majority of opinions received by us) that the disqualification should remain, provides as a safe-guard against abuse, that the Chastity of Hindu Women during her husband's life-time shall not be questioned after his death, except in special circumstances. These special circumstances are:—(a) the existence of a will by the husband disinheriting the wife on the ground of unchastity, and (b) the existence of a finding of unchastity by a court in a proceeding to which both husband and wife were parties and in which the question of her chastity was in issue" (vide the Report p. 17). Be it noted that from the Bill as it now stands, the first of these conditions has been removed and in it only the second condition has been retained. The history of clause 18, as disclosed by these deliberations, throws a flood of light on the attitude taken by the Committee in framing the proposed Code and shows how easily the Joint Select Committee walked into the trap. Hindu Law on the point is completely ignored by both the Committees. Clause 18 is in the Bill only "in deference to the majority of opinions received" by the Hindu Law Committee; but good care has been taken to make this bar to inheritance nugatory by imposing a condition that the husband should obtain a decree deciding that his wife is unchaste, which condition would, in practice, be rarely fulfilled, except in those strata of Hindu society where the feeling of self-respect is so blunt and unchastity is so common a feature as takes it away from the category of sin, offence or a very grave moral delinquency and is looked at only as misbehaviour, not very uncommon, as in some Hindu communities and most non-Hindu civilizations. A wife has already been exempted from punishment for adultery, under the criminal law of the land (vide Indian Penal Code Sec. 497). This is now an attempt to absolve her from Civil disability also, on the pretext of shielding her from blackmailing revisioners; and yet, the Code containing such law is to be called Hindu Code. Better classes of Hindu society shall strongly oppose such a change.

18. It may be pointed out, that out of 18 members constituting the Select-Committee, two have expressed no opinion but 10 members have clearly stated in their dissenting notes that apostacy should be a bar to inheritance. The Select Committee has, however, completely ignored, not only the provisions of Hindu Law in this res-

pect, but also the opinion of majority of its own members in not restoring the bar. From economic point of view, this will have a disastrous effect in case of males as well, as Hinduism not being practically a proselytizing religion, there would be no compensating gain to the Hindu society.

19. The fact is that the high Hindu ideals of life and the precautions taken in the Hindu Law to make it easy and natural to realize those ideals, are being completely overlooked, and proceeding fast with the back towards them is considered progress. Hindu law is certainly not suited to such progress which in fact, is only receding back from those ideals. The Hindus yield to no other nation in the regard they have for their females. Their civilizations has deified the female sex as no other people in the world has done. They have done so in all the social aspects of that sex, but have attached greatest importance to the aspect as mother. Hindus do not at all grudge any share of property being given to females, because they have any the less regard for them. They detest this innovation because it does not fit in with their scheme of social polity, which has produced great personalities amongst females, the very memory of whose names is believed to purify a Hindu. We are not unaware of the fact that thoughtless Hindus treat females in most objectionable ways; but this is clearly against the Hindu Law. The remedy lies not in giving them property and complete freedom of action. It lies in enforcing the provisions of Hindu Law designed for their protection. Literacy is not education. It is, therefore, wrong to think that females in Hindu society are uneducated. In their family life they always receive all the education which prepares them to discharge satisfactorily the duties assigned to them in Hindu society, though they may not be literate, and they all show such a purity of character, both physical and mental, such a devotion to duty, such a spirit of self-sacrifice, such high qualities of head and heart, that they may be looked upon as the highest ideal of womanhood in the world. Most of the so-called educated females of the present day may boast of literacy; but having received education on wrong lines and in vicious surroundings, they do not develop the noble qualities noted above. They develop, on the other hand, false pride, egotism, selfishness, pleasure-seeking and easy-going tendencies and detestation for what smacks of religion. It is very gratifying to find that there are some very worthy exceptions, but this is due to force of heredity and innate purity and nobility of Hindu female mind, asserting their influence. A Hindu true to the lofty ideals of his race would naturally wish that by thoughtless changes in their laws, what is base and demeaning may not acquire false value, through the sanction of law; and what is really lofty and worth preserving at any cost may not be regarded trash.

20. The Joint Select Committee has published a long list of Women's Associations which support this Bill. Some of the members of these associations, who are leading their less advanced sisters, may be very capable ladies, quite competent to look after their property, manage their affairs efficiently and withstand successfully all attempts to cheat or lead them astray; but it is difficult to believe that all other members of these Associations possess these qualifications; and it can be asserted, without any fear of contradiction, that the vast majority of the Hindu females do not possess them. Consequently, it is apprehended that much of the property they receive may be wasted under their management and they may themselves be exposed to great dangers. It is evident that these Associations are supporting the Bill and are jubilant over the prospects of getting all the benefits which the proposed law is to shower on them, but it is equally evident that they have not realized the far-reaching evil effects this law would have on the Hindu society as a whole and on themselves as a part of that society. It is a notorious fact, that all over India Hindu females are carried away by seduction and other devices and this evil is increasing alarmingly in Bengal, (particularly Eastern Bengal), Sind and N. W. Frontier Province. We find that Associations of these Provinces also have joined others in supporting this Bill. They have not realized that when there is, by the operation of the proposed law, the assurance of getting property of which the females carried away by seduction or force become absolute owners, and also property which they

inherit even inspite of their conversion, those miscreants would be further encouraged to pursue their nefarious business with greater vigour, cunning and assiduity; and thus those who are posing to be their benefactors and emancipators are exposing thousands and thousands of their less fortunate and less protected sisters, to greater danger by such attempts to improve their lot. The richer the female, the more exposed would she be to this danger. Unfortunately this danger exists throughout India, not from Mahomedan kidnappers alone but also from vicious adventurers of other religions and nationalities as well. Thus the proposed changes in the law of inheritance expose females throughout India to greater danger and are suicidal.

21. These grave defects would, I think, be sufficient to show why the Bill should be rejected. It is most discouraging and ominous to find that the Government should depart, without any necessity, from the just and prudent policy of non-interference in socio-religious matters and should authorize the formation of a Code, so much opposed to the settled and time-honoured principles of Hindu Law and detrimental to Hindu society from moral and material points of view as well—in fact a code quite unsuited to the genius of the vast majority of the Hindus—for the sake of satisfying the wishes of a handful of dissenters, simply because they occupy positions of power and influence and are more vociferous. Particularly at a time when people are groaning under the calamities brought on by the World War, launching of the Scheme of codifying Hindu Law is most inopportune.

22. For these reasons, among others, I strongly oppose the Bill and I am decidedly of opinion that it must be rejected and codification of Hindu Law be not proceeded with.

Dr. D. W. Kathalay, LL.D., Advocate, Nagpur and Sixty-three others

It is said about the Parliament that the more it changes, the more it remains the same. The Select Committee, consisting of 18 members, some of whom were Christians and Mahomedans, presided over by Sir Sultan Ahmed, has introduced some changes in the original Bill drafted by the Hindu Law Committee. But notwithstanding these changes, the Bill has substantially remained the same. As regards the changes, the Bill has been mahomedanised still further by including the parents in the list of simultaneous heirs and has been made a laughing stock as it confers a life estate on the father and an absolute estate on women, thus setting aside the established rule by which men got absolute estates and women got limited estates. This Bill is examined in detail in the sequel, where, to use the language of Homer in his Iliad, "I would speak what wisdom would conceal, And thoughts dangerous to the great reveal."

4. APPOINTMENT OF MAHOMEDAN MEMBERS ON THE SELECT COMMITTEE DEALING WITH HINDU CODE IN FLAGRANT VIOLATION OF THE CONVENTION ESTABLISHED IN 1936 AT THE TIME OF THE PASSING OF THE SHARIAT ACT NO. XXVI OF 1937:—

As matters stand at present, no member of a legislature can be legally prevented from exercising his right of vote, but he can be persuaded to remain absent or neutral though present. In the year 1936 when the Shariat Bill, which became Shariat Act No. XXVI of 1937, came for discussion a convention was established to the effect that a decision of the majority of the Mahomedan members of the Central Legislature regarding the Bill about Mahomedan Law should be treated as binding on the Hindu members of that legislature, and similarly the Mahomedan members should accept as binding upon them the decision of the majority of the Hindu members relating to the Bills about Hindu law. No such convention has been established as regards the Christian members of the Legislature. But it is not difficult to persuade them to do what the Mahomedan members have agreed to do. Moreover the number of Christian members is very small. The appointment of the three Mahomedan members in the Select Committee by Sir Sultan Ahmed who became its president was due to a flagrant breach of the convention

mentioned above. Some of the members of the Select Committee, while admiring the intelligence of the non-Hindu members have themselves complained about the inclusion of the Mahomedan members in the committee. For example Mr. Amarendra Nath Chattopadhyaya observed as follows. "Regarding constitution of the Joint Select Committee, some members objected to the Moslem and Parsi members taking part in the deliberations during the Committee stage. They have every justification in taking part and our Chairman who was a Moslem could not be replaced by a Hindu who might deal with the matter in a better spirit. He was quite competent and our Moslem and Parsi colleagues were quite competent. But I did not like our Chairman to break the convention. The convention is that Moslem or non-Hindu should not vote on matters relating to Hindu Law and Hindus and non-Moslems should not vote on matters of Moslem Law. In this Committee that convention has been broken. In my opinion this procedure has vitiated the Bill as it has emanated." The Honourable Sir Syed Sultan Ahmed requires to be told in the language of Firdausi that—

"It is an ill tree that thy hand hath planted,
With poisonous fruit and leaves of Colocynth."

5. HINDU CODE BILL NOT ACCEPTABLE TO THE HINDUS ON THE GROUND OF ITS BEING PREPARED BY THE SELECT COMMITTEE WHICH INCLUDED CHRISTIAN AND MAHOMEDAN MEMBERS:—

Several provisions in the Hindu Code Part I, relating to inheritance must have been passed on account of the majority of votes caused by the presence of the non-Hindu members of the Select Committee. This bill does not represent the ideas of the Hindus only on the various points dealt with by the Code. There was a time when Hindu India was a teacher of the world as stated by Manu in Adhyaya II, shloka 20. Even now the Hindus do not stand in need of any assistance from the Honourable Sir Syed Sultan Ahmed and his able non-Hindu nominees in the Select Committee, in order to find out what is to be done in the matter of amending the Hindu Law. It would not be in keeping with the traditions of the Hindu community to get the Hindu Law amended with the help of foreigners. The Bill as emerged from the Select Committee should be thrown up on the simple ground that it has been tainted by the views of the non-Hindu members who voted for its preparation.

6. Both the parts of the Hindu Code relating to inheritance and marriage are prepared in such a way that while they are detrimental to the interests of the Hindus they are advantageous to the Mahomedans.

7. SECOND POINT FAVOURABLE TO THE MAHOMEDANS—WHO ARE ENTITLED TO INHERIT IN ACCORDANCE WITH THE HINDU CODE THOUGH A NON-MAHOMEDAN CAN NOT INHERIT TO A MAHOMEDAN:—

It was pointed out in a case decided in Burma [Chedambaram Chettyar vs. Ma Nyein Me. (1928) Indian Law Reports, Rangoon series, Volume VI, page 243] that according to the Mahomedan Law, the Hindu relations of the deceased Mahomedan can not inherit any part of his estate. In that case one Arunachellam Chettyar after marrying Alamelu migrated from the Madras Presidency to Burma, leaving his wife Alamelu in India, and afterwards he renounced Hinduism and became a Mahomedan. Afterwards he married a Mahomedan woman Asha Bi and died leaving behind him some property. It was held that according to the Mahomedan Law which applied to the case Alamelu, the Hindu widow could not inherit any part of the estate. At page 252 of this report a reference is made to the case of the Hindu daughter of the convert to Islam and it is pointed out that she could not inherit his estate, because no Hindu can inherit from a Mahomedan, except in accordance with the provisions of the Freedom of Beligion Act (No. 21 of 1850), which enables only the convert to inherit the property of his deceased relation of another faith but which does not apply to the cases mentioned above, which are governed by the general rule about the disability imposed on non-Mahomedans as regards inheritance. There is a similar disability imposed by Hindu Law upon the non-Hindus in matters of inheritance and the non-Hindu relations of a deceased

Hindu are not entitled to inherit his estate. While the Hindu Law remains uncodified, this principle will be always enforced by the courts but in the absence of any clause embodying this eternal principle about exclusion of foreigners from inheritances, the courts would have no jurisdiction to enforce the rule. The definition of agnate and cognate to be found in clause 2, sub-clause (1) A and B entitled all agnates and cognates of the deceased to inherit his estate, whether they are Mahomedans, Christians or Buddhists. According to this code one person is said to be an "agnate" (gotraja) of another if the two are related by blood wholly through males; and one person is said to be "cognate" (bandhu) of another, if the two are related by blood, but not wholly through males. There is no clause imposing upon the foreigners the disability to inherit which is imposed by the Mahomedan Law. The rule about imposing the disability is justifiable on the ground of the principle adopted from the earliest times upto the present day. Those who want to justify it on the grounds of reciprocity are also entitled to do so. The Hindu Code as it stands does not contain the abovementioned necessary provision.

CONSTRUCTIVE SUGGESTION ABOUT EXCLUDING NON-HINDUS FROM THE RIGHT OF INHERITANCE:—

A clause disqualifying non-Hindus from inheriting the property of the Hindus should therefore be added in the code. It may be worded as follows, "Notwithstanding anything contained in this code, a non-Hindu shall not be entitled to inherit the property of his deceased relation".

A THIRD POINT IN THE HINDU CODE FAVOURABLE TO THE MAHOMEDANS—THE NON-FORFEITURE OF THE HINDU WIDOW'S ESTATE THOUGH SHE MARRIES A MAHOMEDAN:—

The Hindu Code Bill relating to intestate succession has reversed the view of the Privy Council according to which the estate inherited by a woman was a limited estate. One of the results of this view was that the estate inherited by a Hindu widow was liable to be forfeited by her on her remarriage even if she married a Hindu. Provision about the forfeiture of the estate held by a Hindu widow on account of her remarriage even with a Hindu was made in section 2 of the Hindu Widow's Remarriage Act (XV of 1856). It provided that "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 lineal successors, 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". The definition of *streedhan* given in clause 2 sub-clause (1) (h) of this Bill, however, lays down that property acquired by a woman by inheritance, e.g., from her husband, is her absolute property in the same way as the property acquired by her own skill or exertions. The effect of the change caused by this new definition is to set aside the current law as stated by the Full Bench in *Vitta Tayaramma v. Chatakundu Sivayya* reported in the Indian Law Reports (1918) Madras series Volume 41, page 1079. In this case, the dispute arose regarding a house which belonged to one Pullayya, a Hindu by caste. On his death, his widow, who inherited a widow's estate, became Mahomedan and soon after married a Mahomedan husband. The court held that she forfeited her right, as she ceased to be a surviving half of her deceased husband. On account of the absolute estate conferred on the widow by the Code, this view is overruled, and the widows with their non-Hindu husbands would be entitled to live in the house of the deceased and enjoy his property. As the widow gets a share in the estate of her husband, who has left sons behind him, the new non-Hindu husband would be entitled to dwell in the house where the sons of the deceased are living. The necessity for not recognising the absolute estate in cases of widows and for forfeiture of that estate on the ground of remarriage is great, especially in those parts of India where kidnapping of women is rampant. Even in other parts of the country it is justifiable on the ground that the widow cannot

claim to retain her husband's estate in such a case, because Hindu Law gave her that estate, as she was regarded as a surviving half of her deceased husband and in those where she is going to lead a life contrary to that principle, she cannot retain the inheritance. In the undigested mass of fiction and error to be found in the explanatory note and the four memoranda attached to the Hindu Code, not a word is stated about this aspect regarding the loss of right by remarriage or otherwise. In his speech introducing the Hindu Code Part I on the 24th of March 1943, no reference is also made by Sir Sultan Ahmed to this aspect of the case.

CONSTRUCTIVE SUGGESTION ABOUT INCORPORATING SECTION 2 OF THE HINDU WIDOW'S REMARRIAGE ACT IN THE CODE:—

On account of the reasons stated above, the provisions of section 2 of the Hindu Widow's Remarriage Act should be incorporated in the present code.

THE HINDU CODE NOT A BILL TO AMEND THE HINDU LAW AS STATED IN THE PREAMBLE BUT TO END IT:—

In paragraph 87 of the report of the Hindu Law Committee it was stated that, "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". This promise which was solemnly made has been completely broken, as would be clear from what has been already said as well as from what is stated in the sequel. Excepting the provisions regarding the devolution of the property of the hermits to be found in clause 11 of this Bill, the Bill has affected a wholesale repeal of the current Hindu Law prevailing amongst acres of Hindus.

REVOLUTIONARY BILL TRANSGRESSING THE FURTHERMOST LIMIT OF REFORM:—

"He knoweth not the law, who knoweth not the reason thereof". This is the English maxim. The principles underlying the Hindu Code Parts I and II and other parts to come is not to reform Hindu Law but to revolutionize it. The difference between reform and revolution is that while reform proceeds from a desire to improve, revolution proceeds from a desire to destroy. The letters, revolution, which hake up the word revolution are also to be found in the phrase "love to ruin", and love to ruin the current Hindu Law is quite apparent in the preparation of this code. It is quite apparent that for practical purposes the whole Hindu Law has disappeared in the Hindu Code. The Hindu Code does not contain Hindu Law any more than german silver contains silver.

PRINCIPLE OF INHERITANCE UPON WHICH THE CODE IS BASED NOT STATED ANY WHERE:—

In the editions of Mayne's Hindu Law and Usage, issued during the life time of Mayne, Chapter XVI dealt with principles of succession in case of males and Chapter XVII, dealt with principles of succession in case of female. In the present edition, these are dealt with in Chapter II, & XIII, not so exhaustively as in the old editions. The main principle underlying rules of inheritance is that about *sapinda* relationship. The Bill and the notes on clauses do not refer to any principle upon which the new code is based. References are made to the changed circumstances, but changed circumstances do not constitute a principle.

ERROR ABOUT AVOIDING THE WORD "SAPINDA" IN THE BILL:—

The report of the Hindu Law Committee which was published on the 19th June 1941 is a lengthy document containing 38 paragraphs printed in 24 pages accompanied with six appendices printed in the next 25 pages. It contains words of learned length and thundering sound, for example, Craies on Statute Law, 1938, pages 196-197 (referred to at page 5), and Ivy Williams, the Sources

of Law in the Swiss Civil Code, 1928, Introduction, pages 13-15 (referred to at page 13), and that the later work which was begun by a great jurist in 1893 became effective law on the 1st of January 1912, on which date of French Law prevailing in certain Cantons and Austrian Law prevailing in certain other Cantons and the German Law and customary law modified by occasional statutes prevailing in other Cantons was superseded. This report also contains very useful classified information. But after all that is said in favour of this report, one thing which strikes the reader is the complete absence of the word *sapinda* from the beginning to the end of this report. All the schools of Hindu Law accept as authoritative the text of Manu in Adhyaya 9 shloka 187, usually translated as, "To the nearest sapinda, the inheritance next belongs". The difference between them is due to the fact that the Mitakshara interprets the word *sapinda* to mean a blood relation while the Dayabhaga interprets it to mean "a person offering a pinda to the deceased". A discussion of the new rules of inheritance which should supersede the established rules of inheritance, without any reference to the word *sapinda* and its meanings and bearings is to quote a popular expression like Hamlet without the Prince of Denmark" or "Othello without the Moor" or—as the Hindu Code is going to deal with marriage—a marriage without the bridegroom, which has not been rendered valid by the application of the doctrine of *factum valet* by the Hindu Law Committee. The Hindu-Muslim-Christian select committee has perpetuated this mistake.

REPEAL OF GOVERNMENT OF INDIA ACT OF 1935 FIRST AND THE AMENDMENT AND CODIFICATION OF HINDU LAW AFTERWARDS:—

There is a Chinese saying to the effect that a blind man is not afraid of serpents. The admirers of the Hindu Code who are bent on pushing the Bill without waiting for the termination of the war forget that there are many constitutional changes going to take place in this country very soon and it is absolutely necessary to see what those changes are before proceeding to amend or codify Hindu Law. The "dead" Cripps-plan was stated to be still alive at the end of March 1944 in the Central Legislature. According to this plan, any province has got a right to secede from the federated India. The Hindu Code professes to bring unity amongst the Hindus by providing for one uniform system of Hindu Law. The admirers of the Hindu Code rely upon this aspect and treat as false the assertion of the British Government to the effect that it has brought into existence unity throughout India, which did not exist before. The Cripps-plan, however, is a guarantee for creating disunity throughout India. According to this plan, the province of Bengal, the Hindus in which are governed by the Dayabhaga School of Law, has got a right to secede in accordance with the Cripps-plan, which on this point is analogous to the Pakistan plan. The Bombay Presidency, the rights of the Gotraja sapinda widows in which have been destroyed by the Hindu Code, has got also a right to secede from the other part of India. In these circumstances it is difficult to understand why the admirers of the Hindu Code should go on trying to impose a uniform system of Hindu Law upon the Hindus throughout India, when the Indians as a whole are called upon to solve the problem about the integrity of the country. The question about the repeal of the Government of India Act of 1935 by a proper Act should be solved first and the question of amending the Hindu Law or codifying it can be dealt with afterwards. If the amendment or repeal of the Government of India Act can wait until the termination of the war, the amendment and codification of Hindu Law can *a fortiori* wait for a longer time, until new elections are held under the new constitution.

SUBSTANTIVE AND PROCEDURAL OBJECTIONS TO THE CODIFICATION OF HINDU LAW IS GENERAL AND INHERITANCE:—

There are various objections to the codification of Hindu Law including the law of inheritance, which is the subject of the Hindu Code, Part I, Intestate Succession. These objections may be divided into two classes. Some of these objections may be called, for the sake of convenience, substantive objections, so as to distinguish them from another class of objections, which may be described as procedural objections. These are discussed in the sequel.

Substantive objections are those kinds of objections which are against codification of Hindu Law at any time. Procedural objections are objections which are not to the codification of Hindu Law as such, but to the present piece of legislation and to the codification of Hindu Law at the present time, when the Hindu society has been upset in various parts of India, on account of troubles, internal and external.

APPOINTMENT OF HINDU LAW COMMITTEE—A REMEDY WORSE THAN THE DISEASE:—

The Hindus resent the imposition of the Hindu Code upon them by the British Government. This alleged Hindu Code contains provisions of a revolutionary nature. These provisions are completely subversive of the principles of Hindu Law accepted by the Hindu for ages. They are based on the changing whims of the reformers, whose diversion is to amend the Hindu Law annually if possible, as the Hindu Women's Rights to Property Act was passed in 1937 to be amended again in 1938, to be amended again by the numerous Bills introduced in the Assembly, which are surpassed in their basic perniciousness by both the parts of the present Hindu Code. In order to have some stability even in the reforms to be effected in Hindu Law it was considered necessary that a small committee consisting of experts should be set up by the Government of India in order to scrutinise these Bills and report thereupon. The appointment of the Hindu Law Committee for finding out the proper view has proved to be a remedy worse than the disease. The provisions of the alleged Hindu Code, Part I, P, relating to inheritance has destroyed all the rules of inheritance and exclusion from inheritance—a thing which the amending Bills never aimed at.

STAGES OF THE PROGRESS OF THE HINDU CODE FROM VANITY FAIR TO DISGRACE ABOUNDING:—

In paragraph 38 of the Report of the Hindu Law Committee signed at Simla on the 19th of June 1941 it was stated as follows. "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 Code of Manu rather than those which fall short of the best; a Code which shall recognize 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". This was all Vanity Fair. But from the scrutiny of the 23 clauses of the Bill and the schedule attached thereto and in view of the proviso to clause 13, to the effect that the right of a widow to inherit to her husband shall not be questioned on the ground of unchastity unless a Court of Law has found her to have been unchaste as aforesaid, in a proceeding to which she and her husband were parties and in which the matter was specifically in issue, the finding of the Court not having been subsequently reversed, it appears that from the first stage of Vanity Fair, the Hindu Code has progressed to another stage of Disgrace Abounding. Every thing is so novel in this code that its progress can well be described by using the titles of two novels in the English literature. But the third stage, which may be called the Blitz, is still to follow for the destruction of the law regarding the joint family.

TASK OF REFORMING HINDU LAW TO BE LEFT TO THE HINDU MEMBERS OF THE LEGISLATURE AND NOT TO BE FINANCED BY THE GOVERNMENT OF INDIA WHICH SHOULD BE STRICTLY NEUTRAL:—

Even the Mogals did not attempt to impose a Hindu Code on the Hindus and whether the Government of India possesses greater or less powers than the Moghuls, its declared policy is not to interfere in Hindu religion or Mahomedan religion. The Hindus like the Mahomedans think that their laws are a Divine revelation and it is no use for the Government of India to quarrel with them from on this point. As would be found from the statement in Dr. Gour's Hindu Code (1938) edition, page 45 paragraphs 160-162, there has been

an unanimous course of decisions of the Parliament not to undertake the codification of Hindu Law as stated in the report of the committee appointed by the House of Commons in 1832 up to the report of the fourth commission appointed in 1879. As stated already while discussing the right of a daughter to inherit as a co-heir with the son, it was stated by Sir Nripendranath Sircar—the Law Member at the time when the Bill which became Hindu Women's Rights to Property Act of 1937, came for discussion—that Government was not prepared to go further than the provision of that Act. Nothing has happened since then to justify the change of view which has resulted in repealing almost all the provisions of current Hindu Law. The Government of India should therefore remain absolutely neutral in the matter of codification and it should drop both the Hindu Code Bills altogether and leave them in the hands of the non-official Hindu members. It should direct its officials also to take no sides in the matter and leave the task of codification to the Hindus alone. Those Hindus who are keen on this point of codification should raise a fund for financing the destructive work of the Hindu Law Committee which lies ahead.

NECESSITY OF POSTPONING THE HINDU CODE BILLS TILL THE WAR IS OVER AND NEW ELECTIONS ARE HELD AS THERE IS NO PROPER ATMOSPHERE IN INDIA AT PRESENT FOR CONSIDERATION OF THESE BILLS:—

The Hindus, like the Mahomedans, Chinese and Russians are quite happy without a new code being foisted on them. But while lacs of Hindu soldiers are fighting outside India their law is sought to be changed behind their back. This should not be done. President Roosevelt is desirous of getting the advantage of the votes of American soldiers fighting on the war front. The Hindus also want the same and in order to give the Hindu soldiers a chance to vote on the point of codification of Hindu Law as proposed, it is necessary that both the Hindu Code Bills should be postponed till the war is over and new elections are held, so that lacs of Hindu soldiers returning from the battlefields can take part in those elections and elect suitable representatives. There is also no proper atmosphere in India now for the consideration of these Bills as the attention of the people is distracted on account of the scarcity of food and clothing and fears of invasion of India, and other causes. There is already sufficient turmoil in all parts of India to be dealt with by the Government and it is no use to add one more cause which would increase the same.

NECESSITY FOR POSTPONING THE BILLS UNTIL THE NEW ELECTIONS ON THE GROUND THAT THE CENTRAL LEGISLATURE WHICH HAS GOT ITS SEVENTH "LIFE" DOES NOT REPRESENT THE PRESENT ELECTORATE:—

It is quite evident that the present members of the Council of State and the Legislative Assembly do not reflect the present opinion of the Hindu masses, and they have no moral right whatsoever to pass the Hindu Code so as to make it binding upon the Hindus in the future. These Houses of Legislatures, which are kept alive with a political object should not be utilised by the Government of India, for the enactment of the alleged Hindu Code. The Government of India should therefore postpone the Bills until new elections are held in this country.

Some members of the Central Legislature lay emphasis on re-vitalising the Hindu Law. The greater need is, however, for re-vitalising the Central Legislature.

NO NECESSITY OF CODIFICATION OF HINDU LAW:—

There is no word in Sanskrit or the various Indian languages, which would accurately convey the meaning and the implications of the word code or codification. In one of the Indian languages the word Code written in Devanagari script would convey leucoderma. The word "codification", (as stated in Oxford English Dictionary Vol. II, (c) page 533), is a word introduced in the English language, probably from the modern French and is used in two different senses. It is used to denote the reduction of laws to a code as well as the systematization. In the former sense, it was used in a justice and codification

petition, in 1830, where it was stated that "No otherwise than by codification can the reform here prayed for..... be carried out into effect". In Mill's discussion and dissertations (1859) I. 373, it was pointed out that Bentham demonstrated in 1840 the necessity and practicability of codification or conversion of all law into a written and systematically arranged code. The Hindu Law, in accordance with which the decisions are given is not oral. It is found in books written from time to time the arrangement in which is quite systematic.

The alleged Hindu Code is not a code prepared by the Hindu people for governing themselves and written in the Hindu script. It is a code enforced by the British power upon the Hindus, with the help of Christians and Mahomedans and some reformist Hindu. It is a code which is not prepared in any of the various Hindu dialects and is not written in any Hindu script. All the elements to be found in the French Civil Code or the Swiss Civil Code are wanting in the alleged Hindu Code.

HINDU CODE—NOT A CODE IN THE EUROPEAN SENSE OF THE TERM:—

As would be clear from what is stated above regarding the preparation of the French Civil Code, German Civil Code, and the Swiss Civil Code, these codes repealed all customary laws prevailing in France, Germany and Switzerland and substituted for the same written rules of law governing numerous topics besides inheritance, marriage etc. The second proviso to clause 3 of the Hindu Code Part I dealing with intestate succession, on the other hand definitely provides that "this Act shall not apply to any estate which descends to a single heir by a customary or other rule of succession or by the terms of any grant or enactment". In the next place the object of the European Codes is to provide one uniform rule of devolution of property in those territories, whether by virtue of inheritance or by testamentary succession. In India on the other hand no such uniformity can be achieved, either with respect to the devolution of property either by inheritance or by testamentary succession. The Mohammedans have got a set of rules regarding inheritance and wills, which materially differ from those prevailing amongst the Hindus. Not only that but the rules of inheritance prevailing amongst the Sunni Mohammedans differ materially from those prevailing amongst the Shia Mohammedans. They agree with each other only so far as the rights of the twelve persons mentioned as sharers in the Koran are concerned but with regard to other heirs, the Sunnis allow an agnate to exclude a cognate while the Shias ignore this distinction and allow the agnates and cognates to succeed together according to the rules laid down by the Shia authorities. The Christians have the rules about their intestate succession as mentioned in Sections 29 to 49 of the Indian Succession Act (Act No. XXXIX of 1925). While the Parsis have got special rules for Parsi Intestates mentioned in sections 50 to 5 of the same Act. The calamity of the Indian Succession Act was enacted mainly for laying down the rules of intestate and testamentary succession for the Indian Christians and "in order to promote the gradual growth of a uniform law of succession for Hindus throughout British India". The calamity of imposing the Indian Succession Act upon the Hindus, with some slight modifications required in some cases, e.g., where the declarant has two wives—a contingency not provided for in the Indian Succession Act, was contemplated by the Hindu Law Committee, as would appear from Question No. 1 in the questionnaire issued by it. But as this proposal was violently denounced, the chance of having a common law for the Christians, Parsis and Hindus has ceased to exist. The Mohammedans whose population in this country is double of the population of Great Britain and Ireland, being nearly 9 crores, have got the Shariat Act (XXVI of 1937) passed for governing their intestate and testamentary succession and are quite contented with the laws laid down in Arabia thirteen hundred years ago. There is therefore no possibility of having a uniform rule regarding intestate succession or testamentary succession in India. Therefore it is no use insisting on the passing of the enactment of the Hindu Code, as from the European point of view which appeals to some people, the Hindu Code is an absolute misnomer and has not got even the glamour of a European code.

PARLIAMENT AND GOVERNMENT OF INDIA NOT POSSESSING ANY JURISDICTION TO IMPOSE MODIFICATION OF HINDU LAW UPON THE HINDUS. AS IT CONSTITUTES INTERFERENCE WITH HINDU RELIGION:—

Constitutional writers point out that the parliament can do anything except converting a man into a woman and a woman into a man. It is also powerless to do some other things, one of which is the imposition of codification of Hindu Law upon the Hindus. The unanimous course of decisions of the parliament from 1832 to 1879 is to the effect that the codification of Hindu Law as well as Mahomedan Law, should not be undertaken, because both of them are very much intermingled with religion. These decisions of parliament would be found referred to in Dr. Sir Harisingh Gour's Hindu Code, Fourth Edition, (1938), page 45, paragraphs (footnote 2). Referring to a passage occurring on page of the First Report of the Commissioners appointed by Parliament to prepare a body of substantive law for India. It is stated in Holland's Jurisprudence (thirteenth Edition, 1924) page 4, as follows, "It is in the East that religion has been, to many nations besides the Jews, a direct and nearly exclusive source of law. The Pentateuch finds its parallel in the Koran and the Institutes of Manu. Hence arises the impossibility of any general legislation for British India. "The Hindu Law and the Mohomedan Law, it has been authoritatively stated, derive then authority respectively from the Hindu and the Mohomedan Religion. It follows that, as a British Legislature cannot make Hindu or Mohomedan religion, so neither can it make Hindu or Mohomedan Law. A code, if it was enacted as such by the Legislative Council of India, would not be entitled to be regarded by the Hindus and Mahomedans as the very law itself, but merely as an exposition of law, which might be incorrect". The Government of India should therefore remain strictly neutral in the matter of amendment and codification of Hindu Law. If the Parliament was powerless to deal, with the codification of Hindu Law and Mahomedan Law in 1879, nothing has happened since then, by which it or Government of India has got now a power to codify the Hindu Law. Power to codify Mahomedan Law is not even alleged, though Sir, Sultan Ahmad was a member in charge of Law and Disorder.

Substantive objection to codification—

MAYNE AGAINST CODIFICATION OF HINDU LAW ON PRACTICAL GROUNDS:—

In his preface to the first edition of his 'Hindu Law and Usage' published in 1878, which is also published in the latest edition of 1938, John D. Mayne observed, "Hindu Law had the oldest pedigree of any known system of jurisprudence and even now it shows no signs of decrepitude. At this day it governs rarefied men, extending from Kashmir to Cape Camorin, who agree in, nothing else except their submission to it. Referring to the opinion held by some people to the effect that everything would be set right by a short and simple code, which would please everybody, and upon the meaning of which the judges are not expected to differ, he observed, "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 Rameshwaram, at 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. (4) That these remarks are as true in 1943 as they were in 1878, would be admitted by those who had an occasion to listen or read the speech of the Hon'ble Sir Sultan Ahmad, who while introducing the present Bill on the 24th of March 1943, described the confusion created by sections 2 and 3 of Hindu Women's Rights to Property Act of 1937 as amended in 1938. He said "The Act was found to be defective and wholly unworkable. Lawyers and courts were baffled at the proper interpretation to be put on the second and third sections of the Act. The different implications of those sections were not clearly apprehended". The present Code contains twenty three sections and not three only. A new Law

Member speaking about the present code seven, years hence in 1950, shall use precisely similar but more violent language, while describing the confusion brought by the Code, which is to come into operation in 1949 and would say that Mayne was right when he disapproved of codification of Hindu Law.

MULLA'S ERRONEOUS VIEWS ABOUT CODIFICATION—WRONG USE OF THE TERM CODIFICATION IN INDIA:—

This point has been dealt with at elaborate length because some persons appear to have a misapprehension regarding the meaning of the word codification. For example, some of the women's organizations recently represented that there should be a codification of Hindu Law, while all that they meant was that legislation to amend the Hindu Law on some particular point should be undertaken in order to reform the Hindu Law because the current common law of the Hindus produced some hardship. This is however a matter not for codification but for reforms. Similarly the Hindu Law Committee whose report was signed on the 19th of June 1941, observed in paragraph 1, page 12 of its report, as follows:—"A little over twelve years ago the late Sir Dinshaw F. Mulla in his preface to the sixth edition of his "Principles of Hindu Law" observed: "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 crystalizing the Hindu Law. I for one do not believe that it is impossible to codify the Hindu Law. The codification may involve difficulties, but they are not insurmountable". These observations, coming as they do from so eminent an authority, are entitled to the greatest weight and have largely influenced us in our recommendations. These observations were not repeated in the subsequent editions of that work and are not to be found in the ninth edition of that work published in 1940. Probably lapse of time suggested the futility of the suggestion made in the earlier edition. One strange point about this im-earthing of Mulla's view about codification is that in the period, in which he was the Law Member of the Government of India, he never made a suggestion on that point and his example is better than his precept. He however has used the words "codify" and "codification" in an erroneous sense.

ERRONEOUS VIEWS ABOUT THE CODIFICATION OF HINDU LAW PROPOUNDED BY MR. S. SHRINIVASA IYENGAR:—

Mayne in his treatise on Hindu Law and Usage condemned codification of Hindu Law from 1878 all along while he was alive. This condemnation appeared in his first edition, which was always reprinted in subsequent editions. In this preface he said, as stated already, "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 Rameshwaram, 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". This preface is also reprinted in the Tenth Edition of this work edited by Mr. S. Shrinivasa Iyengar in 1938. While editing this work, he did not say any thing in favour of codification which was condemned by Mayne. But a few days before his death he changed many of his views, on political as well as legal topics. On account of change in the political view, he resigned from the Congress. His legal views were also changed beyond recognition. He approved of codification of the Hindu Law. His various views were published in the Golden Jubilee, number of the Madras Law Journal for the year 1941. He advocated also one mode of succession and that the rules of inheritance should be the same whether the family is divided or undivided and whether the family is joint or separate. At page 23 of this volume it is stated that such a single rule of inheritance should abrogate the rule of survivorship and the vested interest of the son in the ancestral property by birth. All these views are bound to be rejected by the Hindus. His views including that about codification are not well considered. The points against codification mentioned in this note were never considered by him.

(4) Mayne's Hindu Law and Usage, tenth edition (1938) page V-VI (preface).

UNSUCCESSFUL ATTEMPT OF DR. GOUR IN THE MATTER OF CODIFICATION OF HINDU LAW:—

A standard treatise on Hindu Law called the Hindu Code has been written by the well known savant of India—Dr. Sir Harisingh Gour. I am under the impression that he tabled a resolution about the codification of Hindu Law, while he was a member of the Central Legislative Assembly, and that this resolution was lost. This fact has not been at all considered by the Hindu Law Committee in arriving at the conclusion about the codification. In the work mentioned above Dr. Sir Harisingh Gour stated that the Hindu would not consent to codification of Hindu Law unless an Avatar comes and prepares it. He, however, did not state the language in which the Avatar was to prepare that code. Surely it was not the English language.

The essence of a code is that it is to be looked at as the sole guide on the matters dealt with by it. Hence if the Hindu Code becomes the law of the land, it would not be possible to refer to the Smritis on any point about which provision is made in the code. As regards the various points about which no provision is made in the Hindu Code—this Hindu Code is not exhaustive, it is to be seen whether the Hindus are to be permitted to refer to the smritis or they are required to refer to the English books on the point. So far as the points dealt with by the code are concerned, the codification of the Hindu Law is tantamount to the burning of the smritis, and the commentaries thereon as well as the various works in Sanskrit which have been written by the Hindu legists on the subject. I don't think that the Chhotu Aurangzebs, manufacturing the Hindu Code would succeed in this object of theirs.

SUBSTANTIVE OBJECTION THAT CODIFICATION OF HINDU LAW IS AN INSULT TO HINDU LAW.

CONDEMNATION OF THE HINDU CODE ON THE GROUND THAT CONVERSION OF THE PERSONAL HINDU LAW, WHICH CAN ACCOMPANY AN EMIGRANT TO NEPAL, BURMA, CEYLON, KASHMIR AND SEVERAL OTHER STATES, INTO A TERRITORIAL LAW FOR BRITISH INDIA ONLY IS DEPRIVING IT OF ITS PRESTIGE:—

As stated by Sir Henry Sumner Maine, the Hindu Law is twice as old as the legislation of Solon and the Twelve Tables of Rome, and Sir William Jones held that Manusmriti was as old as 1280 B.C., while Schlegel placed it in 1000 B.C. and Elphinstone is 900 (see Early Law and Custom, pages 3 and 11). Whatever may be the exact age of Manu the law laid down by him in general as well as particularly in the dictum "To the nearest sapind, the inheritance next belongs" continues to this day. It has been followed by later sages and explained by commentators from Kashmir to Kanyakumari, and the importance of the Hindu Law lies in the fact, that "Hindu Law is a personal law", as the lawyers are in the habit of explaining it. A Hindu emigrant carries it wherever he goes. Whether he goes to Nepal or Burma, Ceylon or Kashmir, or even to Hyderabad Deccan, he carries it wherever he goes. The Hindu Code is a purely territorial law for British India. As a person entering these territories of Nepal or Burma would prefer to carry gold with him in preference to Government Promissory notes issued by the British Government, the Hindus desire to be governed by the Law of the Rishis which they carry with them and condemn the Hindu Code on the ground that the Hindu Law is deprived of its prestige. The sphere of influence of the law made by the Rishis is much greater than the sphere of influence of the Hindu Code. As stated in clause (1) sub-clause (2) of the Hindu Code Part I (Intestate succession), the Hindu Code extends to the whole of British India. If the two Hindu states of Baroda and Mysore, who have already committed the mistake, which the Government of India is going to commit in British India, are kept out of consideration for a moment, the Hindu Law laid down by the Rishis, as expounded by the various commentators does not recognise territorial limits. It enters unrestricted in the various 145 Hindu and Mahomedan States, arranged in 17 different groups whose description would be found, for the sake of convenience, in the First Schedule of the Government of India Act of

1935. The personal law of the Hindus enters those States and territories where the Baroda Code or Mysore Code or the Hindu Code cannot enter. The alleged Hindu Codes are admittedly powerless to govern the devolution of the property of emigrants who do not die in those territories, for which they are enacted. The present Hindu Code is like the Civil Procedure Code and the Criminal Procedure Code, a mechanical contrivance, which the judges would be bound to use for deciding cases before them. That is all. But the Hindu Law propounded by the Rishis, as stated by John D. Mayne in his Preface to the first edition of Hindu Law and Usage, referred to already governs races of men, extending from Kashmir to Cape Comorin, who agree in nothing else except their submission to it. This is a strong argument against codification of Hindu Law. Codification of Hindu Law is to insult Hindu Law.

NO HARM IF HINDU LAW IS NOT CODIFIED AS THE HINDU CODE IS NOT NECESSARY FOR BRINGING UNITY:—

The fourth objection, in the category of substantive objections is that no harm would result, if the Hindu Law is not codified. Dr. Shyamaprasad Mookerjee, speaking at the Dayanand Anglo-Vedic College at Jullunder on 29th of April 1943, observed that India was not only an undivided whole geographically but there was something more and that was spiritual and cultural unity permeating the mind and heart of every individual in whatever part of the country he lived. The passing of the Hindu Code or the enactment of a new rule of inheritance is not necessary for bringing out a unity, which is already there. The Indian Penal Code, the Civil Procedure Code, the Criminal Procedure Code and various Acts of Central Legislature have not been the causes for producing the unity which exists to-day and the authors of the Hindu Code need not have any sense of frustration if their Code is rejected by the people. As regards the difference of opinion amongst the various schools, there are differences of opinion amongst the various High Courts in India regarding the interpretation to be put on several sections of several Acts passed by the Legislature.

MANY PEOPLES WITHOUT CODES:—

There are many peoples without Codes. They are referred to in the sequel.

NO CODE IN RUSSIA:—

The population of the whole of Russia, which may be taken to be nearly 17 crores, does not require a code.

NO CODIFICATION OF COMMON LAW OF ENGLAND:—

There is no codification of common law of England. There is no British Contract Act corresponding to Indian Contract Act, the English Law of Torts is not codified. There is no British Penal Code corresponding to Indian Penal Code.

NO CHINESE CODE:—

A few years ago an Encyclopedia of Chinese law was published by the Chinese Government at . It was referred to in a Burmese case reported in the Indian Law Reports, Rangoon series, volume 9, page . The Chinese, whose population is about 45 crores, are without a code.

NO MAHOMEDAN CODE:—

There is no Mahomedan code. The only Mahomedans, numbering only about a crore and sixty lacs, who have got a code, have got the Swiss Civil Code governing them. These Mahomedans are the Turks.

HINDU CODE TO BE DISTINGUISHED FROM THE FRENCH, GERMAN AND SWISS CODES:—

There are other countries, which have got codes. There is a French Code, a German Code and a Swiss Code. But it appears that in these days people with codes have got a lot of trouble for them, while people without codes like the British and the Russians are better off. One thing to be remembered always about these codes is that these codes are enacted by the people, to be governed by them, in their own language. The Hindu Code is not such a code. An attempt is made to transfer the Sanskrit ideas in English language, with the result that, as stated by the Hon'ble Sir Sultan Ahmed in his speech on the 24th March 1943, that the debates relating to the Hindu Women's Property Acts of 1937 and 1938 do not disclose that the

different implications of the two sections of the Act were clearly apprehended. This has taken place even in the present bill. The short definition of the word "related" given in clause 2 (1) of this bill, which is borrowed from English cases, contains three mistakes as pointed out in the note on that clause. These mistakes are due to the fact that English notions were carried into Sanskrit law. The mistakes arising from carrying notions in Acts passed in English are of the type described already. This objection is rather of a mixed type—an objection which is substantive as well as procedural. Tukaram, the saint-poet of Maharashtra, described the confusion created by the marriage of a Karnatic girl with a Maratha youth, each of whom could not understand what was meant by the other. A similar confusion was created by the Hindu Women's Right to Property Acts of 1937 and 1938 and the bill would create greater confusion.

Now it is necessary to note the procedural objections. A careful perusal of the sections of the present code shows that this code is not for the people but the people are for the code. Nothing more can be conveniently stated on this point at this place. This objection is described as procedural, because another code in better form might be acceptable, to those who are not against codification as such. The Select Committee may therefore be pleased to scrutinise this bill from this point of view. A good deal of information contained in this note is relevant on this point.

The second objection on the ground of procedure is that the present Members of the Central Legislative Assembly were not elected on the ticket about reforming or codifying the Hindu Law. So many changes have taken place in the country that these members do not represent the will of the Hindu community. If the present members stand for election on the ticket of reforming the Hindu Law, several of them would be not only defeated but would forfeit their deposits. The life of these members as representatives of the people has been abnormally prolonged by the Governor-General by repeatedly giving them oxygen as stated already. Their views on the present question would be as much out of date as the views of men, two-hundred years or three hundred years old, still kept alive for a particular purpose. Whatever legal necessity may exist so far as the Government is concerned for not dissolving both the Council of State and the Central Legislative Assembly, the Government is not entitled to take advantage of that procedure for the purpose of imposing on the Hindus this alleged Hindu Code, the explanatory notes on which openly state that they follow Mahomedan law, Christian law, the law of the world and what not.

PROCEDURAL OBJECTION POSTPONEMENT OF THE QUESTION OF CODIFICATION UNTIL THE FEDERAL LEGISLATURE COMES INTO EXISTENCE:—

In order to avoid the conflicts of Laws caused by the passing of the Hindu Code, it is necessary to postpone the question of codification of Hindu Law until the Federal Legislature comes into existence.

PROCEDURAL OBJECTION CONFLICTS OF LAWS THROUGHOUT INDIA CREATED BY THE HINDU CODE WHICH WOULD BE IN CONFLICT WITH PROVINCIAL LEGISLATION AND WOULD NOT BE ALSO ENFORCEABLE IN STATES:—

In a case decided by the Bombay High Court and reported in the Bombay Law Report some years ago, it was held in the case of a man who held property in the Bombay Presidency as well as in the Baroda State, that though his wife ceased to be his wife in Baroda State, where the courts granted a divorce in accordance with the provision for divorce available in that State, she continued to be his wife in the Bombay Presidency. The powers of modern States, whether they are ruled by the British or by the Hindu princes, is limited. Their laws are not binding beyond their territories. On account of the Hindu Code being applicable to British India only and that too in matters of non-agricultural property, its provisions would not be able to affect the property of the people who own agricultural land or who live in the States, whatever may be the nature of their estate. It is therefore necessary to wait until the Federal Legislature comes into existence.

POSTPONEMENT OF THE BILL UNTIL THE PROVINCIAL LEGISLATURES BEGIN TO FUNCTION NORMALLY:—

Confucius was asked by one of his disciples as to whether he should return good for evil. Confucius replied in the negative and said that if a person is to return good for evil, what return can he make if a person does him good. After all that is said and done, the powers of the Central Legislature to pass this legislation are very limited and this legislation cannot affect agricultural land unless the Provincial Legislatures pass the same or similar legislation. It is wise therefore to wait until the Provincial Legislatures begin to function normally and they are in a position to undertake similar legislation for consideration. India is predominantly an agricultural country and there is no point in trying to enact this bill into an Act in the present circumstances. Some people rely on the powers of the Governor to pass an Act making the Hindu Code applicable to agricultural land. But such Acts would be very short-lived. The Governors in some provinces have set aside the prohibition policy of the Congress and restored to some persons their sacred right to drink, which the Congress had taken away. This action of the Governor will be set aside in a moment as soon as the Provincial Legislatures begin to function normally and similarly any Acts which the Governors would pass behind the back of the Congress for making the Hindu Code applicable to agricultural land would be repealed as early as possible. It is therefore wiser to stop all activities regarding the codification of Hindu Law, as the question of codification is one of the numerous post-war-reconstruction problems. But a passage in Shukraneeisars, Adhyaya II Shloka 112 (to be found at page 128 of the Second edition published in Calcutta in 1890) says, "Who does not become delicious for a long time, after having enjoyed the intoxication caused by holding authority."

The sixth objection of the ground of procedure is that the legislation of the Hindu Code Part I Intestate succession is a piecemeal objection of the most dangerous type. It should have proceeded to deal with the law relating to joint family property. The Hindu Women's Rights to Property Acts of 1937 and 1938 openly declared that the heirs to the separated or self-acquired property were the same as those of the joint coparcenary property. The Schedule shows that the above Acts would be repealed to the extent of separate or self-acquired property, but would continue to govern the devolution of joint property, which would devolve on the heirs specified for separate or self-acquired property. The legislature should have stated here what is to be the rule of devolution of joint property. Sir Sultan Ahmed stated in his introductory speech on the 24th of March 1943 that the Hindu Women's Rights to Property Acts were found to be defective and wholly unworkable and that lawyers and courts were baffled at the proper interpretation to be put on the second and third sections of the Act. Now a better substitute has been found for the devolution of self-acquired separate property. Why it is not made applicable to joint property, is not stated. The previous Acts dealt impartially with the devolution of both joint property as well as separate and self-acquired property and could not be stigmatised as piecemeal legislation on the subject of devolution. It can be very easily presumed that the rules of succession provided here would be immediately applied to the joint family property. This is one reason why the devolution of joint property, self-acquired property and separate property should be tackled at once and not piecemeal. There is another point also. The present bill has not only touched the law of joint property at a tangent, but has pierced through it by providing a wrong illustration of heritable property which is defined in sub-clause (d) of sub-clause 1 of clause (2), and also laying down in clause 7 (b) that joint son and a reunited son would succeed along with a separated son. There is a third point to be considered in this connection. In the Explanatory Note reliance is openly placed on the analogy of Mahomedan Law, and the Christian law and the Parsi law (with respect to women). The next instalment of the Hindu Code may proceed on this basis and abolish the son's vested interest in the ancestral property. It is therefore very necessary that piecemeal legislation regarding the devolution of separate and self-acquired

property should be considered along with the legislation regarding the devolution of the interest in joint property. If the Government refuse to place its bill governing the devolution of joint property for discussion along with the present bill, the present bill should be rejected, as being a most dangerous piece of legislation, unsupported by any straight-forward conduct.

A coparcener, who executes a will of his share of the joint property, dies intestate, as his will is in operation. The Legislature should therefore deal with the devolution of the interests of a coparcener at this time.

Another important point to be noticed in this connection is that an effort would be made afterwards to extend the application of the rule of inheritance laid down in this bill to the devolution of the interests of a coparcener and it is therefore necessary to see whether the provisions of this bill are suitable for application to the devolution of joint property.

The Hon'ble Sir Sultan Ahmed, in his introductory speech on the 24th March 1949, after referring to the Hindu Women's Rights to Property Acts of 1937 and 1938 as being defective and wholly unworkable made reference to seven bills which were introduced by various persons for amending the law of inheritance. One of these bills was the Hindu Women's Rights to Property Amendment Bill by Dr. G. V. Deshmukh and Mr. Kailash Bihari Lal, which proposed to give retrospective effect to the Act of 1937 from 26th September 1939. In other words, the estate inherited by people in accordance with the law in force from 20th September 1935 to 1937 was to be taken away from those heirs and delivered to other heirs which were mentioned in the Act of 1937. The other six bills are well known to the members of the Select Committee and some of them are referred to in the note while dealing with clause 13 under the heading 'Epidemic of reform'. The law of the Rishis remained stable for four thousand years during the course of which the Hindu Law has been evolved and perfected. But since 1937, nobody knows what would happen to it. Even those who voted for the Acts of 1937 and 1938 might have no idea that their work was to be repealed by a bigger monster to be born only four years afterwards, that is in 1941-42. The provision for giving retrospective operation to the new rules of inheritance and other provisions in other bills and the possibility of some more bills on the point have made the position of Hindu Law as unstable as that of Sind Ministry. No body knows what is going to happen tomorrow. Perhaps Hindu Law might be murdered. In these circumstances, the British Government should provide a rest cure for the treatment of the reformers of Hindu Law and tell them to wait until the next elections and get themselves elected on the ticket of reforming Hindu Law and then proceed to anglicise or mahomedanise it or do anything which they like.

The procedural objection is on the ground of the Anglo-Mahomedan ancestry of the various provisions of this alleged Hindu Code. "By their ancestors, you know them well". This is an Indian saying. Question 16 of the questionnaire issued by the Hindu Law Committee openly asked the Hindu public to state whether the provisions of Indian Succession Act should not be made applicable to them with a slight modification in the case of a person who has got one or more wives—a contingency which was not provided in the Indian Succession Act. I answered this by stating that to do so would be basing the new Hindu Law on *perjury in excess*. In Mahabharata Sabhaparva, Adhyaaya 81, shloka 11 (to be found at page 129 of the edition published by the Chitrashala Press Poona) it is stated "Time does not smash anybody's brains by striking a cudgel. The evil force of the time consists in this. It makes one see only the perverse, side of things". But perjury has trumbled. References are now openly made in the explanatory Note to the Mahomedan law for justifying the various innovations made in the Hindu Law. The result of the combination of the provisions of the Indian Succession Act and the Mahomedan Law is seen in clause 5, class I, entry 1, where the son, widow and daughter are

made coheirs, the son's share being double of the share of the daughter. To justify this clause, a great intellectual effort has been made in the explanatory note to show that this innovation is justified by the provisions of Hindu Law and sacred texts are tortured for justifying these provisions. But the Government of India should remember the saying of Francis Bacon, to the effect that a bad man becomes worse, if he pretends to be a saint and it should refuse to lend its help to this piece of legislation. In a case decided by the Privy Council, Ramchandra Martand Waiker vs. Vinayek Venkatesh Kothekar, Indian Law Reports, Calcutta series, volume 42 page 384, it was observed, "The Hindu Law contains its own principles of exposition, and questions arising under it cannot be determined on abstract reasoning, or on analogies borrowed from other systems of law, but must depend for their decision on the rules and doctrines enunciated by its own law-givers and recognised expounders". This principle applies to the reforming of Hindu Law also. The Anglo-Mahomedan-hybrid rules of inheritance are embodied in clause 5—class I, entry one and as the principal heirs are affected by this clause, the entire code should be rejected. This code is like a 'legal mule', which has no pride of ancestry and no hope of posterity. It is the duty of every Hindu to prevent its entry in the statute book.

PROCEDURAL OBJECTION—BILL DESTROYS WOMEN'S RIGHT THROUGH SOME EDUCATED HINDU WOMEN ERRONEOUSLY SUPPORTING THIS BILL, WHICH THEY SHOULD HAVE CONDEMNED:—

Some educated Hindu women have erroneously supported this Bill, which they should have condemned. There is a good deal of propaganda, going on in favour of this Bill. They should remember that medicines are not so efficacious as their advertisements. The rights of the widows of the Gotraj-sapindas are completely destroyed, on mature reflection, by the Hindu Law Committee. This committee has been completely crushed by the great weight of Mahomedan and European jurists in the entire world. This Bill has raised the status of the son's daughter-in-law to that of a murderer and has prevented her from succeeding to her grand father-in-law's property even if there is no other heir and the property is going to lapse by escheat to the British Government, who is made a nearer heir than her to succeed to the estate. But there is a third point also. There is no equality of rights between men and women in this Bill, though the educated women are regaled with stories about the same. Brother and sister do not inherit as coheirs. Brother's son, and sister's son do not inherit as coheirs. The false hopes raised in their minds have not materialised. If these educated women get an occasion to read this note, they would come to the conclusion that the Government of India proposes to deprive them of silver they possess by giving them German silver of equal weight. The women of India have condemned this aspect of the Bill in their recent conference at Bombay in April 1944. Let us wait and see.

The question whether it is expedient to amend or codify, in successive stages, the whole of the Hindu Law as stated in the preamble or not and whether it should remain un-amended and un-codified like the Burmese-Buddhist law or Chinese-Buddhist law or Ceylonese-Buddhist law or the Mahomedan Law is a question, which should be decided not by a bare majority of votes in the legislature but there must be a substantial majority of Hindu votes on the point. The Mahomedan and Christian votes should be excluded in accordance with the convention referred to in other part of this note. The basic principle governing such cases is the greatest good of the greatest number. And this can be secure only by the votes of the substantial majority of the Hindu members for whom seats are provided in the Houses of the legislature. If some Hindu members remain absent, the majority of the votes of the persons present should be a substantial majority. This substantial majority may be fixed at 75 per cent. of the Hindu votes as calculated above on the analogy of the changes in the constitutional Acts for which that majority is regarded to be essential. From the year 1936, a guerilla warfare has been waged by some Hindu members against the Hindu Law and in order to have stability of law, whether it is the

orthodox Hindu Law, or the reformed Hindu Law, the above-mentioned safeguard is necessary. This safeguard should be adopted by the Provincial Legislatures also, when they would be called upon to prepare a legislation similar to that of the Hindu Code for the devolution of the agricultural property in the provinces. The method of creating this safeguard is that a convention to the above-mentioned effect may be established by the members of the Legislature. Another method is that the Governor General of India should not give his consent to any Bill which is not passed by the substantial majority referred to above. It may be noticed that in the history of the growth of Hindu Law during the past five thousand years the calamity of the nature created by the Hindu Code never arose. As new diseases require new remedies, the above-mentioned suggestion has been made. A reference to the majority required for important constitutional changes is stated in the sequel.

Constitutions of various countries lay down the procedure for effecting a change in the constitution itself and further lay down the number of votes required for effecting that change. For example Article 5 of the Constitution of the United States of America lays down that amendments to the constitution shall be valid to all intents and purposes, if ratified by the legislatures of three-fourths of the several states. (See Shivarao's Select Constitutions of the World, page 672). Similarly Article 102 of the Turkish constitution lays down as follows "Amendments to or modifications of this Constitution may be made only upon the following conditions. The proposal to amend must be signed by at least one-third of the total number of deputies. The proposed amendment must be thereafter discussed by the assembly and adopted by vote of two-thirds of the total number of deputies. No proposal to alter or amend Article 1 of this Constitution, specifying that the form of government is a Republic, shall be entertained. (See the Appendix in Toynbee's Turkey (1926) where the constitution is given. It may be noticed that Article 2 of this constitution, which came into force on the 20th of April 1924 and which provided that "the religion of the Turkish State is Islam" was repealed in the Grand National Assembly of Turkey by an unanimous vote in April 1928 (as stated in Luke's Making of Modern Turkey (1936), pp. 195-218. The amendment or codification of Hindu Law is a matter which is as important as the amendment of the constitution of a country and these questions cannot be decided by a bare majority as stated above.

A 'RED' SUBMARINE LAUNCHED WITH THE BLESSINGS OF DR. JAYAKAR FOR DESTROYING THE RIGHTS OF THE SON IN ANCESTRAL PROPERTY.

I have attached herewith a pamphlet on the "Legal rights of Hindu Women" by Mr. K. B. Gajendragadkar with a foreword by the Right Honourable Dr. M. R. Jayakar, Privy Councillor, priced at 6 annas and published in 1942 by the Institute of Sociology, Girgaum, Bombay. At page 26 of this pamphlet, it is stated a specific rule must be embodied in the Hindu Code itself that the son does not get a right to the ancestral property by birth. The Rau Committee itself stated that "Defects of the kind (pointed out as existing in the old amending Acts) are inevitable in piecemeal legislation effecting fundamental changes in Hindu Law. The only safe course is not to make any fundamental changes by brief isolated Acts. If fundamental changes have to be made, it is wisest to survey the whole field and enact a code, if not of the whole Hindu Law, at least of those branches of it which are necessarily affected by the contemplated legislation". But this committee should have produced a Code regarding joint family, as it is materially affected by the Intestate Succession Bill. Another point of greater importance is that the public would have been aware whether the Government of India is going to sanction the wild-cat schemes, which are openly preached for example, in the pamphlet attached herewith. This straight-forward course would have given the public a clear idea of the complete destruction which the Government of India is going to encourage. I have called the pamphlet a 'Red' submarine launched for destroying the rights of the son in ancestral property. This right of the son in ancestral property is

generally despised by those who never had it. The Government of India should frankly state its proposal about the destruction of joint property, if it has any. If it has none, a clause to that effect should be embodied in this Bill.

WANTON REVERSAL OF ESTABLISHED RULES OF LAW ONE MAIN CHARACTERISTIC OF THE BILL:—

A careful scrutiny of the Bill, called the Hindu Code, Part I (Intestate succession), after perusing it from its preamble to the schedule of repeals, reveals that wanton reversal of established rules of law is one main characteristic of the Bill. The numerous points of law, which have been settled by the decisions of the Privy Council after incurring a good deal of expenditure by the litigants in this country, as well as those points on which there has been consensus of opinion in this country for centuries past but which are upset by the Bill would be discussed in another article in detail. This article contains the examination of the new rule of inheritance stated in this Bill, from only one point of view, that is, the substitution of a uniform rule of inheritance for all the Hindus in British India in lieu of the old rule, in which divergence takes place in the list of heirs only after the brother's son, and not earlier.

EXTENT OF AGREEMENT AMONGST ALL SCHOOLS OF LAW:—

There are two main schools of law known as Dayabhaga and Mitakshara school. The Bombay school is a branch of the Mitakshara school from which it differs on three points, (a) allowing daughters in the family, for example, son's daughter, brother's daughter etc., a right of inheritance, which is denied to them in other parts of India, (b) allowing them an absolute estate but denying the absolute estate to a widow, because she would, by mischievous exercise of the right, destroy the chance of succession of the daughter and daughter's son, and would not forfeit her right on remarriage, and (c) allowing the widows of Gotrajesapindas to inherit—a right denied to these women not only in other parts of India but by all the people in the world, including the civilised ones. The difference between the Dayabhaga and Mitakshara school arises on account of the meaning attached to the word *sapinda*. In Manusmriti it is stated in various places "He should offer the pinda and take the property". According to Dayabhaga and whose author was alive in the eleventh century of the Christian era, as stated in the Full Bench judgment of the Calcutta High Court, the word *sapinda* means a ball of rice offered to the ancestors at the time of Shraaddha as contemplated by Manu and therefore if a Bengal Hindu who is governed by the rules stated in the Dayabhaga dies, leaving behind him a daughter's son or daughter's son's son, neither of them succeed to his property, as both of them do not offer a *pinda* to him. But if he dies leaving behind a son's son's son, and a son's daughter's son, both of them are entitled to succeed as heirs, though the son's son's son has got a preferential right. According to the Mitakshara school, including the Mayookha school referred to above, all the persons mentioned above are entitled to succeed, though the son's son's son excludes the others on the ground of his preferential right. This is due to the fact that the Mitakshara and Mayookha school interpret *Pinda* in the sense of 'a body' and therefore *sapinda* as a blood relation. Though there is thus a difference of opinion between the two schools, the same set of heirs succeed up to a certain point, in both the schools, as pointed out by the Privy Council in 5 Bom. 110 (121). These are the (1) widow, (2) daughter, (3) daughter's son (4) parents, (5) brother, and (6) brother's son, in the order enumerated, in the case of a man, who died sonless, which means without leaving a son, son's son and a son's son's son behind him. The difference arises after the brother's son in the two schools.

DIFFICULTY OF RECONCILING THE DAYABHAGA AND THE MITAKSHARA FOR HAVING A COMMON RULE OF INHERITANCE AS GREAT AS THE DIFFICULTY OF RECONCILING THE RULES OF MAHOMEDAN LAW OF INHERITANCE AS EXPOUNDED BY THE SUNNI AND SHIA SCHOOLS OF LAW:—

The difficulty of reconciling the Dayabhaga and the Mitakshara for the purpose of having a common rule of

inheritance is as great as the difficulty of reconciling the rules of Mahomedan Law of inheritance as expounded by jurists of the Sunni and Shia schools of law. About the Koranic sharers, there is no dispute, between the two schools, as there is no dispute between the Dayabhaga and the Mitakshara schools of law, so far as the rules of inheritance from the widow to the brother's son are concerned. After the brother's son, the dispute about the meaning of the word *sapinda* arises, the Mitakshara interpreting it to mean a blood-relation, and the Dayabhaga interpreting it to mean one connected by funeral oblations. As stated by Sir Henry Sumner Maine (in *Early Law and Custom* page 116) the rules laid down in the Bengal works Dayabhaga and Dayakrama sangraha, display not only a close connection between Ancestor-worship and inheritance, but a complete dependence of the last upon the first. These rules are absolutely irreconcilable with the Mitakshara rules for adjusting the claims of agnates and cognates, as the rules about the succession of residuaries and distant kindred as propounded by the Shia jurists who mix up the agnates and cognates together, are irreconcilable with the rules propounded by the Sunni jurists, according to whom all agnates exclude the cognates. As it is impossible to frame a rule of succession which would please both the shias, and the sunnis, it is impossible to frame a rule of succession which would be cheerfully adopted by the Bengal Hindus as well as by Hindus in other parts of India.

A SIMPLE ILLUSTRATION FROM THE RULES ABOUT MOURNING OBSERVED IN BENGAL AND OTHER PARTS OF INDIA TO SHOW THAT THERE CANNOT BE ANY COMPROMISE AS REGARDS THE RULES OF INHERITANCE:—

In a case, *Ramchandra vs. Vinayak* decided by the Privy Council and reported in the Indian Law Reports, Calcutta series, volume 42 at pages 384 and 385, it was pointed out that the limitation of sapinda relationship laid down in the Mitakshara (Achara Kand) i.e., that it ceases after the 7th ancestor on the father's side and the 5th ancestor on the mother's side, is not confined to prohibition in respect of marriage, impurity on account of mourning and exequial rites only, but applies also to inheritance. Therefore the difficulty of reconciling the Bengal and the non-Bengal rules of inheritance can be easily illustrated by referring to a case about the observance of mourning. In *Manusmriti*, Adhyaya 5, shloka 88 it is stated that

"In the case of the Brahmins, the mourning lasts for ten days, after the lapse of which they become free from impurities. In the case of the Khatryas, it lasts for twelve days. In the case of the Vaishyas, it lasts for fifteen days. In the case of the Shoodras it lasts for a month".

This rule is observed in Bengal, where the shoodras observe mourning for a month. But in the case of many shoodras e.g., those in the Central Provinces, Berar and Bombay Presidency the mourning is observed only for ten days, as is the case amongst Brahmins. Now as the Bengal shoodras observe mourning for a month, and the Maharashtra shoodras observe mourning for ten days, can anybody strike a mean and propose a rule that the Bengal shoodras should observe mourning for 20 days (that is, ten days less than usual 30 days) and the Maharashtra shoodras should observe mourning for 20 days (that is for an additional period of ten days), and thus bring out a uniformity? Each set of people have got their authority on the point. Both of them are right. If an uniformity is sought to be established by effecting a compromise between them, both of them would be wrong. The same thing happens by the alleged compromise between Dayabhaga and Mitakshara with regards to the rules of inheritance.

UNIFORMITY OF THE HINDU LAW OF INHERITANCE LAYING DOWN THE HEIRS—FROM THE WIDOW TO THE BROTHER'S SON DESTROYED BY THE BILL:—

However anxious to secure uniformity of law a Mahomedan may be, he would not interfere at all with the Koranic sharers, about whom there is a consensus of opinion amongst all schools of Mahomedan Law. As stated already, there is a similar consensus of opinion amongst all the schools of Hindu Law regarding the heirs up to a certain point, that is, from the widow to the brother's son. But like a new

scout, who was told to do a good act every day, and therefore gave a canary to a cat, the bill destroyed that very part of the rule of inheritance which was obeyed throughout all parts of India—a rule of inheritance which existed for the last two thousand years since the time of Yama-walkya. The rule allowing a daughter, daughter's son, parents, brother, and brother's son to succeed in the order mentioned according to all the schools, has been now superseded by a new set of heirs described below in clause (5) of the Bill.

Class I.—Widow and descendants.

(1) Widow; son, daughter, son of a pre-deceased son, and son of a predeceased son of a predeceased son (the heirs in this entry being hereinafter referred to as simultaneous heirs).

(2) Daughter's son.

(3) Son's daughter.

(4) Daughter's daughter.

Class II.—Mother, father and his descendants.

(1) Mother.

(2) Father.

(3) Brother.

(4) Brother's son.

People are interested more in the order of inheritance of near relations. They are not interested so much in the order of inheritance of distant relations. The rule, in which people have more interest, is first destroyed by the Bill and this rule was obeyed throughout all parts of India as stated already.

FUTILITY OF COMPROMISE REGARDING DISTANT HEIRS, WHEN THE COMPACT SERIES OF SERIES AGREED UPON BETWEEN THE TWO SCHOOLS IS DESTROYED BY THE BILL:—

As the compact series of heirs beginning from the widow to the brother's son is completely superseded by the new rule of inheritance, the question of effecting a compromise between the two schools of law loses all the importance, which would have attached to it, had the rule about the compact series of heirs been kept in tact. If the Bill can commit the act of cutting the head of the rule, whether it allows its other parts to remain where they were is not a matter of much concern. The Hindu Law Committee, however, speaks of effecting a compromise between the Dayabhaga and the Mitakshara schools. It is stated in the explanatory note that the first object, of having a common law of intestate succession, for all Hindus in British India, is proposed to be secured by adopting for the most part the Dayabhaga scheme for near succession and the Mitakshara scheme for distant succession—a compromise, which as will be clear from the memoranda appended to the Bill, does no great violence to either school. By "near succession", we mean the comparatively near relations enumerated in clause 5 of the Bill and by "distant succession" we mean the comparatively distant agnates and cognates not so enumerated. There is not a word of explanation for justifying the course of abolishing the principal part of the rule of inheritance. The alleged compromise is on unimportant matters. On the important matter, there is autocratic silence.

THE HINDU LAW COMMITTEE REGARDS THE RULES OF BOTH THESE SCHOOLS AS EQUALLY FALSE AND HAS PROCEEDED TO DESTROY THEM ROOT AND BRANCH—THIS CANNOT BE ALLOWED TO BE DONE:—

The rules of inheritance stated in the Bill are as different from the rules of inheritance propounded by any school of Hindu law, as the rules of the Swiss Civil Code, which was adopted by the Turks in 1928 (as Sir Harry Luke has told us in his *Making of Modern Turkey*), are different from the rules of inheritance propounded by the jurists of the Sunni school. But the Turks were straightforward. Though there was uniform rule of inheritance in Turkey, they threw it away and openly accepted the Swiss Civil Code in its place, the Turkish Minister of Law and Justice being educated in a Swiss University. Here in India, the uniform rule about inheritance, which is a principal part of the rule of inheritance, as well as the divergent rules of inheritance as propounded by the two schools are destroyed by the new Bill, the alleged Hindu Code, which has kept no Hindu in the rule of inheritance. The ridiculous nature of the compromise, alleged to be effected in that part of Hindu rule of inheritance, where there is a divergency

between the two schools, is illustrated by a case, which is referred to in the sequel, as if one on all four with the present case.

THE NEW TABLE OF HEIRS NOT JUSTIFIABLE EVEN FROM THE POINT OF PRINCIPLES AS CONCEIVED BY EUROPEAN JURISTS:—

Whether the Hindu rules of inheritance are approved of by European jurists or they are disapproved of by them is a matter which does not concern the Hindus at all. But the new table of heirs is against elementary principles regulating inheritance amongst European nations. Bentham said that as we expect inheritance from our ancestors, our descendants expect inheritance from us. Puffendorf in his Law of Nature and Nation has stated the same principle. Therefore the estate devolves upon the descendants in preference to collaterals. In this Bill, there is no provision for the 4th or the 5th agnatic descendant of the deceased. It is expected that he would succeed if the 29 heirs mentioned in the table are not to be found. Mr. Santipam introduced a Bill providing that a son's daughter's son, son's son's daughter, daughter's son's son, son's daughter's daughter, and daughter's daughter's son shall be entitled to rank in the order of succession immediately after a daughter's daughters. These persons have at least much better right than father's father's sister's son, or the mother's brother's son's son, who are expressly named, and who being collateral Bandhus, should not be allowed to succeed in preference to the descendant Bandhus as pointed out by the Madras High Court in a case reported in the Indian Law Reports Madras series, volume 59 at page 48. But the ashes of this Bill have been safely deposited by the committee in the matters of Jahnuma, where its soul now rests in peace. These are only a few samples of the numerous mistakes to be found in the table of inheritance.

LAW LAID DOWN IN DAYABHAGA AS DEAD AS THE CORPSES IN THE CITY OF CALCUTTA:—

The Committee has destroyed the entire law as laid down in Dayabhaga. The law laid down in this treatise by Jeemotyanahana who was alive in the year 1092 of the Christian Era as stated in Rajani Nath Das v. Nitai Chandra Dey a full bench case reported in the Indian Law Reports, Calcutta Series Volume 48, page 43 at page 87 has governed the devolution of property of the Bengal and Assam Hindus for nearly nine centuries. It would be as dead as the corpses lying in the streets of Calcutta, on account of the passing of this alleged Hindu Code prepared by the Hindu Law Committee, which has stated in paragraph 20 page 14 of its report that Jeemootavahan flourished in the 13th century of the Christian Era and is not aware of the time when he lived.

THE DEFORMED UNIFORMITY ENFORCED BY THE CODE WHICH REPEALS BASIC PRINCIPLES:—

The Code has produced a deformed uniformity on various points in the Law of inheritance. The law regarding the extent of the rights of adopted son in competition with the rights of legitimate sons born to the adoptor subsequent to the adoption varied from province to province. As stated in Mulla's Hindu Law page 550 and para. 497 the adopted son used to get a share, which was one-fifth, one-fourth, one-third or one-half according to the law as understood and enforced in the various provinces. But the basic principle was that the share of the adopted son ought to be less than the share of the legitimate son. Had the bill proposed that the adopted son should get one-fourth, or one-third share in competition with the legitimate son, by striking a golden mean between the extremes while retaining the principle that his share would be always less than that of the legitimate son, the proposal would have been approved on the ground of uniformity. But the Code gives a share to the adopted son, which is equal to the share of the legitimate son. This cannot be accepted as a reasonable proposal, on the ground of uniformity, as it is inconsistent with the basic notions of the Hindus on the point. The simultaneous succession of various heirs is another instance of the type of deformed uniformity, which the code is going to enforce. The code has destroyed the provisions of Hindu Law on the points, on which its provisions have been uniform throughout India. e.g., on the

point about excluding an unchaste widow from inheritance. Clause 18 of the Bill has destroyed this rule of Hindu law. Nobody should approve of this Bill on the alleged ground of uniformity, which it professes to establish.

UNIFORMITY IN RISHI-MADE HINDU LAW APPLICABLE TO HINDUS FROM KALACHAI TO IMPHAL AND FROM KASHMIR TO COMORIN:—

In this continent of India where a numerous languages are spoken by the peoples, whose complexion varies from white to black, there is uniformity of law applicable to the Hindus, a like of which is not to be found in the countries in Europe, which if Russia is excluded, is as big as India. The few variations that are found are matters of interpretation of basic principles, but the provisions of a code are also liable to be interpreted in various ways, as would be clear to anybody who finds it difficult to carry in his hand the three volumes of Civil Procedure Code, which Nagpur has the honour to produce. Dealing with the aspect of uniformity brought about by Hindu Law, Mayne, in the Preface to the first edition of Hindu Law and Usage published in 1878 (this preface is now published at pages V and VI of the present 10th edition printed in 1938), observed as follows "Hindu Law has the oldest pedigree of any known system of jurisprudence, and even now it shows no signs of decrepitude. At this day it governs races of men, extending from Kashmere to Cape Comorin, who agree in nothing else except their submission to it".

THE LATER INVENTION ABOUT THE NECESSITY OF UNIFORMITY OF HINDU LAW AND THE UNNECESSARY REPEAL OF THE MITAKSHARA AND THE DAYABHAGA SCHOOL, WHICH WERE TO BE RECOGNISED EVEN IN THE CODIFICATION OF HINDU LAW:—

At the end of paragraph 16 of the Hindu Law Committee's Report, it was stated as follows, "We do not regard the existence of various schools of law in the several Provinces of India as an insuperable obstacle to codification. Codification does not necessarily mean the abolition of the Schools; the aim should be uniformity where possible and divergence where inevitable." The necessity of bringing about uniformity in Hindu Law by destroying both the rules of succession laid down by the Mitakshara and the Dayabhaga schools is a later invention, which took place subsequent to the signing of the report of the Hindu Law Committee on the 19th of June 1941. The credit for this invention goes, however, to the Madras Presidency, a Law Journal in which published the views of Mr. S. Shrinivasa Iyengar regarding the Hindu Law reform. In the Golden Jubilee number of the Madras Law Journal, 1941, pages 8-24, his views are published in detail and at page 12 it is stated that the legislature should lay down only one mode of succession and that the rules of inheritance should be the same whether the family is divided or undivided and whether the family is joint or separate. At page 23 it is stated that such a single rule of inheritance should abrogate the rule of survivorship and the vested interest of the son in the ancestral property by birth. The Madras Vesuvius contains numerous ashes and lava for being poured out over the entire sub-continent of India. At page 8. Sir V. Venkatesanbha Rao stated that coparcenary system should be abolished.

TWO CONSTRUCTIVE SUGGESTIONS REGARDING THE TITLE AND LANGUAGE OF THE ENACTMENT AS THE HINDU CODE IS LIABLE TO BE REJECTED ON THE GROUND THAT IT IS INCAPABLE OF BEING TRANSLATED IN INDIAN LANGUAGES SO AS TO BE UNDERSTOOD BY THE PEOPLE:—

In paragraph 38 of the report of the Hindu Law Committee it was stated that "the contemplated code shall be simple in its language, capable of being translated into the vernaculars and made accessible to all". The Hindu Code is not a Code of this type. From the beginning to the end it deals with foreign vocabulary and some of the sections are so badly worded that many persons would find it difficult to understand the code even in English language. The sections 8 and 9 of the Code may be referred to in this connection. Moreover the ideas given effect to in the Code are foreign to the Hindus. Instead of being a slight departure from the established

notions about the rules of inheritance prevailing amongst the Hindus, 'there is a general holocaust. The name 'Code' itself is an absurdity; this word which is pronounced as *aks* denotes in Marathi language a disease called leucoderma. From one point of view the Hindu Code is really a disease of that type to Hindu Law and therefore the Hindu Code is regarded with revulsion. One constructive suggestion as regards the name of the enactment, which I am inclined to make is that this enactment should be described as Vyavahara-Sootra or the analogy of the Grihya-Sootra, as the former deals with legal points. Another constructive suggestion is that the word Daaya should be used to denote intestate succession. The Sanskrit phraseology should be now used in the Code to the full extent possible, so that the Hindu public may get an impression that the enactment is really the work of a translator of a Sanskrit treatise already existing on the subject. As the matters stand at present, the form as well as the substance of the Code is such that the Hindus would reject it either on the first ground or the second ground or on both the grounds, as regards the title this enactment may be called Vyavahara-Sootra Daayabhaaga-prakaranam.

SIMILARITY OF THE DESCRIPTION OF HINDU CODE PART I, INTESTATE SUCCESSION WITH THAT OF THE GOVERNMENT OF INDIA ACT OF 1935, WHICH CONTAINS FEDERAL PROVISIONS:—

Hindu Code is an ambitious title like William the Conqueror. If all other subjects besides intestate succession would be dealt out by the Legislature in various instalments, the title Hindu Succession Act can be repealed, and this piece of legislation can be consolidated with other Acts and the whole may then be called Hindu Code. But from the way in which the Hindu Committee has threatened to do the work and wipe out the Hindu Law, there is no immediate possibility of other parts of the Hindu Law being dealt with, and even an astrologer would be unable to mention the year in which the Hindu Code would be complete, as is the case with the Federal part of the Government of India. It is better to give this bill the modest title of the Hindu Succession Act.

CLAUSE (1)—HINDU CODE, PART I—INTESTATE SUCCESSION—BAD ON ACCOUNT OF NOT INCLUDING THE PROVISIONS ABOUT THE DEVOLUTION OF THE INTERESTS OF COPARCENERS:—

The Hindu Code Part I dealing with intestate succession and Part II dealing marriage can be criticised in the language of the Civil Procedure Code, for being bad both of the ground of non-joinder of proper parties as well as misjoinder of unnecessary parties. According to Illustration (III) of section of the Indian Succession Act, a person who dies leaving an invalid will dies intestate. A will of a Hindu coparcener is absolutely invalid and therefore in fact or in law, he must be said to have died intestate. Whatever may be the faults of the sufficiently condemned Hindu Women's Rights to Property Acts of 1937 and 1938, they had one merit in them. They proceeded to deal with the rights and interests of a deceased Hindu in respect of joint property as well as separate and self-acquired property, and provided one rule of devolution for both. The present bill professes to lay down the general law of intestate succession as stated in the preamble, but as would be pointed out in the sequel, while commenting on clause (2) sub clause (1) sub clause (d) containing the definition of heritable property and clause 7 (b) providing that the separated son succeeds along with the joint or reunited son, the bill actually lays down in one important particular the law regarding the devolution of the interests of a father who is joint with his son. Why not proceed further and lay down the rule when the coparcener does not leave behind him a son, but leaves a widow or a daughter-in-law. Instead of doing this simple thing, the committee has proceeded to prepare Part II, dealing with marriage—a matter remotely connected with the rules of devolution. This bill is a most dangerous kind of piecemeal legislation, as it does not provide for the devolution of the interests of a coparcener which was done by the earlier Hindu Women's Rights to Property Act of 1937 and 1938.

CLAUSE 1 SUB CLAUSE 4—DESIRABILITY OF POSTPONING THE APPLICATION OF THE HINDU

CODE TO A PERIOD OF ONE YEAR AFTER THE NEW ELECTIONS ARE HELD IN THIS COUNTRY:—

It is stated in this clause that the Hindu Code shall come into force on the 1st day of January 1946. In South Africa elections are taking place now. It is reasonable to expect that elections would soon take place in India. But assuming that they do not take in the near future on account of the troubled atmosphere in this country, it is all the more desirable that the operation of this Act should be postponed to a date, which may a year after the new elections would take place. If the new members do not bring a bill to repeal the Hindu Code, during that period of one year, it would automatically come into force on that day.

CLAUSE 1 SUB-CLAUSE 3—GONDS AND OTHER PEOPLE DESCRIBED ABORIGINES TO BE GOVERNED BY HINDU LAW:—

It is necessary to provide that Gonds and other people described as aborigines are governed by Hindu Law. The cases about the law to be applied to the inheritance amongst the Gonds arise often in this province. In one of the recent cases it was held that slight evidence would be required to show that the Gonds have adopted the Hindu Law in the matter of inheritance. But it is necessary to adduce such evidence. This is an erroneous view of the law and requires to be repealed by expressly providing that the Gonds are governed by the Hindu Law, because if no evidence is tendered in the cases of Gonds to show that they have adopted the Hindu Law, or if a judge refuses to believe such evidence, when it is tendered, the provisions of Indian Succession Act are made applicable to the case. The Gonds have been living here for thousands of years before the British came here and enacted the Indian Succession Act first in 1865. They were not governed by these provisions at any time. They can not be governed by these provisions. Yet they are governed by these provisions. One of the cases which has acquired some notoriety on the ground of the application of Indian Succession Act to the case of Gonds, is that which arose in the Hoshangabad District and is known as the Rani Mira Moti's case. Gond is a Sanskrit word, which according to *संस्कृतशब्दकोश* denotes a man of lower caste. Sanskrit English Dictionaries state that the term is applied to mountaineers in the Vindhya range. Before the advent of the British, nobody questioned the applicability of Hindu Law to the Gonds. To apply Indian succession to them is an atrocity, which is perpetuated by the application of that Act to other aborigines in some parts of India. It is necessary to stop this.

Moreover, if the provisions of any law are applicable to the aborigines on the ground of justice, equity and good conscience, it is the Hindu Law and not any other system of law.

CLAUSE 2.

DEFINITIONS AND INTERPRETATION—(1) IN THIS ACT, UNLESS THERE IS ANYTHING REPUGNANT IN THE SUBJECT OR CONTEXT:—

(A) ONE PERSON IS SAID TO BE AN "AGNATE" (GOTRAJA) OF ANOTHER, IF THE TWO ARE RELATED BY BLOOD WHOLLY THROUGH MALES;

(B) ONE PERSON IS SAID TO BE A "COGNATE" (BANDHU) OF ANOTHER IF THE TWO ARE RELATED BY BLOOD, BUT NOT WHOLLY THROUGH MALES.

DEFINITIONS OF SAPINDA, GOTRAJASAPIND, BANDHU AND OTHERS TO BE GIVEN IN LIEU OF THE DEFINITIONS OF AGNATES AND COGNATES:—

In a Hindu Code, the definitions of the technical terms used in Hindu Law are required to be given. This code does not give any definition of sapinda at all. The reason is that it has destroyed both the definitions of the word sapinda as given by the Mitakshara as well as the Daya-bhaga school. The code contains definitions of the words agnates and cognates. But these are not the technical expressions used by the Hindus. As this Hindu Code is not intended for the use of persons who classify their relations as agnates and cognates, and as it is used for those who classify them as sapindas, gotraja-sapinda Bandhus, samanodaks etc., it is necessary to define these expressions in a Hindu Code.

THE DEFINITION OF THE WORD "AGNATE" UNNECESSARILY OVERRULING THE VIEW OF THE PRIVY COUNCIL IN *ATMARAM V. BAJIRAO* (1935) ALL INDIA REPORTER PAGE 57:—

The Hindu Code does not contain the definition of the word sapinda and samanodaka as stated. The definition of the word "agnate", which is to be found in the Hindu Code unnecessarily overrules the view laid down by the Privy Council in *Atmaram v. Bajirao* reported in (1935) All India Reporter at 57 and in 31 Nagpur Law Reports page 398 and other reports. The person claiming in that case to be the heir was in the 22nd degree. It was held that he was not entitled to the property. The Privy Council had two alternatives. It could decide in favour of a man in the 22nd degree, on the basis of a smṛiti text. But it decided on the authority of a later text against him and held that in the absence of samanodaka agnates up to the 14th degree, the Bandhus were entitled to succeed. This was done on the ground that the later text was in harmony with the usage followed by the people governed by the law. This very plausible view is overruled by the definition of the 'agnate' given by the code. And it is now possible for an agnate 22 degrees remote or 30 degrees remote to succeed to the property of the deceased in preference to a nearer Bandhu (cognate). This is the first instance of wanton reversal of established rules of law effected by the Hindu Code—rules of law established after incurring great expenses for the litigation.

SUCCESSION OF EVEN NEAR COGNATES POSTPONED BY THE NEW DEFINITION OF AGNATES:—

Though the cognates mentioned in this bill, are near relations, they have no chance to succeed now, until an agnate of the 22nd degree or of the 50th degree is dead. Mr. Santanam had introduced a Hindu Law of Inheritance Bill, which sought to widen the scope of the Hindu Law of Inheritance Amendment Act of 1929 by providing that a son's daughter's son, son's son's daughter, daughter's son's son, son's daughter's daughter, and daughter's daughter's son, shall be entitled to rank in the order of succession immediately after a daughter's daughter, and that a sister's son's son shall rank after a sister's son. These persons can not now succeed until all agnates are dead before the propositus—a very unlikely event.

RELATION USED IN A LIMITED SENSE IN ENGLAND:—

As stated in the commentary, on section 98 of the Indian Succession Act by Basu (1941) page 127 the word 'relation' taken in its widest extent embraces an almost illimitable range of objects; for it comprehends persons of every degree of consanguinity, however remote, and hence, unless some line were drawn, the effect would be, that every such gift in favour of relations would be void for uncertainty. In order to avoid this consequence, recourse is had to the Statute of Distribution; and it has been long settled, that a bequest to relations applies to the person or persons who would, by virtue of those statutes, take the personal estate under an intestacy, either as next-of-kin or by representation of next-of-kin. In Hindu Law the agnates are confined to the 14 degrees as stated already. The English rule is analogous to Hindu rule and is referred to here, as it is more likely to be appreciated, than the Hindu rule.

NECESSITY OF MODIFYING CLAUSE (A) OF SUB CLAUSE (1) OF CLAUSE (2), SO THAT A WOMAN WOULD BE A GOTRAJA SAPIND OF HER HUSBAND AND HIS RELATION ON ACCOUNT OF HER MARRIAGE:—

Clause (b) of sub-clause (2) of clause 2 lays down that a woman shall be deemed to be an agnate of her father and his agnates, and shall not by reason only of her marriage, be deemed to be an agnate of her husband or his agnates. But by what other process in addition to marriage she can become an agnate of her husband or his agnates is not stated in the Bill.

In the explanatory note on clause 2 sub-clause 1 (a) and (b) dealing with the definition of cognates, it is stated that "We are aware that, according to Hindu ideas, a girl, upon marriage, is deemed to be re-born in the gotra of her husband. Strictly speaking, therefore, she is a gotraja of her father until marriage and of her husband after marriage. In fact, on this basis we framed a rule for the succession of the widow of a gotraja sapinda in our original

proposals (see, for example, Rule 8 of the Rules for All-India in our Third Memorandum); but the rule has been heavily criticised as being of a type peculiar to the Bombay school and unknown to any other system of law in the world. In deference to this criticism we have omitted the rule; under the Bill, therefore, she will have the right to succeed as an agnate in her father's family, but not in her husband's. Except in Bombay, she has, generally speaking, no such right in either family under the existing law; and in Bombay she has at present such a right in her husband's family, but not in her father's. Even as regards Bombay, the provision in the Bill has the advantage that she is less likely to be disinherited (by will) by a blood-relation that by a relation by marriage. In certain other respects also she gets much better rights under the Bill than she enjoys at present, whether in Bombay or elsewhere; she not only gets a share of her father's property, but also a very high place as an heir to her grandfather, whether paternal or maternal. In view of these compensations, and for the sake of uniformity, we consider that the Bombay school might well accept the provisions of the Bill."

The view that the committee changed its original proposals providing for the succession of widows of Gotraja sapindas, on the ground that "it has been heavily criticised as being of a type peculiar to the Bombay school and unknown to any other system of law in the world" lays down a dangerous precedent. It would enable the committee to prepare a rule abolishing the vested interest of the son in Mitakshara families on the ground that it is only peculiar to Mitakshara families and is not recognised by the Dayabhaga system or by any system in the world. The rights conferred by the Hindu Law can not be abrogated because other systems in the world outside India do not contain similar provisions.

The reason why other systems in the world do not contain similar provisions is that principles of non-Hindu jurisprudence do not agree with the principles of Hindu Law with reference to the effects of marriage, and with regard to the point of view about marriage.

While explaining the correctness of the decision of the Allahabad High Court reported in the Indian Law Reports, Allahabad series Vol. V page 65—*Fida Ali versus Muzaffar Ali* to the effect that a wife has no right of preemption of property transferred by her husband, Sir Roland Wilson in his Digest of Anglo-Muhammadan Law () edition page pointed out that "the general tendency of Muhammadan Matrimonial Law is to treat husband and wife as essentially strangers, united by a precarious contractual bond for a special purpose. In another case, decided by the Full Bench of the Allahabad High Court, and reported in Indian Law Reports, Allahabad series, volume 8 at page 140 Abdul Kadir versus Salima, Mr. Justice Mahomed, whose views were accepted as correct by four other judges, pointed out that the contract of marriage amongst Mahomedans is analogous to a contract of sale of movable property. The question arose about the effect of non-payment of dower, and it was pointed out that her right to resist her husband so long as the dower remains unpaid is analogous to the lien of a vendor upon the sold goods while they remain in his possession and so long as the price or any part of it is unpaid; and her surrender to her husband resembles the delivery of the goods to the vendee and her lien for unpaid dower ceases to exist after consummation.

The Christian system about marriage is also materially different from the Hindu system, and it is not possible to find in any system in the world a rule similar to that developed by the legists in the Bombay Presidency in accordance with which a widow becomes a Gotraja sapind by virtue of her marriage, which amounts to a new birth in the family of her husband. The widow of a Gotraja-sapind observes mourning for ten days on the death of a man. The widows of agnates in the world do not do this. The system of the latter is good for them. The Hindu system is good for the Hindus, who have it.

One of the deplorable consequences of this clause is that a grand-daughter-in-law, or a great-grand-daughter-in-law, can not inherit in the family of their grand-father-in-law. No reform of Hindu law is worth the name, if these women are not put in the list of heirs either prior to the daughter or at least as coheirs with the daughter.

A formula used at the time of performing the marriage amongst the Maharashtra people and presumably amongst several other Hindus should be voted in connection with this point. The father of the bride says to the father of the bridegroom. This girl of proper age has been brought up by me with the same affection as shown to a son. Now I have given her in marriage to your son. Please treat her with the affection of a son. The father of the bridegroom says "Yes" in front of the sacrificial fire. This is an agreement stronger than a bond. It is necessary to make a proper provision for the right of inheritance in favour of the daughter-in-laws mentioned above, as well as the widows of the Gotraja-sapindas.

Another deplorable result flowing from the view about the disinheritance of the widows of Gotraja sapindas is that the rights of the crown to get the property by escheat is immensely enlarged by this provision. How the rule preventing the inheritance of these women works harshly can be found from a passage in Mayne's Hindu Law and Usage (1938) tenth edition, page 617, which reads as follows:—

"Hence, no claim as heir could, before the new Act, be set up on behalf of the widow of a son, or of a grandson; or can even now be set up on behalf of the widow of a daughter's son, or of a brother, or of an uncle, or of a cousin. While in some of the cases the contest was between the widow of a sapindas and some other heir, who was held to have a preferential title, in others, however, she was excluded on the general principle that she did not come within the line of heirs at all. Finally it was held that the Crown would take by escheat in preference to her. This is still the law of Bengal, Benares and Madras, subject, of course, to the two new statutory exceptions."

The exceptions are now gone and the harshness of the rule about escheat has again become great.

In a meeting held in Bombay in April 1943, presided over by Lady Ramarai and convened under the auspices of 19 Women's associations and organisations the action of the Government on this point was rightly condemned.

GRAND-DAUGHTER-IN-LAW AND MURDERERS DEBARRED FROM INHERITANCE:—

It is a matter of great surprise that in Madras Law Journal for 1942 volume 1, July Number, great delight is expressed on account of the omission of the provision enabling the daughter-in-law to succeed to the property of her father-in-law clause 19 of the Bill, prevents the murderers from succeeding to the property of the deceased whom they murdered. The Madras Law Journal view or a similar view advocated by anybody else places the grand-daughters-in-law in the same category as murderers and prevent both of them from succeeding. The propounders of this view would like the British Government to take the property by escheat instead of allowing the grand-daughter-in-law and other widows of Gotraja-sapindas to succeed to the property. This is as unfair as it could be and should not be allowed by the Legislature.

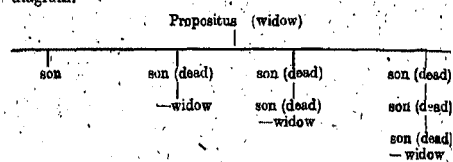
For the sake of achieving uniformity, it is not desirable to deprive the is to be achieved, it should be done by allowing these widows to inherit in other provinces in other words, by levelling up and not levelling down. In a case, in which the Privy Council held that the adoption of an only son was valid, and which is reported in Indian Law Reports, Madras series, volume 22 at page 398 and as well as in the Allahabad series, volume 21 at page, it is observed at page 430 of the Madras report and at page of the Allahabad report that "People may be disturbed at finding themselves deprived of a power, which they believed themselves to possess and may want to use. But they can hardly be disturbed at being told they possess a power which they did not suspect."

NECESSITY OF ADDING AN EXCEPTION ENTITLING THE BOMBAY GOTRAJ SAPINDA WIDOWS TO INHERIT:—

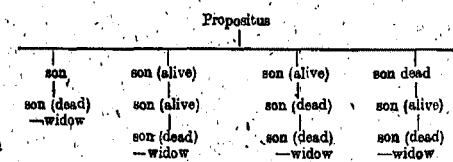
If the representatives of other provinces are adamant and want the British Government to take the property by escheat, though the widows of Gotraja sapindas are alive, they may be allowed to have full scope for this views in their provinces; and an exception safeguarding the vested interests of the Bombay Gotraja sapindas widows may be put in the code.

RIGHTS OF WIDOWED GRAND-DAUGHTERS IN-LAW TO SUCCEED IN DIFFERENT SETS OF CIRCUMSTANCES—DAUGHTER-IN-LAW, GRAND DAUGHTER-IN-LAW AND GREAT-GRAND-DAUGHTER-IN-LAW TO SUCCEED AS THE REPRESENTATIVES OF HER HUSBAND, WHEN THERE IS NO INTERMEDIATE MALE DESCENDANT OF THE PROPOSITUS ALIVE:—

The rights of the widowed grand-daughter-in-laws in the family of the propositus should be given effect in two different ways in two different sets of circumstances. If a man dies, his widow or widows and his son or sons should inherit his property. But if a man dies leaving a widow and a son and a widow of a predeceased son, the widow of the predeceased son should be allowed to succeed to his share. If a man dies leaving a widow, a son, a widow of a predeceased son and a widow of a predeceased son of a predeceased son, all of them should get a share. If a man dies, leaving behind him a widow, a son, a widow of a predeceased son, a widow of a predeceased son of a predeceased son, all of them should get a share each. This is illustrated by the following diagram.



This principle may be extended to a case of any widow of any agnate descendant of the propositus provided there is no intermediate agnate descendant is alive. If he is alive, the widow of his descendant should not take because her right to succeed would arise after his death. This point is illustrated by the following diagram.



None of the daughters-in-law in these cases should be entitled to succeed, as their rights would arise after the death of the intermediate agnate descendant of the propositus.

INHUMAN CRUELTY IN ALLOWING THE WIDOWED GRAND-DAUGHTER-IN-LAW, AND GREAT GRAND-DAUGHTER-IN-LAW TO BE EJECTED FROM THE PROPERTY AT THE INSTANCE OF REMOTE HEIRS BEGINNING FROM THE DAUGHTER AND ENDING WITH ANY COGNATIC RELATION WHOSE FACE THE DECEASED MIGHT HAVE NEVER SEEN AND WHOSE EXISTENCE HE MIGHT HAVE NEVER SUSPECTED:—

If there is a strong case for allowing a widow of the propositus to succeed along with his son, irrespective of the fact whether she is the mother of that son or step-mother, the case for allowing the daughter-in-law, to succeed is stronger, and the case of the grand-daughter-in-law and the great-grand-daughter-in-law and others mentioned above as being entitled to succeed, the strongest, in view of the fact of the more tender age of the girls, who, to the language of Hindu Legists, have been born again in the family of their husbands. This new birth of the girl in the family of their husbands is so complete in Maharashtra and some other parts of India that the girl married in the family are given a different name, by which she is called in that family, in the same way as the girl adopted in the new family is given a different name. The widows would not generally remarry, if the family is high class family and it would be inhuman cruelty to allow them to be ejected from the family property at the instance of remoter heirs beginning from the daughter and ending with any cognatic relation, who, with a genealogical tree, genuine or forged, would pounce upon the estate and whose existence the deceased might have never suspected.

According to Vishwātapa the widow of his son or of grandson is entitled to the same proprietary share at the time of partition of ancestral property when the wife of the head of the family is given a share see paragraph 429 pages 541-542 of Mayne's Hindu Law and Usage (1938). Allowing the various daughter-in-laws a share in the inheritance it is justified by the principle recognised by this authority.

WIDOWS OF AGNATIC AS GOTRAJ-SAPINDAS AS STATED IN THE MITAKSHARA:—

It has been pointed out by some critics that the principle laid down by Brihaspati that the widow is the surviving half of her husband was not adopted in all parts of Hindustan. These persons may therefore read the statement in the Mitakshara about sapinda relationship upon which the rules of inheritance are based. This statement is to be found in the commentary on shloka 52 of the first chapter called Achaaradhyaya of Yajñewalkya Smṛiti. As the usual translations of Mitakshara into English deal with not other portions of the second Adhyaya called Vyavaharadhyaya and the above portion, a translation of this portion as given in Lalubhai vs. Cassibai (1890) decided by the Privy Council and reported in the Indian Law Reports Bombay series Vol. V page 110 and page 119 is given below. "(He should marry a girl) who is non-sapinda, i.e., (1) a sapinda (with himself). She is called his sapinda who has (particles of the body) (of some ancestor) in common (with him). Non-sapinda means not his sapinda. Such a one (he should marry). Sapinda relationship arises between two people through their being connected by particles of one body. Thus the son stands in sapinda relationship to his father, because of particles of his father's body having entered (his). In like manner stands the grand son in sapinda relationship to his paternal grandfather and the rest, because, through his father, particles of his (grand-father's) body have entered into (his own). Just so is (the son a sapinda relation) of his mother, because particles of his mother's body have entered (into his). Likewise (the grandson stands in sapinda relationship) to his maternal grandfather, and the rest through his mother. So also (is the nephew) a sapinda relation of his maternal aunts and uncles and the rest, because particles of, the same body (the paternal grandfather) have entered into (his and theirs); likewise (does he stand in sapinda relationship) with paternal uncles and aunts and the rest. So also the wife and the husband are sapinda relations to each other, because they together beget one body (the son) in like manner brothers' wives also are (sapinda relation to each other) because they produce one body (the son), with those (severally) who have sprung from one body (i.e., because they bring forth sons by their union with the offspring of one person), and thus their husband's father is the common bond which connects them. Therefore, one ought to know that wherever the word sapinda is used, there exists (between the persons to whom it is applied) a connection with one body, either immediately or by descent".

This question is also dealt with in the sequel, while discussing the question about, the uniformity of law sought to be achieved by the bill.

CONCRETE SUGGESTION:—

The best course is to recognise an exception to the general rule in the case of widows of Gotraj sapindas, governed by the Bombay school of Law.

WRONG VIEW IN THE MADRAS LAW JOURNAL AND CALCUTTA WEEKLY NOTES REGARDING THE WIDOWS OF GOTRAJ SAPINDAS:—

I have read with amazement the passages in the learned journals like the Madras Law Journal and Calcutta Weekly Notes, which object to the inclusion of the widows of Gotraj sapindas in the list of heirs on the ground that the text of Brihaspati laying down that the wife is the surviving half of her husband was not accepted as correctly stating the position of the widows of Gotraj sapindas. The Mitakshara does deal with this point definitely and states that they are sapindas. Mourning is observed on the death of these widows for ten days, while no mourning is observed in the case of death of daughter of remote sapindas. Looking at the question from the point of degrees of relationship, the widow of a Gotraj sapinda is nearer than her daughter, in whose favour the right of inheritance is recognised.

DEFINITION OF THE WORD BANDHU (COGNATE) GIVEN BY THE PRIVY COUNCIL IN RAMCHANDRA WAIKAR VERSUS VINAYAK (1914) REPORTED IN INDIAN LAW REPORTS, CALCUTTA SERIES VOLUME 42 AT PAGE 384 UNNECESSARILY SET ASIDE BY THE DEFINITION OF THE WORD 'COGNATE' GIVEN IN THE HINDU CODE:—

In the case of Ramchandra v. Vinayak referred to above, the Privy Council rejected the statement of Golap Chandra Sarkar to the effect that the word 'Bandhu' means and includes all cognate relations without any restriction and it held that it ceases after the seventh ancestor on the father's side and the fifth ancestor on the mother's side. This view is unnecessarily set aside by the definition in the Hindu Code, and no reasons, plausible or otherwise, are attempted to be given. This is the second instance of wanton reversal of the established rules of Hindu Law by the Hindu Code.

(e) "RELATED" MEANS RELATED BY LEGITIMATE KINSHIP, AND ANY WORD EXPRESSING RELATIONSHIP OR DENOTING A RELATIVE SHALL BE CONSTRUED ACCORDINGLY:—

FOUR POINTS SETTLED FOR CENTURIES UNSETTLED BY THE SHORT DEFINITION OF THE WORD "RELATED" WHICH CONTAINS THREE DEFEATS:—

The short definition of the word "related" contains three mistakes. The law settled for centuries is unsettled on three points by this definition.

OVERBOUNDARY HIT BY WHICH UTERINE BROTHER OR UTERINE SISTER EXCLUDED BY HINDU RULE OF INHERITANCE BECOME ENTITLED TO SUCCEED UNDER THIS ALLEGED HINDU CODE:—

According to the rules of Mahomedan Law of Inheritance the brothers and sisters are divided into 3 clauses. Full brothers and sisters are those who are born from the same father and mother. Consanguine brothers and sisters are those who are born from the same father but different mothers. Uterine brothers and sisters are those who are born from the same mother but from different fathers. The definition of the term 'related' as meaning related by legitimate kinship follows the view laid down in English cases. But for the purposes of the Hindu Code, this is an over-boundary hit, as uterine brothers and sisters are not recognised as heirs under the Hindu Law, though from non-Hindu point of view, their relationship is regarded as legitimates. If a man dies, leaving behind him (1) Full brother, (2) consanguine brother, and (3) uterine brother, the full brother excludes the consanguine brother; both, however, are heirs to his property. But either the uterine brother or uterine sister is not an heir and heir under the Hindu Law. An exception should be added to this definition as follows.

Exception 1.—Nothing in this section shall be deemed to confer on the uterine brother and uterine sister and their relations a right of inheritance, which they did not possess under the Hindu Law.

INNOVATION INTRODUCED IN HINDU LAW ON THE BASIS OF MAHOMEDAN LAW:—

The above innovation, which is introduced in Hindu Law has its basis in Mahomedan Law. It is inconsistent with the scheme of Hindu Law of inheritance.

RIGHTS OF INHERITANCE ENJOYED BY THE DASIPUTRAS TAKEN AWAY BY THE BILL AS THEY ARE NOT INCLUDED IN THE LIST OF HEIRS THE QUESTIONNAIRE ISSUED BY THE HINDU LAW COMMITTEE DID NOT VOTE THIS POINT:—

The question about depriving the Dasiputras of their rights of inheritance was not included in the questionnaire issued by the Hindu Law Committee. Question 8 was to the following effect, "A shoobra dies leaving a widow and a Dasiputra. Under the Act of 1937 and 1938, the widow inherits the same share as a son. Should she inherit the same share as an ordinary son or as the Dasiputra? In the former case, she would take three-fourths of the estate, and the Dasiputra would take one-fourth, and in the latter, each would take one-half. Whatever may be the answer to this question, depriving the Dasiputra of his right of inheritance could not be the answer to it. The notes on clauses do not state why the Dasiputra is excluded from inheritance.

THE TWO-FOLD CLASSIFICATION LEGITIMATE RELATIONSHIP AND NO-RELATION—NOT SUFFICIENT FOR PURPOSES OF HINDU LAW, WHICH RECOGNISED THE STATUS OF DASIPUTRA FOR CENTURIES PAST:—

As stated by Lord Darling in a judgment of the Privy Council reported in the Indian Law Reports. Bombay series, volume 50 page 604 (610, 611)—*Bai Nagbhai v. Bai Monghibai* the law bearing on this point originated in the sayings of almost immemorial sages, but has long had a definite meaning, whether expressed in the language of India or of Europe. The persons denoted by it had, and have still where it remains applicable, a recognised status below that of a wife and above that of a harlot. Almost a wife, according to ancient authorities, in that she was affected to one man only, although in an irregular union merely. States of the son of a Dasi should not taken away, as would be the result of the definition of the word 'related' which recognises only the legitimate relationship.

REVERSAL OF LAW ON THE POINT SETTLED FOR CENTURIES AND ABOUT WHICH THERE IS NO DIFFERENCE OF OPINION BETWEEN THE DIFFERENT SCHOOLS:—

The rights of Dasiputras are recognised by both the schools of law, the Mitakshara and the Dayabhaga. This point has remained settled for centuries. It is now upset by the Code.

NECESSITY OF ADDING ANOTHER EXCEPTION:—

It is therefore necessary to add another exception to the clause as follows:—

"Exception II.—Nothing in this subsection shall be deemed to deprive a Dasiputra of the rights of inheritance to which he is entitled under the provisions of Hindu Law".

NECESSITY OF ADDING A THIRD EXCEPTION AS RIGHT OF BLOOD RELATIONS OF PROSTITUTES ARE DESTROYED BY THE BILL:—

This definition upsets a rule of law prevailing for ages to the effect that the children of prostitutes succeed to their property. The law on the point, as it stands at present, would be found stated in Mulla's Hindu Law (1940) pages 152, 153 paragraphs 163 and 164. A third exception should therefore be added as follows.

"Exception III.—Nothing in this definition shall be deemed to deprive the blood relations of a prostitute or any other similar man of their right of inheritance to her property".

NECESSITY OF ADDING A FOURTH EXCEPTION DISQUALIFYING NON-HINDUS FROM INHERITANCE:—

It is necessary to add a fourth exception for the purpose of disqualifying the non-Hindus from inheriting the property of the Hindus. This point is dealt in details in the beginning in paragraph 7 of this note.

(b) "STREEDHAN MEANS PROPERTY ACQUIRED BY A WOMAN BY INHERITANCE OR DEVISE, OR AT A PARTITION, OR IN LIEU OF ARREARS OF MAINTENANCE OR BY WAY OF ABSOLUTE GIFT FROM A RELATIVE OR STRANGER BEFORE, AT, OR AFTER HER MARRIAGE, OR BY HER OWN SKILL OR EXERTIONS, OR BY PURCHASE, OR BY HER PRESCRIPTION, OR BY ANY OTHER MODE WHATSOEVER:—

DEFINITION OF STREEDHAN AS INCORRECT AS ITS SPELLING STRIDHAN:—

The Sanskrit word स्त्रीधन, which should have been spelt as *streedhan* is spelt in Bill as *stridhan* as if the word was स्त्रिधन. It should not surprise anybody that the present definition of स्त्रीधन is an incorrect as its English spelling used throughout in the Bill and the explanatory note and the various memoranda dealing with it.

PRESENT LAW ON THE POINT:—

Property acquired by woman by inheritance or at a partition, or in lieu of maintenance is not regarded as *streedhan* according to the law laid down in British India courts and settled for more than a century, by the decisions of the Privy Council. For the sake of convenience, only one case decided by the Privy Council and reported in the Indian Law Reports, Allahabad series volume 34 page 234 (*Debi Mangalprasad Singh vs. Mahadeo Prasad*

Sing) may be referred to in its connection. As regards earlier decisions they are *Bhugwandeon Doobey v. Myna Baes* () reported in Weekly Reporter volume 9 Privy Council section 23 and *Thakur Dayee versus Rai Balack Ram* () reported in Weekly Reporter volume 10 Privy Council section page 3.

The lawyers and the lay members of the Legislature are now asked to decide that the Privy Council was wrong and that the Hindu Law Committee and Dr. Jayaswal and Sir Venkatsubbarao are right and that the Privy Council decisions should be overruled. It is easy to find out who has committed the mistake, whether the Privy Council or the Committee. I think that the Privy Council is right.

THE WORD ADYAM MEANING 'ET CETERA' OR 'THE LIKE' IN THE TEXT OF YAJNAWALKYA SMRITI, WHICH THE MITAKSHARA EXPLAINS AS INCLUDING THE PROPERTY OBTAINED BY INHERITANCE PARTITION, ETC., BY A WOMAN IS NOT FOUND IN MANY EARLIER AND LATER COMMENTARIES AND IN DAYABHAGA WHERE THAT TEXT IS CITED:—

'Adyam' is out of place in the text of Yajna-walkya. One most important point which has not distracted the attention of the Hindu Law Committee while preparing the definition of *streedhan* is that the word 'Adyam', meaning 'et cetera', or 'the like' is not found in many other versions of the Smriti of Yajna-walkya used by other commentators e.g. Vishwarorta and Apararka. These commentators read च (cha), which means 'and', in place of Adyam which means 'et cetera' or 'the like' as stated above. According to these commentators the entire passage consisting of two verses containing two sentences reads as follows,

"What was given to a woman by the father, the mother, the husband or a brother and received by her at the nuptial fire, and presented to her on her husband's marriage to another wife, is denominated a woman's property and that which has been given to her by her kindred; as well as her fee or gratuity or anything bestowed after marriage". "Her kinsmen take it, if she dies without issue".

The passage in the version available to Vajnaneshwar, the author of Mitakshara, reads as follows,

"What was given to a woman by the father, the mother, the husband or a brother and received by her at the nuptial fire, and presented to her on her husband's marriage to another wife, as also any other (separate acquisition), is denominated a woman's property". And "That which has been given to her by her kindred, as well as her fee or gratuity or anything bestowed after marriage". "Her kinsmen take it, if she dies without issue".

DAYABHAGA AND TWO COMMENTATORS OF YAJNAWALKYA SMRITI, WHOSE VERSION OF THE YAJNAWALKYA SMRITI DOES NOT CONTAIN THE MYSTERIOUS ADYAM, WHICH MEANS 'ET CETERA' OR 'THE LIKE':—

(1) Vishwarupa, who according to the statement in Mayne's Hindu Law and Usage (1938) flourished in the years 788-820 of the Christian era and was a pupil of the great Shankaracharya, wrote a commentary called बालक्रीडा Baalkreeda, Yajna-walkya Smriti. He reads, (cha) meaning 'and'. He does not use Adyam which means 'et cetera' or 'the like', as stated already Adyam denotes also property which she may have acquired by inheritance, purchase, partition, seizure or finding. These are described by Manu and others as *streedhan* 'Woman's property'. This is the sole basis of the definition of *streedhan* now put in the code.

See the edition of Vishwarupa's commentary printed by the Travancore Government, Trivandrum, or the edition of Yajna-walkya smriti with various commentaries edited by Setlur. ()

(2) In the commentary of Apararka—King of Konkan—published in the Anandaashram series Poona referred to in Mayne's Hindu Law and Usage (1938) at pages 4 and 48, this shloka is numbered as 143 in Vyawaharaadhy and the passage reads as अविदितकिये

(3) This text is cited in Dayabhaga in chapter IV section 1 paragraph 13 (see Setlur's Translation of Hind Law books, part II) (in the same volume) Dayabhaga page 30, where the various kinds of *streedhan* are enumerated. It reads अविदितकिये. The word अ

(Adyam) compounded with *अधिदेनिकाय* so as to produce the expression *अधिदेनिकाय* not to be found in this version. According to the statement in Rajani Nath Das v. Naitai Chandra Day (1920). Full Bench, reported in the Indian Law Reports Calcutta series, volume 48 at page 643—the statement occurs at page 687—Jeeemootawaahana the author of Dayabhaga was alive in the year 1092 of the christian era. Yajñawalkya lived at Mithila, in the modern Behar and text cited in Dayabhaga in Bengal should be regarded as more authentic than the text available to Vijnaneshwar the author of Mitakshara. According to the statement in Mayne's Hindu Law and Usage, (1938), Vijnaneshwar, the author of Mitakshara lived some time in the period covered by the years 1076–1126 of the christian era. He was a contemporary of the author of Dayabhaga who was alive in 1092.

THE MYSTERIOUS ADYAM MEANING 'ET CETERA' OR 'LIKE' REPUGNANT TO THE CONTEXT:—

The word *अद्यम्* (Adyam) which is compounded with *अधिदेनिकाय* to produce the expression *अधिदेनिकाय* and which means 'et cetera' or 'the like' was always described as the mysterious 'Adyam' by Mayne in the editions of Hindu Law and Usage issued in his life time. It is repugnant to the context. Had Yajñawalkya used the word himself, he would have stopped the description of the varieties of *streedhan* in that very line of the verse. But he does not do so. He states other varieties in the next verse and says in continuation "the property which has been given to her by her kindred; as well as her fee or gratuity (*shulkam*) or anything bestowed after marriage". And the enumeration ends here. As the expression 'et cetera' occurs after the statement of all specified matters, and not at any intermediate place, the reading of the verse of Yajñawalkya *Smṛiti* adopted in Mitakshara is repugnant to the context on its very face.

SLIPPERY BASIS FOR THE MITAKSHARA INCLUSION OF PROPERTY ACQUIRED BY INHERITANCE OR PARTITION IN THE LIST OF STREEDHAN PROPERTIES:—

It is thus clear that there is a slippery basis for the Mitakshara inclusion of property acquired by inheritance or partition in the list of *streedhan* properties. The Mitakshara version, of the Yajñawalkya *Smṛiti* containing the word 'Adyam', explained in the Mitakshara to denote also the property acquired by inheritance, partition &c., is against at least other version of the same text, found in at least three other important works.

NECESSITY OF OMITTING THE ESTATE ACQUIRED BY A WOMAN BY INHERITANCE FROM THE DEFINITION OF STREEDHAN NOT FELT BY THE FRAMERS OF THE HINDU CODE, WHO HAVE EXPRESSLY PROVIDED FOR IT IN CLAUSE 13(A):—

It is stated in the explanatory note that one of the three main features of the Bill is that it abolishes the Hindu woman's limited estate. A considerable portion of the explanatory note and a considerable portion of the fourth Memorandum are devoted to support to view about repealing the Hindu Law with regard to the limited estate held by a Hindu widow and about substituting the rule about absolute estate in its place. But notwithstanding this grim determination of the Government to abolish the Hindu Woman's limited estate, it has not been able to do it. It is definitely provided in clause 13 (a) of the Bill that the widow would get a limited estate by inheritance. The clause reads as follows:—

"Property inherited by her (a woman) from her husband shall devolve upon his heirs, in the same order and according to the same rules as would have applied, if the property had been his and he had died intestate in respect thereof immediately after his wife's death".

Explanation.—For the purpose of this clause, property devolving on another widow of the husband, whether under this clause or under entry (9) in clause (b) shall be deemed to be property inherited by such widow from her husband.

A CHINESE PUZZLE IN THE HINDU CODE:—

Insertion of clause 13(a) providing for the life-estate of a widow is as interesting as a Chinese puzzle.

IS THIS SIMPLY A TRICK FOR PREVENTING AGITATION ON THE POINT FOR THE PRESENT AND FOR PERMITTING AN INNOVATOR AT SOME OTHER TIME TO MOVE AN AMENDMENT THAT THIS CLAUSE SHOULD BE OMITTED:—

The Government should state its views on this point.

DELETION OF THE PROPERTY OBTAINED BY A WOMAN AT A PARTITION, OR IN LIEU OF MAINTENANCE WRONGLY INCLUDED IN THE DEFINITION OF STREEDHAN CLAUSE (2) SUB-CLAUSE 1 (i):—

While a family remains joint, a woman has no right for a specific share of the family estate, except as provided by the Hindu Women's Rights to Property Act of 1937 as amended in 1938, and under clause 5 class I. But according to the former Act, and according to clause 13 (a) of this Bill, property inherited by a widow from her husband is not her *streedhan* and therefore it devolves upon the heirs of her husband after her death. If a widow succeeding under the provisions of the former Act or this Bill effects a partition of the property, the process of partition cannot confer on her a bigger estate than that which she got under their provisions. Otherwise every widow getting a share in the inheritance would like to have a partition effected. In such a case the estate which she gets is in lieu of the estate which she already held remains subject to the same restrictions. It is therefore erroneous to provide that the property obtained by the widow by partition in such a case is her absolute property.

Another occasion when a woman gets a share on partition is when her sons or step sons effect a partition. It should be remembered that while the brothers remain joint, the mother has no right either under the Mitakshara or the Dayabhaga school to demand any specific share of the family estate. She is only entitled to maintenance. But if a partition takes place between her sons, she gets a share equal to that of a son. In the Mitakshara school, she gets a similar share even when the partition is effected among her step-sons. In a case decided by the Privy Council and reported in the Indian Law Reports (1911) Allahabad series, volume 34 page 234—Debi Moulai Prasad Singh versus Mahadeo Prasad Singh, it was pointed out at page 242 that "whether the share given to a widow on partition is a substitute for what to which she would be entitled upon inheritance, it would seem reasonable that it should follow the same rule of descent and revert on her death to her husband's heirs. If, on the other hand, it is given to her by way of provision for her maintenance, it seems equally reasonable that when the necessity for her maintenance has ceased, the property should revert to the estate from which it was taken".

If property obtained at a partition or given in lieu of maintenance is treated as *streedhan* property, it would devolve upon the daughter or daughter's daughter and the daughter's son of the widow, in preference to her son as well as a son of her husband from a predeceased wife. It would follow a different line of descent.

It is therefore necessary to omit the words "or at a partition or in lieu of maintenance" occurring in this clause, which defines *streedhan*.

SANSKRIT AUTHORITIES IN FAVOUR OF A LIMITED ESTATE OF A HINDU WIDOW:—

No research for the *smṛiti* authorities in favour of the view that a widow gets a limited estate in the property inherited by her husband need be made. Mayne in his Hindu Law and usage, while explaining the limited power of disposal possessed by a widow over the property inherited by her from her husband, always used to refer to them, though all of them are not referred now in the latest edition of that work published in 1938 (the tenth edition), where at page 766, a reference is made to the text of Katyayana only. In the earlier editions, a text of Mahabharat and another from Narada used to be quoted, and they would be found for example in the seventh edition of that work published in 1906. Dr. Altekar, in his work 'Position of Women in Hindu civilisation' (published in 1938) has referred to the above texts at pages 314–321 and has added one more from Brihaspati in support of the view that the widow's powers are limited. This work is very cursorily referred to in the note, and no reference to his view justifying the recognition of the life estate is made. But as neither Mayne nor Altekar has attempted to state the authorities from a chronological

point of view, which is necessary to bear in mind in order to know the period during which the rule has been observed in Hindu society, these authorities are explained from this point of view in the sequel.

LIMITED ESTATE IN FAVOUR OF A WIDOW LAID DOWN IN MAHABHARATA TWELVE CENTURIES BEFORE CHRIST:—

According to Dr. Dattari, the date of Mahabharata may be taken to be about twelve centuries before Christ, though according to others it is much more previous to that. In Mahabharata in the chapter on दान स्तव in (93) अश्वत्थामन पर्व, अध्याय २६, श्लोक २४, (in the Parva called Anushasanaparva, Adhyaya 47. Shloka 24 page 131 of the Poona Chitrashala Press Edition where the more comprehensive word दानवत्तु occurs.), it is stated that "it has been always laid down that the property inherited by a woman from her husband is intended only to be enjoyed by her. Women should never waste any portion of their husband's property.

According to a statement in Mayne's Hindu Law and Usage (1938) tenth edition page 32, Katyayan, Narada and Brihaspati may all be regarded as belonging more or less to the same period.

Katyayan stated that "a widow leading a chaste life and keeping unsullied the bed of her lord should enjoy the property with moderation, during her lifetime. The reversioners would get the property after her death,

Brihaspati said that "a widow, who kept the traditions of the family should obtain the property of her husband, in case of his death. She should have it for her life. She has got no right to make a gift, mortgage or sale thereof".

Narada laid down that the transfer effected by women are regarded by the wise as invalid i.e., if they were never effected, especially, the gift, mortgage and sale of a house or a field.

INSCRIPTIONS. SHOWING THE PRACTICE OF OBTAINING EXPRESS PERMISSION OF THE REVERSIONERS FOR VALIDATING THE TRANSFER BY A WIDOW EVEN FOR RELIGIOUS PURPOSES:—

Dr. Altekar in his work 'Position of women in Hindu civilisation' pages 317 and 318 refers to various transactions by the widows, in which reversioners consent was obtained, though the gift was for spiritual purposes. He says, 'Neither Devanabhatta nor Nilakantha states whether the consent of the next reversioners was necessary for validating such a transaction. The language which they have used would suggest that if the gift was a bona fide one for religious purposes, the widow could give it herself without the consent of the reversioners. The actual practice seems to have varied considerably. We have no recorded cases from Northern India, but South Indian inscriptions of the medieval period show that the silence of the authorities was interpreted differently by different persons and localities. There was one view that the express permission of the reversioners was an essential pre-requisite for such a transaction. It would be therefore better if the gift purported to be made jointly by the widow and the reversioners. Some inscriptions from South India show that this opinion was acted upon in practice on several occasions. Thus a 10th century epigraph from Mysore records a gift of land given by a widow and her brother-in-law (E.C., XI, Holkere No. 23). The brother-in-law is obviously introduced here to show that the transaction had the full consent of the next reversioner. The widow alone could not have sold the property. A 12th century inscription from the same stated records the donation given by a widow to a temple along with her brother-in-law and Srivishnavas. Here it is clear that the consent of not only the next reversioner but of the whole caste was deemed necessary to validate the transaction (*ibid*, X, No. 100-A). A 13th century inscription from Madura district narrates how two childless widows wanted to give a garden to a temple, how their relations would not sanction the transaction, and how eventually they could achieve their object only by securing the permission of some other reversioners

(S.I.E.R.), 1916, No. 401). It is quite clear from the above cases that the widow's estate was regarded as a limited one. The permission of the next reversioner, if not of the whole caste, was necessary to enable her to gift it even for a religious purpose. There are, however, other records equally numerous and hailing from the same part of the country, which record sales or gifts of landed property by widows made for religious purposes, but which are silent about any permission of the reversioners. The epigraphic evidence then shows that the custom differed with different castes and different localities in south India. Some sections of society felt that the permission of the reversioners was necessary to validate even a religious gift; others thought that it might be dispensed with. When we note that our jurists all belonged to the priestly class, it need not be wondered that their general tendency should have been to give the widow an unrestricted power in the matter.

SCOUNDRELS READY TO CHEAT THE WIDOWS AND DEPRIVE THEM OF THEIR ESTATES:—

How scoundrels are waiting for opportunities to cheat the widows and deprive them of their estates is best described in Mahabharata, Adi parva, Adhyaya 153 Shlokas, 12-13 Poona Chitra Shala Press, Edition (1929) page 269 in the following words:—

"As the birds desire very much to take possession of the pieces of flesh thrown on the ground, all persons seduce a widow with a similar avidity. O husband, as I would lose my balance of mind on account of being seduced by the scoundrels and would not be able to remain in the condition approved of by the virtuous."

Notwithstanding what is stated in the explanatory note about the litigation due to limited estate this point is illustrated by several cases coming before the Courts. The following is only one sample. The case is reported in the Indian Law Reports Calcutta series (1914) volume 41 at page 870. There a woman called Ramdhani Dases gave away not only the property which she inherited from her husband, but all other property which she purchased from the savings of that estate, to one Kulachandra Chakravarty, who, though a stranger to the family, exercised appreciable influence on her. The Calcutta High Court held that the transfer was not binding on the reversioners, who were entitled to the estate as the alienations was not justified by legal necessity and the transferee was ejected.

A great part of the explanatory note is devoted to the disabilities attaching to the transfer to be effected by a widow who is the owner of a limited estate. But it is surprising to find that not a single word is devoted to this aspect of this question. But this point was elaborately dealt with by the Hon'ble Sir Sultan Ahmed, in his introductory speech delivered on the 24th of March, 1943, when he said that when women become members of the legislature and ministers, the question of their competency to manage the estate can not arise. The provisions of Hindu Law are intended to protect the average Hindu, woman, about whose protection there is great need, as pointed out by Dr. Altekar. As regards the women ministers and members of the legislature they can ask their husbands to provide in the will from them to the effect that they would get absolute estate. But all the Hindus in general cannot be asked to give up the protection, which the law gives to women, and which is also given to Mahomedan women, as stated numerous decisions of the Privy Council relating to pardhanashin ladies.

DR. ALTEKAR'S OPINION IN SUPPORT OF THE CONTINUANCE OF THE LIMITED, ESTATE:—

The point about the absolute estate and the limited estate is discussed by Dr. Altekar in his work. "The position of women in Hindu civilisation" published in 1938, at pages 314-322. At para. 312, he observes as follows. "We must, however, note that even at present the widow can sell or mortgage her property for genuine necessities. 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 powers of alienation; the result was that many of them sold away their valu-

able lands and eventually became paupers, as they could not properly utilise or invest the also proceeds. Eventually the governments of those provinces had to restrict these powers in the interests of the peasants themselves. We should not forget that 95 per cent. widows are still 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. The money realised from sale will not last long, and the majority of widows disposing of their property will eventually find that they have lost both the lands and their sale proceeds. Their condition will then become very pitiable. In the present circumstances therefore, it is not in the interests of the widows as a class that they should have unrestricted power of alienation.

STURDY MAHOMEDANS OF PUNJAB AND SIND ABLE TO DEFEAT THE NAZIS RESCUED FROM THE CREDITOR'S CREMATORIUM BY THE LAND ALIENATION ACTS:—

Apart from the protection given to the Mahomedan purdanasheen ladies by the Privy Council decisions as stated above, the sturdy Mahomedans of Punjab and Sind, who are able to defeat the Nazis, were required to be rescued from the creditor's Crematorium by the Land Alienation Acts passed in those provinces. The Land Alienation Acts are passed almost in all other provinces. In these days, when men required to be protected, it is idle to talk that the protection given by the Hindu law to women should be taken away. If the Hon'ble the Law Member is of opinion that free right of transfer could be conferred upon the Hindu women, let him first use his good offices to persuade all the Provincial Governments in British India to repeal the various Land Alienation Acts, and then urge that the limited estate of a Hindu Woman should be converted into an absolute estate, after those Acts are repealed.

ANTI-ALIENATION LAWS IN ANCIENT TIMES:—

A French writer (E. De.) Laveleye, in his work "Primitive property", which has been translated into English, has dealt at length with this aspect of the question and his view is that non-transferability was the characteristic of property in ancient times not only in India, but in Sumatra, Java and in other places. As stated already non-transferability is the rule even to-day as regards the property which men have inherited from their ancestors. It is preposterous to contend that though men could not transfer the property in ancient times or in modern days, women could transfer the inherited property in ancient days and should do so now. Yet the latter point is urged very seriously.

FLOUTING THE VIEW OF THE SMRITIS AND COMMENTATORS OF GREAT ANTIQUITY AND HIGH AUTHORITY NOT PERMISSIBLE:—

The Hon'ble Sir Sultan Ahmad, called upon the members of the legislature to produce a shruti in support of the principle that a widow inheriting from her husband could not transfer that estate, like a protigal son mentioned in the Bible and he did not care to be bound for the smritis. He himself, has, however, not produced any shruti in support of his view. The shruti authority for a limited estate can not of course be cited, for the simple reason that in those early days, the shruti prevented a widow from succeeding to her husband's estate, in the same way, in which she is prevented from succeeding to her husband's rights and interests in the coparcenary property today. This point is dealt with at elaborate length in the sequel. Here we assume that the Hon'ble Sir Sultan Ahmad, himself produces a shruti saying that a widow inheriting the estate from her husband had absolute powers of transfer and on that ground the new rule about absolute right of transfer would be justified. Such a case would be similar to a text from Koran being in consistent with the views of the Mahomedan jurists of the shia and sunni schools. It is therefore interesting to note how such points could be dealt with at the present age. In a case governed by

the Mahomedan law decided by the Privy Council and reported in (1897) the Indian Law Reports, Calcutta series, volume 25 at page 9, Lord Davay dealt with a similar point at page 18 and 19. On the basis of a text in the Koran, to be found in sura II *versus* 241-2, it was contended that a wife had a right to be maintained out of her husband's estate for a year independently of any share which she may obtain in the property left by him. (But contrary to this text, it was laid down in the Hedaya (Book IV, Ch. XV, S. III), which says expressly: "Maintenance is not due to a woman after her husband's decease", and gives reasons for so holding. The Imamia (Baillie, p. 170), after saying that it would seem that after the death of her husband the widow has no right to a residence except in the single case of her being pregnant, says: "A widow has no right to maintenance, even though she be pregnant". Lord Davay, delivering the judgment of the Privy Council observed: "Their Lordships on these authorities must hold that a Mahomedan widow is not entitled to maintenance out of her husband's estate in addition to what she is entitled to by inheritance or under his will. They do not care to speculate on the mode in which the text quoted from the Koran, which is to be found, Sura II, *versus* 241-2, is to be reconciled with the law as laid down in the Hedaya and by the author of the passage quoted from Baillie's Imamia. But it would be wrong for the Court on a point of this kind to attempt to put their own construction on the Koran in opposition to the express ruling of commentators of such great antiquity and high authority.

As the shruti authority in favour of the new view is not produced, this point need not be discussed any further. It is referred to in order to state that flouting of the smriti authorities is not permissible and that the view about the absolute estate which is characterised by novelty and boldness should be rejected.

SHRUTI AUTHORITY AGAINST INHERITANCE OF PROPERTY BY WOMEN:—

The discovery by the faddists to the effect that a Hindu widow got an absolute estate by inheritance in the smriti period is similar to the discovery of a black cat in a dark room by blind men, when the cat was not there at all. In Jogdamba Koer *vs.* Secretary of State for India in Council decided by the Calcutta High Court in 1899, and reported in the Indian Law Reports, Calcutta series, volume 16, page 367, Sir W. Comer Petheram, Kt. Chief Justice, and Mr. Justice Bannerjee, delivering the judgment, pointed out at pages 371 and 372 as follows. "We shall consider these authorities under three heads, first, the original authorities, second, the opinions of later writers on Hindu Law; and third, the decisions of Courts of Justice. Under the first head, if it were necessary to refer to the remote sources of the Hindu Law, we should find ample authority for the total exclusion of women from inheritance. There is the well-known text of the Taithtiriya Yajur Veda Sanhita (Kanda VI, Prapathaka V, and Anuvaka VIII). "Therefore females are feeble and unworthy of inheritance". Then there is a passage of the Nirukta (Vedic Glossary) to this effect; therefore it is known that the male is the taker of wealth, and that a female is not a taker of wealth" (see Roth's Edition of Yaska, p. 53 and Satyavrata Samasrami's Edition, Vol. II, p. 259); and there is the Sutra or Aphorism of Baudhayana (Prasna, II, Kanda II, 27). "Nor (ought she) to inherit. For the Veda (says) "women are not considered to have a right to use sacred texts, nor to take the inheritance", which forms the basis of the law on the point. Nor is this exclusion of females a feature peculiar to Hindu Law. The exigencies of primitive society stamped that feature more or less upon ancient law everywhere. In the present instance the text itself contains the reason for the rule it lays down. It says women are feeble, and, therefore, unworthy of inheritance." The original passage in the Nirukta (to be found at page 179 of the Nirukta published by the Shree-Venkateswar Press, Bombay) is as follows तस्मात्तु यजुर्दत्तव्योऽस्मात्तु विद्वान् । The passage from Baudhayana would be found at page 231 of Volume XIV of the Sacred Books of the East series (which contains translations of Vashishta and Baudhayana).

LIMITED ESTATES OF THE FEMALE HEIRS A SUBSTITUTE FOR THEIR MAINTENANCE ALLOWED TO THEM BY THE EARLIER HINDU LAW, WHICH DENIED THEM A RIGHT OF INHERITANCE THE VIEW OF MAYNE IN HINDU LAW AND USAGE:—

Mayne's in his Hindu Law and Usage dealt with this point in "Chapter XX Woman's estate". In property inherited from males in a paragraph—"Limited power of disposal"—In the recent edition of that work the arrangement is completely changed. A reference to earlier editions would be very convenient to find out his view. After referring to the texts of Mahabharata, Katyayan, and Narada, which are referred to already, Mayne observed, "If, as I have already suggested, the widow's inheritance originally commenced as a compendious mode of enabling her to maintain herself, it would naturally follow, both that her right of using the property would be limited, and that after her death, it would revert to the heirs of her husband's family". Probably the same origin may be ascribed to the limitations on the estate of a mother and other female ancestor.

CONCLUSION OF DR. ALTEKAR FROM THE TEXTS ABOUT THE GRANT OF A LIMITED ESTATE TO THE WIDOW:—

From the texts noticed above Dr. Altekar draws the irresistible conclusion, in his work on "The position of Women in Hindu civilization" page 315, as follows, "To conclude, we find that even some of the warmest champions of the widow's right of inheritance like Brihaspati definitely declare her to be a limited heir".

ERRONEOUS OPINION OF SIR M. VENKAT-SUBHARAO, RETIRED JUDGE OF THE MADRAS HIGH COURT, WHICH CONFLICTS WITH ANOTHER ERRONEOUS OPINION OF DR. JAYASWAL:—

In the fourth, memorandum paragraph 5, reference is made to the opinion of Sir M. Vankatsubharao, retired judge of the Madras High Court, who contributed an article to the Golden jubilee number of the Madras Law Journal, who after discussing the texts, observes, "The doctrine of limited estate is thus a pure creation by judicial decisions unsupported by ancient shastras". "According to him, the courts established by the satanic British Government, in one of which he worked for a long time, are guilty of this crime. This is quite good. But in the explanatory note, a reference is made to Dr. Jayaswal's Tagore Law Lectures for the year 1917, on the subject of 'Manu and Yajñawalkya' page 236, where it is stated that "all the commentators are equally guilty in reducing the right of the widow to a limited interest. According to this authority the courts established by the British Government are not guilty, but some others are, Sir Venkatsubharao may be asked to state his opinion about the view of Dr. Jayaswal.

OPINIONS OF THE PUNDITS REFERRED TO IN THE EXPLANATORY NOTE AGAINST THE OPINION OF SIR M. VENKATASUBHARAO:

A detailed reference to the opinion of the Pandits in an old case decided by the Privy Council in 1826—*Kasinath Bysack v. Hurroondery Dasse*, is made in the explanatory note to show that according to four Pandits, a widow inheriting an estate from her husband got a limited estate and not an absolute estate and if she were to alienate that property for other than the permitted purposes without the consent of her husband's relations, the alienation would be invalid, "four other Pandits, on the other hand stated that though she would incur moral blame, yet the act would be valid against the relations of the husband. In other words, in the opinion of these four Pandits, the shastras have merely imposed a moral duty and not a legal limitation upon the widow even in a Dayabhaga Province". But what was the decision of the super-Pandits in the Privy Council in this case is not stated. It is also not stated whether the Hindu Law Committee agrees or does not agree with the latter set of Pandits in holding that the shastras have merely imposed a moral duty on the widow for not effecting the transfer, or whether the committee

thinks that there is not even a moral duty. One thing which is clear from the opinion of the latter set of four Pandits is that the prohibition about transfer is laid down by the shastras, whether it is a legal or merely moral prohibition is a different matter. This opinion of the Pandits destroys the force of the opinion of Sir M. Venkatsubharao, according to whom the doctrine of limited estate is 'a pure creation by judicial decisions unsupported by ancient shastras'.

INHERITED PROPERTY BY A MAN IS SUBJECT TO THE RIGHTS OF HIS SONS, GRANDSONS AND GREAT-GRAND-SONS TO-DAY AS INHERITED PROPERTY BY A WOMAN IS SUBJECT TO THE RIGHTS OF THE DAUGHTER AND DAUGHTER'S SON WHILE THE SELF-ACQUISITIONS, BY EXERTIONS OF EITHER ARE AT THEIR DISPOSAL:—

Bereft of all the irrelevant points, that are unheard in the discussion about the question of conferring an absolute estate in the property inherited by a woman, the provisions of Hindu Law on the point are fairly simple. If a man acquires property by his self exertions, or if a woman acquires property, to use the expression of the Hon'ble Sir Sultan Ahmad, by becoming a legislator or Minister, both of them have a right to dispose of it in any way they like. But if the property is acquired by a man from his ancestor or by a woman from her husband or father, without any exertion, and simply because of the death of the propositus their children acquire an interest in it. The man acquires the ancestral property subject to the rights of sons, grandsons and great grand sons in the property. The woman acquires the property inherited from her father or husband, subject to the reversionary rights of her son, instead of distributing the estate amongst twelve coheirs as prescribed by Koranic law, the Hindu Law provides for the devolution of the estate to the immediate descendants subject to the rights of the descendants of the next degree and so on. The essential principle governing both these causes is stated in a text of *Yogas* which is quoted in the *mitakshara* for the justification of the rights of the sons to set aside the alienation of ancestral property made by their father. For the sake of convenience, a translation of this text would be found cited in *Chandraseosingh v. Mataprasad* (1909) reported in the Indian Law Reports, Allahabad series, volume 31, page 176 and 212 and it is as follows, "They who are born and they who are yet begotten and they who are still in the womb, require the means of support. No gift or sale should therefore be made". "Even a single individual may conclude a donation, mortgage and sale of immovable property during a season of distress, for the sake of the family and especially for pious purposes". It would be thus clear that the limitations imposed on the property inherited by a woman from her father or husband are precisely those that are imposed upon a man who inherits the property from his ancestors. Both of them can not transfer it and destroy the rights of the heirs presumptive except cases justified by legal necessity.

MEN AS WELL AS WOMEN REQUIRE PROTECTION AGAINST SHARKS AND SHYLOCKS:—

In a Full Bench case referred to above, *Chandra Deosingh v. Mataprasad* reported in the Indian Law Reports, Allahabad series, volume 31, page 176, Sir John Stanley, Kt. Chief Justice of the Allahabad High Court, observed at page 208 as follows, "In practice the observance of the rule of *Mitakshara*—(about setting aside the father's alienation of ancestral property)—does afford some protection to the interests of the sons. The greed which exists for the acquisition of landed property in this province is well known. Money lenders are ever ready to advance money to thriftless or extravagant land owners on the security of their landed property with a view to the ultimate acquisition of the property. Interest is allowed to accumulate, until the mortgage debt has reached such dimensions that it is unlikely that the owner can redeem. Then a suit for sale is instituted on the foot of the security, the mortgagee gets leave to bid and buys and the family loses its ancestral property". If the mortgage is one by conditional sale, no leave to bid is necessary and the mortgagee takes possession of the

property after foreclosure. The provision about conferring the limited estate on a Hindu widow prevents the loss of the family property. Only a shark or a shark should complain about it. As regards sharks, a case reported in the Indian Law Reports, Calcutta series volume 41 page , is noted in the sequel.

ERROR IN THE VIEW OF DR. MITTER:—

In the explanatory note in favour of the view that the limitation about a Hindu Women's limited estate has no real basis in the smritis reference is first made to the observations of Dr. Mitter, who had discussed this question at great length in his thesis on "The position of Hindu Women in Hindu Law" (1913) where at page 526 he has observed that "although the doctrine has been firmly established by judicial decisions, nevertheless, so far smriti authority goes, there is very little of it to support the theory of the limited estate of women in inherited property". So far as the smriti authorities are concerned, they are already referred to Dr. Mitter is a retired eminent judge of the Calcutta High Court and he was a member of the Hindu Law Committee. With the deference to him it should be pointed out that his inference from the authorities noticed by him is absolutely erroneous. At page 527 and 528 he himself has noticed the text of Katyayan and Narada and the passage from Mahabharata and he proceeds to comment on them as follows: "With regard to the text of Katsyana all that need be said is that it is only by stretching the language of the text that it can be made to support the theory of the restricted estate of a Hindu widow. One fails to see why alienation of property should not be regarded as one of the modes enjoyment. In many cases where the widow inherits moveable property, conversion may be essential to its enjoyment. The authority of the text quoted from the Mahabharata is considerably weakened when we remember that the text occurs in a chapter on "the Religious merits of gifts", and could not consequently have been intended to lay down a legal injunction. Besides this the Mahabharata is a Purana and as a source of law is regarded as of lesser authority than the smritis so that the passage in the Mahabharata cannot prevail over express texts of the smritis like those of Jainavalkya, Manu, etc., to the contrary; and, moreover, people generally look to the Mahabharata not for legal rules but for rules of ethics and morality in which it does truly abound. With regard to the texts of Narada it is clear that it is stated so broad that it cannot really represent the true view of the law. His verse would apply even to Sridhan over which women have undoubtedly absolute right of disposition. Besides they are not cited by any commentator, not even by the Daya-bhaga, in support of the theory which curtails the rights of women in inherited property."

• Alienation of property cannot be regarded as one of the modes of enjoyment, simply because if it is transferred, there remains nothing to be enjoyed, e.g., if the estate is transferred by the widow to her brother by way of gift, who is going to enjoy the estate? Can the widow be said to be in enjoyment of the estate, or is the brother enjoying it? Moreover the meaning of the sanskrit text, has not been properly understood by him. Golap Chandra Sarker Shastri—a great Bengal lawyer has pointed out in his work on Hindu Law that Sanskritists with law and lawyers without Sanskrit often commit mistakes in understanding the sanskrit texts. The interpretation put upon this text by Dr. Mitter illustrates this view. The entire text means that "the inheritance of the property of the husband results in giving the widow a right to its usufruct. But so far as the corpus of the property is concerned, the women should not waste it on any account". If a person bequeaths property to his widow and lays down that she would be entitled to usufruct only and the corpus should be left for the daughter and daughter's son, the widow can not claim to transfer the corpus. The limited estate of a widow under the Hindu law is an exactly similar arrangement. As regards moveable property, where the widow inherits it, conversion may be necessary for its enjoyment, but conversion brings in another property in lieu of the property converted and the widow possesses the limited estate in the new property substituted for the old. Conversion of the movables into immovable property is one of the ordinary

acts of managements, which the widow is entitled to do under the Hindu Law.

ERRORS OF DR. MITTER, SIR M. VENKAT-SUBHA RAO, AND DR. JAYASWAL:

"One thing, which is free from doubt to-day, is that a widow was not allowed to inherit her husband's interests, in those cases, where he died as a member of a joint family, until that law was modified by the Hindu Women's Right to Property Act, which was passed in 1937, amended in 1938, and is to be repealed partly in 1943, as stated in the schedule to the Hindu code. A widow, in times of Manu and prior to it was not allowed to inherit even her, self-acquired property or separated estate. The subsequent smritis and commentators developed her right to succession to such an extent that development the Hindu Law Committee has become afraid to give effect to them and has deprived the widowed-daughter-in-law and the widows of agnates of their right to inherit, which they have been enjoying according to the Bombay and Mayaukha school for nearly three hundred years, as Mayukh is considered to have been written about 1650. But the inheritance has been always for a limited estate. And this rule about the limited estate is applicable not only to the widow, but also to the daughter, mother, grandmother (excepting the cases governed by the Bombay school of law and Mayaukha). If the reasoning of Dr. Mitter, Sir M. Venkatesubha Rao and Dr. Jayaswal is to be pushed to its logical consequence for finding out the law in the times of Manu, to make it applicable to a widow, that law would be in favour of disqualifying her absolutely from succeeding to her husband's separate or self-acquired property, in the same way, as the law prevented her from succeeding to the interests of her husband in the joint family property. This is quite clear from the growth of the widow's right of succession from the historical point of view, which is stated in the sequel.

ONLY A PREGNANT WIDOW ENTITLED TO INHERIT IN THE FIRST CENTURY BEFORE CHRIST OR THE FOURTH CENTURY AFTER CHRIST IN THE TIME OF KALIDASA, WHILE THE KING WAS ENTITLED TO TAKE THE PROPERTY BY ESCHATEAT, THOUGH OTHER WIDOWS WERE ALIVE:—

The time during which Kalidasa flourished is a matter of dispute. According to some he flourished sometime at 57 years before Christ. According to others, he flourished about the fourth century of the Christian era. In the times of the poet, a widow's right to inherit was not recognized unless she was pregnant. In the sixth Act of the Shakuntala—The lost King—a play of Kalidasa, the Minister in charge of Law, Disorder informs the King that a rich merchant died leaving widows only and that his property therefore escheated to the crown. The King, however, directed an enquiry to find out whether any of the widows was pregnant, adding that if any widow was pregnant the property would not escheat to the Crown, evidently implying that it would escheat otherwise, though the deceased left many widows. This passage occurs in Act VI after a few sentences after the verse 22. They are as follows:—

King—(Reading it to himself). What do I find here? The chief merchant, named Dhanamitra, trading by the sea, has perished in the wreck of his ship. The poor fellow has no issue, they say; and the Minister writes that his entire property (lit. accumulated lapses to the King.—"Miserable, indeed, is the state of being childless". Vetravati, the noble merchant had vast riches, he must have many wives. Let it be inquired if any of his wives is pregnant. Door-keeper.—My Lord, it has been heard that his wife, daughter of a merchant of Ayodhya, had her Purnvasvana ceremony just performed. King—Indeed, then the child in the womb inherits the patrimony.

Go, say so to the Minister.

Door-keeper. As your Majesty commands.

King—(heaving a long and warm sigh). Thus, alas, do the riches of families, rendered supportless by the absence of issue, go to others on the demise of the person making the acquisition.

**(PATNI) WIDOW IN YAJNAWALKYA'S TEXT
MEANING A PREGNANT WIDOW ACCORDING TO
VISHWAROOPA WHO FLOURISHED AT THE
END OF THE EIGHTH AND THE BEGINNING OF
THE NINTH CENTURY OF THE CHRISTIAN ERA.—**

Yajnawalka laid down the rule of inheritance in the text.

"The widow, daughter (daughter's son), Parents, brothers, brother's son, Gotraja, Bandhu, the disciple and co-student are heirs to the property of a deceased man, having no son or son's son (or son's son's son). Each of them succeeds in default of the other. The rule applies to persons of all castes".

Vishvarupa, commenting on this well-known text of Yajnawalkya, laying down the priority of the various heirs and the persons entitled to succeed, as stated above states with reference to the widow that she must be one who is pregnant and then states the authorities in support of his view. Vishvarupa and other commentaries edited by Sefur (1912) Madras or the Travancore edition. The commentary of Vishvarupa is the earliest available commentary on Yajnawalkya Smriti. According to a passage in Mayne's Hindu Law and Usage pages 45-46, paragraph 24-25, Vishwaroopa is identical with Sureshwar, a pupil of the great Shankaracharya who lived in the period covered by the years 788-820 of the Christian era, while Vijaneshwara, the author of Mitakshara lived in the time of the Chalukya King Vikramaditya of Kalyan (in the Nizam's Dominion) in the period by the years 1076-1126, that is, about three hundred years afterwards.

**CURRENT OF AUTHORITY FOR HUNDREDS OF
YEARS IN FAVOUR OF A WIDOW INHERITING A
LIMITED ESTATE AS ADMITTED BY DR.
JAYASWAL.—**

Dr. Jayaswal in his Tagore Law Lectures for 1917, on "Manu and Yajnawalkya" (page 236) has stated that "all the commentators are equally guilty in reducing the right of the widow to a limited estate". The ages of various commentators would be found stated in Mayne's Hindu Law and Usage (1938) tenth edition at pages 43-58 in paragraphs 23 to 30. The age of commentators may be said to begin at the time of the great Shankaracharya who lived in 788-820 of the Christian era, as his pupil Sureshwar is considered to be identical with Vishwarupa who wrote a commentary on Yajnawalkya Smriti. The current of authority derive this long period of eleven hundred years throughout the length and breadth of this sub-continent has been uniform to the effect that the widow gets a limited estate. In a case decided by the Privy Council and reported in the Indian Law Reports, Calcutta series, volume 43, page 80 (and many other reports)—*Balwantrao vs. Bajirao*, Lord Duvein stating the opinion of the Privy Council observed, "It must be always remembered that the commentaries are only commentaries. They do not enact; they explain and are evidence of the congeries of customs, which form the law". It is quite clear that when the commentators began their work, the uniform custom throughout India was to give a limited estate to the widow.

**NO PROVISION IN THE SMRITIS FOR AN
ABSOLUTE ESTATE TO BE INHERITED BY A
WIDOW.—**

In the explanatory note, it is stated that there is a considerable body of opinion that this particular limitation a limited estate allowed to the widow—has no basis in the Smritis. This statement is absolutely wrong, as the Smriti of Katyayan, Naada and Brihaspati do make a provision for the limited estate. But the more relevant point is whether there is any provision for the absolute estate inherited by a widow from her husband, anywhere. This is not mentioned anywhere in the explanatory note and the memoranda.

**ERRONEOUS OBSERVATION THAT THE SMRITI
AUTHORITY ABOUT THE WOMAN'S LIMITED
ESTATE IS NOT EQUIVOCAL.—**

The explanatory note, after explaining the point in an entirely wrong way, assumes the garb of impartiality and

observes, "But on the whole, it seems safe to state that Smriti authority for the doctrine of the Hindu Woman's estate is not equivocal". This observation is wrong. If all the commentators have declared the right of the widow to a limited estate, as Dr. Jayaswal has admitted in the passage cited in the note, and they are quite clear on the point, it is very unsafe to allege that the Smriti authority for the doctrine of the Hindu Woman's estate is not equivocal, especially in view of the mistakes in the self-contradictory reasonings of the three learned lawyers pointed out above.

**ABSOLUTE ESTATE OF THE WIDOW IN ONE-
EIGHTH PORTION OF HER HUSBAND'S PRO-
PERTY ALLOWED BY THE MAHOMEDAN LAW.—**

As stated by Sir Henry Sumner Maine, the Mahomedan system is a system of minute fractional division between a number of relatives, whose grouping nobody seems to have as yet successfully explained, and that it must have grown up among a race whose property was easily divided into units, and possibly consisted of flocks and herds. See Early Law and Custom page 126). In such a division, a life-estate heir, was an impossibility as the flocks and herds would die away in the life time of the heir. Another point to be noted in this connection is that the Mahomedan law allows the widow to inherit only one-eighth share in the property, when the deceased leaves children behind him. When there are no children, she gets one-fourth of the estate. But if there are two, or three or even four widows, all of them get the same one-eighth. The result is the share of a Mahomedan widow varies from one-fourth to one-thirty second part of the estate. For example, if the deceased left behind him Rs. 32,000, a widow may get an amount varying from Rs. 1,000 to Rs. 8,000 according to the circumstances of the case. But she would not get the remainder as long as any agnate or cognate is alive, though according to some authorities she would not get it at all in any case, even when that property escheats to the Crown. (See Mulla's Mahomedan Law () page .

The lot of the Hindu widow is incomparably superior. Being the surviving half of her husband, she succeeds to his estate in full, though her power of transfer is restricted. The Mahomedan Law regards the Marriage in a different light. According to Mahomedan Law, a woman succeeds to sixteen annas share in the estate, whether as a widow or daughter, if a separated brother is alive. According to Hindu Law she inherits the entire property in such circumstances.

**(a) A PERSON IS DEEMED TO DIE INTES-
TATE IN RESPECT OF ALL PROPERTY OF WHICH HE
OR SHE HAS NOT MADE A TESTAMENTARY DIS-
POSITION CAPABLE OF TAKING EFFECT.**

**NECESSITY OF ADDING ILLUSTRATIONS TO
THE DEFINITION OF AN INTES-
TATE AS GIVEN
IN CLAUSE (2) SUB-CLAUSE 2 CLAUSE (a):—**

This clause is word for word the same as section 30 of the Indian Succession Act. But this is nowhere mentioned in the notes on clauses. Four illustrations are given in the Indian Succession Act to section 30 in order to explain the meaning of the section. These illustrations may be reproduced here. They are as follows:—

Illustrations.

- (i) A has left no will. He has died intestate in respect of the whole of his property.
- (ii) A has left a will, whereby he has appointed B, his executor; but the will contains no other provisions. A has died intestate in respect of the distribution of his property.
- (iii) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.
- (iv) A has bequeathed 1,000 rupees to B, and 1,000 rupees to the eldest son of C, and has made no other bequest; and has died leaving the sum of 2,000 rupees and no other property. C died before A, without having ever had a son. A has died intestate in respect of the distribution of 1,000 rupees.

NUMEROUS OBJECTIONS TO CLAUSE 5.

There are numerous objections to clause 5 from the point of principle as well as detail. They are stated below:—

RIDICULOUS NATURE OF THE CLAUSE INCLUDING THREE CLASSES OF HEIRS IN ONE ENTRY SIMILAR TO FORCING THE VICEROY AND TWO EXECUTIVE COUNCILLORS TO SIT IN ONE CHAIR OR SEAT WHILE ALL OTHER OFFICERS HAVE ONE FULL CHAIR OR SEAT EACH FOR THEIR USE:—

The ridiculous nature of the entry I in class I of clause 5 can best be illustrated by forcing the Viceroy and two Executive Councillors to sit in one chair in the Viceregal train going from Delhi to an unknown destination—a train in which 28 other officers are allowed 28 different seats or chairs, one seat or chair to one officer. The conclusion that would arise from this arrangement is similar to that arising in the present case, from the multiplicity of the classes of heirs in entry I.

HINDU SYSTEM OF RECOGNISING INHERITANCE ONLY IN FAVOUR OF A SINGLE CLASS OF HEIRS, CONTRASTED WITH THE MAHOMEDAN SYSTEM OF INHERITANCE IN FAVOUR OF SIMULTANEOUS SUCCESSION OF HEIRS OF VARIOUS CLASSES THUS GIVING RISE TO FRAGMENTATION:—

It would appear from the table of heirs according to both the schools of Hindu law, that, one of the principles of the Hindu Law of Inheritance is that the inheritance goes to only one class or relations who are sapindas. Two or more classes are not mixed up as heirs! Widow and daughter do not succeed together. Daughter and daughter's son do not succeed together. Summary widow, daughter, daughter's son and parents do not succeed together. A *fortiori* son, widow, daughter, daughter's son, parents, brothers, and brother's son do not succeed together. Each of them succeeds in default of the other. Fragmentation of the property of the deceased is thus avoided. This is one chief characteristic which distinguishes the Hindu system of inheritance from other systems.

The difference between the Aryan systems of inheritance and the Mahomedan system was explained by Mr. Justice Mahmood in an oft cited Full Bench case, *Govind Dayal v. Inayatulla* (1885) reported in the *Indian Law Reports*, Allahabad series, Vol. 7, page 775 at page 783, in the following terms, "Among Aryan systems, which avow the notion of the inchoate rights of heirs, the rule of primogeniture, the *ius representationis*, and the exclusion of females from inheritance except in special cases, the property is not so completely split up on the owner's death, but under the Mahomedan system, upon a man's death, not only his children are entitled to succeed to his property, but his wife, mother, father and other heirs, according to well defined rules, and I myself know of a case in which, after a Muhammadan's death, his property was divided into twenty-three shares, each heir having a separate share in every parcel."

ENTRY IN CLASS I OF CLAUSE 5 WRONGFULLY DESCRIBED AS "WIDOW AND DESCENDANTS", THOUGH THE FOURTH AGNATIC DESCENDANT AND THE COGNATIC DESCENDANT—DAUGHTER'S SON IS NOT THERE:—

There are numerous objections to the entry No. 1 in class I of clause 5, which is described as 'widow and descendants' as stated already.—The description 'widow and descendants' is as inaccurate as it is misleading. The descendants of a daughter, e.g., daughter's son and daughter's son's son, are not included in this category, like the son's son, or the son's grandson. Even all the male descendants are not mentioned therein. For example, the 4th descendant of the deceased in the male line of the propositus is not mentioned therein.

ALL THE AGNATIC DESCENDANTS SHOULD BE INCLUDED IN CLAUSE 5, CLASS I AS ENTRY 1A:—

Before the daughter mentioned in entry (2) of Class I it is necessary to mention in an intermediate entry which may be described as 1A, the son and the grandson of the great-grandson, that is the fourth and the fifth agnatic descendant of the deceased. I remember to have read

a case from Punjab reported in the newspapers some years ago, where all the five agnatic descendants were alive and the birth of the fifth agnatic descendant was celebrated with all the affection which it deserved. It has been repeatedly pointed out to be an anomaly of the Hindu Law of Inheritance that the 4th or the 5th agnatic descendant is not entitled to succeed as some of the chief heirs and that the inheritance goes to other remote relations. This defect has not been remedied by the committee which was busy in doing other things. In *Brihaspati* chapter 25 shloka 25 (translated in the *Sacred Books of the East* series in volume 33 Narada and *Brihaspati* at page 373), it is stated as follows, "Whether he, be the third or the fifth, or even the seventh in descent, he shall receive the share belonging to him by right of succession?" No doubt this refers to the descendant of a person who went abroad and died there, but the principle is the same and should be recognised by enacting that "all agnatic descendants should be exhausted before the estate devolves on other heirs. These would exclude the daughter also, as the sons should exclude the daughter."

NECESSITY OF ADDING A CLAUSE TO THE EFFECT THAT AN UNDIVIDED SON EXCLUDES A DIVIDED SON, LAW RELATING TO JOINT FAMILY PROPERTY TAMPERED WITH BY PROVIDING THAT AN UNDIVIDED SON SHALL SUCCEED ALONG WITH THE SEPARATED OR RE-UNITED SON—SECTION 7 (B):—

The point that an undivided son should exclude a divided son is already dealt with, while criticising the definition of heritable property. A clause should be added here that an undivided son excludes a divided son.

NECESSITY OF ADDING AN EXCEPTION TO THE EFFECT THAT A DASIPUTRA OF A SHOODRA WOULD BE ENTITLED TO A SHARE WHICH WOULD BE HALF OF THAT WHICH HE WOULD HAVE TAKEN HAD HE BEEN A LEGITIMATE SON:—

While criticising the definition of the word 'related' given in clause (2) (1) (i) it has been pointed out that the Bill has unnecessarily destroyed the rights of a Dasiputra of the Shoodras, which have been recognised for centuries. As stated at page 34 of Mulla's *Hindu Law* (1940), according to decision of the Privy Council, an illegitimate son of a shoodra takes one-half of what he would have taken, if he were legitimate. This decision should be the basis of a provision recognising the rights of a Dasiputra of a shoodra.

NECESSITY OF ADDING ANOTHER CLAUSE TO THE EFFECT THAT AN ADOPTED SON COMPETING WITH A LEGITIMATE SON WOULD BE ENTITLED TO ONE-FOURTH SHARE:—

It is necessary to add another clause to the effect that an adopted son competing with a legitimate son or sons of the deceased would take one-fourth share, while each legitimate son would be taking one share each. Whether the adopted son should be given one-fifth share or one third share or one-fourth share is a matter of detail, which may be decided by the select committee. But the adopted son can not be given a share equal to that of a legitimate son, as proposed in the Bill. The point about the growth of rights of the adopted son from nothing to something but something short of the right of the legitimate son is discussed in the sequel.

ADOPTED SON'S SHARE SHOULD NOT BE EQUAL TO THAT OF THE LEGITIMATE SON.

ADOPTED SON NOT ENTITLED TO INHERIT IN THE TIMES OF RAMAYAN AND MAHABHARAT:—

Sonless kings were not in the habit of taking sons in adoption for the purpose of offering pindas to them after their death and for perpetuation of their lineage. Hence Dasharath did not adopt anybody though he became nearly 60 years old, when he performed the *śrāddha* sacrifice and got the sons later on. Similarly the kings in Mahabharata did not adopt when the extinction of their lives face them. The reason for all this is that the adopted son was not then entitled to inherit. This point is stated in Mahabharata *Adiparva*, *Adhyaya* 120, Shloka 34 (page 292 of the Poona Chitrashala Press edition of 1929) where after referring to the sons who are *पुत्र* दत्ता relations as well as heirs in

Shlokas 32 and 33, the दत्त adopted son is referred to in Shloka 34, as being one who is an *that is a person who is not a relation and heir*. The list of persons regarded as sons, but not entitled to inherit is given in the following passage.

"The adopted son, a son purchased, a Kritima son, a self-given son, a son of a woman who was in the womb at the time of her marriage, a son born to the wife from adulterous intercourse, and a son-born from low caste woman are not regarded either as relations or heirs".

This point is discussed at elaborate length in Mayne's Hindu Law and Usage (1938) tenth edition pages 110-125, where a table of sixteen authorities is given at page 111, to show the various ranks to which the adopted son was assigned by them. Some of these authorities still treated the adopted son as incompetent to inherit, while others allowed him a right to inherit. This is the second stage in the growth of the rights of the adopted son. The third stage was reached, when all other kinds of sons became obsolete and only the दत्त (legitimate) and दत्त (adopted) sons remained and the right of दत्त son to inherit was not the subject of dispute. But if a legitimate son was born to the adopter after the adoption, the adopted son did not share equally with the legitimate son, but was entitled to a lesser share. As stated by Vashishtha in Adhyaya XV, placitum 9.

If after an adoption has been effected, a legitimate son is born, the adopted son is entitled to a fourth part. This subject is dealt with at elaborate length in Mayne's Hindu Law and Usage (1938) tenth edition at pages 260-262, and in Mulla's Hindu Law (1940) ninth edition page 550 the same thing is stated.

THE REASONS GIVEN IN THE EXPLANATORY NOTE FOR GIVING AN EQUAL SHARE TO THE ADOPTED SON:—

The reasons given in the explanatory note for giving an equal share to the adopted son are stated as follows. "It is worth considering whether the law should not be further simplified by putting all adopted sons, whatever the form of adoption, on the same footing as natural-born sons for purposes of reckoning relationship. As already stated we propose to abolish the distinction between an adopted son and an Aurasa or natural-born son for purposes of inheritance. Rules of intestate succession should be as simple as possible. Variations to meet individual cases may be left to the individual owner to make by will. When, as in ancient Hindu Law, wills were unknown, it might have been necessary to insist upon every shade of difference between one sort of heir and another. But now that wills have become a recognised part of Hindu law it is possible to simplify the rules of intestate succession without hardship to anybody. Hindu law treats an adopted son as entitled to inherit just as if he were a natural-born son except when a son is actually born after the adoption. When, however, a son is born after adoption, he (i.e., the after-born son) usually gets the larger share of the father's property, the relative shares of the two sons being different in the different schools of law. In Bengal, the adopted son usually takes one-third of the father's estate, in Benares, one-fourth, in Bombay and Madras, one-fifth; but amongst Sudras in Madras and Bengal, an adopted son shares equally with an after-born son. Not only do the texts on this subject differ, but the same text has been interpreted in different ways in different parts of India. Further complications are likely to arise when there are other competing heirs. However, as the result of the Deshmukh Act, which gives the widow equal rights of succession with a son (in accordance with a principle which we believe to be in the true spirit of Hindu law), it is probable that adoptions will become increasingly rare in future and the time therefore seems ripe for doing away with these complicated distinctions between adopted sons and "after-born" sons. No such distinctions appear to be recognized in the text of Vriddha Gautama cited in the Dattaka Mimamsa, Sec. V, 43, "A given son (i.e., an adopted son) abounding in good qualities existing should a legitimate son be born at any time, let both be equal sharers of the father's whole estate". There appears to be nothing in this text to restrict the rule laid down therein to any particular caste. Thus, according to this text, there is no difference (whether among dwijas or others) between

the shares of the adopted son and an "after-born", son, if the adopted son "abounds in good qualities", a condition which is presumably satisfied in every adoption (see Manu IX, 68-69) and upon which Courts cannot, in any case, be expected to pronounce. It must be remembered that a dattaka son loses all his future rights in the family of his birth as a consequence of the adoption and it seems hardly fair that he should ever count as anything less than a natural-born son in the family of his adoption.

CRITICISM OF THE REASONS FOR ALLOTTING AN EQUAL SHARE TO THE ADOPTED SON:—

From Mulla's Hindu Law (1940) ninth edition page 550, it would appear that only amongst shoodras in Madras and Bengal, an adopted son shares equally with the after-born natural son. In the case of shoodras in other places, he does not get the same share. For example in the Bombay Presidency, even amongst the shoodras the adopted son gets one-fifth of the whole estate. In the case of the twice born, adopted son never got an equal share in any part of India. It may be noticed that amongst the shoodras, a Dasiputra is entitled to one-half share, and as the adopted son's status is better than that of a Dasiputra, a practice might have grown up in Bengal and Madras in favour of treating an adopted son better than a Dasiputra, and as this could be done only by giving an equal share to the adopted son, it was done. But no such practice arose in other parts of India as stated already and therefore the Committee was entirely wrong in upsetting the practice of giving a lesser share to the adopted son which prevailed for centuries.

The next point alleged by the Committee is that not only the texts on this subject differ but the same text has been interpreted in different ways in different parts of India. The scope of the discordant text of Vriddha Gautama about giving an equal share to the adopted son has been treated as stated above, as having no binding force as against other authorities. As regards the contention that the same text is interpreted in different ways in different parts of India, the different ways are that in Bengal, the adopted son gets, when there is an Aurasa son, one-third of the adoptive father's estate, in Benares school of Law, he gets one-fourth of the estate and in the Bombay and Madras Presidencies, he gets one-fifth of the estate. But these different results are due to the method of finding out what is the one-fourth of the estate. This difference can not be a ground for giving an equal share to the adopted son.

Another point is that by giving a smaller share to the adopted son, further complications are likely to arise when there are other competing heirs. But in the Mahomedan law of Inheritance, which is reproduced in this clause, different heirs have got different shares. No further complication can arise by giving a smaller case to the adopted son in this case. As regards an adopted son possessive in good quantities referred to in the explanatory note, Vashishtha's rule about giving one-fourth share, which has been accepted as authority for centuries, does not make any distinction between an adopted son with bad qualities and good qualities. The committee is wrong in holding that the condition of possessing good qualities is presumably satisfied in all cases. The Courts have pronounced in all cases, as stated already, that an adopted son as such, gets a lesser share, whether he is good or bad is a matter of no significance. The last point is that a Dattaka son loses all his future rights in the family of his birth as a consequence of the adoption and it seems hardly fair that he should ever count as anything less than a natural-born son in the family of his adoption. That the adopted son loses his rights in the natural family is not a discovery like the discovery of America. Vashishtha knew it well, and still laid down the rule. Adoptions have taken place on the basis of this rule giving a lesser share for centuries, because "one-fourth of a loaf is better than no bread". It is the poor parents who give their sons in adoption to the rich. The son of the former has little to inherit. By adoption the same boy becomes entitled to inherit a big estate, subject to its divesting in favour of the legitimate son in the way discussed already.

In stating that it seems hardly fair that he (the adopted son) should ever count as anything less than a

natural-born son in the family of his adoption, the committee was not aware of the gravity of the mistake it was committing. In the case of an impartible estate, the after-born son is preferred to the adopted son, on the ground that the adopted son is a substitute for the Aurasa son, and that, when the latter comes into existence, he excludes the substitute see *Mayne's Hindu Law* (1938), p. 262, paragraph 198 and according to this principle enunciated in the explanatory note, it would follow that in future legislation applicable to other subjects, including impartible property, the adopted son should exclude the Aurasa son.

An anomaly to be noticed here is that the Dasiputra, who was entitled to half a share in the property, has been completely deprived of it, while the adopted son who was entitled to a share ranging from one-third to one-fifth (except in one province and that too amongst the shoodras only), has been declared to be entitled to the full right of a legitimate son, which was three to five times of that of an adopted son.

Here is an additional illustration of the dangers of piecemeal legislation. If the entire Hindu Code had been taken in hand, this mistake would have been easily avoided.

From what is stated above, the adopted son was not entitled to inherit at all in the early days. When he got the right of inheritance, it was limited in extent as stated already. His right can not be the same as that of a legitimate son. An exception should therefore be added to the clause as follows, "Exception. Where the deceased leaving behind an adopted son, as well as legitimate son or sons, the adopted son shall be entitled to one-fourth share".

If 4 parts are given to one legitimate son, the adopted son should take one part.

WANTON DESTRUCTION OF THE RIGHTS OF GRANDSONS AND GREAT GRANDSONS WHOSE FATHER AND GRANDFATHER RESPECTIVELY ARE ENTITLED TO INHERIT THE PROPERTY OF HIS DECEASED FATHER UNDER CLAUSE 5, CLASS I, ENTRY 1:—

The essence of a code is exhaustive and it is not therefore permissible to introduce any other principle of Hindu Law for explaining its terms. According to Hindu Law as it stands at present, all property which a man inherits from a direct male ancestor, not exceeding three degrees higher than himself, is ancestral property, and it is at once held by himself in coparcenary with his own issue, [see *Mayne's Hindu Law and Usage* (1938), paragraph 275, page 353 and *Mulla's Hindu Law* (1940), paragraph 223, pages 238-239]. As the son, grandson and the great-grandson get a vested interest in this property by birth, the effect of the rule of inheritance stated in the text-books on Hindu Law to the effect that the property of a man passes to his (1) son, (2) son of a predeceased son, and (3) son of predeceased son of a predeceased son is, that the son of a living son, and the son of a living son of a living son also get an interest in the property though their interest is less than the interest of the son of a predeceased son and the son of a predeceased son of a predeceased son, because that is to be determined in accordance with the rules of *stirpal* succession as stated in the rule of *Yajnavalkya* to the effect. But as Code is a Code and no reference to anything else is permissible, the son who inherits his father's estate, becomes entitled to it in its entirety. If a man dies, leaving three direct descendants in one line, a son, grandson and great-grandson (and no widow or son of a predeceased son or son of a predeceased son of a predeceased son), the son alone would be entitled to the property and the grandson and great-grandson would not be entitled to it. The provision therefore requires to be changed so as to allow the grandsons and great-grandsons to have their vested interests recognised by the Mitakshara school, unaffected. The vested interests of sons and grandsons and great-grandson destroyed by the new legislation.

DANGER OF PIECEMEAL LEGISLATION ILLUSTRATED BY THE CASE MENTIONED:—

The danger of piecemeal legislation is illustrated by the case mentioned above. If the legislature wants to abolish the vested interests of sons, grandsons, and great-grandsons

in the ancestral property, it should formulate a direct proposal to that effect, instead of formulating provisions which produce that effect in an indirect manner.

NECESSITY OF REMOVING THE DAUGHTER FROM CLAUSE 1, ENTRY 1, WHICH HAS CONVERTED A DHARMAPATNI, ENTITLED TO THE WHOLE ESTATE OF THE DECEASED INTO A KIND OF BEGUM OR MADAM WHOSE SHARE IS TO DECREASE IN PROPORTION TO THE INCREASE IN NUMBER OF THE DAUGHTERS OF THE DECEASED:—

According to the Hindu Law as prevailing in both the Mitakshara and the Dayabhaga schools for centuries, the widow excluded the daughter from inheritance, and she did so also under the Hindu Women's Rights to Property Act of 1937 as amended in 1938. The widow took a limited estate according to the statute and the estate devolved on the daughter or daughters of the deceased in its entirety. The reason why the daughter or any body else did not succeed in the lifetime of the widow as an heir or co-heir is that which is stated by Brihaspati, in *Adhyaya* 25, *shloka* 47, translated in the Sacred Books of the East series, volume 33 at page 377 as follows "of him whose wife is not dead, half his body survives. How can any one else take the property, while half of his body survives". The daughter does not take any interest in the property of her father, while the father is alive (though the son does so in the case of ancestral property). How can daughter take the estate of her father, while the surviving half of the father is still there in possession of the property. The explanatory note accompanied by four lengthy memoranda does not contain any reference to any single text, allowing the daughter to succeed as a co-heir along with the widow of the deceased. Looked at from the point of principle laid down by the Rishis justifying the inheritance of the widow, there is no room for allowing the daughter or daughters of the deceased to succeed as co-heirs along with the widow. Let the daughters wait to have some patience. Let them wait patiently until their mother or stepmother dies, as they waited until the death of their father. The Hindu sages have safeguarded the rights of inheritance of the daughters by allowing the widow a limited estate and the daughters would succeed to the property after the death of the widow or widows of the deceased. The Christian to Mahomedan-hybrid rule of succession has converted the *वैतर्क* (Dharmapatnee) of the deceased, who was entitled to the whole estate of her husband into some kind of Begum or Madam, whose share in the property of her husband goes on decreasing in proportion to the greater number of daughters left by the deceased. The blessing which a Hindu girl was accustomed to get was to have eight sons and have her husband alive during her lifetime (*आष्टा संसृज्यते*). But if she has eight daughters, she would be the most unfortunate woman (*आष्टिका दुर्लभ्यते*) if she is governed by this alleged Hindu Code instead of by the Hindu Law. The Mahomedan or the Christian principle of giving a share to the daughter during the lifetime of the widow can not be introduced into the Hindu system of inheritance. On account of the peculiar system of marriage prevailing amongst the Mahomedans and the Christians, a man's daughter is always his daughter, but a wife is not always his wife, as she might be divorced in his lifetime and might re-marry after his death. As pointed out by Sir Roland Wilson in his *Digest of Anglo-Mahomedan law* while justifying the view of the Allahabad High Court in *Fida Ali versus Muzaffar Ali* (1882) reported in the *Indian Law Reports*, Allahabad series, Vol. 5 page 65 to the effect that according to the Mahomedan Law, wife has no right of preemption, "The general tendency of the Mahomedan Matrimonial law differing from the Hindu law, is to treat the husband and wife as essentially strangers, united by a precarious contractual bond for a specific purpose". It is on this account that the Mahomedan jurists gave the daughter a share in the property of her father even though there were sons. She had no expectation of any inheritance at all and where it did exist, the share allotted to her was negligible. According to the orthodox school of Hindu Law, a wife of a Hindu can not re-marry either in his life time or after his death. The right of a widow to inherit are very restricted under the Mahomedan and the Christian systems and the rights of a daughter much

higher, seven times higher than those of a widow, while according to the Hindu Law, the matter is reversed and the Hindu widow is entitled to succeed to the whole estate which she may even transfer for justifiable purposes while the daughter does not succeed during the life time of the widow. If a Mahomedan dies leaving behind him a widow and a daughter, the widow gets two annas share in the property, while the daughter gets fourteen annas. According to the Indian Succession Act, section 38, the widow gets one-third share and the remaining two-thirds share goes to the daughter. The Mahomedan or Christian rule about making a daughter a co-heir with the widow is absolutely inconsistent with the Hindu jurisprudence and can not be introduced into it. The daughter should therefore be removed from the list of co-heirs mentioned in class I entry I.

NECESSITY OF REMOVING THE DAUGHTER FROM THE LIST OF CO-HEIRS:—

According to the Hindu Law as prevailing in both the schools for centuries, as well as according to the Hindu Women's Right to Property Act of 1937 as amended the son excludes the daughter and the widow also excludes the daughter. According to the clause 5, the daughter is made a co-heir with both the son as well as the widow, who excluded her. This is not justifiable on the ground of the principles of inheritance of Hindu law acted upon for centuries as stated already. The daughter should be removed from the first entry and put down in another entry, which for the purposes of convenience may now be called entry I-A. The absurd results arising from the application of the rule are stated below:—

ABSD RESULTS FLOWING FROM THE RULE:— DAUGHTERS GETTING A BIGGER SHARE OF THE PROPERTY THAN THE SON ACCORDING TO THE MAHOMEDAN-CHRISTIAN-HYBRID RULE OF INHERITANCE, AS ILLUSTRATED IN THE CASE OF THE ESTATE OF DR. SIR NILRATAN SARKAR:—

According to Hindu Law a son excludes a daughter, on this point the law has been settled for centuries and there is no difference of opinion between the two schools of Mitakshara and Dayabhaga. According to the Mahomedan-Christian-hybrid rule of inheritance now imposed on the Hindus by this alleged Hindu Code, daughters would get a bigger share of the property than that allotted to a son and completely dislocate the son's management of the property and his residential arrangements. This may be illustrated with reference to the estate of Dr. Sir Nilratan Sarkar, who died at Girdih recently leaving an only son and five daughters, as stated in the press reports. In this case, the estate would be divided according to the rule into seven parts, and two seventh of the estate would go to the son and five-seventh would go to the five daughters. Suppose that he left behind him a big bungalow, containing fourteen rooms of equal dimensions, the son would have got under the Hindu Law the entire bungalow to himself, where he would be bringing up his children. According to the new rule, he would get only four rooms out of fourteen rooms and ten rooms would be owned by his five daughters who would be living with their husbands in the husband's houses and whose main concern in the father's estate would be to sell their shares to the highest bidder. The new rule would produce results, which are absolutely inconsistent with the Hindu modes of living.

DAUGHTERS GETTING A BIGGER SHARE THAN THE SON AND WIDOW OF THE DECEASED PUT TOGETHER:—

In the above case, the deceased did not leave behind a widow. Had he left a widow behind him, the estate would have been divided into nine parts, and the widow would have got two shares, the son would have got two shares and the daughters would have got five shares. The shares of the daughters in such a case would have been greater than the shares of the widow and the son put together.

ERROR IN NOT STATING THE UNANIMOUS VIEW OF THE LEGISLATURE WHICH REJECTED THE CLAUSES IN BILL NO. 35 OF 1935 BY WHICH WIDOW DAUGHTER, MOTHER AND SONS WERE SOUGHT TO BE MADE CO-HEIRS WITH THE SONS AND BY WHICH THE PROVISION ABOUT ABSOLUTE ESTATE OF THE WIDOW WAS REJECTED

AND THE LEGISLATURE PASSED HINDU WOMEN'S RIGHTS TO PROPERTY ACT NUMBER 19 OF 1937 BY WHICH SONS AND WIDOWS ONLY ARE CO-HEIRS AND THE WIDOW GETS A LIMITED ESTATE:—

Any body going through the entire report of the Hindu Law Committee and the explanatory note and the four memoranda attached to the Hindu Code Part I, dealing with intestate succession gets the impression that the question of making sons and daughters and widows as co-heirs as well as the question of conferring absolute estate on the widow is to come for the first time for the consideration of the Central Legislature at the time of considering the Hindu Code. The Hindu Law Committee has not written even a word about the fact that the Central Legislature gave its decision against both these points when Hindu Women's Rights to Property Act (No. XVIII of 1937) was passed. Clause No. 4 of the Bill No. 35 of 1935 introduced by Dr. Deshmukh wanted to make the son a co-heir with the widow mother, daughters and daughter-in-laws of the deceased. But the legislature refused to make the daughter a co-heir with the son and the widow. Similarly a clause in the Bill wanted to give absolute estate to the widow in the property inherited by her from her husband but this was rejected by the Legislature and section 3 sub-section (3) of the Hindu Women's Rights to Property Act expressly provides that any interest devolving on a Hindu widow under that Act shall be the limited interest known as a Hindu women's estate. The report of the Select Committee on the Bill introduced by Dr. Deshmukh was signed on the 25th of January 1937 (see the Gazette of Government of India. Part , dated , page) and this report was signed by N. N. Sircar, Muhammad Yakub, G. V. Deshmukh, F. Noyce, Sri Prakasa, V. V. Giri, N. C. Chunder, Lalchand Navarai and Nilakantha Das. While the Hindu Law Committee has presumed to state that the Privy Council was wrong in holding that the estate inherited by a woman from her husband was limited estate, and cited passages in the explanatory notes for showing that the limitation about the limited estate of a Hindu widow had no real basis in the smritis, it did not see the beam in its own eyes while pointing out to the absent note in the eyes of the Privy Council. Not a word is to be found anywhere in the report of the committee to the effect that the contention about the widow being entitled to an absolute estate was rejected only four years before it signed its report on the 18th of January 1941 in the bracing climate of Simla. Similarly no reference was made to the fact that the Honourable Sir Nripendra Nath Sircar (Law Member) said that "The Government was quite prepared to support the Bill so far as the rights are intended to be given to the widow and not to daughters and Dr. Deshmukh issued a statement in the Press on which he relied for saying that he will be quite satisfied if the Bill is limited to the rights of widows". [See The Legislative Assembly Debates (1936) Vol. IX page 3284] 15th October 1936. This Hindu Law Committee may be called upon to explain why it suppressed a reference to the above matters while writing its report and preparing the explanatory note and the memoranda attached to the Hindu Code. The members of this committee has not acted as impartial scholars helping the Hindu community on the most important pieces of legislation affecting it. They have acted as advocates would have acted in order to secure advantages for that side by whom they were engaged.

EXAMINATION OF THE OLD AUTHORITIES, WHICH ARE ALLEGED TO ALLOW DAUGHTER TO INHERIT AS CO-HEIR ALONG WITH THE SON AND WHICH ARE REFERRED TO IN THE REPORT OF THE SELECT COMMITTEE BUT NOT BY THE HINDU LAW COMMITTEE:—

It is necessary to examine the old authorities, which are alleged to be in favour of women's rights of inheritance in general and which are alleged to allow a daughter to inherit as co-heir along with the son and which are referred to in the report of the Select Committee but which were not referred to by the Hindu Law Committee. These authorities were brought to the notice of the Select Committee, as stated in its report in the memorandum submitted to the joint Committee by the representatives of the women

of Simla "The ancient shastras do not exclude a daughter from inheritance. Sukra Smriti says that if a man divides his property during his lifetime, the daughter should be given half a share; 1/4th share is mentioned by Yajñawalkya, Kalyana and Manu and they are not quite clear if it is 1/4th share from each son or only of all the sons. As the question of share is so undecided in Smriti authority, we feel that in view of the considerations of equality and of modern requirements, an equal share should be given".

"Kalyana" referred to in the above memorandum appears to be a mistake, as there is no smriti known as Kalyana's smriti. Some of the other prominent authorities referred to above are discussed in the sequel.

THE OBSOLETE RULES OF INHERITANCE MENTIONED IN SHUKRANEETI, ACCORDING TO WHICH THE SISTER WAS TO BE GIVEN ONE-EIGHTH SHARE AND THE SISTER'S SON ONE-SIXTEENTH SHARE BY THE SON OF DECEASED FATHER:—

In the memorandum submitted to the Joint Committee by the representatives of the women of Simla, it is pointed out that "The ancient shastras do not exclude a daughter from inheritance. Shukra Smriti says that if a man divides his property during his life-time, the daughter should be given half a share". The Shukra smriti referred to is the Shukraneetisar—Second edition of which was published in Calcutta in 1880 by Shree Jeevananda Vidyasagar Bhattacharya.

The rules of inheritance are mentioned in the fourth Adhyaya, in the fifth topic. The few rules to be found in this work are inconsistent with each other. In Shloka 295, the author reproduces the text of Manu to the effect that the women, son, and slave do not hold any property and their property belongs to them to whom they belong. The rules regarding the share to be given at the time of partition and the shares in the inheritance are mentioned in the shloka's meaning:—

"If the father effects a partition during his lifetime, he should give equal shares to his sons and wives. He should give one-half of his own share to the daughter and one-half of that half to the daughter's son. Even in the case of death of the person who is the owner of the property, sons and others are entitled to the shares mentioned above. They should give to the mother one-fourth share and to the sister one-half of the share given to the mother. The sister's son should be given a share equal to one-half of the share given to the sister. The remaining should be accepted by the son. The following heirs inherit the property, each in default of the previous. The son, grandson, widow, daughter, daughter's son, mother, father, brother, and brother's son".

The rule giving one-sixteenth share to the daughter's son of the deceased has long become obsolete. In accordance with the rule "The nearer excludes the remote", the daughter's son is not entitled to any share while the daughter is alive. Similarly the rule prescribing one-fourth share to be given to the mother that is, to the widow or widows of the propositus has also become obsolete and has been replaced by a provision to be found in Yajñawalkya Smriti, Achaaradhyaya, verse in accordance with it the mother becomes entitled to an equal share with the son in case of a partition amongst the sons. As regards the extent of the share to be given to the sister, that is, the daughter of the deceased, it is one-eighth of the share to be allotted to the son. It is not half-a-share. It is thus clear that the relevant passages of the Shukraneetisar do not support the provision made in the Bill about giving half a share to the daughter. Moreover the last shloka, which lays down that each heir succeeds in default of the previous, is inconsistent with the previous shlokas and has got the effect of nullifying them.

ONE-FOURTH SHARE TO BE GIVEN TO THE (UNMARRIED) DAUGHTER BY THE SON ACCORDING TO MANU:—

According to the passage in Manu smriti, Adhyaya IX, Shloka 118, the son was required to give one-fourth share to the daughter, who is described by the word Kanyaa and means an unmarried daughter.

As pointed out by Kullukabhattacharya in his commentary on the shloka the word Kanyaa means an unmarried daughter and therefore this shloka is no authority for the proposition that married daughters were also entitled to

inherit as co-heirs. The provision for giving one-fourth share to the unmarried daughter was a provision for her marriage.

The method of calculating one-fourth share is discussed in the sequel.

ONE-FOURTH SHARE TO BE GIVEN TO THE UNMARRIED DAUGHTER BY THE BROTHERS ACCORDING TO YAJÑAWALKYA:—

Yajñawalkya smriti, Achaaradhyaya, shlokas 123 and 124, which state that an one-fourth share is to be given to the unmarried daughter, lay down as follows: "Amongst the heir dividing (the ancestral property) after the death of the father, let the mother also take an equal share. Uninitiated brothers should be initiated by those for whom the ceremonies have been already performed. But sister should be disposed of in marriage, giving them as an allotment the fourth part of a brother's own share."

The one-fourth share given to the unmarried daughter is a share which would be equal to one-fourth of the share of a son who would be a co-heir with the other son. Therefore where a man died leaving behind him one son and one daughter, the estate would be divided into two parts and one part would be further sub-divided into four parts and the one-fourth of this one-half, which is equal to one-eighth of the whole estate, would be given to the daughter. This point is dealt with at length in the Mitakshara which states as follows: For example, if a certain person had only a Brahmani wife, and leaves one son and one daughter, the whole paternal estate should be divided into two parts, and one of such parts be sub-divided into four; and, one of these four parts given to the unmarried daughter the remainder shall be taken by the son. Or, if there be two sons and one daughter, the whole of the father's estate should be divided into three parts and one such part be sub-divided into four; and, one of these four parts having been given to the unmarried daughter the remainder shall be shared by the sons. But, if there be one son and two daughters, the father's property should be divided into three parts and two shares be severally sub-divided into quarters; then, having given two (quarter) shares to the unmarried daughter the son shall take the whole of the residue. It must be similarly understood in any case of the residue. It must be similarly understood in any case of an equal or unequal number of brothers and sisters alike in rank. (See Setlor's translation of Hindu Law Books on inheritance, part I, page 22).

The principle about the calculation of shares explained by the Privy Council in Karulammal v. Viswanathaswami, decided in the year 1922 and reported in Indian Law Reports, Madras series, volume 46 page 167 at page 174. The Privy Council was concerned about the meaning of the one-half share which was to be given to a dasee-putra in accordance with the rule to that effect in Yajñawalkya Smriti. It held that the rule meant to give one-half of that share which he would have taken, had he been legitimate. "Both the texts as well as the commentaries speak of the dasee-putra being made partaker of a moiety of a share or participating for half a share, but there is no explicit statement as to the unit in which he is to take his half-share. There are two possible views—either that he is to take one-half of what the illegitimate son would have taken had he been legitimate". The Privy Council, after referring to the various authorities on the point held that a dasee-putra was entitled to one-half of the share to which he would have been entitled, had he been legitimate. For example if a Shoodra leaves behind him one legitimate son and one dasee-putra, the dasee-putra gets 1/4th share and the legitimate son gets the remaining 3/4th, because had the dasee-putra been legitimate, he would have got one-half share and as he is not legitimate, he is therefore entitled to a one-half of one-half. According to this Hindu principle of interpretation, half a share to be given to a daughter in the presence of a son means one-fourth share to be given to her, as if half of one-half.

DAUGHTER NOT ALLOWED TO INHERIT AS CO-HEIR ALONG WITH THE SON BY ALL SCHOOLS OF HINDU LAW ACCORDING TO WHICH ONE CLASS OF RELATION SUCCEED AT ONE TIME AND OTHER CLASSES OF RELATIONS SUCCEED IN A PARTICULAR ORDER MENTIONED IN THE SMRITIS:—

The system of allowing the married or unmarried daughters to succeed as co-heirs along with the son became

obsolete long ago and has been replaced by the system of allowing one class of relation to succeed at one time. The sons succeed first, the widow or widows succeed in default of sons, the daughter or daughters succeed in the absence of sons and widows, the daughter's sons succeed in the absence of all the first three, then the parent succeed. The brothers succeed in default of all these persons mentioned above. The rule on the point is stated as follows in Yajñawalkya Smṛiti, Aachāraadhya, śhlokas 135-136.

"The wife, and the daughters also, both parents, brothers likewise, and their sons, gentiles, cognates, a pupil, and a fellow student; on failure of the first among these, the next in order is indeed heir to the estate of one who departed for heaven leaving no male issue. This rule extends to classes."

The heirs from the wife to the brother's sons are the same throughout India, whether the case is governed by the Mitākshara school or the Dayabhaga school of law. Yajñawalkya lived nearly two thousand years ago and the rule stated above has been in force during this long period.

The rule is Yajñawalkya smṛiti about granting one-fourth share to an unmarried sister can not be made the basis of granting half-a-share to every married daughter when the deceased leaves behind him sons or widows or both.

NECESSITY OF MENTIONING IN AN EXPLANATION TO SECTION 7 SUB-CLAUSE (D) THAT THE HALF SHARE GIVEN TO A DAUGHTER IS USED IN THE HINDU SENSE AND NOT IN THE MAHOMEDAN SENSE:—

Sub-clause (d) of clause 7 provides that each of the intestate's daughters shall take half a share. The illustration (iii) appended to this clause is as follows: The surviving relatives of an intestate are two widows, a divided son, two undivided sons, an unmarried daughter; two married daughters, a widowed daughter, and four grandsons by a pre-deceased son. The two widows together take one share each of the three sons takes one share, each of the four daughters takes half a share, and the four grandsons together take one share. Thus each widow takes 1/14th of the heritable estate, each son 1/7th, each daughter 1/14th, and each grandson 1/28th. Here the word half a share is understood and is used in the Mahomedan sense and not in the Hindu sense, which has been explained already. The Mahomedan meaning of half a share is that if a man dies leaving a son and a daughter, the daughter gets a share and the son gets two shares and the estate is divided into 3 parts out of which one goes to the daughter and two parts go to the son. According to the Hindu sense, as stated already, had there been another son living, he would have got half a share. But as there is a daughter and not another son, the share of the daughter would be half of what another son would have got and hence a daughter would get 1/4th and the son would get 3/4ths. Those who are in the habit of stating that the provisions of the Code are based on the provisions of the Hindu Law are required to pay attention to this matter for the purpose of calculating the extent of the share of the daughter. But if they want to base their provisions of the Hindu Code on the Mahomedan law, they are expected to state it.

THE INTERESTS OF THE DAUGHTERS TO BE CARED FOR BY THEIR FATHERS INSTEAD OF BY THIS ALLEGED HINDU CODE:—

The conclusion, regarding the provisions about daughters as co-heirs is that the interests of the daughters can safely be entrusted to the care of their fathers instead of being protected by this alleged Hindu Code.

DAUGHTER'S SON EJECTED OUT OF HIS PLACE IN THE ORDER OF SUCCESSION AND DAUGHTER'S DAUGHTER SUBSTITUTED IN HIS PLACE:—

Though the reference to daughter's son occurs as the 2nd heir in the first class, his right to succeed has been practically taken away by the Act and daughter's daughter is substituted in his place. This is the result of three other provisions made in this Bill. According to all schools Hindu Law (excepting the Bombay school according to which the daughter gets an absolute estate), a daughter's son succeeds in default of the daughter of the deceased, propositus, irrespective of the fact whether she was his mother, or whether his mother died before the propositus.

But according to the definition of *streedhan* given in section 2 sub-section 1 clause (i), *streedhan* means property acquired by a woman by inheritance and by section 12, which deals with the right of woman over *streedhan*, a woman has the same rights over his *streedhan*, as a man has over property acquired by him in the like manner. In other words she gets an absolute estate in the property of her father inherited by her. According to section 13, which deals with the order of succession to *streedhan*, this property shall devolve in the following order, that is, (1) daughter, (2) daughter's daughter (3) daughter's son, (4) son, (5) son's son (6) son's daughter, (7) husband, (8) husband's heirs, (9) mother, (10) father, (11) father's heirs, and (12) mother's heirs. Hence if a daughter inherits her father's property, this property devolves after her death upon her own daughter, in preference to her own sons. Thus the property which devolves upon the daughter's son now according to the law generally in force in India, will not devolve upon him unless the deceased daughter has left no daughter, daughter's daughter and daughter's son. In other words, he, the daughter's son of the male owner has a chance only to inherit that property if he has not got a sister or sister's daughter—that is daughter and the daughter's daughter of the propositus. But if the property is transferred away by the daughter, there is no estate left to inherit.

In a case where the propositus leaves behind him a daughter and a predeceased daughter's son, the latter has very little chance to inherit the property, as he would only inherit on account of his being included in the list of father's heirs (numbered as 11 in the above list). This innovation is more dangerous than the one already referred to.

AN UNPRINCIPLED TABLE OF HEIRS REFUSING TO PUT THE FATHER'S SISTER A NEARER AGNATE AS DEFINED BY THE CODE—ABOVE THE FATHER'S SISTER'S SON, WHO IS ADMITTEDLY A BANDHU AND ENTITLED TO SUCCEED AFTER ALL THE AGNATES ARE EXHAUSTED, NECESSITY OF PUTTING THE FATHER'S SISTER ABOVE THE FATHER'S SISTER'S SON IN THE LIST OF HEIRS:—

As is well known, the Mitākshara and the Dayabhaga schools of law agree in the order of succession in laying down that in the absence of a son's grandson or great-grandson the widow, daughter, daughter's son, parents, brother and brother's son succeed to the property in default of each other, and the divergence between them arises afterwards in accordance with the two different meanings of the word *sapinda*. Whether a case is governed by the Bengal School of law known as the Dayabhaga school or by the other school of law known as the Mitākshara school, there is no doubt about the principle to be applied to the facts of each case. So far as this code is concerned, there is no settled principle which can be taken as a guide and the fact that the father's sister is not mentioned as an heir though her son is mentioned as an heir in class III entry 6—"Father's sister's son" shows that the entire table of heirs is an unprincipled one. It is stated in sub-clause (b) of sub-clause (2) of clause 2 (dealing with definitions) that a woman shall be deemed to be an agnate of her father and his agnates, and from this it follows that a father's sister is to be treated as an agnate of the propositus. According to the Hindu Law all agnates excluded the cognates. From this it would follow that the father's sister would exclude the father's sister's son, if father's sister is to be treated as a *Bandhu* as she was treated by the Bombay High Court—But if she is to be treated as an agnate and as not suffering from any disability formerly attaching to females as now proclaimed from time to time, she should be entitled to succeed in preference to her own son, on the ground that she is a nearer heir than her son as well as she is an agnate, while her son is a cognate. Clause 8 of the Bill affirms the right of all the agnates to exclude all the cognates and from this it would follow that the father's sister is a preferential heir to the father's sister's son. But clause 8 has not made the principle of exclusion of cognates by the agnates, applicable to what is called a succession amongst the enumerated heir which includes the father's sister's

son. Looked at from the point of principle, the order of succession amongst enumerated heirs is based on no principle. It is based on a compromise as admitted by the Committee, but as stated already, rules of inheritance are to be based on principles which do not change from time to time, as compromise do. From the point of principle a father's sister should succeed before a father's sister's son and similarly a father's father's sister should succeed before a father's father's sister's son. If the table of enumerated heirs is not rejected as being based on no settled principle, the father's sister should be introduced as an heir before the father's sister's son and the father's father's sister should be introduced as an heir before the father's father's sister's son.

Futility of compromise in matters of principles governing inheritance is also illustrated by these two illustrations. These two illustrations are similar to allowing a daughter's son to succeed before the daughter or allowing a sister's son to succeed before the sister. This is perversity in excess. The entire table vitiated by perversities should be rejected.

DESIRABILITY OF ADMITTING THE PROPOSITION THAT NO WOMAN SHOULD BE DISQUALIFIED ON INHERITING BY REASON OF HER SEX:—

As regards the contention in paper No. 1 in the report of the Select Committee dealing with the point about not excluding the woman on the ground of sex, I agree, though on different grounds, which require the enlargement of the scope of inheritance for women. While commenting on the oft-quoted texts of Manu relating to inheritance and translated as "To the nearest Sapinda, the inheritance next belongs", the Bengal Pandit Kulluck Bhatt said that the word sapinda denoted male as well as female sapinda "सुपुत्र स्त्री वा". If a woman can succeed as heir to her father in the capacity of a daughter, as heir to her husband in the capacity of his widow, as heir to her son and grand-son in the capacity of a mother and grand-mother, as heir to her brother according to the Bombay School of Law in the capacity of a sister, as heir to her paternal uncle according to the Bombay School of Law in the capacity of niece, and as an heir to her husband's brother according to the Bombay School of Law in the capacity of a brother's widow, it is desirable to admit and lay down a rule to the effect that "no woman should be disqualified from inheritance by reason of her sex, if she is a sapinda of the deceased". In order to prove this simple matter the select committee has adopted a difficult line of reasoning.

The Hindu Law Committee as well as the Select Committee, however, have unanimously cut down to the extent of half the rule of inheritance explained by Kulluck Bhatt as stated above and have prevented the widows of Gotraj Sapindas from inheritance. This is a matter which requires to be rectified and which is also referred to previously while commenting on the meaning of the word agnate in clause 2 sub-section (a), according to which one person is said to be an agnate (gotraja) of another, if the two are related by blood wholly through males, but not related as a gotraja sapinda by marriage.

DESTRUCTION OF THE VARIOUS MARWADI AND CHETTY FIRMS EFFECTED BY THE BILL:—

Many Marwadi and Chetty firms and other Hindu firms are now carrying on their ancestral business from generation to generation. But the effect of this Bill which makes daughters as co-heirs with the son would be to destroy these firms within a few years. There are many cases where a banker or a trader has got one son and one or two or more daughters. According to the present law the son succeeds to the father's business and carries on the same and if he died, leaving a son and daughters, the business is carried on by the grand-son of the ancestral who started the same. On account of the present Bill, fragmentation of the estate would occur and the son will inherit only a portion, the extent of which would depend upon the number of the daughters. If a banker dies leaving a son and four daughters, the estate will be divided into six parts, four parts would go to the daughters and two parts would go to the son. Not only the rich classes would be hit by the present Bill but the families which are now regarded as well to do families will become paupers in the next genera-

tion on account of the fragmentation effected by the Bill. Even a son of a Subordinate Judge succeeding to his estate would find it difficult to maintain his family and his children and give them education, if he is required to share the inheritance with the daughters of the deceased, who cannot remain in the same household as members of the same family and whose interest would lie in effecting partition at an early date. Hindu Law has safeguarded the rights of the daughter in her husband's family and it has safeguarded the right of the son in his father's family and this scheme is in accordance with the sentiments of the Hindus and it should not be upset.

CLAUSE 5.—NECESSITY OF INTRODUCING A PROVISION FOR PRE-EMPTION:—

In an oft-cited Full Bench case, *Gobind Dayal vs. Inayatulla* (1835) reported in the Indian Law Reports, Allahabad series volume 7 page 775, Mr. Justice Mahmood, after referring to the rules of inheritance according to the Mahomedan Law, by which the property is split up on the owner's death into numerous parts, observed "If such a law of inheritance were not mitigated by the law of pre-emption the result would be serious inconvenience, and possibly even disturbance". If the multi-class inheritance system is to be retained, a right of pre-emption should be provided for and the procedure to enforce it may be laid down. It may be noticed that there are already statutory provisions about enforcing preemption in certain provinces, for example, the Punjab Pre-emption Act (), the Agra Pre-emption Act, the Berar Land Revenue Code etc. But some of them are not exhaustive enough to include houses. A provision about pre-emption, enforceable on any kind of transfer, for consideration or without consideration, of any kind of immovable property, effected by any coheir, may be added in the Bill.

NECESSITY OF CHANGING THE RULE IN CLAUSE 7 (A) SO AS TO ALLOW EACH HINDU WIDOW A SHARE EQUAL TO THAT OF A SON ACCORDING TO THE PRINCIPLE SANCTIONED BY HINDU LAW:—

Hindu Law does not contemplate the case of a son or sons succeeding to the property as coheirs along with the widow or widows of the deceased. But it does provide that if partition of ancestral property takes place between the sons, the widow or each of the widows of the deceased father, are entitled to a share equal to that of the son, whether they are or are not the mothers of the sons dividing the property. Yajñawalkya said in *Vyawaharadhyaya*, shloka 123.

And the word माता mother has been interpreted in a broad sense by the Mitakshara school to mean step-mother. This point is dealt with by text book writers in details. For example in *Mulla's Hindu Law* (1940), ninth edition, page 885, paragraph 816, it is stated as follows. "A mother can not compel a partition so long as the sons remain united. But if a partition takes place between the sons, she is entitled to a share equal to that of a son. The term 'mother' includes step-mother".

HINDU LAW PRINCIPLES MORE BENEFICIAL TO THE WIDOW THAN THE MAHOMEDAN PRINCIPLE:—

The application of the Hindu principle of equality of shares amongst the sons and the widows of the deceased would be more beneficial to the widows than the present scheme which is similar to that recognised by the Mahomedan law. This is very important, in case where the widow is not the mother of the sons entitled to the property of the deceased. Take a case where the deceased leaves behind two sons and a widow, who is the mother of these sons, and another widow, who has no sons, and an estate worth forty-thousand rupees. According to the principles sanctioned by Hindu law, the widow, who has no sons, should get an estate worth ten-thousand rupees, and the other widow would get estate worth ten-thousand rupees and each of the two sons would get similar estates. But according to the Mahomedan scheme of treating two or three, or four widows collectively as equal to one widow, which is the basis of the scheme adopted by the Act, the estate would be divided in three parts, and both the widows collectively would get an estate worth Rs. 13,333-5-4 as and the widow, who has no son, would get the estate worth Rs. 6,666-10-0 only. So far as the widow, she is the

mother of the sons, is concerned, she would in normal circumstances live with her sons and would be well cared for by them. But so far as the lot of the son-less widow is concerned, she is a sufferer by the adoption of the Mahomedan principles, upon which the scheme is based. It is very clear that the greater the number of the widows, the greater is the wrong done to them by this alleged Hindu Code.

THE PROVISION OF ALLOWING A WIDOW OR ALL THE WIDOWS TOGETHER ONLY ONE SHARE—SIMILAR TO THE PROVISIONS OF THE MAHOMEDAN LAW:—

If a Mahomedan dies, leaving behind him one widow, or two, or three, or four widows and one son and one daughter, widow or all the widows collectively take their Koranic 1/8th share of the estate, and as regarding the remaining estate, it is divided between the daughter and the son, the son gets a share, which is double of that given to the daughter (see Mulla's Mahomedan Law () edition pages). According to this clause, the shares of a Hindu's daughter and son are to be the same as the shares of a Mahomedan's daughter and son. Another similarity is that the Hindu's widow or all the widows collectively are given one share, which is no doubt greater than the share of a Mahomedan widow, as it is equal to a son's share. But the Mahomedan principle that all widows share collectively whether they are two, or three, or four, should be entitled to the same share which is given to a widow only has been adhered to here.

CLAUSE 7—SUB-CLAUSE (B)—UNDIVIDED SON SHOULD EXCLUDE A DIVIDED SON:—

Clause (7) sub-clause (b) provides that each son of the intestate shall take one share, whether he was undivided or divided from, or re-united with, the intestate. The explanatory note on this sub-clause states that no distinction is made between divided and undivided sons, as there has been a conflict of judicial decisions on this point and we have adopted the view, which leads to the simplest rule. This point is dealt with already while discussing the meaning of heritable property. The reasons given in the explanatory note about the conflict are incorrect. It should be provided that undivided and reunited sons should exclude the separated sons. Moreover, the legislature has no jurisdiction to solve this conflict one way or other unless it undertakes to legislate just now with reference to the devolution of coparcenary interests, as suggested in this note, as it is stated in the beginning that it does not deal with property passing by survivorship.

CLAUSE 7(D)—DAUGHTER IN COMPETITION WITH THE WIDOW OR SON SHOULD NOT BE GIVEN ANY SHARE AT ALL, ETC.:—

That the daughter should not be given any share at all as a co-heir along with the widow or the son, is already discussed while dealing with clause 5 class I—entry I.

MODIFICATION OF SUB-CLAUSES (A) AND (B), AND DELETION OF SUB-CLAUSE (D) NECESSITY OF CONSEQUENTIAL CHANGES:—

In the light of principles stated above, it is necessary to modify the sub-clauses (a) and (b), and to delete clause (d). It should be provided as follows:—

(a) The heritable property of a male, that is, the separate or self-acquired property shall devolve on the joint son or sons and the widow or widows of the deceased.

(b) In default of joint son or sons, it would devolve on separated sons and the widow or widows of the deceased.

(c) The share of each of the sons and widows shall be equal.

CLAUSE 7—GIVING HALF-SHARE TO A DAUGHTER SHOULD BE DELETED:—

Reasons are already stated for not giving a share to the daughter as a heir along with the widow or sons of the deceased, while discussing clause 5 class I entry I.

ERROR OF DEALING WITH THE LAW OF JOINT FAMILY IN A BILL DEALING WITH INTESTATE SUCCESSION:—

The preamble of the Hindu Code* (Part I) relating to intestate succession states that "where as it is expedient

first to amend and codify the general Law of Intestate Succession.

IT IS HEREBY ENACTED AS FOLLOWS:—

PRELIMINARY.

1. SHORT TITLE, EXTENT AND COMMENCEMENT OF:—

This act may be called the Hindu Code, Part I (intestate succession).

Thus though the Bill professes to deal with intestate succession, it has proceeded to change the law relating to joint family and the devolution of the interest of a member of a joint family in subsequent clauses, by instalments. Clause 7 sub-clause (b) lays down that each son of the intestate shall take one share, whether he was undivided or divided from, or re-united with, the intestate. The explanatory note on this sub-clause states that no distinction is made between divided and undivided sons, as there is a conflict of judicial decisions on the point and the view adopted in this clause leads to the simplest rule. In the first place to state that there is a conflict of judicial decisions on the point may be technically correct but it does not represent the matter correctly. According to the statement of the law to be found in Mayne's Hindu Law and Usage (1938) pages 643-644, paragraph 526 and Mulla's Hindu Law (1940) page 33, paragraph 43, all the High Courts take the view that the undivided sons succeed to the self-acquired property of the father to the exclusion of divided sons and it is only the Oudh Chief Court which took a contrary view in *Badri Nath v. Hardeo* (1930) 5 Luck. 649. This ruling is however, dissented in the recent Full Bench decision of the Allahabad High Court in *Ganesh Prasad v. Hazarilal* (1942) All. Law. Journal 239; A. I. R. 1942, 201. It is thus clear that the law relating to the right of a joint son to exclude the separate son as understood throughout India has been affected by the Legislature. The Legislature should not propound a simple rule or a complicated rule regarding the devolution of the interest of a father upon his joint sons and separated sons in a Bill which does not profess to deal with joint family property. But the rights of a joint son to exclude a separated son can not be destroyed in the incidental way adopted by the committee. The Bill has made another encroachment on the law relating to joint family. Clause 21 of this Bill provides that if two or more heirs succeed to the property of any intestate, they take the property as tenants in common and not as joint tenants. In other words if two joint sons succeed to the estate of their father by survivorship, as stated already, they would get the estate as tenants in common and not as joint tenants. Such a provision whether good or bad cannot be made in a Bill which does not profess to deal with joint family and its property.

4. HINDU CODE BILL PART I RELATING TO INTESTATE SUCCESSION A SAMPLE OF THE DANGEROUS TYPE OF PEACE-MEAL LEGISLATION:—

The law relating to the interest of a joint son in the joint family property has been abrogated on two points as stated above. The Hindu Law Committee should have provided for the devolution of the interest of a coparcener in this Bill or should not have touched the devolution of joint family property at all. In the Hindu Women's Right to Property Act the devolution of joint property as well as separate and self-acquired property is provided for. The Hindu Law Committee prepared a Bill regarding marriage which was not so necessary while it did not prepare a Bill regarding the joint family property. It did not even prepare a clause regarding the devolution of the interest of a coparcener in the joint family property. This omission by the committee to frame a provision regarding the devolution of the interest of a coparcener has laid some people to suspect that those very provisions which would be made applicable to intestate succession would be made applicable to the devolution of joint property. This piece of legislation regarding intestate succession cannot therefore be taken into consideration unless and until a provision regarding the devolution of the right of a coparcener is framed and a bill regarding joint family property is introduced in the legislature along with this Bill.

CLAUSES 8 AND 9—NECESSITY OF STATING THE ORDER OF SUCCESSION AMONG NON-ENUMERATED HEIRS MENTIONED IN CLAUSES 8 AND 9 IN TERMS FAMILIAR TO HINDU LAW AS EXPLAINED IN VARIOUS CASES:—

As stated already, Manu explained the rule about the priority amongst heirs in a sentence 'To the nearest sapinda the inheritance next belongs'. This rule has been explained in numerous cases, in which the point what constitutes nearness, has been explained. The rules mentioned clauses 8 and 9 are expressed in too technical a language. The illustrations appended to these clauses are of a very simple nature and would not be useful guides in complicated cases. Take a simple case, where a sister's daughter's son is claiming the estate as against the paternal uncle's daughter's son. Both of these are fourth in degree from the point of blood relationship. The Allahabad High Court recently held in *Sahodra vs. Shri Thakur Baharji Maharaj* (1942) Allahabad Law Journal 732, 733, that in a competition between Bandhus of the same class and of the same degree, the one claiming from near line excludes the more remote. This principle is stated in Rule 2 of Clause 9 which is explained by an illustration. But the rule as stated by the Allahabad High Court is more easily intelligible. A man need not go on shouting for aqua pura and sodium chloride when he wants water to drink and grains of salt. All these rules stated in clauses 8 and 9 should be restated in terms made familiar to the lawyers by the re-page (120) paragraph 45.

"The principles", wrote the Law Commissioners to whom the Transfer of Act was referred for opinion, "which we attempt to introduce in our legislation and especially in Code, should be comparatively few, carefully chosen, and thoroughly approved. They should be cast in a form as far as possible resembling that of rules already accepted or appearing as the logical outcome of already recognized doctrines. The new law would thus link itself naturally to the law previously existing, blend with it imperceptibly, and form a basis for a new departure. (See Dr. Gour's commentary on the Transfer of Property Act introduction page (120) paragraph 45.

CLAUSES 8 AND 9—OMISSION OF RULE 3 OF CLAUSE 8 NECESSARY:—

The principle laid down in rule 3 is unknown to all the schools of Hindu Law. According to Hindu Law, the relationship of Bandhus extends up to five degrees on the mother's side and seven degrees on the father's side, as stated in *Yajñawalkya smṛiti*. It is the sex of the first ancestor of the claimant, that determines the extent of his right of inheritance. The sex of his other intermediate ancestors has nothing to do with his right of inheritance. The principle laid down here, is well known in Mahomedan Law and is referred to by some of the jurists as the doctrine of radd (root) while determining the claims of persons, who are described as Distant kindred. The explanatory note and the four memoranda attached to it do not state the source, from which the committee managed to get this principle. A case is discussed at page 48 of *Aly-sirajiyah* (translated by Almaric Rumsey, second edition, 1890), where it is stated as follows: "A man dies leaving the daughter of a daughter's son, and the son of a daughter's daughter," according to Muhammad, the property is divided between the roots, that is, those in the second rank, in thirds, two-thirds going to the daughter of the daughter's son, namely the allotment of her father, and one-third of it to the son of the daughter's daughter, namely, the share of his mother. The rule 3, which is based on a similar principle, should be dropped altogether.

ADMIRABLE SPEECH OF SIR SULTAN AHMAD URGING TRANSFERABILITY OF PROPERTY INHERITED BY WOMEN, ABSOLUTELY SILENT ON TWO POINTS ABOUT THE NON-FORFEITURE OF THE ESTATE OF A HINDU WIDOW ON ACCOUNT OF HER REMARRIAGE AND THE DEVOLUTION OF THE ESTATE TO A DIFFERENT SET OF HEIRS:—

When Sir Sultan Ahmad delivered his speech on the 24th of March 1943 introducing the Hindu Code Part I, it struck the audience, as if some great sanskrit scholar,

who was expert in confounding the sannatanists, was dealing deadly blows and,

The wonder grew, that even a big head could carry the shrutis it knew. He insisted on any body producing a shruti in favour of the limited estate of a woman, attached no weight to the *smṛitis*, which have laid down the law at least for a period of two thousand years. But he has not stated any reason why this property should be allowed to go to a different set of heirs, because it was quite possible to invest the widow with powers of absolute transfer and still make the husband's or father's property descendible to his heirs, instead of allowing it to go to a different set of heirs. A man has got absolute power over his self-acquired property but the heirs to that property are the sons as they are in ancestral property. A woman may have absolute property in the estate inherited by her from her husband or from her father. But why should the property inherited from a father by her should devolve upon her daughter and not her son, he has not stated, similarly he has not stated why the daughter of pre-deceased wife of a man should be presented from succeeding to his estate, if the widow has not alienated it. He has also not dealt with the question why the widow should be allowed to retain the estate after her remarriage. To these questions no answer was given or attempted. These points are dealt with in the sequel.

CLAUSE 12—EPIDEMIC OF REFORM OF HINDU LAW AND THE VARIOUS BILLS INTRODUCED IN THE CENTRAL LEGISLATURE FOR ABOLISHING THE LIMITED ESTATE OF A HINDU WIDOW AND SUBSTITUTING ABSOLUTE ESTATE IN ITS PLACE AND FOR OTHER PURPOSES:—

According to the provisions of Hindu Law a widow gets a limited interest in the property inherited by her from her husband and though she is entitled to dispose of it for purposes of legal necessity, she has got no such power over it, as she has over her *streedhan*, which is her property absolutely. Her husband's property devolves after her death on her husband's heirs, and not on her own heirs, for example, her brother or father, who are entitled to succeed to her *streedhan*, in the event of her death without issue. If he was married to her husband in a disapproved form of marriage. Hence the attempt to describe the estate inherited by a widow from her husband as *streedhan* so that she may get absolute right therein.

A LIMITED ESTATE ALSO ACCORDING TO THE HINDU WOMEN'S RIGHT TO PROPERTY ACTS OF 1937 AND 1939.

According to the Hindu Women's Right to Property Act (XVIII of 1937 as amended by Act XI of 1938), which was passed for giving effect to the Bill introduced by Dr. G. V. Deshmukh of Bombay, it was definitely laid down by section 3 sub-section (3) as follows:—

"Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu Woman's Estate, provided however that she shall have the same right of claiming partition as a male owner".

COURSE OF AMENDMENTS AND ITS EFFECTS:—

Writers on English jurisprudence explain the way as to how a path is made across a common. One man's trespass, not resisted by anybody, is followed by another trespass similarly and so on at and in course of time there is a regular road, on which a man can drive his car. A similar thing has happened to the Hindu Law.

In his speech introducing this Bill which is to be called the Hindu Code (Part I), the Hon'ble Sir Sultan Ahmad admitted that "while the Act of 1937 as amended by the Act of 1938 enlarged the rights of females, the Act was found to be defective and wholly unworkable and that Lawyers and courts were baffled at the proper interpretation to be put on the second and third sections of the Act, which enlarged those rights. In order to make confusion more confounded a Bill, called the Hindu Women's Rights to Property Amendment Bill was introduced by Dr. G. V. Deshmukh and Mr. Kailash Bihari Lal and this Bill proposed to give retrospective effect to the Act of 1937 from the 26th of September 1935. But as two years retrospective operation of the Act was not considered sufficiently baffling, Dr. G. V. Deshmukh introduced another Bill called the Hindu Women's Estate Bill, which sought to

amend the Hindu Law, so as to enlarge the interest of the Hindu widow in the property inherited by her from her husband, and proposed to give her absolute interest in one-sixth of the corpus of the property inherited by her from her husband. It may be noticed that according to the rules of inheritance of the Mahomedan Law, when the deceased dies leaving behind him a widow and a son, the widow gets her Koranic share to the extent of one-eighth share, and the son gets the remainder. In other words, a Mahomedan widow gets two annas share in a rupee, and the son gets fourteen annas share. In this case, the widow's share is nearly one-sixth of the share of the son, though it is one-eighth of the whole estate, and the widow gets an absolute estate in this one-eighth share. This principle which Dr. Deshmukh embodied in his Bill about giving absolute estate to a widow in one-sixth of the estate, and not in the whole of the estate is similar to that recognised by the Mahomedan Law. Its introduction in the Hindu jurisprudence would have created a confusion, could be compared only to the confusion which the Hon'ble Sir Sultan Ahmad would be able to create in the British Pharmacopoeia, if he were given statutory authority to meddle with it, and he had taken full advantage of it. It is not known why the eminent surgeon of Bombay did not apply the same principle to a daughter or mother, or grandmother, who got a similar life-estate, and why he did not reduce the absolute right of a sister in Bombay to one-sixth only, thereby ensuring uniformity in the Hindu Law. Mr. N. V. Gadgil, however, introduced another Bill, which did not possess the abovementioned characteristics. This Bill sought to remove some of the inequities under which the Hindu women were suffering, that is, to give the Hindu women absolute right to property in respect of inheritance, partition etc., and to bring them on an equality with men. The French people invented the doctrine of 'Liberty, Equality, and Fraternity', more than 150 years ago and have not given to the French women a right to vote for electing members of the French Parliament, which has two houses. The principle of equality propounded by Mr. Gadgil was confined to the grant of absolute estate to women, who got limited estate under the Hindu Law. But it was not carried further to enable father and mother, brother and sister, paternal uncle and paternal aunt and maternal uncle and maternal aunt, to succeed as simultaneous heirs. Their were some other Bills introduced in order to remedy the adverse effect produced upon the rights of succession of a daughter under the Hindu Law by Act XVIII of 1937, by Mr. Dutt and Mr. A. N. Chattopadhyaya. They had a limited objective in view, and had nothing to do with the limited estate which the daughters inherited from their father in the provinces, which they represented.

REMOVAL OF SUB-CLAUSE (A) OF CLAUSE 13, AND PUTTING IT IN A SEPARATE CLAUSE BY ITSELF:—

As a property inherited by a widow from her husband is not her *streedhan*, and does not devolve upon her heirs, but devolves upon the heirs of her husband after her death, who are described as reversioners, it is necessary to remove the sub-clause (a) from clause 13. It should be put in a separate clause by itself and a provision should be added to it to the effect that she would forfeit the estate by her remarriage.

NECESSITY OF ADDING A PROVISIO ABOUT THE FORFEITURE OF A WIDOW'S ESTATE UPON HER REMARRIAGE:—

In spite of all what is said and done and what is not said and not done, one fact remains outstanding that the committee has neither cared or dared to repeal the provisions of section 2 of the Hindu Widows Remarriage Act (Act XV of 1856), which reads as follows,

"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 lineal successors, 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."

NECESSITY FOR THE CLAUSE ABOUT FORFEITURE ON THE GROUND OF REMARRIAGE, IN THOSE PARTS OF INDIA, WHERE KIDNAPPING OF WOMEN IS RAMPANT:—

The necessity for not recognising the absolute estate in cases of widows and for forfeiture of that estate on the ground of remarriage is great, especially in those parts of India, where kidnapping of women is rampant. Even in other parts of the country it is justifiable on the ground that the widow cannot claim to retain her husband's estate in such a case, because Hindu Law gave her that estate, as she was regarded as a surviving half of her deceased husband and in those cases where she is going to lead a life contrary to that principle, she cannot retain the inheritance. In a case reported in the Indian Law Reports, Madras series, volume 41, page 1078, and decided by a Full Bench, the dispute arose regarding a house which belonged to one Pullayya, a Kapu by caste. On his death, his widow, who inherited a widow's estate, became Mahomedan and soon after married a Mahomedan husband. The court held that she forfeited her right, as she ceased to be a surviving half of her deceased husband. The principle of this decision should be given effect to by adding a clause about the forfeiture of the estate by the widow after the remarriage.

WIDOW REMARRYING ENTITLED TO STAY IN HER HUSBAND'S HOUSE IN THE COMPANY OF HER SON AND DAUGHTER ACCORDING TO THE HINDU CODE:—

The rule about the forfeiture of the limited estate was enforced in the above case when the widow took the entire property by inheritance. Now this alleged Hindu Code permits the widow to inherit as a coheir with her daughter and son. If the clause about forfeiture is not introduced, the widow with her new husband would be entitled to live in the house of the deceased, where his son and daughter would be also living. The clause 5 makes all widows as coheirs with others. The greater the number of the widows, the greater the necessity for the provision mentioned above.

HINDU WIDOW MARRYING AGAIN A HINDU OR EVEN A NON-HINDU NOT TO FORFEIT HER ESTATE AND ENTITLED TO LIVE IN THE HOUSE:—

One consequence of including inheritance in the definition of *streedhan* is that a Hindu widow marrying again a Hindu or even a non-Hindu would be entitled to reside in the house, along with the son and daughter of her deceased husband, who are unable to eject her. Bereft of unnecessary excrescences which have crept in the discussions on the subject, it should be noticed that one consequence of the definition of *streedhan*, by including inheritance, into it, would be that a Hindu widow inheriting her husband's estate will get an absolute estate in that property and if she marries again a Hindu or even a non-Hindu, she will not forfeit that estate, as her estate was absolute. If the deceased left behind him only a widow and no son or daughter, the widow would remain in possession of the property along with her new husband. If the deceased left a widow and a son, the widow would get half a share like a son, and she with her husband would be entitled to live in the same house, where he son and daughter-in-law live. If the deceased left a widow and a minor daughter, the minor daughter would also live with her and in the event of the widow's remarriage with a non-Hindu, her conversion to another faith would be a matter of hours. In those parts of India where kidnapping is rampant, this definition would work a havoc. According to the present Hindu Law, if the widow remarries she forfeit the estate as stated in the Hindu Widows Remarriage Act or in accordance with the principle that she cannot remain in possession of the property of her husband, as she ceased to be his surviving half. According to the new Hindu Code, this would be no longer the law on the point, and still the code is Hindu Code.

ANOTHER CONSEQUENCE OF THE DEFINITION PASSING OF THE PROPERTY IN THE NON-HINDU FAMILY BY GIFT OR WILL, RESULTING IN THE DESTRUCTION OF THE RIGHT OF INHERITANCE OF HINDU HEIRS:—

Another consequence of this definition is that the widow would be entitled to make a gift of the estate or a will of

in favour of her non-Hindu husband, and this will result in passing away of the property from the family altogether.

Similarly where a Hindu dies, leaving a widow, and a daughter from a predeceased wife, this daughter would not be entitled to inherit the property of her father, as the widow would always be inclined to dispose of the property in her lifetime.

CLAUSE 18—

DISQUALIFICATION OF WIDOW WHO WAS UNCHASTE DURING HUSBAND'S LIFETIME—IF AN INTESTATE'S WIDOW HAS BEEN UNCHASTE DURING HIS LIFETIME AND AFTER HER MARRIAGE, SHE SHALL, UNLESS THE UNCHASTITY HAS BEEN CONDONED BY HER HUSBAND, BE DISQUALIFIED FROM SUCCEEDING TO HIS HERITABLE PROPERTY, AND IT SHALL DEVOLVE ON HIS OTHER HEIRS AS IT WOULD IN HER ABSENCE.

PROVIDED THAT THE RIGHT OF A WIDOW TO INHERIT TO HER HUSBAND SHALL NOT BE QUESTIONED ON THE GROUND AFORESAID, UNLESS—

(A) THE HUSBAND HAS DEPRIVED HER OF ANY PORTION OF HIS PROPERTY ON THAT GROUND BY A VALID TESTAMENTARY DISPOSITION SUBSISTING AT THE DATE OF HIS DEATH, OR

(B) A COURT OF LAW HAS FOUND HER TO HAVE BEEN UNCHASTE AS AFORESAID IN A PROCEEDING TO WHICH SHE AND HER HUSBAND WERE PARTIES AND IN WHICH THE MATTER WAS SPECIFICALLY IN ISSUE, THE FINDING OF THE COURT NOT HAVING BEEN SUBSEQUENTLY REVERSED.

FIRST PROVISIO UNNECESSARY:—

The first proviso is absolutely unnecessary, because if a valid testamentary disposition is effected by the owner of the property, the legatee gets the property, and there is no estate left, upon which the law of inheritance can operate.

SECOND PROVISIO ATROCIOUSLY FOOLISH.

In the explanatory note it is stated that the proviso has been considered necessary for the purpose of preventing widows being blackmailed by unscrupulous reversioners. The object is good. The remedy is bad. The 2nd proviso, as it stands, is atrociously foolish. Take for example, the facts of the case reported in 41 Mad. 1078 F. C., where it was held that a Hindu woman, who becomes Mahomedan, forfeits under the Hindu Law, by her remarriage, her interest in her husband's estate. There the dispute was regarding the house, which belonged to one Pullayya, a Kapu by caste. On his death his widow, who inherited a widow's estate, became Mahomedan and soon after married a Mahomedan husband. The court held that she forfeited her right. Now we would take it that Pullayya wants to remain alive for being governed by this alleged Hindu Code, and his wife becomes a Mahomedan during his lifetime and marries a Mahomedan husband during his lifetime. Pullayya does not prosecute her and her new husband for bigamy. Under the second proviso, Pullayya's ex-wife is entitled to succeed to his estate. Even a poor man would think beneath his dignity to bring such matters before a court of justice in order to have a finding from the court for the purpose of disinheriting his wife.

A Mahomedan husband can disinherit his wife, in such circumstances, by shouting "Talak, talak, talak", and it is not necessary for him to get a declaration in a civil court as recommended by the Hindu Law Committee. The position of a Hindu husband has been made absolutely intolerable by the Hindu Law Committee. Referring to this aspect of the law proposed by the committee, I have described elsewhere the progress of the committee as being from "Vanity Fair to Disgrace Abounding".

Both the provisions should therefore be deleted.

DISEASE, DEFECT, ETC., NOT TO DISQUALIFY—NO PERSON SHALL BE DISQUALIFIED FROM SUCCEEDING TO ANY PROPERTY ON THE GROUND OF ANY DISEASE, DEFECT OR DEFORMITY OR, SAVE AS PROVIDED IN SUB-SECTION (2) OF SECTION 11 AND SECTIONS 18 AND 19, ON OTHER GROUND WHATSOEVER.

NECESSITY OF DELETING THE ENTIRE CLAUSE AND SUBSTITUTING IN ITS PLACE THE PROVISIONS OF THE HINDU INHERITANCE (REMOVAL OF DISABILITIES) ACT, XI OF 1928:—

Describing the Dragon of the Black pool, a Chinese poet said,

"Deep the waters of the Black Pool coloured like ink. They say a Holy Dragon lives there, whom men have never seen."

(See Waley's translation of Chinese poems, page 121.)

The Sanatanists state that the Dragon of the Black Pool coloured like ink resides in this Hindu Code and if anybody has to see how it works, this clause furnishes an illustration. The rules of inheritance in Hindu Law or Mahomedan Law, which are intermingled with religious doctrines are always accompanied by rules relating to exclusion from inheritance. As regards the rules regarding exclusion from inheritance, there was never any difference between the Dayabhaga and the Mitakshara schools. As regards the Mitakshara school however, the Hindu Inheritance (Removal of Disabilities) Act, XI of 1928, made some changes but allowed the exclusion principles to remain effective, in part, as regards idiots and lunatics from birth who were alone excluded from inheritance. This Act applied only to cases governed by the Mitakshara school. It did not apply to cases governed by the Dayabhaga school. Now the present clause 20 destroys the entire chapter relating to exclusion to be found in the commentaries as well as the Books dealing with the subject. It is therefore quite evident that one portion relating to inheritance has been openly repealed to-day. The other portion relating to the actual rules about the persons who are the heirs and about their priorities as recognised by the Hindu Law has been destroyed equally effectively, though this is not admitted in the Bill. In the lapse of 15 years only from the passing of the Act XI of 1928, this change has taken place, notwithstanding that elaborate references are made to the shrutis in the introductory speech of the Hon'ble the Law Member.

EXCLUSION—CLAUSE 20 AND MURDER—SINGULAR MIXTURE OF SOPHISTRY AND FANATICISM:—

There is a singular mixture of sophistry and fanaticism in the defence of this clause, which is stated in the explanatory note as follows, "The time has now arrived for abolishing the other disqualifications of Hindu Law such as congenital blindness, deafness, etc. The legislation of 1928 has already abolished them in part in the Mitakshara jurisdictions; they might now, we think, be abolished completely everywhere. They are difficult to justify in equity, and with the progress of medical science it must become increasingly difficult to say what defects, or diseases are incurable. If the heir is incapable of managing his property there are ample provisions in the law at present for the appointment of a competent manager or guardian". But the question which a Bengali governed by the Dayabhaga school would ask whether a competent or incompetent manager or guardian is entitled to offer a Pinda to the propitiatus and whether the latter would accept it and can he shave his mustaches when a man is dead. The Hindu rules of exclusion from inheritance are enforceable against everybody from princes to paupers. Hence, Dhritrashtra, who was born blind, was considered to be incompetent to succeed to the sovereignty and his younger brother Pandu succeeded to the same, as stated in Mahabharata Adi Parva Adhyaya 109 Shloka 25 Poona Chitrashala press edition (1929) page 199, which states as follows:

"On account of blindness, Dhritrashtra did not get the kingdom. Vidura did not get it, as he was born from a shoodra woman. Pandu therefore became king."

It is necessary to delete the entire clause 20 and add another clause preventing an apostate from inheriting the property of a deceased Hindu. This is stated in the sequel.

'MALTA' COURAGE OF THE HINDU MUSLIM SELECT COMMITTEE, WHICH REFUSES TO INTRODUCE ORDINARY CHANGES IN THE BILL—FOR EXAMPLE BY PROVIDING PRE-EMPTION IN CASES OF TRANSFERS BY ONE OF THE CO-HEIRS MENTIONED IN CLAUSE V SUB-CLAUSE (1):—

Many persons were under the impression that the select committee would make changes in the Bill if the proposed changes were reasonably sweet and they sent many constructive suggestions to the committee. Amongst the

various constructive suggestions, which I made, there was one pointing out the necessity of introducing a provision for pre-emption in case of transfers by one of the numerous co-heirs mentioned in clause V, sub-clause (1), which as now modified in the select committee includes "Parents if dependant on the intestate, widow, son, daughter, son and widow of a pre-deceased son, and son of a pre-deceased son of a pre-deceased son (the heirs in this entry being hereinafter in this Act referred to as "simultaneous heirs"). It was pointed out in the note as follows: "In an oft-cited Full Bench case, *Gobind Dayal vs. Inayatulla* (1885) reported in the *Indian Law Reports*, Allahabad series, volume 7, page 775, Mr. Justice Mahmood, after referring to the rules of inheritance according to the Mahomedan Law, by which the property is split up on the owner's death into numerous parts, observed "If such a law of inheritance were not mitigated by the law of Pre-emption the result would be serious inconvenience, and possibly even disturbance". If the multi-class inheritance system propounded in this Bill is to be retained, a right of pre-emption should be provided for and the procedure to enforce it may be laid down. It may be noticed that there are already statutory provisions about enforcing pre-emption in certain provinces, for example, the Punjab Pre-emption Act, the Agra Pre-emption Act, the Berar Land Revenue Code etc. But some of them are not exhaustive enough to include houses. A provision about pre-emption, enforceable on any kind of transfer, for consideration or without consideration, of any kind of immovable property, effected by any co-heir, may be added in the Bill. Nothing however happened and no change was effected by the select committee on this point. The courage of this Hindu-Muslim select committee, which has Mohamedanised the Hindu Code still further by including the father in the list of co-heirs but which was impervious to several reasonable changes is indeed as great as Malta's. This is pointed out here for bringing to the notice of the public the important fact that several other important changes suggested to it were not made in the Bill.

ANTI-HINDU OUTLOOK OF THE MAJORITY OF THE MEMBERS OF THE HINDU MUSLIM SELECT COMMITTEE, WHICH COULD NOT INCLUDE IN THE BILL A PROVISION FOR PREVENTING A CONVERT FROM INHERITING THE PROPERTY OF HIS HINDU RELATION AND THUS REPEALING THE PROVISIONS OF THE FREEDOM OF RELIGIOUS ACT:—

As stated already, there were eighteen members of the Select Committee and some of them were not Hindus. The Hindu Muslim select committee possess an anti-Hindu outlook and it could not vote for the incorporation of a clause to the effect that a convert from Hindu religion should not be entitled to inherit the property of his deceased relation. In the note that I sent to the select committee it was stated as follows:

NECESSITY OF INTRODUCING A PROVISION TO THE EFFECT THAT CONVERSION TO ANOTHER RELIGION SHOULD OPERATE AS A BAR TO INHERITANCE:—

Change of religion is, according to the provisions of Hindu Law, a ground for exclusion for inheritance. An apostate comes with the meaning of the expression (Patit) used by Manu, in *Adhyaya IX* verse 201. According to Hindu notions as well as Mahomedan notions a man, who has changed his religion is civilly dead. Notwithstanding the proclaimed policy of the British Government about not interfering with the religion of the Hindus and the Mahomedans, it enacted section 9 of Regulation VII of 1832 of the Bengal Code, and subsequently passed the Caste Disabilities Removal Act (XXI of 1850) popularly known as the Freedom of Religion Act, by which an apostate, who could not inherit according to the provisions of both the Hindu Law and the Mahomedan Law, has been empowered to inherit the property of his relation; whose religion he has renounced. The Government should immediately introduce a provision in this Bill preventing an apostate from inheriting the property, if it wants the people of this country to continue to believe in its policy of non-intervention in religious matters. As regards the provisions of Hindu Law preventing a convert from inheriting the property of his relation, see Mulla's Hindu Law (1940) ninth edition, pages 98, 99 (citation at the top of page 98 and paragraph

97), Mayne's Hindu Law and Usage (1938) tenth edition pages 74, 203, 351, 728, Gour's Hindu Code (1933) Fourth edition page 84, paragraph 256. As regards the provisions of Mahomedan Law preventing a convert from inheriting the property but repealed by the Caste Disabilities Removal Act, see Mulla's Mohammadan Law (1944) edition, page . . . As stated in Dr. Sir Harisingh Gour's Hindu Code, page 84, paragraph 256, since Hindu Law is a religious Law, the right to property is made by that Law dependant upon observance of that faith. Consequently, a lapse from the orthodox practices of Hinduism would under that Law entail forfeiture of the caste and all rights to property and inheritance. The pioneer missionaries influenced the Government to remove this disability, resulting in the enactment of the Caste Disabilities Removal Act (XXI of 1850), otherwise known as a Lex Loci Act. This measure applies equally to those who change their religion, or are outcast for failing to comply with any of its precepts. Whatever may be the case in the matter of persons who resort to unorthodox practices, there is no reason why a person who has given up the religion of his relation should come forth to claim his property as his heir. As the Hon'ble Sir Sultan Ahmed is very keen on reviving the law of smritis, and the explanatory note on *streedhan* lays a great emphasis on the law of the smritis, the Government should treat this point as a non-controversial one and grant its support in its favour.

TEN MEMBERS OF THE SELECT COMMITTEE IN FAVOUR OF DISQUALIFYING A CONVERT FROM INHERITANCE:—

From the minutes of dissent it appears that there were ten members supporting the view that a convert should be disqualified from inheritance. Mr. Sobha Singh said "I am strongly of opinion that in the interest of peace and harmony of all concerned apostasy from religion should be made a disqualification for inheritance. Consequently a Hindu who abandons the Hindu religion or a female Hindu who marries a non-Hindu should be disqualified from inheritance. I, therefore, disagree with the majority who consider that apostasy should not be a ground of disqualification". The other persons who held the view that apostasy should be a disqualification to inherit were Messrs. (2) Govind V. Deshmukh (3) Lalchand Navarai, (4) V. V. Kalikar, (5) Susil Kumar Roy Chowdhury, (6) Nilakantha Das (7) Baijpath Bajoria, (8) H. N. Kunzru, (9) P. N. Sapru, and (10) S. N. Mehta. But it appears that all these ten members did not act in concert and therefore no amendment of clause 20, of the Bill could be effected. It is necessary that apostasy should be treated as disqualification to inherit and the Government of India should take step to repeal the Freedom of Religion Act (XXI of 1850) on this point.

COPARCENARY RIGHTS OF SONS, GRANDSONS AND GREAT GRANDSONS AS WELL AS OF BROTHERS AND OTHERS DESTROYED BY CLAUSE (21):—

If a man dies leaving a son, a son of a predeceased son, and a son of a predeceased son of a predeceased son, all of them succeed, according to Hindu Law as well as according to this clause 5. But it is laid down in clause 21, which deals with the mode of succession of two or more heirs, as follows:—

"If two or more heirs succeed together to the property of any intestate, they shall take the property—

(a) save or otherwise expressly provided in this Act, per capita and not per stirpes; and

(b) as tenants in common, and not joint tenants".

One consequence of these two provisions is that in a case where the deceased leaves behind a joint son, a joint grandson and a joint great-grandson of the type stated in the clause, they do not take the estate as joint tenants under this clause, as they do under the Hindu Law. There is no reason why their joint tenancy should be destroyed. I should therefore be provided as follows:—

"Exception:—In those cases, where the property passes to joint sons, grandsons, or great-grandsons, described in clause 5 class I entry I, they would get the estate as joint tenants amongst themselves, and this joint tenancy would not be affected by the fact that they inherit the estate along with another co-heir, for example the widow of the deceased."

TWO NEW ITEMS OF LOOT CREATED BY THE HINDU CODE ON ACCOUNT OF THE DUTY FOR OBTAINING SUCCESSION CERTIFICATE BY THE JOINT SONS AND THE LIABILITY TO PAY HIGHER INCOME-TAX;—

It has been already pointed out that by abolishing the right of the widows of gotraj sapindas to inherit, recognised by the Bombay school of Hindu Law, the chances of the property escheating to the Government have enormously increased. But there are two other items of loot created by the Hindu Code. The joint sons, who got the property of their father, by survivorship were exempt from paying the duty for obtaining succession certificate, while others are required to pay. By the favour of the Hindu Code, these persons would be required to pay this duty, as they take the property as heirs and not as survivors.

The income-tax to be paid on the joint income by the joint sons is much less than the income-tax which would henceforth be required to be paid by them, as they take the property as tenants in common and their total income would not be taken into account. As the income of each son would be separately assessed with income-tax, the total amount of assessment which would be required to be paid henceforth would be much more than that paid at present.

Clause 23 and Schedule

CLAUSE 23 AND THE SCHEDULE ABOUT REPEALS:—

In his introductory speech on the 24th of March 1948, the Hon'ble Sir Sultan Ahmad said that "the Hindu Women's Rights to Property Act of 1937 as amended in 1938 was found to be defective and wholly unworkable and lawyers and courts were baffled at the proper interpretation to be put on the second and third sections of the Act and that the debates relating to the Acts of 1937 as amended by the Act of 1938 do not disclose that the different implications of these sections were clearly apprehended". The Hindu Code, Part I—Intestate succession repeals as stated in the schedule only sub-section (1) of section 3 of the Hindu Women's Right to Property Act, which was applicable to separate or self-acquired property of the deceased. But sub-section (2) of that section, which governed the devolution of the interests of a joint coparcener still remains in force. In other words, the defective and unworkable Hindu Women's Right to Property Act, which has been condemned by Sir Sultan Ahmad himself and which baffled both lawyers and judges equally effectively is to remain in force not only until 1945 when the Hindu Code, Part I—Intestate Succession would come into force but for a long time afterwards, until the Government of India takes it into its mind to frame a rule for the devolution of the interests of a coparcener. This is a very bad procedure. As stated already, the provisions governing the devolution of the interests of a coparcener should be framed immediately and incorporated in this Act.

THE HINDU CODE—A LEGAL MULE WHICH HAS NO PRIDE OF ANCESTRY AND NO HOPE OF POSTERITY:—

From what has been stated already while criticizing the various clauses of the bill, it is clear that this alleged Hindu Code is a legal mule, which has no pride of ancestry and no hope of posterity. From the undigested mass of fiction and error to be found in the explanatory notes accompanied by the four memoranda, it would appear that, like a rag-bag of a thrifty housewife, it contains numerous things borrowed from the Chinese, Mahomedan and Christian systems of law. It is a common of assylum, which has received whatever is atrocious and has applauded the same, though it is repugnant to Hindu notions. It is the secret duty of every Hindu to prevent the entry of this legal mule in the statute book, where the Government of India, contrary to the previous pledges of enforcing the Hindu Law of inheritance, has promised it a haven.

THE SUPREME TEST TO BE APPLIED TO THE HINDU CODE PREPARED BY THE HINDU-MUSLIM-CHRISTIAN SELECT COMMITTEE:—

Since the time when the activities of Aurangzeb came to an end, nobody attempted such a holocaust on a grand scale, in the history of Hindu Law and religion, as that attempted by the Hindu Law Committee and the Hindu-Muslim-Christian Select Committee, which prepared this bill and wantonly reversed several points of Hindu Law settled for ages. They have produced a code for the condemnation of which un-Parliamentary language alone is suitable. The supreme test by which the bill should be judged and would be judged, is that which may be stated in Ruskin's words, "When we build, let it be such a work as our descendants will thank us for; and let us think as we lay stone on stone, that a time is to come when those stones will be held sacred because our hands have touched them, and that men will say as they look upon the labour and wrought substances of them. 'See, this our fathers did for us'".

ADVERSE OPINION AGAINST THE CODIFICATION OF HINDU LAW:—

In the lives of the Roman and Greek heroes, Plutarch stated that Solon, the Greek Legislator, being asked if he had framed the best possible laws for the Athenians, replied "No; but the best that they could have been induced to receive". The opinions adverse to the codification of Hindu Law are mentioned in the sequel.

OPINION OF THE WOMEN OF SIMLA AND OTHER PLACES:—

The opinions of some women regarding the Hindu Code Part I are stated in the memoranda numbers II, III and IV, which are printed in the report of the Select Committee. This is neither the place nor the time to discuss them in detail. It is sufficient to state that there is divergence of opinion amongst the Hindu women in India regarding the utility of the bill. When the Honourable Sir Syed Sultan Ahmed, Law Member introduced the bill to amend and codify the Hindu Law relating to intestate succession on the 24th of March 1948, he observed as follows: "While the Act of 1937 as amended by the Act of 1938 enlarged the rights of females, the Act was found to be defective and wholly unworkable. Lawyers and Courts were baffled at the proper interpretation to be put on the second and third sections of the Act. In spite of the laudable intentions of the sponsor of that Act, and they must be acknowledged on the floor of this House, the debates relating to the Acts of 1937 and 1938 do not disclose that the different implications of those sections were clearly apprehended." These observations hold good with respect to the women who fully support the main principles of the Hindu Intestate Succession bill. If repercussions which the provisions of this bill would cause, are considered by them again with reference to the various criticisms made in this note, they would have good grounds to change their view. The Government of India should print this note and all other similar notes which criticise the Hindu Code and should send copies of the same to the women who are in support of this bill. "Those, who know not and know not that they know not, are asleep. Awaken them." The proper test to find out the opinion of the Hindu women is to wait until the new elections are held and women voters are given a chance for voting in favour of or against a candidate who is standing on the ticket of codification of Hindu Law. If the Hindu women come to know that the Government of India is a nearer heir according to this bill to the estate of a Hindu who died leaving behind a widow of a deceased grand-son and a step-mother and a brother's widow and would dispossess them all in the event of the death of the owner of the property, they would be convinced that "There are many things rotten in the state of Denmark." If the Hindu women come to know that the bill gives power to their mothers to make a gift of their father's property to scoundrels and deprive them of the property which should come to them, they would vote against the bill, without waiting to consider the other atrocious provisions to be found in the bill, to which reference has been already made.

HINDU MAHASABHA AGAINST THE HINDU CODE:—

Notwithstanding all efforts made by Dr. Savarkar, the President of the Hindu Mahasabha, to persuade the Government of India not to proceed with the codification

of Hindu Law until the war is over, the work of codification went on. The report of the Hindu-Muslim Select Committee, which manomadanised the Hindu Code still further by adding the parents in the list of simultaneous heirs, was published on the 13th of November 1943 in the Gazette of Government of India in Part V, pages 183-218. In the sessions of the Hindu Mahasabha subsequently held at Amritsar in the Christmas of 1943 a resolution against the enactment of the Hindu Code was passed unanimously. The opinion of the Hindu Mahasabha correctly reflects the attitude of the Hindus towards this piece of legislation. Both the parts of this alleged Hindu Code relating to intestate succession and marriage contain provisions, which are subversive to the principles and rules of Hindu Law established for ages, and it is the duty of every Hindu to bring about the end of this alleged Hindu Code as it is not possible to amend it.

CONGRESS VIEW EXPECTED TO BE AGAINST THE HINDU CODE:—

In its issue dated the 23rd March 1944, the *Free Press Journal* of Bombay observed in its editorial in the very first sentence that "Congress members of the Central Legislature, who are participating in the proceedings of the Central Assembly are guilty of a gross breach of National discipline". It further observed that they 'did not represent the view of the Congress and the correct course which they should adopt is to resign their seats and get elected on the Independent ticket'.

Some of the members of the Select Committee themselves have observed that it would not be proper to get the Hindu Code bill passed in the absence of numerous members who are in jail now. It would be still more improper to get the bills passed in the absence of the members who though out of jail refused to attend the proceedings of the Assembly. If the Government is obstinate enough to proceed with the bill in the absence of so many members, the inevitable would follow. The members of the Congress, who for several years past have been preventing the use of English language in their meetings and who voted for the Quit India resolution, would not allow the Hindu Law, propounded by the Rishis and explained by the commentators in the holy Sanskrit language to be subverted and codified in the language of the "Satanic" Government, which they want to supersede. The Congress would reject this alleged Hindu Code without reading it, as it rejected the Government of India Act of 1935, without reading it. I am also inclined to think that post-war Hindu India would be more orthodox and therefore against the passing of the Hindu Code Part I as well as Part II. Therefore it is better for the Government of India to stop immediately all the activities about the codification of Hindu Law and direct its energies for better purposes. Otherwise the promoters of these activities would find all love's labour lost.

BETTER TO BE GOVERNED BY THE UNAMENDED AND UNCODIFIED HINDU LAW AS CONTENDED BY THE SANATANISTS THAN TO BE GOVERNED BY THE ANGLO-MAHOMEDAN HYBRID MISCALLED THE HINDU CODE:—

The present Hindu Code is an Anglo-Mohamedan hybrid, though the Hindu-Muslim-Christian Select Committee has not made any change in the title of the bill which is to be called a Hindu Code. But what is there in a name as Shakespeare said? The Babbul can prick equally well even if it is called a Rose. The Sanatanists object to the passing of both the parts of the Hindu Code on the ground that the Hindu Law is unchangeable. They take the same view as the Mahomedans take of the Mahomedan Law and regard it as unchangeable. It is better to be governed by the un-amended and uncodified Hindu Law than to be governed by the Frankenstein monster created by the joint efforts of the Hindu Law Committee and the Select Committee.

WRONG TO EXPECT HINDUS OUTSIDE INDIA TO RESPECT THIS BILL:—

The Hindus outside India, who would continue to be governed by the law propounded by the Rishis, would look upon the present Hindu Code with contempt. If in the future constitution of India, they can exercise some influence in the matter about the codification of

Hindun Law, they are expected to be against it.

CONCLUSION:—

My view about this alleged Hindu Code as originally framed or as amended by the Hindu-Muslim-Christian Select Committee is that, as stated in the Sanskrit verse meaning, "The Hindu Code possesses no merit and contains many defects. It has been prepared by a committee of four persons, and has been nourished by the Mahomedan members (of the Select Committee), to gain their objects. That Hindu, who can extract milk from stone can hope to get any benefit from this bill. The Hindus should throw this bill in the waters of Yamuna immediately."

Mr. B. D. Kathalay, B.A., LL.B., Advocate Nagpur, Member of University Courts Nagpur and Delhi.

The Intestate bill.—The bill as amended by the Select Committee contains 23 clauses. Clause 1 is divided into 4 sub-clauses and deals with the short title, extent, application and commencement of the Act. Clause 2 contains the definitions. Clause 3 lays down the application of the Act. Devolution of heritable property of males is given in Cl. 4, while right of women over *streedhan* is dealt with in Cl. 12. Cl. 13 lays down the order of succession to *streedhan* property. Clause 22 provides for *escheat* and cl. 23 refers to the repeals.

Preamble of the bill.—The preamble of a statute has been held to be a key to the proper understanding of the meaning and object of the Act; 62 Cal. 125.¹ The preamble of the present bill is as follows:

"Whereas it is expedient to amend and codify, in successive stages, the whole of Hindu law now in force in British India; and whereas it is expedient to amend and codify the general law of intestate succession; it is hereby enacted as follows."

Amending the law of intestate succession.—From the history of the present bill it would be seen that no one wanted that the whole law of intestate succession should be amended. The object of the appointment of the committee, was only to deal with the problems arising out of the interpretation of the Hindu Women's Rights to Property Acts, and much less was it ever intended that the principles of Mahomedan law or Indian Succession Act should be grafted on the sacred law of the Hindus.

Adaptability of Hindu law.—Hindu Dharmashastra or Hindu law, in its ordinary sense includes religious as well as legal injunctions. The Dharmashastras have culminated into divergent schools on account of the fact that Hindu theology, law and metaphysics are commingled with one another, and the tendencies or the methods of reasoning and interpretation which influence one branch of knowledge also influence others. For example, in Eastern part of India, namely, Bengal and Bihar, where Vedas are less read and Mimamsa less studied than in the South, the dialectic philosophy or Nyaya is consulted more and is relied on for rules of reasoning and interpretation upon questions of law as well as metaphysics. This has given rise to two principal schools of law which, owing to their divergent methods arrive at different conclusions from the self-same text of law: 14 ALL. 672 at p. 80. Such divergence is inevitable because the Hindu nation consists of peoples having diverse tongues, colours, and modes of life. The Hindu law aims at creating unity in diversity by allowing each group of the people to mould the law according to its requirements. On account of this large-minded and accommodative policy of Hindu jurists the Hindu law has developed from time to time and from place to place. This is why the Hindu law could change according to circumstances and surroundings from the times of the venerable Manu till the introduction of the British system of administration of justice. This remarkable progressive tendency of Hindu law was

1. Maxwell on Interpretation of Statutes, Edn. 7, pp. 27, 39 (34) 21 A.I.R. 1934 Cal. 741; 153 I.C. 291; 62 Cal. 125; 60 C. L. J. 298; 38 C. W. N. 1056. Badar Rahim v. Badshah Mea.

2. (32) 14 ALL. 67; 1892 A.W.N. 161 (F.B.), Beniprasad v. Hardai Bibi

retarded during the British period of Indian history.³ The Hindus also carried their law to Burma, Java, Sumatra and other places and where it still governs the bulk of the populations of those countries. No doubt the Hindu law has worn the local garb but it has kept its individuality intact, so much so that the law of Damdupat is still prevalent in Sumatra. Owing to this peculiar capacity of Hindu mind and Hindu law, the Hindu nation has become assimilative and progressive.

Advisability or otherwise of abolishing different schools of law.—According to the bill under review the Bengalis and the Punjabis would be governed by one Code of Hindu law. Now far this contemplated measure would satisfy the needs of divergent people is not stated anywhere. In a case of Aroras in the neighbouring districts of Muzaffargarh it was held that by custom the daughters of a sonless proprietor were excluded by collaterals from succeeding to the ancestral property. It was said that this custom was dictated by local circumstances, as the district being rugged and wild, it was difficult for females to retain and manage the immovable property: 17 Lah. 61.⁴ Solon, the Greek legislator, said two thousand years ago that the laws which were proposed by him might not be the best, but they would be such as the people would be most disposed to accept. Will the abolition of the different schools of Hindu law by an Act of Legislature contribute to the natural growth of Hindu law? The answer is in the negative. The Code will lend rigidity to the whole law and it will not develop unless the Legislature takes into its mind to revise the law so as to keep pace with growth of the times and the needs of the people. It is common knowledge that the Legislature moves very slowly. This fact can be gathered from the time it has taken to amend the Contract Act and its inactivity in not amending the various Codes which deserve immediate amendments, and on account of this the law Courts are forced to administer the law which has outlived its utility. This point would be discussed in detail in the sequel.

The question of codification of the whole of Hindu law was not before the public for consideration.—The various Civil Courts Acts enacted in India comprise only a few select topics of the Hindu law, such as succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, family relations, wills, legacies, gifts, partitions or religious usages or institutions. When the questions issued by the committee were before the public for expression of opinion the above topics were not included and, therefore, they were not naturally considered by the public. They had no idea that the whole of Hindu law was so bad that it requires amendment in every branch. Why the Hindu law has not become so distasteful within the last few years has not been made clear anywhere. Moreover, the committee did not care to lay down the principles according to which the various branches of Hindu law are to be amended. Even conceding for a moment that Hindu law requires radical change it is difficult to believe how it could not have shared the same fate in the year 1939, when the Central Legislature, the very Legislature which is out for codifying Hindu law had felt justified in incorporating the much maligned principle of indissolubility of Hindu marriage in S. 2 of Muslim Marriage Act (8 of 1939). Similarly it was with open eyes that the various Provincial Legislatures allowed recently the rule of Damdupat, propounded by the venerable Manu, to have a place in their statute books.

Whether Hindu law-givers codified Hindu law and whether codification of Hindu law possible.—The view that in the old days, "the task of codifying the law from

time to time was performed for us by successive law-givers and commentators,"⁵ is not correct. When a law is codified the previous law is repealed. No one can say that Manu's law was ever repealed and it was substituted by another Smriti. The sage Yajñawalkya has cited about nineteen Smriti writers but nowhere has he said that the old smritis cited by him were no longer a law, and, therefore, they should not be followed. Nowhere is it laid down that even a particular portion of any of the Smritis or their commentaries has lost its force and is not binding on the Hindus. In speaking about Hindu law a mistake always occurs that it is supposed to be a command of a sovereign or a political superior. Hindu law was never promulgated by any power, political or otherwise. Apart from the fact that the Hindus believed in the divine origin of their law, it was obeyed not because of any physical sanction behind it but because it was based on natural justice and commonsense and its potency to maintain the solidarity of Hindu society. By codification the very basic principles will lose their moorings. Codification will mean a command of a political sovereign; and it will come under the definition of law as propounded by Austin, which is denied in his own country. When the Hindu law will be transformed into a command of a political superior, it cannot be changed without his permission and this will retard the free growth of the law itself, a thing which will not be appreciated by any reasonable man. And if Hindus submit to it by their own free will, they will invite their own disaster. It appears that this point of view was not considered by the learned authors of the bill.

It is also not true to say that commentators codified the law. At best they have only interpreted it. For example, that great judicial intellect the Yogi Vijñāneshwar did not repeal the holy Institutes of any of the predecessors of the sage Yajñawalkya. The same is true of Dayabhaga or Vyavahara Mayookha. No doubt, these works kept the law abreast of current needs and current sentiments but not by codification. Their authority was followed because of the great judicial intellect of those writers on law and not because of any physical sanction behind them. They had no power to punish those who refused to follow them. If one refuses to obey the law, right or wrong, given by the Legislature today, he will have to submit himself to the long arm of the law. How this long arm works is common knowledge and need not be dwelt upon. It may also be noticed that these works are complementary to each other. Though the Mitakshara is the supreme authority in the whole of India except Assam and Bengal, yet even in Bengal the Mitakshara is still regarded as a very high authority on all questions in respect of which Dayabhaga is silent. The law reports teem with judgments where the questions in one school are decided according to the dictates of the works of authority prevalent in other schools. Similarly Dattak Chandrika and Dattak Mimamsa are equally respected throughout the whole of India irrespective of any difference of opinion on other vital points. It may be added that a case of partition governed by the Mitakshara school was decided according to the views of the Vyavahara Mayookha by the Lords of the Privy Council. All this goes to show that the view that Hindus codified their law from time to time is not correct.

The committee while recommending the codification of all the elements of Hindu law seems not to have taken into consideration the views expressed by two Royal Commissions and the Civil Justice Committee. Under the Charter Act of 1833, a law commission was appointed to codify both the Hindu and the Mahomedan laws. But as it appears from their report dated 13th December 1855, the law commissioners abandoned the attempt on the ground that it would arrest the development of Hindu law and they held that the Legislature possessed no power to do it. This commission was followed by several other commissions, namely, the second commission appointed in the year 1853, by S. 23, Charter Act (18 and 17 Vic., Ch. 95) 1853, the third commission appointed in the year 1861 by the Secretary of State, fourth commission appointed by the Viceroy with previous sanction

3. Banerjee in his Law of Marriage and Streedhan says: The Hindu law was highly-elastic, and has been gradually growing up by assimilation of new usages and the modifications of ancient text law under the guise of interpretation, when its spontaneous growth was suddenly arrested by the administration of the country passing into the hands of the English, and a degree of rigidity was given to it which it never possessed before.

Sir Henry Maine says: Under the hand of the Judges of the Sudder Courts, . . . the native rules hardened, and contracted a rigidity which they never had in real practice. (Village Communities).

4 (35) 22 A.I.R. 1935 Lah. 518: 165 L.C. 754: 17 Lah. 61: 38 P.L.R. 385, Ganga Ram v. Narayanandas.

5. Hindi Law Committee Report, Para. 15, p. 11.

of the Secretary of State in the year 1921. All these commissions were unanimous in their opinion. The Civil Justice Committee which sat later observed that the attempt to codify Hindu law is likely to be successful in some branches and almost abortive in others, Hindu law is therefore entirely misconceived.⁶ Similarly when Sir The recommendation that Hindu law should be codified is therefore entirely misconceived.⁷ Similarly when Sir Hari Singh Gour moved a resolution to codify Hindu law, the Government of India itself declined to do so.

A sketch of the whole of the codified Hindu law ought to have been placed before the public so as to give idea about the law, as a whole.—Just as before putting up a large building the architect surveys and sounds the site on which he has to build and after taking into consideration all these factors submits the sketch of the whole building for approval, similarly when the law committee ought to have given the public the whole picture of their intention so that the persons concerned would get a comprehensive view of the subject. Another advantage of this method would be that one would be able to examine its repercussions on other branches of law. For example, the bill provides for the succession of simultaneous heirs peculiar to Mahomedan law. But the bill does not say anything about the pious obligation of the son to pay his father's debts. Is the son liable to pay the whole of his father's debt though he may inherit only a part of the inheritance? Or are all the heirs liable to pay the debt? If so, in what proportions? Without these details one would find it difficult to judge the soundness of the provisions of the bill. Moreover, according to Mahomedan law the estate of the deceased is to be applied successively in payment of the funeral expenses, death-bed charges, expenses of obtaining probate, letters of administration or succession certificate, wages due for services rendered to the deceased within three months next preceding his death by any labourer, artisan or domestic servant; other debts of the deceased according to their respective priorities (if any) and legacies not exceeding one third of what remains after all the above payments have been made. Are these rules applicable to the estate governed by the bill? Similarly, it is also necessary to note the effect of alienation by an heir of his share before the payment of the debts of the deceased. Such points and the like require explanation.

Codification in successive stages.—The Report says that this plan for a comprehensive code may have the effect of delaying reform; but even delayed reform is better than piecemeal legislation which has to be amended and recast every now and then. The need is for a comprehensive, co-ordinated solution rather than quick remedies.⁸ But the committee followed a different procedure. Instead of giving a comprehensive code the committee wants to make the code by instalments. This method is open to question.

Disadvantages of the codification of Hindu law.—One of the palpable dangers of a complete code is that it fixes up the mobile elements of the law at its very inception. It may petrify them and deprive them of their capacity of growth under the care of scientific doctrine at the call of the extended needs. The danger reaches its climax when the principles of a foreign system are imposed on a community of different character and habits; and the greatest danger lies in fixing up the terminology.⁹ It may also be remembered that the value of codification is no longer esteemed as highly as when Sir John Salmond wrote. Codes like all express enactments require interpretations and the latter require codification because of the diversity of judicial opinions and thus a vicious circle is formed. The continental countries having codified laws have increasingly taken to reported cases, though treating them differently from the English method, and the most distinguished jurists of France appeal to *jurisprudence constante* as frequently as English lawyers do to precedents.¹⁰ Therefore, in recent years

the estimate of the superior value of legislation in the sense of direct legislation of new principles has declined. All nations with codes have found interpretation necessary and therefore the general principles are enacted in a "skeleton" form leaving the details to be settled by administrative decisions, which is not law in the strict sense of the term.¹¹ Therefore recently Turkey gave up the idea of codifying the Mahomedan law, which was subsequently replaced by the Swiss Code along with its commentary.

Disadvantages of codification illustrated by Indian Evidence Act, Indian Contract Act, Civil Code of California and the Code of Procedure in New York.—That a good code is a good thing, but a bad code is, in a country which possesses competent judges, worse than no code; these are the propositions which need no explanation. The imperfect success of the Evidence and the Contract Acts in India is but another instance in addition to those furnished by the Civil Code of California and the Code of Procedure in New York of the difficulties which attend these undertakings. Long before the codification of the various branches of law was talked of in India Savigny had shown how hard it was to express the law in a set of definite propositions without reducing the elasticity and impeding its further development.¹² The India experience of codification did not impress the English mind about the utility of a codified system of law with the result that the jurists in England hesitate to codify their own laws.

Codification and the divergence of judicial opinion on the interpretation of the various Acts amending the Hindu law.—Whatever may be the advantages of codification, one disadvantage is certain, viz., that it gives rise to the divergence of judicial opinion on the meaning of the words used in the Code. This can be understood from the sharp difference of opinion among the various High Courts regarding the meaning or the object of the various Acts which amended the provisions of Hindu law. For example, there is a conflict of judicial opinion on the question, whether the widows, who are by custom of their caste entitled to remarry, lose their interest in the property of their husbands by a second marriage. The Allahabad High Court and the Chief Court of Oudh hold that the provisions of S. 2 of the Widow Remarriage Act are inapplicable in the case of a widow who is permitted by the custom of her caste to remarry and such a widow does not by remarriage forfeit the property inherited by her from her deceased husband. The other High Courts hold a different view. Similarly, the simple expression sister is understood or misunderstood in different ways by the different High Courts. The Allahabad, Patna and Madras High Courts hold that the word sister does not include half sister and therefore she is not entitled to succeed but the Nagpur High Court after considering all these views came to the conclusion that sister includes half-sister and is therefore entitled to succeed. The divergence of judicial opinion will again create new schools of Hindu Code and the Legislature will again be called upon to propose a law by which these sharp conflicts of opinions would come to an end. Thus the Legislature will have to devote considerable time and energy to keep the law uniform throughout the country. It seems that this view was not considered while the bill was drafted.

Necessity of frequent revision of Codes.—After an exhaustive enquiry the Civil Justice Committee observed that it is necessary that codes should be revised at frequent intervals. The reason being that—

"Our modern world
Has grown so fast out of her old beliefs,
She's like a boy that splits one pair of trousers,
Before the next is ready."

The constant revision of legal codes must throw quantity of work upon the Legislature which may leave insufficient time for other more important matters. The difficulties of systematic revision become greater as the statute books get larger and new problems press for

6. Report of the Civil Justice Committee. Chap. 47, pages 534, 535.

7. Hindu law Committee Report, para. 17, pp. 12, 13.

8. Report of the Indian Law Commission (1879) para. 42, p. 21.

9. Salmond's Jurisprudence (1937) Edn. 9, p. 59, Note 40.

10. Ibid., 212, 213, Note 142.

11. Bryce's Studies in History and Jurisprudence, Vol. 1, pp. 111, 113.

attention. It may be necessary to remind that the revision of the Transfer of Property Act is one of the urgent needs but no effort in that direction is made upto this time.¹² Similarly the working of the other existing Indian Codes is very defective but no attempt to remedy the defects is made either by the Government or by the public in that direction.¹³ Similar will be the fate of the Hindu Code, which will not grow like other Indian Codes. If the Hindu law is not codified, there is a possibility that it will grow if the circumstances become favourable.

Statutory law doing injustice to Hindu community not modified by the committee.—The statutes which modified the Hindu law from time to time did not receive the attention of the Committee. For example, the Freedom of Religion Act (21 of 1850) repealed the provisions of rules of forfeiture and exclusion from inheritance on change of religion or loss of caste. This Act has excluded the Hindu relations from inheritance and protected the rights of a convert to another religion. In a case where a married Hindu became a convert to Mahomedanism and married a Mahomedan wife and had children by her, the persons entitled to his estate were his Mahomedan wife and children, and not his Hindu wife. 6 Rang 248.¹⁴ But in this case the Mahomedan husband would be entitled to succeed to the *streedhan* of his Hindu wife. The law of reciprocity does not apply in this case. This is a specific example where the rights of Hindu women in their husband's property are denied by the present bill. If the object of the legislation was really to confer better rights on Hindu women, the Legislature ought to amend the provisions of the Freedom of Religion Act (21 of 1850). Similarly this Act requires amendment from men's point of view also.

Similarly nothing is done to remove the disability of a married female, who is debarred from succession under cl. (c) of s. 20, Colonization of the Government Lands (Punjab) Act (5 of 1912). In the same way women are excluded under *inam* rules from succession. A review of the various provincial Acts and other rules relating to the devolution of property governed by special usages recognised by the statute would give an idea of the exclusion of females from inheritance. Nothing has been done to remove these disabilities though the women excluded under the above Acts and rules are as good as the women excluded by the Hindu law.

Clause 1 (2). Extent of the Code.—The Hindu law not being a command of the sovereign power is not bound by geographical limits. This meant that wherever a Hindu goes he carries his law with him and he is governed by his personal law and not by the law of the place. But this unlimited jurisdiction of the Hindu law is curtailed by the proposed code and no reasons for the reduction of the jurisdiction are given. The result of the passing of the code would be that the property of a Hindu would be governed not by his personal law but by the law of the place where it is situated. For example, the property in French India would be governed by French law, in Mysore by Mysore law and so on.

Personal Law of Hindus versus the doctrines of law 'loci and domicile.'—There is a marked distinction between the Hindu law and other non-Hindu laws. The Hindu law being a personal law and part of the status of Hindu family it follows a Hindu wherever he goes. For example, a family, migrating from Gujrat, where the Vyavahara Mayookha prevails, to Madras where the Mitakshara is supreme, will be presumed to be continued to be bound by the Vyavahara Mayookha. Similarly a Marwari Hindu from Rajputana would be governed by his personal law, whether it be Mitakshara or custom, and a Sikh from the Punjab would similarly follow the ancestral custom of his home. But this is not the case with the persons who follow the Christian law, which is *lex loci* or territorial law. Therefore a Frenchman or

a Portuguese migrating from French or Portuguese India to British India renders himself subject to the Indian Succession Act, the *lex loci*, the reason being that severance from the domicile of origin and permanent residence in different territory would effect the change of domicile and with it the change of law: 43 Bom. 647¹⁵ at p. 677. But this is not the case with Hindu law or the Mahomedan law: 43 Bom. 647.¹⁶ In the case of a Hindu widow residing in French India and subject to Hindu law prevalent there, it was held that she carried her law with her to British India and her rights were to be determined not by Hindu law in British India but the law of the place from which she came, 24 Mad. 650,¹⁷ and so took absolute interest in her husband's property: 43 Bom. 647.¹⁸ The tenacity of personal law and custom even under the strain of migration has been repeatedly recognised by the Courts and accordingly it is held that the question is one of personal status as distinguished from status arising from geographical situation: 29 Cal. 433¹⁷ at p. 452. If it is alleged that a particular Hindu or a Mahomedan has become subject to the new local custom, the new local custom must be affirmatively proved to have been adopted: 43 I. A. 85.¹⁹

If Hindu law would have been promulgated by a command of a political superior it would have been *lex loci* as are the laws of the Indian Legislature. The Hindu law is a part of religious law of the Hindus and it is inextricably blended with their religious rites and worship and therefore the policy of the Government is not to interfere with their law or religion and this policy is made clear from time to time. [Government of India Act (5 & 6 Geo. V., Ch. 61) 1915, S. 112.] It is in keeping with this view that the Hindus are entitled to be judged by their own law wherever they are living.

As the Hindus are found scattered all over India and if their laws were to be altered by each movement, or in accordance with the rule of *rei situ*, they might be subjected to a variety of rules as divergent as the opinions expressed on the bill. It may also be remembered that the doctrines of *lex domicilii* or *lex loci* apply to countries which possess more or less uniform territorial laws. In the vast continent of India the devolution of property is regulated by many rules and laws, as for example, the Hindu law, the Mahomedan law, the Indian Succession Act, the various Tenancy laws and so many other Inheritance Acts and customs. This list is not exhaustive but it illustrates the absence of any territorial or uniform law in the country governing all the peoples of India: If the bill were to be in the form of a territorial law for all inhabitants of the country then the doctrine of *lex domicilii* would have been useful.

Moreover this rule will give rise to many other important topics, which will require judicial decision from time to time. It will be necessary to fix some domicile to every man or otherwise it may be impossible to decide by what law his rights or those of other persons are to be determined. The cases of actual homelessness must be met by some conventional rule, or, in other words, a person must have a domicile or legal home assigned to him even though he does not possess real one.²⁰

The question of validity of marriage and the sequences following from it may open a new chapter in the International law. As for example, whether a customary marriage recognised by the Code will confer legitimacy on children or whether customary marriage is a marriage at all or not would be required to be decided by foreign Courts if the question crops up in a foreign country regarding a Hindu domiciled in British India. Possibly indissolubility of Hindu marriage may be considered as repugnant to the civilised ideas of the West and possibly

12. Report of the Civil Justice Committee, Chap. 47, Paragraphs 5 and 6.

13. *Ibid.* ... see also Bryce's Studies in History and Jurisprudence Vol. I, pp. 108-111 for working of Indian Codes.

14. (28) 15 A.I.R. 1928 Rang. 179; 111 I.C. 2: 6 Rang. 245, Chedambaram v. Ma Nyein Me.

15. (18) 5 A.I.R. 1918 Bom. 39; 51 I. C. 513; 43 Bom. 647; 21 Bom. L. R. 85. Mohamed Haji v. Khatubai.

16. (1) 24 Mad. 650; 11 M. L. J. 309, Mailathi Anni v. Subbaraya Mudaliar.

17. (22) 29 Cal. 433; 29 I. A. 82; 8 Sar. 206; 6 C. W. N. 490 (P. C.), Parbati Kumari Devi v. Jagadish.

18. (15) 2 A. I. R. 1915 P. C. 86; 32 I. C. 413; 43 I. A. 36 (P. C.), Abdurrahim Haji v. Halimabai. This case is not reported in I. L. R. series as it was a case from East Africa. The parties were Mahomedans (Memons) emigrants from India.

19. Dicey's Conflict of Laws, 4th Edn. page 81.

a Hindu may not succeed if he pleads the same as in America an Englishman cannot confine his wife in an iron cage, or beat her with a rod, of the thickness of the judge's thumb though these powers are conferred on the husband by the English law.²⁰

Thus the Hindu law will become more complicated and the questions like the rights of the husband, rights of wife, legitimacy, succession to immovable property situated outside British India will require judicial determination, which as usual will require lot of money and time. When these problems will face the Hindus, they will say:

"I rather bear those ills we have than fly to others we know not of."

Clause (3) and Application of the Act.—Clause (3) lays down that this Act regulates the succession to the heritable property of a person to whom this Act applies other than one governed by the Marumakkattayam, Aliyasantana or Nambudri law of inheritance.

The object of the Hindu Code is to give one uniform and common law to the whole Hindu nation. But one does not understand why the code is not made applicable to persons governed by Marumakkattayam and other laws. The Mahomedan members of the Central Legislature seem to be wise when they made Shariat Application Act applicable to all the Mahomedans whether governed by custom or Hindu law. Even the Mahomedan women who enjoyed full rights under the Marumakkattayam and other laws were forced to accept the yoke of the Mahomedan law which curtailed the above rights. If the Mahomedans are thus able to increase the number of the followers of the Mahomedan law by an act of Legislature, one wonders why the Hindus sit silent and look to the process with indifference. If one takes into consideration the groups of persons to whom the Mahomedan law was made applicable by an Act of Legislature one is amazed at the inactivity of the Hindu members of the Legislature.

A learned Muslim member of the Central Legislature said that the Muslim Personal (Shariat) Application Act (26 of 1937) is primarily intended to improve the status of women and to confer upon them benefits which are lawfully their due under the Mahomedan law.^{20a} The position of a Mopla lady governed by Marumakkattayam law is infinitely stronger than the position that was sought to be brought about by the Act. From this point of view though Act 26 of 1937, was doing injustice to women yet it was made applicable.

Similarly in the year 1920, an Act was passed whereby Cutchi Memons could declare against the application of Hindu law in matters of inheritance and succession and declare that he along with his descendants were to be governed by Mahomedan law.^{20b} When this Act was on the anvil the Select Committee found that there were considerable number of Cutchi Memons who did not support the bill. And with a view to do justice to minority the bill took the form of an enabling legislation. But in the year 1938, the Cutchi Memons Act (10 of 1938), was passed with a view to apply compulsion to the minority, which constitutes 90 or 40 per cent. of the population and which might not be willing to bring itself under the Mahomedan law.^{20c} The Hindu Law Committee did not investigate this suffering of large followers of Hindu law and did not try to bring them under the jurisdiction of Hindu law for which they would have felt, very grateful. The Cutchi Memons Act ought to be repealed.

Aliyasantana Law not changed by the committee though Jains in Madras Presidency gave up that law and are governed by the Mitakshara.—The Jains in the South Kanara were once the rulers of that country. Now, the Jains are regarded as members of a rich community. They were governed by Aliyasantana law but they found that they suffered many disabilities under it. Therefore

they agitated and in the year 1918, they sent a memorial to the Government of Madras requesting that a legislation should be passed according to which they would be governed by the ordinary Hindu law. At last the Jain Succession Act (Madras 3 of 1929), was passed and now the Jains are governed by the Mitakshara law.

It is a matter of surprise to all that the learned men in the Madras Presidency found Mitakshara to be a good law upto the year 1929.

Khojas not following Koran but Dasavatara, a work describing nine incarnations of Vishnu and tenth incarnation of most Holy Ali—whether governed by Hindu Code.—Though Khojas are classed as Mahomedans, they ordinarily know little about the Prophet and of the Koran. They believe in a book called Dasavatara. This book is divided in ten chapters containing (as, indeed, its name imports) the account of ten Avatars or incarnations each dealt with in a separate chapter. The first nine chapters treat the nine incarnations of the Hindu God Vishnu, and the tenth chapter treats with the incarnation of the most Holy Ali, one of the ancestors of Aga Khan (12 Bom. H.C.R. 323^a at pp. 858, 859). These people were governed by Vyawanara Mayookha (29 Bom. 85^a at p. 80). But after the passing of Muslim Personal (Shariat) Application Act (26 of 1937) an attempt is made to subject them to Mahomedan law, a law originating from the Mahomedan religion, which they do not follow. It is necessary to make the position of such people clear by bringing them under the jurisdiction of the Code. But can it be done in these days?

Gonds.—The Gonds in Central Provinces belong to an humble tribe living in the districts of Chhindwara and Mandla, where in the ancient times they had established large kingdoms. Rani Durgawati was a sovereign of Garha-Mandla State and she is a monument of Gond heroism and valour. If a question were to be asked what was the law by which succession to the property of this well-known Rani was governed, it would have shown the ignorance of the querist and not of the person who would have answered it and answered it correctly. The question whether the Gonds are governed by Hindu law or not is discussed in many cases in which it has been held that a Gond is not a Hindu and he is not governed by Hindu law. The erroneous nature of these decisions was sought to be rectified by the introduction of a bill in the Central Provinces Legislative Council but it was lapsed.

The bill has not made any clear statement regarding these humble but war-like people.

No lead on the problems facing Hindus on account of their impact with foreign systems and the law to be followed.—The object of codification is supposed to give in unambiguous words the existing rights and liabilities of the persons governed by a particular system of law. Unfortunately the Committee did not give any such lead in cases, arising out of the new situations created by the contact of the foreign systems.

For example, the bill does not include the illegitimate children of a Hindu father by a Christian mother, or the illegitimate children of a Hindu father by a Mahomedan mother to be Hindu though it has been held that the illegitimate children of a Hindu mother by a European father are to be treated as Hindus (8 M.I.A. 400^b). The bill ought to have included the above persons in the class of Hindus.

Similarly the bill has not settled the question, whether the Hindu rule of survivorship is applicable to families of native Christians who continue to be joint even after conversion. According to the Madras High Court it is not applicable to such families but according to Bombay High Court, it is. Thus where two Hindu brothers, A and B, constituting a joint Hindu family, become converts to Christianity and continue to be joint after their conversion and B, dies leaving a widow, according to Madras High Court, B's one-half share in the property should go to his heirs under the Indian Succession Act,

20. Story's Conflict of Laws, page 186, para. 111.

20a. Legislative Assembly Debates, (1937) p. 1427.—Sir Muhammad Yamin Khan:—The Bill seeks to do away with the injustice done to women for a long time by people who do not want to part with their property. This will really do justice to the people who have been suffering for a long time.

20b. Legislative Assembly Debates, (1937) pp. 1834, 1835.

21. (1961) 12 Bom. H. C. R. 323, Advocate-General v. Muhammad. 22. (1941) 29 Bom. L. 55: 6 Bom. L. R. 874, Rashid, Karamali v. Sherano.

23. (1951) 8 M. I. A. 400: 2 W.R. 4: 1 Suther. 452: 1 Sar. 579 (P. C.), Myra Boyce v. Ootaram.

1925. According to Bombay High Court, B's one-half share should go to A, by survivorship.

The bill ought to have made clear whether the proposed Hindu Code would govern the cases of this type.

Comprehensive Laws of Smritis applicable to those who have no laws of their own.—The Smritis recognise the laws of particular class of people, and permit every community to be governed by its own recognised usages and customs. When the Mahomedans came to India they brought with them their own personal laws and choose to be governed by these laws. The same would apply to other communities inhabiting India or coming from outside who choose to be governed by their own laws. But those who have not expressly so chosen to be governed by particular rules of their own in the shape of usages and customs, will be governed by comprehensive laws of the Shrutis and Smritis which apply to all people (8 Pat. 152^a at p. 169). This nature of Hindu law has not been retained in the present intestate bill. Now-a-days there is a general tendency to hold that Indian Succession Act enacted for a handful members of a particular Community is *lex loci* of India, while Hindu law, which governs about 1/5 of human race is not the *lex loci* of India. The learned framers of the bill did not shed any light on this question. It is necessary to enact that Hindu law is the *lex loci* of India being a law of the largest number of people.

Clause (1) (3) (I) & (II).—Non-applicability of the Code to estates governed by customs, special Acts and Rules of primogeniture and agricultural property leading to the establishment of different kinds of rules of succession; a circumstance against the object of codification.—The object of codification of Hindu law is to give one common and uniform law for all the Hindus in India. But the authors of the bill forget to note that this object of having a common law would be defeated the moment Hindu law is codified in British India. At present there is no difference between the Hindu law administered in the Native States, who are about 300 in number and Hindu law administered in British India. Hindu law is now a common law of the whole of India irrespective of its political division. If the law is codified, there would be at least two kinds of Hindu law diametrically opposite to each other—the Hindu Code in British India which is neither Hindu in name nor in substance and the textual Hindu law in Native States. If it is the ambition to have uniform Code throughout India irrespective of political divisions, it will be necessary to enact about 300 more Hindu codes.

Similarly the authors of the bill regard custom more sacred than the divine Hindu law. They are not prepared to touch the customary law at all, though Sir Tej Bahadur Sapru suggested the codification of customary law long ago.

In England the rule of primogeniture has been overthrown by the Administration of Estates Act, 1925. The bill has not embodied the provision of this Act as far as the rule of primogeniture is concerned. Possibly the authors of the bill desire that the eldest son in India requires more protection than in England.

Moreover, this Code will not govern the devolution of agricultural property. This means, if a Hindu dies leaving behind him both agricultural and non-agricultural property, the agricultural property would be governed by Hindu law and the non-agricultural property by the Code. This state of affairs is not healthy. It would encourage litigation. It will also be necessary to define what is an agricultural property.²⁴

Another result as formulated in the report of the Committee would be that in the United Provinces there will be at least three sets of rules of succession and the position will be similar in the Central Provinces and possibly elsewhere.

In face of these conditions one is at a loss to understand the reason of insisting on the codification of Hindu law, a law which is logical and which has influenced all those who came in its contact. For example, among the

high caste Mahomedans the divorce is absent. Similarly, the Central Legislature grafted the Hindu principle of indissolubility of marriage in S. 2, Dissolution of Muslim Marriage Act, (8 of 1939) according to which the renunciation of Islam by a married Muslim woman on her conversion to a faith other than Islam shall not by itself operate to dissolve her marriage.

The object of the present bill and the proposed Hindu Code is to bring the Hindu law in accordance with the changing times and evolve out an Act which would satisfy the needs of progressive society. The bill seems not to have attained this standard. Now-a-days there is a tendency among the Hindus—a tendency encouraged by the progressive Hindus—to allow many non-Hindus to embrace Hinduism. The bill does not provide for the problems arising in such cases. For example, an American lady after converting herself to Hinduism married one Ratansi according to vedic rites. He was governed by Mayookh school of law. She died leaving behind her a son who inherited the property belonging to her. After her death Ratansi died in 1934 and his property devolved upon his son of the above marriage. The son died in 1935, leaving behind him a son of the sister of his mother, who was a Christian by religion and a son of the sister of his father who was a Hindu. According to the view of the Bombay High Court, mother's sister's son and father's sister's son succeed in equal shares. In this case according to the bill, can mother's sister's son who is related by legitimate kinship succeed? If so, why; if not, why not? The bill provides no answer for such questions. No one should say that these are exceptional cases. There are many of this type and it is necessary to get some answer for the question raised.

Similarly, according to the Bombay school a married man having a son can be validly adopted. The adoptions according to the bill will sever the ties of the adopted son with the natural family. But will it sever the legitimate kinship of his son before the adoption. The son born before the adoption would be related by legitimate kinship.

Clause 2 (a).—Agnate.—The definition of the word agnate does not give any limit and an agnate is to succeed before cognate; therefore, a distant agnate would exclude a nearer cognate.

Clause 2 (c).—“Related.”—Clause 2 (c) lays down: “Related” means related by legitimate kinship, and any word expressing relationship or denoting a relative shall be construed accordingly.

“Heritable Property.”—Heritable property in cl. 2 (d) of the proposed bill does not include joint family property and therefore succession with regard to joint family property would continue to be governed by the existing rules of Hindu law which exclude female heirs. The necessary result would be that the changed law would provide an ever ready tussle between the male and female heirs. The former would try to show that the property passed by survivorship while the latter would aim at proving that it did not. The result of these measures would bring ruin and disaster to Hindu homes.²⁵

Adopted daughter by dancing girl is not entitled to inherit her adoptive mother's gains of profession.—The bill has preserved the customs of the people but where adoption of daughters by dancing girls prevails, and such adoption is legal and not punishable by criminal law, the adopted daughter should be able to inherit her mother's gains of profession. She gets no rights to inherit under the bill. It is necessary to make a change in the bill as the framers of the bill wanted to give rights to women. By not including such daughter, the rights enjoyed by women are taken away by the bill, and this is not in keeping with the general object of reforming the Hindu law by giving better rights to women.

Clause 2 (2) (a).—No restriction on the power of making wills:

The bill deals with intestate succession. But there is no interference with the right of those who do make a will and give their property to whom they please. In England the experience of the people is that many

24. (24) 11 A. I. R. 1924 Pat. 420: 78 I. C. 749: 3 Pt. 152: 5 P. L. T. 203, Ram Pergash Singh v. Mt. Dahan Bibi.

25. The term “agricultural land” is not defined in the Constitution Act.

26. Allahabad Law Journal, 20th January 1944.

wealthy men gave their property to other women excluding their own widows. The Parliament was, therefore, required to enact a law called, Other Women's Property Act according to which a testator cannot bequeath all his property to others by disinheriting his wife and children. The champions of feminism lost sight of this side of the bill.

Clause 2 (2).—Domicile.—The question of domicile is already discussed under the heading of Extent of the Code.

Clause 3.—*Mitakshara still a good law for the Jains of south of Madras Presidency though bad for other Hindus.*—

It is stated already that the Jains in the south of the Madras Presidency were governed by the Aliyasantana law. They found that they could not develop under that system, and so they changed their law and adopted the Mitakshara by Jain Succession Act (Madras 3 of 1929). This Act is not repealed and therefore the Jains would be governed by the Mitakshara. The Jains in Southern India are not fortunate enough to claim the advantages of the present bill.

Clause 4 and 5.—*Devolution of heritable property of males and simultaneous heirs.*—The principles of Mahomedan law and Indian Succession Act have been introduced in the bill. Clause 5 lays down that the parents, if dependent on the intestate, widow, son, daughter, son and widow of a predeceased son will inherit as simultaneous heirs.

It is necessary to remember that the structure of the law of succession whether of the Muslims, the Christians or the Hindus is a complete organic structure by itself, and any attempt at dismembering any part thereof or foisting a portion of one on that of other should be beyond the ken of any law-makers. According to Hindu law each individual or group, which comes in that order gets the whole of inheritance. The Mahomedan law or the Indian Succession Act divides the heritage in several parts and among several heirs with the result that the shares are sometimes so small that it is not worthwhile to have them. In a case governed by the Mahomedan law it was found that each parcel of the estate left by the deceased was divided into 23 parts and therefore the Mahomedan law introduced right of pre-emption among the heirs. The bill though providing for the inheritance of a large number of heirs at one time does not provide for the prevention of the infringement of a stranger upon the family property. Suppose a Hindu dies leaving behind him his parents dependent on him, widow, son, daughter and a son and a widow of a predeceased son and one house. Then the house will be divided into six parts according to their proportionate rights. Suppose the daughter marries a Mahomedan, the widow of the deceased marries a Christian and the widow of the predeceased son sells her share to a Jew, and all of them stay in the same house, the son or the parents of the deceased have no right to prevent the introduction of the strangers into the family or the family property. As the principles of the law of pre-emption are not embodied in the Code, the other heirs, though capable of purchasing the part of the house, will not be able to enforce their right in the Court of law. The family will consist of co-heirs and discordant elements and the worst will be that the homogeneity of the family will be destroyed.

It may however be noticed that the economic condition of the society whose laws favour the distribution of inheritance in several shares is not sound. In cases of the families governed by the rule of breaking of inheritance the transfer of property is always fraught with suspicion and persons are not prepared to negotiate any kind of transaction because of the fear that an unknown heir may crop up and challenge the transaction. Thus the credit of the society is altogether dried up.

Parents versus children of the deceased.—The Bill puts parents first in the list of enumerated heirs. This is against all the accepted canons of jurisprudence. Bentham in his theory of legislation gives a model of statute of succession in the form of Code and according to him the property first goes to the descendants and not to ascendants. According to him the reasons for this arrangement are: (a) Pre-eminence in the matter of

affection. Any other arrangement would be opposed to the wish of the father. We love those who depend upon us better than those upon whom we depend. (b) It is quite certain that our children could not exist without us or someone who should take our place. It is probable that our parents could exist without us, as they existed before we came into being.^{26a} Parents do not enjoy such a right of precedence in any other system of law.

Expression 'dependent' not defined.—It is necessary to define the expression 'dependent' in the sentence 'parents if dependent on the intestate'. The absence of the definition or any explanation is likely to give rise to litigation.

Joint succession of son and daughter in the father's property.—In the bill introduced by Dr. Deshmukh an attempt was made to divide the inheritance in several parts by giving rights to several female heirs. The principle of dividing the heritage in several parts was rejected at that time. The report of the Committee does not show any reason why the rejected principles are again embodied in the bill.

As regards the succession of sons and daughters simultaneously it may be said that the rights of a daughter in Hindu family are protected sufficiently. Her right of maintenance and residence and marriage are not dependent on the good will of the parents but a legal duty is cast upon the parents to see that the daughters are well provided for. The question of unmarried daughter, or spinsters is not facing the Hindu society at all. Possibly it shall never come for consideration of the Hindus on account of their legal and social systems. It may be remembered that in spite of the Western ideas the Hindu women have as yet not lost their faith in the institution of marriage. This is the case from the very ancient times as would be seen from the immortal words of Kalidas:

"A daughter is a boon, a precious jewel,
Lent to a parent till her husband claims her."

The result of this view is that a girl contracts closer relationship with another man, in whose property she acquires an interest which is, to use the language of Hindu jurist, "like a mixture of milk and water". According to the provisions of this bill a daughter will get property from her father as well as from her husband. This will not conduce to the healthy growth of society, because women will have property without any liabilities while men will have responsibilities without property. It may also be remembered that in legal systems which gave rights to daughters, there was necessarily a provision that she could not marry outside the family or tribe. For example, amongst the Jews there was a rule that a daughter becoming sole heiress must marry within her own tribe. The Solonian legislation provided that when the daughter was the only child, the agnate who took the property should also take her as his wife (11 Bom. H.C.R. 249²⁷ at p. 274). According to Athenian law when an intestate died leaving no son but unmarried daughter, the next kin who claimed inheritance was bound to marry the daughter.²⁸ The marriage of a sister with her brother in ancient Egypt was based on the theory of preservation of inheritance.²⁹ It is needless to point out here that among the Christians and Mahomedans cousin marriages are very popular. The reason is the same as the one stated above.

If the daughters are given a right along with their brothers in the paternal property, it will become necessary to change the law of marriage with regard to prohibited degrees. Whether the Mahomedan law will be a better guide or the Christian law is a disputed question. The wise policy of Hindu law of excluding daughters in presence of son's appeals to reason and commonsense. A jurist of international reputation observes as follows:

"When daughters pass into other families it is not necessary for them to share equally with their brothers in their father's property. For it is foolish indeed to believe that it is opposed to piety, required of father, to distribute his property unequally among those who, one as well as another, were begotten by him."³⁰

^{26a} Bentham, Theory of Legislation, Vol. 1, p. 237, Art. 5. See also Hugo Grotius De Jure Belli A. C. Pacis Libri Tres, Vol. 2, p. 272. Where the opinions of many jurists are cited favouring the rights of children in presence of parents.

²⁷ (74) 11 Bom. H. C. R. 249, Bhau Nanaji v. Sundarabai.

²⁸ Hearn's Aryan Household, page 103.

²⁹ Lee's Historical Jurisprudence, page 77.

Adopted son v. daughter.—In cl. 2 (g) it is defined that the expression son includes a dattaka son. Therefore, in cl. 5, where the enumerated heirs are mentioned, the word son would include an adopted son. The bill provides that a daughter should succeed along with her brothers whether real or adopted. A father can curtail the extent of the right of daughter and the adopted son who is not a son in fact becomes superior to daughter who is born of the father's body. The committee which speaks so loudly about the rights of women has not considered this point of the adopted son, sharing with the daughter. It would have been in keeping with the promise of giving better rights to women, if the rights of an adopted son would have been curtailed or done away with. Under the Oudh Estates Act (2 of 1869) the Privy Council held that the adopted son is not included in the term son: 3 Luck. 76.³¹ Similarly an adopted son is not entitled to perform the *parvana shraddha*, that is, he cannot offer funeral cakes on his mother's side. He is entitled only to perform the *skoddishtha shraddha*; that is a right in favour of a single ancestor.³² From this point of view the adopted son ought to have been excluded from the line of succession to Stridhan property.

Daughter's position in Mysore.—In Mysore, after an exhaustive enquiry regarding women's rights under the Hindu law, it was enacted that the daughters should inherit as a class and should not share with any other relations. [Section 4 of Regulation to amend Hindu law as to Rights of certain women in certain respects (10 of 1933)].

Desirability of dividing female heirs into two classes:
(1) *Relations by blood* and (2) *Relations by marriage* and giving better rights to relations by marriage.—It is desirable to divide female heirs into two classes, for example, the female relations by marriage and female relations by blood. The relations by marriage should have priority over the relations by blood. In effecting any reform it is necessary to improve the position of female heirs in their husband's family instead of trying to give them some rights in the father's property. This would result in preserving the Hindu family as a unit which would contribute to the peace and prosperity of the community. In Bombay Full Bench case which was affirmed by their Lordships of the Privy Council it was pointed out that the marriage as well as birth created gotra relationship for inheritance. This might lead to absurd results, as women inheriting in two families, while men inherited in one, might gradually absorb all the property: 2 Bom. 389³³ at p. 446. Even according to Mahomedan law a mother and a wife are given different shares and a daughter is a residuary and a sister is a sharer or a residuary according to circumstances: 51 Mad. 134³⁴ at p. 26.

Right of aurās son born after adoption.—According to the Hindu law as administered to-day in the case of the twice born classes, where, after an adoption, a son is born to the adopting father, the adopted son loses all rights to the performance of religious ceremonies, and his rights in inheritance are reduced: (a) If he be governed by the Bengal school, to one half of the share of a lawfully begotten son; (b) if he be governed by the Benares school to one third of the share of a lawfully begotten son; (c) if he be governed by the schools prevailing in Southern India and Bombay to one fourth of the share of a lawfully begotten son.³⁵ The bill does not provide for such contingency. It is necessary that the law should be clear on these points.

Kritrima son and right of inheritance.—The expression son in cl. 2 (g) includes a kritrima son. The kritrima form of adoption has become absolute throughout India except in Mithila and some parts of the Punjab subject to the customary law. Either a man or woman can adopt in this form and a wife or widow adopting does not require the assent of her husband or his kinsman. The result of such adoptions is that the adoptee is not considered a member of the adopter's family. He does not assume the surname of his adopter, or forfeit his claim to his own natural family.³⁶ It merely creates a personal relationship between him and the adoptive father or adoptive mother and kritrima son succeeds only to the estate of his father or mother, according to the person who had adopted him.³⁷ Now according to the bill under review a kritrima son will inherit to both his father and mother though only one of them may have adopted him. Similarly, he will inherit to the collaterals of his adoptive father and mother, a right which he does not enjoy under the textual law.

One curious circumstance may come into existence. For example, according to "Dwaita Parishisth" of Keshab Mishra, a person is free to adopt his own brother and even his own father.³⁸ Such adoptions though valid in Mithila would create much confusion in the law of inheritance. Such adoptions may become popular in cases where a rich man dies leaving behind a widow and no other relatives. In such circumstances the father of the girl may advise her to adopt him and thus secure a right of inheritance in the property for himself. This would indicate how the bill has not been properly conceived.

Moreover the right of adopting in kritrima form and dvyamushyan form has been extended throughout India, an advantage not asked for by the people.

It may be noticed that the committee was appointed to give better rights to woman. The committee extended the right of adoption in kritrima form and dvyamushyan form. But the committee has done nothing to validate the adoption of daughter, which could be done by enacting that the expression "daughter" includes adopted daughter. If this example, along with other points which are against the rights of women, is considered one will be tempted to say that improvement(?) of the status of women under the Hindu law is only a pretext for doing something which is not warranted.

Undivided and divided son.—The Bill lays down that each son of the intestate shall take one share whether he was undivided or divided from, or re-united with the intestate. This rule is not equitable. For generally it happens that a son who separates from the father retains his share or some property and therefore a divided son has no right to his father's estate when an undivided son is there. The result of the present rule will be that the divided would get more than the undivided son—a rule against equity, good conscience and justice.

The contrast: Legitimation of illegitimate children in England and other European nations while the Bill dis-inherits Dasseputra.—Legitimation by subsequent marriage is admitted with different modifications by the law of Scotland, France, Spain, Portugal, Germany, and most of the continental nations in Europe. The rule was imported into their jurisprudence from the Roman law.³⁹ The practice of legitimation of children is now recognised by nearly all the States of United States of America. Since 1910, an illegitimate child has been treated, for purpose of relief, accorded to payers of income-tax, as included in the definition of "child" in the Income-tax Act if the parents have married each other.⁴⁰ It has been remarkable that legitimation by subsequent marriage should have been refused recognition by English law despite the growing tendency to accept it abroad and the spectacle of its existence and recognition in Scotland. The pressure of enlightened opinion has resulted in the attainment of general agree-

30. Purfendorff's The Law of Nature and Nations, Vol. 2, Book 4, Chap. 11, page 631.

31. (28) 15 A.I.R. 1928 P. C. 87: 108 I. C. 673: 3 Luck. 76: 55 I. A. 139 (P. C.). Raghuraj Chandra v. Subhadra Kunwar.

32. Dattaka mimansa, Ch. 4, Para. 74: Setlor's Hindu Law Books, Part 1, Page 281.

33. (76) 2 Bom. 388 (F.B.), Lalubhai Babubhai v. Mankuvarbai affirmed by the Privy Council in (80) 5 Bom. 110: 7 I. A. 212: 4 Sar. 154 (P. C.).

34. (28) 15 A.I.R. 1928, Mad. 299: 108 I. C. 760: 51 Mad. 1: 54 M. L. J. 174 (F.B.), Vannia Kone v. Vannichi Ammal.

35. Trevelyan's Hindu Law, 3rd Edn., pp. 201-202.

36. Gour's Hindu Code, 4th Edn., p. 269.

37. Gour's Hindu Code, 4th Edn., pp. 267-268.

38. Gour's Hindu Code, 4th Edn., p. 270.

39. Story's Conflict of Laws, page 113, Note 2 Edn. 1883.

40. Finance (1909-10) Act 1910 (10 Edw. VII Ch. 8), s. 68. Finance Act 1920, s. 21. Cited in Dacey's Conflict of Laws Diew p. 534. Note.

ment on the terms of a measure to create legitimation by subsequent marriage in England. The measure is retrospective legitimizing persons whose parents have subsequently intermarried from the date of the commencement of the measure, or from birth, whichever occurs later. Persons claiming to have been legitimated under the law, may present a petition for a declaration as may be done under the Legitimacy Declaration Act, 1858 [now consolidated in the Supreme Court of Judicature (Consolidation) Act, 1925]. A legitimated person, his spouse, children or more remote issue, shall be entitled to take any interest: (1) in the estate of the intestate dying after the date of legitimation (2) under any disposition coming into operation after the date of legitimation and (3) by descent under an entailed interest created after the date of legitimation in like manner as if he had been legitimate. Provision is also included for inheritance from the legitimated person by parents, for imposing on a legitimated person the personal rights and obligations as regards maintenance or support of a legitimate person, for placing the spouse and children of a person dying before the intermarriage of his parents on the same footing as if the parent had died immediately after such marriage, and for the levy of death duties as if the legitimated person were legitimate.^{40a}

But the present Bill has disinherited a *dasee-putra*, who stands on a better footing than an illegitimate son. The Sanskrit expression *dasee-putra* has been mistranslated as illegitimate son in many standard works on Hindu law which have created a great confusion in the ideas of the people.

According to Hindu Jurists the filial relationship exists between the *dasee-putra* and the putative father. Such a son does not inherit among the three regenerate castes but is entitled to maintenance. But the great Shoodra community took a more humane view and has put him on a better footing by recognising his rights of inheritance to his father's estate provided his mother was a Hindu and was in the continuous and exclusive keeping of his father and that he was not an offspring of an adulterous and incestuous connexion. This right is not subject to any condition that a marriage could have taken place between the father and the mother according to the custom of the caste to which the mother belongs. For example, the illegitimate son of a Shoodra by a dancing woman who was by profession a prostitute before she came into his keeping but who was kept by him in continuous and exclusive concubinage thereafter, is entitled to get his appropriate share in the joint family property after the father's death, provided the connexion between the father and mother was not incestuous or adulterous. This view of the Hindus is more commendable to reason and common sense as would be clear from the following lines of Van Dyke:

"In men whom men condemn as ill
I find so much goodness still;
In men whom men pronounce divine
I find so much of sin and rot,
I hesitate to draw the line
Between the two, where God hath not."

One expected that the learned framers of the Bill would have preserved the rights of the *dasee-putra* not only in the Shoodra community but also extended them to the regenerate castes. Looking to the history of the purpose of the appointment of the committee one may not be wrong in supposing that an illegitimate daughter, used in the same sense as *dasee-putra* would have been recognised as an heir. The loud talk of giving more and better to women is proved futile in this case at least.

Committee devising uniform and common law of intestate succession for all Hindus, but changing the existing uniform and common law in the schools without assigning any reason whatsoever.—In the explanatory note the committee points out that one of the main features of the Bill is to introduce a common law, meaning possibly uniform law, of intestate succession for all

Hindus in British India. This object is secured by adopting for the most part the Dayabhaga scheme for near succession and the Mitakshara scheme for distant succession and it is pointed out that this kind of compromise would not do great violence to either school. By "near succession" the committee means "the comparatively near relations enumerated in cl. 5 of the Bill." This view is open to question because there is already an uniformity of law among all the schools. The heirs from the widow upto the brother's son are known as compact series of heirs (*Baddhakrama*).⁴¹ The committee has, without any substantial reason, disturbed the existing uniformity of law of succession in all the schools. Their explanation is not supported by any authority. The laying down of an entirely new order of succession at variance with the existing law will make many well wishers of the committee to exclaim "save us from our friends."

Missing heirs.—The Bill does not contemplate the situation arising out of the disappearance of any heir at the opening of inheritance. Should the next heirs come and take the property for their own benefit or should they hold it in trust waiting for the missing heir to return?

Relinquishment of heritage.—The bill is silent regarding the right or otherwise of an heir to relinquish his interest in the inheritance. Can the heir relinquish his interest, if so, who shall come in the line of succession? Can he revoke his relinquishment as Mahomedan can revoke his gift? These are the questions which require explanation.

Hereditary honour or title.—Will a *kritrima* son adopted by the wife only inherit the honour or title of the husband of the adoptive mother? The Bill is silent on this point. If the Bill is interpreted in the usual way such a son adopted by the wife only, and creating only personal relationship will inherit the title or honour of the husband of the adoptive mother. Possibly this right was not asked for.

Curtailment of the widow's right of inheritance.—The object of the appointment of the committee was to give better right to women. But in the bill it is seen that the right of inheritance of a widow is curtailed. According to the law as administered a widow inherits along with her son and takes the same share as a son, and in the absence of the son and his heir, she inherits the whole property, that is, she gets 16 *anas* share in the property.

Now according to the Bill a widow is entitled to share with parents, son, daughter, etc., with the result that the share of the widow is reduced. Moreover, these heirs take the interest for themselves so that on their death the property goes to the heirs of the person who inherited the property and other heirs are excluded for ever.

Thus the widow according to the Bill will never come in possession of 16 *anas* share of her husband's property—a feature which may not be appreciated by the public.

Streedhan and widow's right of inheritance.—*Equality!* thy name is deception is proved to be true when one compares the rights of inheritance of a widow with those of other heirs in the Bill. All the heirs except the widow and daughter, do not get substantial share in the property during the lifetime of the deceased. The widow is in possession of *streedhan*, which is her absolute property and is in her possession. This *streedhan* is provided by the husband or his father and no one has any interest in this kind of property. Similarly the father is required to pay heavy dowries in these days and if one takes the trouble of finding out the actual amount spent for the daughter, one would find that this amount is sometimes more than her share given by the Bill. If the principle of equality, which is very much in vogue these days, is made applicable, then the widow's share must be found out by deducting the *streedhan* in her possession and the daughter's share should be reduced by the amount spent on her marriage. This is necessary because the son has more responsibilities from the family.

41. The following are the heirs who succeed throughout India whether they are governed by the Dayabhaga or Mitakshara. (1) Son. (2) Son's son. (3) Son's son's son. (4) Widow. (5) Daughter (6) Daughter's son. (7) Mother. (8) Father. (9) Brother. (10) Brother's son.

40a. Dickey's Conflict of Laws, Appendix, Note 19, pages 904-905.

point of view while the widow or the daughter can throw away these responsibilities and make themselves comfortable in other families. Curtailment of the right of sons will have very bad effect on the development of society because he who can contribute to the well-being of the family or society has no power to do so.

Birth right of a son in the self-acquired property of father and in the ancestral property a great advance in the emancipation of children.—The sage Yajñawalkya propounded the doctrine of equal ownership of son and father in the property acquired by the grandfather.⁴² The Yogi Vijñāneshwar, the great judicial intellect in his *Mitākshara* laid down that the property in the father's estate is only by birth, although the father has independent power over the disposal of the effects other than immovables. He is subject to the control of his sons in regard to the immovable estate, whether acquired by himself or inherited from his father, for they who are born, and they who are yet unbegotten, require the means of support, and so, no gift or sale should be made of the same.⁴³ This view is in advance of other legal systems with regard to the emancipation of son from the *patria potestas* from which children in ancient times suffered most. In accordance with the provisions of the Code of the laws promulgated by Hammurabi, king of Babylon, a debtor could sell his son or daughter for money or he could hand them over "to work off his debt."⁴⁴ In the old Testament it is laid down that a son, "which will not obey the voice of his father, or voice of his mother" shall be stoned to death.⁴⁵ The exclusive, absolute, and perpetual dominion of the father over his children is peculiar to Roman jurisprudence. In his father's house a son was a mere thing. According to his discretion, a father might chastise the real or imaginary faults of his children by stripes, by imprisonment, by exile, and so on. The majesty of the parent was armed with power of life and death; and the examples of such bloody executions, which were sometimes praised and never punished, may be traced in the annals of Rome, beyond the times of Pompey and Augustus. Neither age nor rank, nor the consular office, nor honours of triumphs, could exempt the most illustrious citizens from the bonds of filial subjection.⁴⁶ In Athens, at least before the time of Solon, a child could be sold to pay his father's debt.⁴⁷ The Chinese had the custom of selling children whom they thought they could not support.⁴⁸ The French Civil Code enacted that a father can have incarcerated his son for a period not exceeding one month; and for that purpose the President of the Tribunal of the district shall, upon his request, issue an order of arrest. This is with regard to the case of a child who has not entered his sixteenth year. As regards child, who has entered the sixteenth year, or until he comes of his age, or is emancipated, the father can only ask that his child be incarcerated for six months. In either case, there shall be no writing and no proceedings in Court, with the exception of the order of arrest itself, in which the reasons shall be stated. If, after the liberation the child again falls back into bad habits, a new incarceration may again be ordered.⁴⁹ According to Benthamite philosophy humanitarian movement sprung up in England which led to the various enactments for the protection of children, of which good example is afforded by the law prohibiting their employment as chimney sweeps.⁵⁰ The spirit of Hindu jurisprudence is entirely different.

The utility of the right by birth can be well understood in language of Eldon, L. C. who said: "the Courts of law can enforce the rights of father but they are not equal to the office of enforcing the duties of the father." And one cannot go to the Court of King's Bench to compel the father to subscribe even the amount of five shillings a year for the maintenance of the child, (1827) 2 Russ. 1st at p. 26. It is the duty of the father to maintain and educate his children, who are incapable of supporting themselves and although the law in India has always recognised this duty, the civil Courts have no direct means of enforcing this obligation, so as to compel him to maintain them out of the property in which they have no interest (55 Cal. 730⁵² at p. 740.). Similarly under the Criminal Procedure Code a father cannot be compelled to educate his children or even to support them according to his own position (55 Cal. 730.⁵³) Therefore, Stanley C. J., of the Allahabad High Court rightly pointed out that the rule of *Mitākshara* does afford some protection to the son (31 ALL. 170⁵⁴ at p. 203) where the father is prodigal.

But alas! all this theory is a cry in wilderness. The future generation may bless the present one for the obligations done to them by depriving their legitimate rights by an Act of Legislature!

Woman entitled to inherit by the testate law disinherited by the committee without any reason and placed in the same category as murderers who are excluded from inheritance by the committee.—The terms of reference and the historical background behind the appointment of the Hindu Law Committee show that the task of the committee was to confer better rights on Hindu women. If the bill is looked at from this point of view one would find that so many women are disinherited by the committee from the line of succession and are given the same status as that of murderers who are excluded from the right of inheritance. These women are deprived of their rights though they are not guilty of any homicide. These women are: (1) father's sister, (2) step-mother (father's widow), (3) brother's widow, (4) brother's son's widow, (5) brother's son's son's widow, (6) brother's son's son's son's widow, (7) brother's son's son's son's son's widow, (8) brother's son's son's son's son's son's widow, (9) paternal uncle's widow, (10) paternal uncle's son's widow, (11) paternal uncle's son's son's widow, (12) paternal uncle's son's son's son's widow, (13) paternal uncle's son's son's son's son's widow, (14) paternal uncle's son's son's son's son's son's widow and the widows of the Sarnadodaks, who are all the agnates of a person from 8th to the 14th degree. All these large number of female heirs are disqualified from inheritance under the present Bill and are made to stand on the same footing as that of a murderer though they are not guilty of any homicide or its abettment.

It may also be noted that these widows are entitled to inherit in spite of the fact that their husbands are disqualified to succeed (32 Bom. 275).⁵¹

No reason is stated for the disinheritance of these widows from the line of succession. The present Bill does not fulfil the object of those who were very anxious to give better rights to women. The object of the members of the Legislature was not to take away the existing rights enjoyed by women.

These rights were enjoyed by the women governed by the Mayookha school of law, a school which came into existence when the Marathas were marching from victory to victory. In those days of freedom the women secured so many rights. Let these rights not die.

Rules of inheritance and of exclusion from inheritance are to be considered together.—The rules of inheritance are inseparably connected with the rules of exclusion from inheritance and both these subjects ought to be considered together. The bill deals with only two disqualifications: one of unchastity, which is confined to widows

⁴² Yajñawalkya Smṛiti, Vyavahara Adhyaya, Shloka 121.

⁴³ *Mitākshara*, Chap. I, S. 1, para. 27.

⁴⁴ World's earliest laws (Code Hammurabi) translated by Chibric Edwards (1934) para. 117, p. 29.

⁴⁵ Deteronomy, Chap. 21, Verses 18 and 21. Deteronomy is evidently the "Book of laws" which Hilkiah, the high priest of Jerusalem, professed to have found in the Temple in the eighteenth year of Josiah (that is, 621, B. C.).

⁴⁶ Gibbon's Decline and fall of the Roman Empire, Chap. XLIV, Everyman's Library Series, Vol. IV, pp. 406-407.

⁴⁷ Pufendorf's De Jure Naturae Et Gentium Libri Octo. Book VI, Chap. II, p. 923.

⁴⁸ Pufendorf's De Jure Naturae Et Gentium Libri Octo, Book VI, Chapter II, p. 922.

⁴⁹ Koran, Sale's edition, Preliminary Discourse, pages 93-94, Note 7.

⁵⁰ Pufendorf, Book VI, Chapter II, page 922.

⁵¹ Bentham Theory of Legislation, Vol. I, page 110.

⁵² French Civil Code, Title X, Of Paternal Authority, Arts. 375-379. Henry Cachard's Edition, p. 129.

⁵³ Dicey's Law and Public Opinion in England (1930) page 183.

⁵¹ (1827) 2 Russ. 1. Wellesley v. The Duke of Beaufort. Cited in (28) 15 A.I.R. 1928 Cal. 600; 111 I. C. 543; 55 Cal. 730 (740), Victor Justin Walter v. Marie Josephine Walter.

⁵² (28) 15 A. I. R. 1928 Cal. 600; 111 I. C. 543; 55 Cal. 730, Victor Justin Walter v. Marie Josephine Walter.

⁵³ (09) 31 ALL. 176; 1 I. C. 479; 6 A. L. J. 263. Chandraseo, v. Mata Prasad.

⁵⁴ (07) 32 Bom. 275; 10 Bom. L. R. 149, Gangu v. Chandra-bhagabai.

only and the other is of being a murderer or abetting of the commission of murder in furtherance of his or her succession to any property. In the schedule it is stated that the Hindu Inheritance (Removal of Disabilities) Act (12 of 1928) is repealed. This Act governed only the Mitakshara school of law and not the Dayabhaga. It was not made applicable to the Bengal school because the Bengali members of the Legislature were against the measure. Within the short time of 16 years the Bengalis do not seem to have changed their ideas about their legal system. At least Bengal is against this measure as can be seen from the history of the bill. Therefore the measure ought not to be made applicable to the Bengal and Assam where Dayabhaga prevails.

Moreover the idea of allowing a lunatic and a blind man to inherit is not so sound as it appears. It may be an academical question to allow a blind and a lunatic to inherit. It is not possible for them to look after their property and it is well known how the guardians manage the property of their wards. 43 Mad. 455 at page 18.

Reasons for exclusion from inheritance.—The strict injunction to maintain and protect disqualified heirs, and the rule that their sons become sharers show that the exclusion was not intended as a punishment but as a protection to a person incapable of or unwilling to manage property and to deal in secular affairs with others (outcasts being incapable of dealing with their fellow beings) and also in order to prevent vicious persons from squandering wealth in Adharma. Giving shares to such persons would result in property being lost to them.

Streedhan and order of Succession.—In the order of devolution of streedhan the right of husband to inherit the property is postponed though the widow who is in class 1 of the enumerated heirs inherits along with the son. If the equality is the basis of the bill, then the husband's position ought to have been higher in the line of succession.

Succession to the property of dancing girls not codified.—The class of dancing girls and prostitutes has found place in the Hindu community in spite of their existence being repugnant to the higher standard of morality set up by the shastras. The Smritis have, however, regarded them as degraded class of people, and have condemned and punished also for the persons carrying intrigues with them, but in the nature of things the class existed.

That the members of this class are Hindus is certain though one may find difficulty in fixing them in one of the four castes. The male members of this caste are normally governed by Hindu law; so also when female members may have children, as they sometimes do, their family relation is governed by Hindu law and presumably Hindu law of inheritance will govern succession to their properties. Will the property held by a woman of this class be governed by the rule laid down by venerable Manu, which runs as follows: "But if two (sons) begotten by two (different men) contend for the property (in the hands) of their mother each shall take to the exclusion of the other, what belonged to his father" (Manu Smriti IX, 191), or will the rule to the nearest sapinda the inheritance next belongs will offer a good guide?

The bill ought to have dealt with this question because of the absence of the definition of daughter in the bill. This omission will give rise to the question whether the adopted daughter is a daughter or not.

Hermits.—The bill does not deal with all kinds of hermits. For example, according to Hindu law a Shoodra cannot become a sanyasi or naistikha brahmacharin. So the line of succession given in the bill shall not apply to them. If the uniformity of law is the object of the Code, then all these people ought to be governed by one law only.

Escheat.—The bill ought to have been based on the recent modifications made in Mahomedan law regarding the law of escheat. It is necessary to modify the bill on that line.

This is not the proper time to deal with Hindu law.—In the end it may be said that in these days of starvation and scarcity, the Hindu nation is not in a position to think properly. It will be in the interest of the nation if the reforming or deforming of Hindu law is postponed till the war is over. It may be remembered that law does not grow into a shapely tree but it grows by jerks. If the Hindu law is codified to-day, it would become necessary to revise the Code after the war because India is at present on the verge of economic revolution. Secondly, when the best brains of India are still behind the prison bars and when the brave sons of the soil are in the battle field, scoring victory after victory in foreign lands, an attempt to reform or deform the Hindu law which has the oldest pedigree and which has preserved the nation through vicissitudes of fortune, should be given up.

Dr. Mrs. Parmanand, D. Phil. (Oxon.) Bar-at-Law

I do not consider that much could really be gained by sending the bill for circulation again and again for inviting public opinion. The few people who are now raising dissenting voices through newspapers and public meetings never did so in time and even now if questioned closely would not be able to substantiate their case. The opposition comes from two types of people (1) Orthodox section and (2) the people who feel their personal interest would be affected. Both these classes have not a real case.

2. To take only a few of the objections of the orthodox section.—

(i) They say that any change in the legislation would affect the foundations of Hindu society. They have put forward this pet objection every time an attempt was made to reform Hindu Law to suit modern conditions. In spite of their fears, Hindu society is still continuing none the worse for the changes effected from time to time through legislation. The orthodox section does not realise that law much change to suit the changing social conditions. The aim of legislation is to ameliorate the lot of the people it governs and not to tyrannise them.

(ii) During the time when Hindu law was drafted women were content with leading a purely domesticated life. They had not developed individuality; they were not conscious of their rights, they were content with being dictated to by men in all important affairs of their life. In the twentieth century, the century not only of emancipation of men but also of women—women would not be content with being given an unequal treatment. They would demand the same rights as men and would not mind being saddled with equal responsibilities which men have to shoulder. It is therefore useless to argue that men have to maintain dependants and so must have a sole right to the property. Women have no such responsibilities and therefore should not have such rights. These responsibilities could easily be created in the case of women as they were in the case of men.

(iii) Today in the political sphere when our brothers of the orthodox section are demanding equality with other nations on grounds of equity and humanity, it is very difficult to understand how in the same breath they can deny this right to their sisters, namely the right to have some share, if not an equal share, in the ancestral property.

(iv) To argue that the Hindu legal system is of sacred origin and therefore cannot be interfered with by modern legislature or that no one except old law-givers like Vijnaneshwar or Yagnya Valkya now can improve on the Hindu legal system by recasting it to suit modern conditions is not likely to convince anyone. Surely Hindu society even today is capable of producing men of equal if not of greater, calibre. To put forward therefore Mayne's criticism of the difficulty of improving on the Hindu Legal Code is equally unconvincing.

(v) It is amusing to hear the orthodox section put forward such lame arguments as:—To devise shares to daughters on the principle of Mohammedan Law is to unconsciously allow Mohammedan influence to play on our legal system. Why not? What have these people to say to the resemblance of the Hindu polygamy system to the Mohammedan polygamy which permits marrying for wives? This group objects to Mohammedan Jurists sitting

55. (20) 7 A. I. R. 1920 Mad. 361; 53 I. C. 496; 43 Mad. 4; 37 M.L.J. 405. Surayya v. Subbamma overruled in (23) 10 A. I. R. 1933 Mad. 215; 60 I. C. 513; 45 Mad. 949; 43 M. L. J. 596 (F. B.). Where it was held that the rule on congenital blind person is excluded from succession has not become obsolete.

the select committee also. Knowledge is knowledge whether it is possessed by Hindu, Parsi or a Muslim. Moreover, they seem to forget the famous and wise Hindu saying which says "Wise words (counsel) coming even from a fool should be acceptable (*murkhad api subhashit-grahyam*).

(vi) The orthodox section also urges that women are usually weak-minded and ignorant; if they have a share in a property they would easily come under evil influence and even would be kidnapped by Muslim "Gundas". Do these people stop to consider what happens to the women Christian and Parsee communities whose law gives men a share in the inheritance along with men? When people are obsessed with a complex such as the fear of mixture of the two communities, namely of the Hindus and Muslims or have a selfish motive of not sharing their riches with their sisters and mothers, they put forward a plea without thinking whether it can stand scrutiny or not.

(vii) There is another pet point which is often made and which is pointless, namely of allowing the property to go into another family with the daughter and of thus allowing it to be split into small bits. This could be understood if the present practice under Hindu Law did not then bring about the same result when the property was divided between different male members—distant and near. When the property goes to a male issue through a sister or aunt no such objection is voiced even today. There is moreover the option for the male member of buying up immovable property from a female member. The excuse of keeping the estate in the same family is dimly in the face of it. In some Provinces where even brothers do not have a common surname, there is no chance of doing it whether the property continues in the same family; others also do not always continue to live as a joint family. The estate, therefore, in most cases in India here unlike in England, the eldest son alone does not inherit the property but all the sons have an equal share; it is cut into so many uneconomic small holdings. The argument therefore of either the estate going to a different family through a female successor or of its being divided into too many uneconomic holdings is not worth considering.

(viii) The orthodox section which takes shelter behind the authority of *Sashtras*, and likes to quote scriptures in support of its stand does not remember how the scriptures themselves say "The daughter is the same to the parents as a son as she too is born of every limb as a son (*Angad-angad, Sambhabhathi Putraive Duhita Naridam*). If the scriptures does look upon a son and a daughter as being equal to the parents what ground can there be to give a daughter such a step-motherly treatment so as to deprive her from having the same right as the son.

(ix) As far as resting the claims of a son on the basis of his ability to perform the *Shradha* ceremony etc., of the parents rests the orthodox section should be asked to invite a referendum and find out what percentage of people whom this legislation will affect, perform these ceremonies these days? If necessary, even a daughter can have this done through some priest. It should also be remembered that not every son is expected to perform the *Shradha* ceremony, but ordinarily only the eldest son. This argument therefore need not be pursued any further.

3. Two of the members on the Joint Select Committee Messrs. Nilkanth Das and Bajinath Bajoria have seen it fit to think that asking women and their organizations to express opinion on the question of succession is like asking a group of dacoits to decide what share they will have in the booty they are organizing to loot! To place one's own sisters, mothers and daughters only because they claim to be treated as equals by being given the right to share in the property as also in the love and respect of their brothers, sons and fathers on par with dacoits or looters, only shows the abyss of selfishness into which human beings can sink.

4. All the tall talk of respecting women as Goddesses and quoting scriptures by saying "Where women are worshipped, Gods take their abode" (*Yatra naryastu pujiyante ramante tatra devatah*) is in fact descending to the level of their popular scripture quoter!

5. Giving limited ownership to women also is unthinkable in the 20th Century where women by their ability and education have proved themselves in no way inferior to men. There are stupid women and ignorant women as there are stupid men and ignorant men. If such men can have full ownership, why should only women, when they are once granted a share in the property, should be denied a full right to its enjoyment as their brothers do. If they are to have the estate, they must take a full interest and should be trusted to make wise use of it.

6. "Stridhana" that is women's special property should not be made an excuse for depriving a woman of her share in her father's ancestral property along with other male members. It has been suggested for this reason that the woman should get half the share of her brother or in any case a share less than that of her brother because she would have a share in her mother's special property. If once a woman's right to share along with the male members of the family is recognised, women would be willing to forgo their special right to "Stridhan". Besides it is not in all Schools of the Hindu law that women get their privileged right to "Stridhan".

7. Complete recodification of Hindu Law certainly would be a welcome measure, but it would be best to push through this bit of legislation as a feeler and also as a most important section of legislation under which half the section of the society, namely women, for whom the law is being made is suffering a great hardship. Unless women get a right in the ancestral property along with male members as a matter of principle, they will never command the respect they deserve, never share the responsibility they should shoulder and never rise to their full stature in society. After all, in this world money to a large extent, means power and there is no reason why when we are fighting for equality in the world outside, we should allow this canker of inequality to eat up the vitals of our home life and social structure. We must keep pace with other progressive communities in this matter who grant a better treatment to their women.

8. The excuse that legislatures at present are not fully attended should not come in the way of going ahead with this legislation. The people who really matter are women themselves for they are the grieved party and women from all walks of life have made it clear in no unmistakable terms that they would like to see this legislation through if at least a part of the hardships, which women are suffering in practice under Hindu law is to be removed.

9. If the legislation is taken up by itself and practical difficulties are experienced there is neither harm nor disgrace in going up again to the legislatures to remedy those defects in the light of the experience gained. The legislatures are meant for this very purpose and should be made to do their work whenever occasion demands.

10. A uniform legal system is not only possible but absolutely desirable in this century for the whole of India. That will be a great link in forging national unity.

Secretary, Kanya Kujia Sabha, Bilaspur, and others

Hindu Law Code Part I (Intestate Succession) Bill having been circulated for eliciting public opinion, I beg to submit the following and request that it may be forwarded to the proper authorities for consideration.

The Bill is intended to be the basis of a chapter on inheritance of Hindu Code proposed to be framed. Hence I may first deal with the question of codification itself. A code always repeals all previous laws on the subject. We Hindus cannot tolerate the repeal of our laws based on Vedas and *Smritis* and substitute in their place laws framed by human beings swayed by different selfish motives and having a very limited foresight. Any such Code will remove from the laws the Divine sanction which makes them work automatically. Such a Code would divide Hindus of British India from those residing in States governed by Indian Rulers. At present they are all governed by the same law. The Hindus have so many communities differing from one another in customs, habits and general development that uniformity in laws governing their civil affairs will not be suitable to most of them.

It is clear injustice and very improper that because a few people want certain laws to be changed, the Govern-

ment should depart from the policy of non-interference in socio-religious matters and, without being requested by the vast majority to frame a Code for them, should overhaul the whole of their civil law, by which they are being peacefully governed from times immemorial.

As regards the Bill, it is evident that the creation of a big class of simultaneous heirs is bound to tear the property to pieces and lower the financial status of every Hindu family. It will give rise to quarrels amongst all members in Hindu families. By introducing outsiders as holders of shares in the family property, it will create difficulties in peaceful enjoyment of the same, particularly in view of the fact that the Bill proposes to legalize inter-marriages between persons of different castes and, apostasy not being a bar to inheritance, persons entitled to share may even belong to different religions.

The number of females who have received education and are capable of managing their property being very small, and the vast majority of females being still incapable of managing the property, giving them absolute rights of ownership and disposal of property would inevitably result in ruining them and their property.

The Hindu society in all Provinces, and particularly in the Provinces of Sindh, Bengal and North and Western Frontier, is constantly in danger of women being taken away by rascals and when with them there would be the additional gain of getting property, the danger would be further augmented.

Apostasy not being included in the causes barring inheritance, the property of Hindus would constantly be flowing to non-Hindus.

The impracticable condition that an effective decree obtained by a Hindu husband to disinherit his wife on the ground of adultery should alone debar her from claiming inheritance would remove a very wholesome check on leading an immoral life.

Giving the spouses and their progeny of inter-caste marriages the same rights that are enjoyed by the spouses of the same caste and the progeny from them, will gradually hybridize the Indian Nation and would ruin it completely.

For these reasons, among others, I pray that the Bill be not passed into Law; but should be rejected and no attempt should be made to codify Hindu Law.

Mr. R. D. Chaube, Pleader, Harda

I. The definition of agnate is defective. Daughters born in the family, who go out by marriage in the family of their husbands and acquire their gotra, should be declared agnates in the husband's Gotra.

II. In the table of succession, father's sister should be shown as heir after father's sister's son.

III. The Dasputra of the Shudras should not be deprived of his right of inheritance enjoyed by him since the time of Yajñawalkya.

IV. In case of inheritance of a divided son and of an undivided son the share of a divided son should be one half of that of an undivided son.

V. Similarly the share of an adopted son when an Auras son is born to the adoptive father after the adoption should be one half of that of the Auras (प्रास) son.

VI. Daughter-in-law should not have been excluded from succession.

VII. Fragmentation of the heritage and destruction of the joint family will be the result of the provision of simultaneous succession of sons, daughters and widows. The provision of making sons and daughters co-heirs is neither logical nor fair.

VIII. Section 7(d) re-inheritance of intestate's daughters should be dropped.

IX. Cogenital lunatics and idiots should inherit one half of the heritage which they would have inherited if free from defects.

X. Joint sons, who inherited as joint tenants with right of survivorship would also henceforth inherit in the same way.

XI. Uterine brothers and sisters (children of the same mother by different fathers) should not be given a right of inheritance. They are not heirs according to Hindu Law. Similarly apostates should be debarred from inheritance.

XII. Section 8 Illustration 4 should read as follows. A woman shall not be entitled to inherit as an agnate of his father and his agnates, and shall by reason of her marriage be entitled to inherit as an agnate of her husband or his agnates (viz., as a widow or mother etc.).

XIII. Limited estate of a widow should not be abolished. Section 12 should read as follows:—“A woman shall have the same rights to enjoy her stridhan property during her life as a prudent manager has. She may transfer the same for legal necessity, but not otherwise. She can gift away her stridhan to a person who would be heir of her husband if she were to die at that moment. Provided that she cannot transfer her stridhan for any improper or immoral purpose.

XIV. The provision for allowing an unchaste widow to succeed to the property of her husband though she admits her unchastity is strange indeed. It is quite unfair and against common sense.

XV. A woman who was divorced by the Baroda Court in accordance with the law prevailing in that State should not be treated as the wife of her husband in British India unless it were shown that the judgment of the Baroda Court being a foreign judgment was void on any of the grounds mentioned in section 13 of the Code of Civil Procedure (Act No. 5 of 1908).

XVI. Section 7(d) should read as follows:—“(d) Each of the intestate's daughters shall take half a share of moveables only whether she is unmarried, or married or a widow, rich or poor or with or without issue of possibility of issue. But she will have no right of heritage in immoveable property except when she is the sole heiress of her father.

Mr. Rai Sharada Prasad, Pleader, Balaghat

I have very carefully studied the provision of the aforementioned bill and I am in general agreement with the sponsors thereof save on the following points:—

(a) Apostasy should be a disqualification to succeed. The reason is obvious. A Hindu intestate would not like his property to go to a non-Hindu.

(b) Daughters should not be simultaneous heirs. After marriage they go over to an absolutely different family and would be entitled to a share in that family property.

No. 14 DELHI

Chief Commissioner, Delhi

In continuation of my letter, dated the 12th June 1944, I have the honour to forward a copy of letter from the Secretary, South India Club (Regd.), New Delhi, containing the views expressed by his association on the Hindu Code, Part I (Intestate Succession) Bill.

The South India Club (Regd.), Delhi-Simla

I send herewith in brief the opinion of my Committee on the Hindu Code Part I (Intestate Succession) Bill.

Opinion

The Bill deals with succession by inheritance of the heritable property defined in clause 2(d) of the bill and does not affect the rules of succession by survivorship of joint family properties.

While it is recognised that the son of the intestate does not usually treat the widow or the parents of the intestate properly having regard to the style of living which they enjoyed in the life time of the intestate, it appears that the recognition of the principles of cumulative succession outlined in clause 5(f) of the bill is likely to lead to family feuds and disruption of the properties. The principle of cumulative succession is closely analogous to the principle of succession obtained under the Mahomedan law.

If it is considered that the widow and daughter of the intestate should be given an absolute estate, there is no reason why the parents alone should be given a life estate or a limited interest in the 1/8th share allotted to them. It is considered that the parents of the intestate would after the death of their only son like to go to all places of pilgrimage and the limited estate given to them would hardly be sufficient to cover the expenditure for such pilgrimage.

Under the bill the son's daughter is postponed to the daughter's son. It is true that a daughter's son can perform sarth to the intestate while a son's daughter would be incapable of performing such rites. But the principle of succession on the basis of capacity to offer oblations or pinda to the deceased is cut at the root by placing the daughter and the son on the same footing in the line of succession. It is considered that the deceased would have preferred the son's daughter who had lived with him to a daughter's son.

Protests against the Bill

The following protest has been signed by "fifty four (54) residents of Delhi.

We the undersigned pray to the Central Government that they should not interfere in any manner in our religions and social life. The Hindu Law Committee which has been constituted for codifying Hindu Law be abolished and the Hindu Code Part I (Intestate Succession) and the Hindu Code Part II (Marriage) be withdrawn.

No. 15, ORISSA

Government of Orissa

I am directed to enclose the opinions of the Advocate General of Orissa and of the Hon'ble Judges of the Patna High Court on the provisions of the above bill, and to say that in the opinion of this Government the points raised therein merit very careful consideration. This Government has taken steps to elicit public opinion in the Province with the result that no public support whatever has been given to the bill. A large number of representations have been received objecting to it, either on the ground that Hindu Law is altogether sacrosanct or that the present legislature is incompetent to amend it. Although this Government cannot support extravagant views of the nature mentioned, they are of opinion from the analysis of the opinions received that this bill should not be brought into force until other bills amending the Hindu Law generally had been fully prepared. They apprehend that if the Hindu law is to be amended in this piecemeal fashion, it will be inevitable that the amendment of other portions of Hindu law will make it necessary further to amend the law of Intestate succession, and that there will be, so to speak, a geometrical progression of amendments. They would prefer that this bill should not become operative until the Hindu Law generally is codified.

With regard to clause 5, it is the opinion of this Government that a married daughter should not be an heir to her father. It would appear that this provision is altogether too favourable to a married daughter both because she may in certain circumstances under this very bill be an heir to her father-in-law, and because it is the general custom, at any rate, in this Province for a daughter to receive a substantial share of the paternal property in the form of dowry. The practical effect of this provision would, therefore, be to give a married daughter a double share of the family property. This Government would prefer to see a married daughter altogether eliminated from the list of heirs.

Lastly, it appears that there is considerable apprehension that if women succeed to property as is contemplated by the bill there will be an undue fragmentation. It is, of course, true that a bill passed by the Central Legislature cannot affect agricultural property, but it can affect urban property and in the end it might be difficult for Provincial legislatures to adopt a different policy in this respect. A number of persons, whose opinions were invited, were of opinion that in any case where a female heir succeeded and where she wished to sell her share the option of purchase should be given to the next male heir. This Government agrees that this would be a reasonable amendment to the bill.

The bill was published in part VI of the Orissa Gazette dated the 11th February 1944 in English.

Minutes recorded by the Hon'ble Judges of the Patna High Court,

Already printed under Bihar Opinions.

Advocate General of Orissa,

I have the honour to furnish my opinion as follows:—

Clause 1(3).—"It shall come into force on the 1st day of January, 1946". In my view, this fixing up of the day for

coming into operation of the Code is premature, as, the members of the Joint Committee admit and appreciate the difficulty of dealing with one particular topic of Hindu Law, without having before them a complete picture of all the proposed reforms; and further that the law of maintenance, law of legitimacy and marriage, and law of partition and re-union, and law of adoption are not without their reactions on the law of intestate succession, and might be capable of influencing decisions on some of the points they have had to consider in this Bill. It would be proper to bring the entire proposed Hindu Code, into force, at once and the same time after the Code, as a whole is published and re-published for eliciting public opinion, and they are considered as a whole.

Clause 2(1) (d).—The Joint Committee say, that they have added the words "whether he dies leaving male issue or not", in order to make the clause clearly applicable to the case of intestate governed by Mitakshara school of Hindu Law. They say, the text of Yajnavalkya which is the basis of law of inheritance in Mitakshara's jurisdiction, states that inheritance is confined to the estate of one who leaves no male issue: when a man dies leaving a son, grandson or great-grandson, the heritage is unobstructed and they can take in all cases by survivorship whether the property is ancestral or the separate property of the father. I do not think that by the addition of these words, the apprehended difficulty is really removed. On the contrary, in my view, it leaves the question where it was. In sub-clause (d) 'heritable property' is defined to be property which passes by inheritance as distinguished from survivorship. Therefore, in order to find out whether the property is heritable, one should hopelessly look to the sub-clause for a solution if with regard to any and what properties rule of inheritance and not the rule of survivorship applies. The sub-clause does not purport to define that rule. This has to be found in general Hindu Law and if in such law, based as it is on the text of Yajnavalkya, even father's separate property passes by survivorship, to the son, grandson or great-grandson, one cannot, on account of the addition of these words contend successfully that the text of Yajnavalkya is hereby abrogated. By this addition the sub-clause (d) will apply also to cases where the intestate dies leaving him surviving son, grandson or great-grandson, as the case may be. Now, if in such a case, Yajnavalkya says that the property passes by survivorship and not by inheritance, then the self-acquired or separate property of a Hindu governed by Mitakshara school of Hindu Law leaving son, grandson or great-grandson, will not be called heritable property, notwithstanding the addition of these words. In my view, if the authors mean and intend to abrogate or nullify the text of Yajnavalkya referred to in their note on this sub-clause, the sub-clause should be differently worded. In my opinion, the effect can be better achieved if you omit the words "and passes by inheritance as distinguished from survivorship" from the sub-clause as previously drafted. Property which belongs to an intestate in his or her own right is sufficiently descriptive of self-acquired or separate property of any property over which the intestate has unlimited power of disposal untrammelled by any consideration of Hindu Law as it now prevails. It is only further addition of the words "passes by inheritance as distinguished from survivorship" which creates difficulty and requires further clarification.

With regard to the change in the Illustration I would suggest the words both "self-acquired" and "separate" should exist side by side. In General Hindu Law, the words "separate property" have a somewhat different connotation from the words "self-acquired property". It is wrong to think that separate property will include self-acquired property as well. Separate property generally means that which a man has got by partition from his other coparceners or that ancestral property in which there is no coparcener with vested interest sharing with him and in respect of which he is the last surviving coparcener. But, in my view, however, the whole point in the Illustration consists in making it clear that the property in which there is no vested right of anybody else, either male or female, should be called the man's property in his or her own right and should be called heritable property. May

I therefore suggest that should it not be better to say in the illustration "so too is the separate or self-acquired property of a Hindu governed by Mitakshara school of Hindu Law in which no other male or female has got any vested right".

Clause 2(h).—In defining "stridhana" in the place of "property acquired in lieu of maintenance", the Joint Committee want to put "property acquired by way of absolute gift in lieu of maintenance or arrears of maintenance". In my view, instead of saying "by way of absolute gift" it should be more in keeping with logic to say, "by way of absolute estate"; because when one is entitled to maintenance, and in adjustment of the said right as also, in satisfaction of the arrears of maintenance, already accrued due, something is given, it cannot be said to be a gift, it being a transfer for value. What the authors of the amendment do really mean is that when any property is granted for life or for any other limited period in lieu of maintenance, etc., it cannot be called "stridhana". To achieve this end, the proper amendment should be to add the words "by way of absolute estate".

Clause 5.—While approving, in general, the innovations introduced into this clause, I would make some suggestions to make the provision more equitable and more in keeping with the existing rights of the male descendants of the intestate. There is a great controversy about giving the daughter a share along with a son or grandson or great-grandson. No doubt, it has to be taken into consideration that a female when married gets a status in her husband's family carrying with it right to inherit and right to be maintained, while male issue has only one and one status. In view of all these considerations, I would suggest that as in case of parents a condition has been attached by the words "if dependent on the intestate" a similar condition may be added to daughter and also to the widows of a pre-deceased son and to the words "if dependent" in case of these relations including parents the words "either partly or wholly" be added. So much for the parents, daughters and the widows of sons or grandsons or great-grandsons as simultaneous heirs. Next after that, daughter may be placed before daughter's son, that is to say, daughter is to take as a simultaneous heir only if she is a dependent. Similar is the case with son's widow, grandson's widow and great-grandson's widow but all the same, in the absence of simultaneous heirs the daughter should be given preference over a daughter's son, as at present, and should get a share independently of any condition as aforesaid. Therefore, Class I, item (2) will be 'daughter', item (3) 'daughter's son', item (4) 'son's daughter and item (5) 'daughter's daughter'. In case of grandsons' and great-grandsons' widows, there ought to be no difficulty or impracticability in working out what share they should get. If the Code rules that any such widow, when she stands alone, or such widow with her son or grandson or great-grandson, if any, should respectively, represent the widow's husband and should get the share her husband would inherit if alive, and the proportion as between the widow and her son or grandson would be the same as it is in case of deceased son's widow and her son or grandson if alive. So, in my view, the same justification exists in the case of widows of pre-deceased grandson or great-grandson as in the case of pre-deceased son's widow, to be included in the class of simultaneous heirs.

I have another suggestion to make with regard to Class I—simultaneous heirs—namely, that a divided son should be a simultaneous heir in the absence of an undivided son which latter ought to exclude the former. Therefore, in such a case where both undivided and divided sons are alive, undivided son alone will be one of the simultaneous heirs and the divided son should come after simultaneous heirs and before daughter and this will be item (1) (a).

With regard to Class II, clause 5, the amendment suggested seems to be equitable.

Clause 7.—In sub-clause (d) the words "whether she is unmarried, married or a widow; rich or poor; and with or without issue or possibility of issue" are redundant and should be deleted. The words used in clause 7 will have the same meaning as the words used in clause 5. If in clause 5 the word "daughter" should mean a daughter, irrespective of her being married, unmarried, or a widow;

rich or poor; and with or without issue or possibility of issue, the word must carry the same meaning in clause 7. I, therefore, recommend that they being redundant should be omitted. In sub-clause (e) I think the parent's position should not be worse than that of a deceased son's widow and his or her share should be half a share and not 1/8th.

Clause 8.—With regard to newly added sub-clause (4) of clause 8, I want to say only this much that a woman should be entitled to inherit as an agnate of her father and his agnates except when he is one of the simultaneous heirs in Class I; because as a simultaneous heir her interest is half of a share of a son but while an agnate she will be entitled to an equal share with any other agnate who may be a son too. In order, therefore, to avoid confusion, this should be made clear by some suitable words.

Clause 13.—As regards clause 13 I have my objection to the provision contained in Explanation to sub-clause (a) of the clause, that is, for the purposes of this clause, property devolving on another widow of the husband, under entry (9) in sub-clause (b), shall be deemed property inherited by such widow from her husband. In my view, to place the case of devolution under sub-clause (a) of the clause and the one under entry (9) in sub-clause (b). In Pare Materia is absolutely devoid of logic. I quite understand, that when a woman inherits property from her husband and dies intestate and under the rules contained in sub-clause (a) of the clause, that property or a portion thereof devolves upon her co-widow as being one of the relations who could inherit from her husband, the inheritance so secured is to be deemed as an inheritance from her husband because the co-widow does not inherit from her co-widow but inherits from her husband to whom notionally it goes back after the co-widow's death, and then descends to the husband's heirs amongst whom is included the said co-widow. But where any widow of any husband inherits 'stridhan' property of another female on account of the said widow being the mother of the deceased intestate female, I cannot understand by what reason of logic that property, on the latter's death will devolve on her husband's heir as if she inherited the same from her own husband. On the contrary, such property ought to go to the stridhan heirs under sub-clause (b) of the mother herself and should not be governed by sub-clause (a). Sub-clause (b) of clause 13, as redrafted by the Joint Committee, does depart from sense of natural justice inherent in the provisions of Hindu Law now regulating succession of that kind of stridhan property. It being stridhan property, Hindu Law lays down that the female descendants would be given preference over the male descendants, and there is absolutely no reason for changing that order, particularly when, one of the main objects of the present codification is to give higher and better rights and better status to the females. In my view, therefore, sub-clause (b) of the original Bill should stand as before.

Clause 14.—As the changes introduced in this clause are consequential upon changes in sub-clause (b) of clause 13 and as, in my view, the said changes are not warranted by justice and equity, there should be no change in clause 14 of the original Bill.

Clause 17.—I do not share the difficulties that presented to the members of the Joint Committee, with regard to this clause. They have left it unaltered but have thrown doubts about it. In my view, there is no difficulty because the clause applies to the case of 'valid marriages'. Therefore as marriage of a Hindu outside his community is not a valid marriage for the purpose of Hindu Law and as the descendants or the surviving spouse of such a marriage may not be Hindus to whom alone the present Bill is applicable there need be no practical difficulty in its application.

Clause 20.—With regard to this clause, I agree with the minute of dissent at page 27 recorded by Messrs. H. N. Kunzurn, P. N. Sapru, S. N. Maitra and also with that of Pandit Nilakantha Das and Mr. Baijnath Bajoria at page 26 bottom, of Mr. Susil Kumar Roy Chowdhury at page 21 and Mr. V. V. Kalikar at page 20. Mr. Amarendra Nath Chattopadhyaya at page 17 also has expressed his doubt with regard to clause 20. Mr. Lalchand Navalrai at page 15 has said that apostasy should be made

a ground for disqualification to inheritance, and the Caste Disabilities Removal Act, 1850, should be repealed by this Bill. He says, apostasy in Mahomedan Shariat Law is also a disqualification and that community should have no objection in joining hands to repeal the aforesaid Act by providing its repeal in the schedule attached to the Bill repealing other enactments. Mr. Govind V. Deshmukh is also of opinion that Hindu opinion is strongly against an apostate inheriting property. Mr. Sobha Singh at page 14 has given his minute of dissent to the same effect. Mr. R. P. Mukherjee in para. 7 of his note at page 18 makes it clear that religious basis of law should not be abolished.

"In my view, this very influential section of opinion to the effect that apostasy should be ground of disqualification and the Caste Disabilities Removal Act, 1850, should be repealed is rather sound. I should agree with them. Therefore, section 20 should be re-drafted.

With regard to the general features of the Bill, I am of opinion, that the authors of the Bill have not taken the economical side of the Hindu agriculturist family into consideration. It cannot be gainsaid, that giving absolute estate to women so as to make them the source from where inheritance should be traced, would cause disintegration in Hindu families. Women who are very often victims of undue influence or coercion, and some such thing or other at the hands of designing persons, should be given limited estate, without at the same time reducing their estate to the status of mere life estate. They should be given full power of disposal in case of proved necessity, a special onus being laid upon those who deal with them to establish existence of such necessities by strong, cogent and unimpeachable evidence. Furthermore, now this particular Bill if made into law will affect the community socially, economically and from religious standpoint, cannot be properly judged before the other branches of the Hindu Law are incorporated in Bills and all these Bills are considered together so as to determine how one branch reacts upon the other and what is the net result of these actions and reactions.

With regard to intestate succession another thing will be made clear, namely, that it should be expressly said whether this Bill, if made into law, will operate in those cases where the male intestate died before the commencement of the Act but some limited estates coming into existence, under the present Hindu Law, and the said limited owner dying, the succession opens after the commencement of the Act and the heirs are to be determined as if the intestate died at that moment.

I take this opportunity of pointing out one mistake of mine that has crept into my previous note on the original Bill contained in this office letter No. 455(48/42), dated the 15th September, 1942, paragraph 6 where, in the place of "daughter" the word "son" has been used in lines 7 and 8 of the paragraph.

No. 16 BENGAL

Government of Bengal

I am to forward herewith copies of the opinions of the High Court, Calcutta, The Bengal and Assam Lawyers' Association, the Bar Association, Small Cause Court, Calcutta, the Bar Library, Midnapore, the District Bar Association, 24-Parganas, the High Court Bar Association, the British Indian Association, the Bangiya Brahman Sabha and the Senior Government Pleader, Calcutta. A large mass of petitions and resolutions passed at public meetings protesting against the Bill has also been received by this Government. From all these it appears to Government that the overwhelming proportion of Hindu opinion in Bengal is opposed to the Bill on principle.

2. The Bill as reported by the Joint Committee was published in English in the Calcutta Gazette of the 27th January, 1944 but was not translated into any language.

Registrar of the High Court of Judicature, Calcutta

I am to say that, as Their Lordships said on the last occasion, the Bill involves questions of policy, and the Court will not be justified in expressing any opinion on its

provisions. Their Lordships would only point out that the Bill involves far-reaching and revolutionary changes in the law of intestate succession; as for instance, where it proposes to admit a married daughter to a share with the sons in the inheritance, and it will be for the legislature to consider whether any piecemeal legislation which threatens to affect the whole structure of the Hindu Community should be undertaken.

Bar Library, Alipore

I beg to forward herewith the written expression of opinion of this Association as set forth in a resolution adopted at the 8th Session of the Bengal & Assam Lawyers' Conference held at Calcutta on 8th April, 1944 under the Presidency of Dr. Nares Chandra Sen Gupta, Advocate.

The resolution speaks for itself.

Resolution No. 7 of the Bengal and Assam Lawyers' Conference held on the 8th April, 1944.

That this Conference is definitely of opinion that the Hindu Intestate Succession Bill as amended by the Joint Committee and circulated for eliciting public opinion ought not to be proceeded with and should be dropped on the following amongst other reasons.—

(1) that it has failed to achieve the end, viz, the introduction of an uniform body of Laws for all Hindus and has introduced greater diversity than that exists at present;

(2) that the provisions of this part of the Hindu Code cannot be considered separately from and independently of provisions relating to cognate and interconnected subjects e.g. maintenance, management of partial debastar or worship of family deities, adoption, marriage, joint family partition;

(3) that neither the Hindu Law Committee nor the joint Select Committee have considered the economic and sociological effect upon the Hindu Society of the provisions of the Bill. This conference points out that this Bill affects particularly the social and economic life of Hindus of Bengal.

(4) that the Bill runs contrary to accepted Hindu notions and Shastric injunctions on material points.

(5) That the present time is inopportune for a legislative measure of a controversial nature with far-reaching consequences on the structure of the Hindu Society, and the public cannot in the present condition give that attention to the provisions and their implications that the subject demands.

(6) that piecemeal legislation is neither possible nor desirable.

That the Hindu marriage Bill should also be dropped for similar reasons.

Bar Association, Small Cause Court, Calcutta

With reference to the above two bills which have been circulated for eliciting public opinion I am authorised by my Association to forward its opinion to the effect that both the bills should not be proceeded with in view of the fact that they are bound to introduce greater complications and diversities than that exist now, that they will seriously affect the economic and social structure of the Bengal Hindus, that their provisions are against the accepted Hindu notions of shastric injunctions on material points, that these matters cannot be properly considered apart from the existing provisions relating to allied subjects, such as maintenance, management of properties of family deities, adoption, partition etc. etc. and that the public cannot in the present condition of affairs give due attention to their provisions and their full implications.

Bar Library, Midnapore

I am forwarding herewith the resolution passed unanimously by the members of my Association at a meeting held on 19th April 1944 regarding Hindu Intestate Succession Bill as reported by the Joint Committee and circulated for eliciting public opinion and also unanimous opinion on Hindu marriage Bill.

Resolution.

Resolved unanimously that this Association is definitely of opinion that the Hindu Intestate Succession Bill as

amended by the Joint Committee and circulated for eliciting public opinion, ought not to be proceeded with and should be dropped.

Further it is resolved that the Hindu Marriage Bill should also be dropped.

District Bar Association, Alipore

I have the honour to forward herewith a true copy of the Resolution passed unanimously in a General Meeting of this Association held on 19th April 1944 embodying this Association's opinion on the Hindu Intestate Succession Bill and Hindu Marriage Bill.

Resolution

This Association is of opinion that the Hindu Intestate Succession Bill and Hindu Marriage Bill strike at the very foundation of the Hindu Society and social structure and should not be proceeded with.

That the provisions of these Bills are interconnected with other subjects e.g. maintenance, management of the worship of family deities adoption etc. and these provisions cannot be separately considered apart from those other subjects.

That Bengal has just come out of a famine and is even now preoccupied with questions of food, rehabilitation, rations etc. and can hardly be expected to consider a Bill of such a revolutionary nature which vitally affects her more than any of her province at the present juncture.

That in the opinion of this Association the legislature elected about 9 years ago which is out of touch with the present day public opinion cannot be expected to voice truly Hindu public opinion in the matter.

Bar Association, High Court, Calcutta.

I beg to state that my Association has adopted the resolution (copy enclosed herewith) requesting the Government to drop the proposed bill for the reasons stated in the resolution itself.

Resolution passed at a General meeting of the Bar Association, High Court, Calcutta held on 28th April 1944 at 1 P.M.

Resolved that in the opinion of the Bar Association, High Court, Calcutta, the proposed Hindu Intestate Succession Bill as amended by the Joint Committee is an inopportune, ill-advised, uncalled for measure, harmful and highly detrimental to the religious, social and economic interest of the Hindu Community and is diametrically opposed to the wishes, custom and sentiments of those on whom it is sought to be imposed and this Association strongly urges on the Government to drop the said bill.

(b) That the reasons in support of the above resolution appended herewith be forwarded to Government.

Reasons in support of the resolution of the Bar Association, High Court, Calcutta.

Piece-meal legislation especially affecting the social laws has been condemned by all authorities and its difficulties had been pointed out by the Hindu Law Committee at some length. In framing the Bill under report such drawbacks have not been avoided. It is absolutely impossible to consider in a water-tight compartment the law applicable for intestate succession only without a due and proper consideration of other cognate and inter-connected subjects. The entire private law, no doubt, has an organising content; but the law of Inheritance perhaps has the largest organising significance. This branch of the law everywhere presents a great organising basic problem which no community can afford to ignore. As a matter of fact, the Joint Committee admitted: "If may well be found that the present bill will require before it is allowed to come into operation readjustment and amendment in the light of decision taken in connection with other branches of the Hindu Law." This procedure is wholly unsatisfactory. The Hindu Law Committee recommended that "if fundamental changes have to be made it is wisest to survey the whole field and enact a code if not of the

whole of Hindu Law, at least of those branches of it which are necessarily affected. Even delayed reform is better than piecemeal legislation which has to be amended and recast every few years.....The need is for a comprehensive co-ordinated solution rather than for quick remedies." The remedy now proposed by initiating piecemeal legislation, as in the draft Bill, will in effect be worse than the disease which the Bill purports to remedy. This Committee is unanimously of opinion that the Bill as drafted cannot be considered far less be passed into law without taking into consideration other cognate branches of Hindu Law.

One of the principal reasons for introducing the Bill is stated to be the promulgation of one uniform law for all Hindus throughout the country. The Bill as circulated, however, instead of introducing uniformity makes the law more diversified than at present. Agricultural lands are excluded in view of the decision of the Federal Court. It is expected by the framers of the Bill that similar legislation will be undertaken in all the different provinces to govern succession to agricultural lands. It is, however, more probable that such legislation in the Provinces will not be uniform in all the details and in that state of things a larger number of different sets of laws, than the number of sub-schools now in force, will be introduced in the country. An individual will under the circumstances be governed by different systems of laws in respect of different kinds of property held by him. Questions are more often bound to arise as to whether a particular property attracts the Central or the Provincial Law or the Original provisions of Hindu Law and specially in Mitakshara families whether a self-acquired property had been thrown into the common stock and made a part of the ancestral estate. Legislation such as these will be responsible for disputes and litigation on such a scale which every one interested in the welfare of the society should attempt to avoid.

The framers of the bill have not further given due consideration to the social and economic implications of the various provisions in the Bill. Social and family laws must as a rule be evolved from within and not imposed from without. The existence of divergent social and economic conditions of the country which had grown up during many centuries in the past cannot and ought not to be ignored. Law exists for the society and not the society for the law. Legislation ought not to be undertaken without proper and careful consideration of social and economic effect of the provisions. If these aspects be properly considered it cannot but be held that most of the innovations and modifications proposed are harmful and highly detrimental to the religious, social and economic interest of the Hindu Society and are opposed to the wishes, customs and sentiments of those on whom they are sought to be imposed.

The Bill is being considered at a time which is wholly inopportune not only on account of the war emergency but also for the present conditions in the country.

For reasons detailed above consideration of the Bill should be postponed if it is not dropped *sine die*.

It is generally thought that the Bill has been introduced for the improvement of the position of women but that is not wholly correct. Various other changes which are fundamental have been proposed which also will modify the entire social structure.

The Joint Select Committee has recorded the opinion of certain women's Associations with an enumeration thereof but no adequate reference is made to the large volume of opinions expressed by the public in general and of men's associations. The public has not for unexplained reasons been allowed to know the opinions collected by the Hindu Law Committee when the proposals were circulated even amongst selected persons. The Women's Associations referred to by the Joint Committee are almost all of them drawn from a particular section who from a small minority of the women population and it cannot be suggested that such women associations represent the real view of the women of the whole country.

If it is said that men and women ought to be placed on equal status, but as a matter of fact it does not do so.

On an examination of the different provisions of the Bill it is patent that equal status has not been given to men

and women as will be evidenced from the following analogous cases—

(a) In respect of property of males the widow is mentioned as one of the simultaneous heirs in Class 1 but in respect of Surinman property the husband occupies a position after 8 other relations.

(b) Similarly the daughter is given a share as a simultaneous heir of the father under Clause 1 but on the death of the daughter the father occupies a position after 8 other relations.

(c) The son inherits the mother's property but on the death of the son the mother inherits the sons' property only if she be dependent on him.

(d) On the basis of the allotments made in the Bill women shall be the owners of a larger share than men even if each of the persons has an equal number of sons and daughters. In three generations near about 2/3rd of the estate will devolve in the daughters' line as against 1/3rd in the original male line.

(e) Estates of persons governed by the Matriarchal rules of inheritance are excluded from the operation of this Bill.

(f) Impartable estates are also excluded.

It appears that the provisions already contained in the original Hindu Law about the rights of unmarried daughters have not been taken into consideration. If the position of the unmarried daughters is declared on the basis of original texts there can be no objection and the difficulties which may have arisen in other parts of India may be sufficiently met. In some instances rights of maintenance or marriage expenses of women should be made a statutory charge on the inheritance and in some instances women have absolute right on inherited property.

The Bill, however, seems to be more favourable to young than old women. The right of the daughter, daughter-in-law or grand daughter-in-law is subject to no restriction but the mother must be dependent on the son to qualify herself to inherit his property. No such consideration is made for the still older woman—the grand-mother.

We should, at this stage, make it clear that on the materials so far available it has not been made out that the codification of the whole of Hindu Law introducing one set of law for all persons throughout India is either possible or desirable. On this point also the Hindu Law Committee had definitely indicated that codification did not necessarily mean abolition of the schools and the aim should be uniformity where possible and divergent where inevitable. The Bill as circulated gives a go-bye to the principle enunciated above and attempts to introduce some portion taken from the Mitakshara, another from the Dayabhaga, super-added with new principles not to be found in any of the existing schools of Hindu Law. It cannot be overlooked that so far as the two principal schools are concerned, there are certain fundamental points of difference not idiosyncratic but most of them have not only a historical, economic and sociological background but if departed from, will be responsible for a social and in certain respects economic transformation—all not for good of the society.

"Many of the rules of Hindu Law are fairly well settled" is the view of the Hindu Law Committee and we may observe that it is as well settled as any other codified law. It is well-known that codes like all express enactments require interpretations and the cycle recommences. On these amongst other general and fundamental grounds we are strongly of opinion that the bill as circulated should be withdrawn pending a fuller and comprehensive consideration of the points mentioned above.

British Indian Association, Calcutta

I have the honour to state that my Association has closely gone through the Hindu Intestate Succession Bill as amended by the Joint Select Committee of the Central Legislature, but it regrets to find that the Bill involves unjustifiable and uncalled for interference with the socio-religious institutions of the Hindu community. The Association has all along held that legislative interference in socio-religious matters touching on the fundamental framework of the ancient Hindu Society is unwise, unless there is a genuine demand for a change from the majority

of the people proposed to be affected thereby. The Association submitted its representation against the Hindu Intestate Succession Bill before it was referred to the Joint Select Committee of the Central Legislature.

My Association is definitely opposed to the principle of legislative interference with socio-religious institutions; it is equally opposed to the basic aims of the Hindu Intestate Succession Bill. The Association was however in agreement with the Rau Committee when they pleaded for codification of Hindu law so that unnecessary litigation may be avoided and conflicting decisions harmonised. It was indeed a worthy attempt, but the Association cannot lend countenance to the subversive overhauling of Hindu law in the name of codification. Moreover, the Association finds that the Hindu Intestate Succession Bill, taken by itself, can never be an attempt at codification unless the analogous parts of Hindu Law viz., marriage, endowment, adoption and maintenance, are seen and examined in detail. It is difficult to judge the law of succession without reference to all ancillary questions, and as such the Bill has all the demerits of piecemeal legislation. From the papers published with the report of the Joint Select Committee on the Hindu Intestate Succession Bill the Association gathers that nearly all women's organisations have supported the main principles of the Bill. It is well known that these organisations are spread over important towns only and they consist of a few English educated women without living and sympathetic touch with the majority of the womenfolk of the country. Their support is merely indicative of instinctive anxiety for the acquisition of property, and the Joint Select Committee have shown bias and lack of understanding of the given condition of the country. Any change in the law of succession which is bound up with religious practices should not be introduced as a result of demand from women's organisations. My Association finds that the persons who will be affected by the Bill have been passed over in preference to vocal women's organisations. It regrets that opposition from the property owning community has not been recorded in sufficient strength. It is stated that the Bill seeks to give legal effect to the following three principles:—

(a) Provision for a common law of intestate succession for all Hindus in British India.

(b) Removal of sex-disqualification by which Hindu women in general have been precluded from inheriting property.

(c) Abolition of Hindu Women's limited estate. First, the Association finds that the Bill is not abolishing the various systems of succession obtaining under different schools of Hindu law. It is true that the Bill generally accepts the Dayabhaga law of inheritance for near succession and the Mitakshara for distant succession, but it does not affect the ancestral properties under the Mitakshara school as they pass by survivorship and not by inheritance. The Central Legislature has full competence in bringing co-parcenary properties governed by the Mitakshara law within the scope of the Bill, but it is satisfied with the inclusion of separate property under the Mitakshara school of law. Accordingly the Bill does not give a common law of Succession to the whole of British India. Moreover, the Bill sponsored in the Central Legislature can only affect non-agricultural properties, and there is no knowing that all the provinces will pass complementary legislation to make the principles of this Bill applicable to agricultural land. In the absence of uniformity, a confusing state of affairs will set in—one principle of succession for agricultural properties and the other for non-agricultural properties.

Secondly, it is to be taken note of that under Hindu Law, the son is under a legal obligation to maintain, amongst others, his aged parents while a daughter is not and that the son offers pinda and performs the shraddha ceremony of his parents and that women changes gotra and family after marriage and loses interest in the family of her parents. When all this is recognised, it is difficult to provide for the removal of sex-disqualification in respect of succession to property, especially as the son is burdened with relative duties and responsibilities. The daughter is thus proposed to be given a share in paternal property for use and enjoyment without corresponding obligations to

the family of her parents. This is not dictated by consideration of equity when marriage is the desired and accepted culmination of a woman's life. The removal of sex-disqualification may be asked for if women were to remain as members of the paternal family. The position in England is otherwise where women remain unmarried up to comparatively older age—98 p.c. at 20, 75 p.c. at 25, 43 p.c. at 30 and 27 p.c. at 35 are unmarried.

Thirdly, the Association finds that the Rau Committee failed to distinguish between women holding property and women inheriting property. As woman has no liability to discharge and no responsibility to perform, Hindu law provided for women's limited estate as the basic principle was that those who could offer spiritual benefit to the deceased were entitled to inheritance. The theory of women's limited estate involved no degradation to Hindu women. But the Bill approaches the question from a different angle and seeks to empower women to inherit absolutely. It takes little recognition of the fundamentals of Hindu society and helps the pulverisation of property on the omnibus principles of equity and justice. The Association contends that equity and justice have different contents in the sphere of sociology and that any violent departure which is not conducive is not to be encouraged by legislation or otherwise.

In addition to the foregoing general observations the Association begs to submit the following suggestions:—

1. Apostasy (that is, change of religion) should be a disqualification for inheritance in the absence of an express will to the contrary. It may be done by providing for the repeal of the Caste Disabilities Removal Act, 1850 or by the insertion of a suitable provision in the Bill. But conversion to sects or creeds of Hindu origin should not be regarded as a disqualification.

2. Succession to the right of the Shebait should be governed by the existing law. Law relating to Debutter estate is to be settled before laying down rules of inheritance. The Association is of the opinion that Sheba-puja of family deity will suffer if daughter who changes gotra and family after marriage be taken in as a simultaneous heir or if persons changing religion are allowed to continue their claim on Debutter property.

3. The law of inheritance should not be finally settled without deciding on the question of legitimate kinship, that is, questions of Anulom, Pratilom, Sagotra marriages. The Association strongly feels that there should be limitations on succession in the event of Sagotra marriages.

4. Daughter instead of having a claim on her paternal property as a simultaneous heir should be preferably compensated for by payment of cash towards her maintenance, residence and other claims representing one-sixth of the son's share. The share of the widow of the predeceased son should be one-fourth of a son's share provided she remains chaste.

5. The Association finds that "Stridhan" under the Bill means all property acquired by inheritance or otherwise. It is strongly of the opinion that "Stridhan" should not include property inherited from males.

6. A woman should have a limited interest over properties inherited by her.

Bangiya Brahman Sabha, Calcutta

The initial objection to such a Bill 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 affair. It is directly concerned with Pinda. "Dadyat Pindam Haret Dhanam". Manu IX-136. Yajnavalkya also says—"Pindodamsahasraisham"—II-135. One who confers spiritual benefit on the departed soul is entitled to inherit the property of the latter. This spiritual side of the question has been entirely ignored by the Committee. It should always be borne in mind that succession of properties of a Hindu is a religious affair. 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, p. 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, 1933), 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 principal 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.

It is not that the reformers in India do not realise that by their training, habits and conduct they are specially unfit to interfere with religious matters, but the fact is that they feel special pleasure in polluting the sacred laws and wounding the feelings of the innocent and Shastra-abiding Hindus. It is a pity that they are often supported now-a-days by Government votes in this respect.

We refrain from making any personal reference to the esteemed gentleman who formed the Committee to sit in judgment on the vast Hindu community and on whose recommendations the present Bill is based.

The Sabha specially disapproves the procedure followed because in the matter of such momentous interest to the Hindu population as a whole which in the minimum calculation represents more than 75 per cent. of the people of this country the Government should have followed a procedure for eliciting public opinion which betrays a state of inefficiency and lack of capacity for proper perspective which in any modern state to-day would deserve strongest criticism. The Bill has not been circulated to the Sabhas, Committees and Organisations, no mention of this was made in any Government communiqué no summary of it was given to any of the numerous journals of the country. The Bill was published only in the Gazettes to which outside public has little access. The Sabha feels that this is not the surest and best way of eliciting public opinion specially about the matters which go to the roots of the social organism of what is known as the Hindu Civilisation.

It disapproves the procedure secondly because the time selected for the consideration of matters of such importance is highly inopportune. A world war is now on and is passing through its most critical stage. Everyone is disturbed and worried because of the uncertainties of almost everything that matters. Manu, Yajnavalkya, and the other great Rishis who propounded these laws from the Vedas did so thousands of years ago. Jimutavahana, the commentator, whose interpretation governs the Hindus of Bengal, did so at least nine hundred years ago. During all this period the Ganges was not on fire. A quiet mind and a calm atmosphere are conditions essential to the discussion and execution of principles which disturb the status quo of centuries. The Sabha considers that at least a decennium must pass after the world is released from the grip of this devastating war before this community could perhaps be called upon—properly or improperly—to examine the immutable laws that had governed the society for hundreds of years.

The Sabha's third reason for protest is that in matters involving change in the Hindu institutions other methods must be evolved if general approval of the people for whom the change is intended is to be expected. The Government is aware that Hindu Civilisation is based on

socio-economic and socio-religious concepts which are widely at variance with what exists in much of the other parts of the world and that this structure has its ramifications in most spheres of life. A pull at one point has repercussions on the entire structure not of the aggregate group-life alone but of individual lives as well. To devise a change one must have a thorough and complete knowledge of the inter-relationships of those forces that have advanced life in the aggregate and in the unit for hundreds of years.

To come to the concrete proposals we beg to submit the following:—

In the very beginning the definition of Stridhana is too wide and therefore open to objection.

The order of succession suggested in the Bill follows neither the Dayabhaga nor the Mitakshara school of interpretation and has been a hybrid resultant full of contradictions and anomalies without any constant principle. The Sabha submits that the two schools have been working satisfactorily in different areas each of which has held fast to its own school with a religious fervour and has made the necessary adjustments during hundred of years past. Those adjustments have grown too tight to be disturbed without creating costly confusions and hopeless complications in many cases. The Bill is objectionable from start to finish. We discuss some of the points below.

A widow or daughter has no claim to inheritance while here is a son to the departed person. Yajñavalkya's text is:—

Patni Duhitragrasaiva Pitarau bhatarastatha

... *Svaratasya kyauputasya etc.*

a. The widow or daughter comes in when there is no son. So also Vishnu; who says:—

Aputradhanam Patnyabhi-gami, tadarkhau duhitri-gami. It has been enjoined that one who does not maintain the widows and other dependants legally left to one's care commits a sin (adharmā). Similarly, one who does not meet out of one's own share the marriage expenses of one's sister, "falls" in virtue.

In both cases they certainly have their legal remedies. The sages and their commentators have fully discussed these cases.

When there is a partition the widow gets equal share with the sons but only half share if there is already some stridhan in her favour (but this right is not absolute). See Yajñavalkya II, 115, 125 and 148.

As to the marriage expenses of a maiden sister there is some little difference of opinion between the commentators as to the quantum, but the provision is recognised by all. See Manu IX. 118 and Yajñavalkya II. 124.

The cases of neglect of the above duties have arisen amongst the earning educated people by the avoidance of duties of maintenance of almost all kindred females according to Manu, and by the introduction of individualism amongst the females. According to strict Hindu law, the partition is forbidden during the life-time of parents, the duties of fathers to maintain daughters-in-law was never meant to be avoidable, and the moral obligation to marry daughters was so strong that the British Courts had to recognise it as a legal duty of the family. To enforce these duties every Hindu has his own remedy according to circumstances but above all the ties and obligations of Dharma have to be respected which cannot be enforced by legislation. To give absolute right of inheritance to females as daughter, as wife and as mother, is to introduce claims for disruption of family life to guard against which the Moslems are having recourse to Wākf. If the proposer of this law wants to punish individualism as such, this proposed distribution will accentuate the progress towards ideals of no property. But if marriage and property which are still held by all civilised sociology to hold the key of culture and cohesion are to be respected then the proposals cannot bear the scrutiny of any Hindu thinker.

It has to be pointed out to the proposer of this law that in 1933 Prof. Seymour Vesey Fitzgerald in his article on Hindu law in the encyclopaedia of Social Science has, for the first time in Europe, pointed out that the Hindu Rishis are more akin to men of science and that Hindu law is a distinct jurisprudence on a distinct philosophy of Manu.

As to 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 Bhartuh Palayanī Gurumathia, Bhunjitamaranat Kahanta Dayada Urdhamapnuyuh.

.....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. Jimutavahan quotes also the following from the Mahabharata (Dana-dharma):—

Strinam Svapatidagastu upahogaphalah smrtak

Napaharam striyah kuryuh patidagat kathanoana.

... 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 widow would invariably go to her paternal relatives or other persons if she is given absolute power of disposition.

Baudhayana also says:—*Nirindriya Hyadayaascha striyo mata iti sruti.* The Sruti referred to run thus:—"Striya nirindriya Hyadayaadih"—Taittiriya Samhita, VI 5th August 1927. As to the interpretation of the above texts of 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 Shoma juice only and not to shares in general. But compare Rigveda III—31.2 where there is no reference to Soma. The passage is to be translated 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 is the performer of holy act, the other is to be enriched with gifts." Besides, the word 'Daya' (occurring in all the Brahmanas placed before the Select Committee) is specially used with reference to heritable property in general. It may be added in this connection that Manu also characterises women as Nirindriya (IX—18) 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.

Legal position of women in respect of properties in the Shastras:—

We beg to quote here the following lines from the Memorandum submitted by Babu Rama Prasad Mookerjee, M.A., B.L., on behalf of the Bangiya Brahman Sabha before the Joint Committee at Simla.

It is not possible for me to give a comprehensive list of the texts or quote them at this place in the absence of the necessary books of authorities. In view, however, of the fact that the Chairman of the Joint Committee had stated that if there were texts in the Sruti literature, there would be no question of that being overridden, and as a matter of fact, Government had declared that on such reference being given, the fundamental principle basing some of the clauses of the Bill would have to be revised or some of the provisions themselves dropped.

I am not intentionally giving any reference to the now-famous Nirindriya text as referred to by Baudhayana (II, 2, 3, 46), which has been discussed at great length by Dr. Dwarka Nath Mitter in the thesis submitted by him on the position of Hindu women at p. 494 ff.

I purposely refrain from giving reference to the interpretation by Baudhayana, Manu, Devan Bhatta in 'Smriti Chandrika' and the Ujjvala Commentary by Haradutta on Apastamba, also by Jimutavahana in the Dayabhaga, for the interpretation accepted by all these authorities for centuries has been questioned by Madhavacharya and some modern Anglo-Indian critics. Some of the references I have been able to trace are given below:—

The Mantra in the Rigveda (III, 31-2) as quoted by Yaska in the Nirukta, Sayana explains this passage that between the two son and daughter, one possessed of male sex who performs meritorious works, such as offering of pindas, etc., the other possessed of female sex is only become adorned with valuable cloth and ornaments. A son being authorised to perform meritorious works as offering pindas, etc., is entitled to inherit the property

of his parents and a daughter is not so, therefore she is only given to others (in marriage). (See Yaska's Nirukta edited by Dr. Lukshman Swarup published by the University of the Punjab, at p. 62).

In Satapatha Brahmana (IV, 4, 2, 18), reference may also be made to the following passage, the English rendering by Max Muller in Vol. XXVI of the Sacred Books of the East Series, at pp. 366-367:—

"13. He (the Adhvarya) then mixes it with residue (of ghee) which is left in the Parakarani spoon. Now other libation he completes by mixing, but this one he determines; for ghee is a thunderbolt, and by that thunderbolt, the ghee, the gods smote the wives and unmaned them, and thus smitten and unmaned they neither owned any self nor did they own any heritage. And in like manner does he now by that thunderbolt, the ghee, smite the wives and unman them; and thus smitten and unmaned, they neither own any self nor do they own any heritage."

One of the grounds for this drastic change is given as the high status of some of the women of the present day. But in ancient days, too, there were learned ladies such as Gargi, Maitreyi, etc. But the laws of inheritance was all the same. The law is made in accordance with the needs of the majority and not of a microscopic minority.

Widows and daughters being inheritors according to Md. Law, the widows and daughters of departed relations (co-sharers) are often found to be married by the surviving member, so that no outsider can come in and create complications. But this is not permitted by Hindu Law.

To avoid too many shares—widows, daughters, etc., the dying Md. owner is often to have recourse to Waki or a deed of gift from the sharers. The evils which the Mds. try to avoid (for which there are provisions in their law), are being invited for the Hindus.

The attitude of the Bill towards unchastity and apostasy is very much to be condemned. Unchastity, whether before or after inheritance, according to Shastric view, makes a woman disqualified for inheritance. While the Hindus would like to reject the decision of the Judicial Committee on this point the Bill has given the greatest indulgence to unchastity by imposing for its being effective an almost impossible condition viz. that of getting a judgment of the Court by the husband to that effect. Apostasy, too, is a ground for being 'fallen' and should be always regarded as a bar to inheritance—whether before inheritance or after it.

There may be some difference regarding the interpretation of the exact shares for an unmarried girl to meet her marriage expense as noted in the Explanation appended to the Bill. But how that can be made a ground for extending that share to married girls also passes our comprehension.

Competency of the Legislature:—

The Hindu Law of Succession is a part of the Dharma, and is most intimately connected with religion and religious rites and observances. In the words of the Judicial Committee in *Tagore v. Tagore* (9, B.L.R. 377, 394), "The Hindu Law of Inheritance is based upon the Hindu religion, and we must be cautious that in administering Hindu Law we do not, by acting upon our notions derived from English Law, inadvertently wound or offend the religious feelings of those who may be affected by our decisions; or lay down principles at variance with the religions of those whose law we are administering."

It was not within the competence of the King during the Hindu regime to amend the Vedic Law or to enact any law which might be inconsistent with or might conflict with any rule of law which was deducible from the same (*vide* Hindu Jurisprudence by Dr. P. N. Sen, p. 31). Under the Hindu Law, the King himself is not above Dharma or law, but is subordinate to the same.

Before the 1935 Constitution Act, the Indian Legislature had not the authority to legislate on religious matters but there was a guarantee for protection in the different charter Acts, and later on, in India Council Act, 1861.

The Indian Legislature, being a subordinate legislature, can, under the 1935 Act, legislate only in respect of subjects specifically mentioned in the legislative lists in the Seventh Schedule of the Act. None of the items in the three legislative lists refer to religious matters. The only items which may be referred to in connection with the present Bill are No. 7 of List III and No. 21 of List II.

These items refer to Succession and Devolution. So, the legislature is competent to modify the existing law of Succession in Hindu Law provided such amendments do not in any manner touch religious matters. It is no doubt true that in the 1935 Act there is no provision analogous to those in the earlier Acts ensuring guarantee of non-interference, but as the authority to legislate is not at all given, the absence of the guarantee clause cannot vest jurisdiction where there is none. Further, the memorable words used in the Queen's Proclamation are still referred to as being the Charter of freedom in religious matters in India.

Time Inopportune:—

In the opinion of the Hindu Law Committee "This is not the time for controversial legislation" (P. 17). Apart from the situation created by the World War, the suspension of the Constitution in most of the Provinces and the great economic distress which is prevailing in the major part of the country, make it impossible for the public to consider the proposals contained in the Bill in a manner consistent with the magnitude and importance of the questions raised. That this is a piece of highly controversial legislation is apparent from the nature of the opposition raised in the opinions set, though there had been no proper or sufficient publication. This is a matter which should not be taken up before the end of the War.

Again why should the law of the majority be replaced by the law of the minority? It should also be noted that those classes of Mussalmans among whom inheritance was so long being regulated by the Hindu Law are now gradually coming under the Koranic law, while the inheritance among the entire Hindu community is now being made to conform to Koran by seceding from the tenets of their own scriptures. Thus, while the Mds. are integrating, the Hindus are being made to disintegrate. Why?

The reason is not far to seek. It is the reformer hatred for everything Hindu and their bias for everything foreign (including their manners and customs). Some of the western Jurists of great repute (*e.g.* Dice), highly admire the Hindu Law as a regular science, but some of our own men are out to kill it. Whenever a change is felt necessary according to their sweet will, they swear by such catchy expressions as 'General trend of opinion', 'the time has now arrived' and the like. But where is the evidence thereof? No reply. What is the proportion of the reformers' number to non-reformers? Only a very small fraction. Then who are they to dictate? Is it not a case of oppression by the minority upon the majority?

Clause 17 introduces a revolutionary innovation in a rather surreptitious manner to avoid detection. They have introduced the same change in a similar manner even in the sacramental marriage of the Hindus; (i) Inter-caste marriage and (ii) Sagotra or Samanapravara marriage are not valid.

(1) As to inter-caste marriage, the line of their argument is as follows:—

True that the Anuloma marriage is forbidden in Kaliyuga by some of the Puranas and the invalidity of such marriage is accepted in certain parts of India, but such (Anuloma) marriage is valid in some parts, *e.g.*, Bombay. Therefore both Anuloma marriage and Pratiloma marriage should be regarded as valid in all parts of India. (Note that Pratiloma marriage is not a marriage at all but a lustful combination).

Why the Sastra-abiding provinces forming a majority should be made to follow the example of Sastra-disobeying provinces forming a minority and not the opposite, is not clear. The reformers should bear in mind that the laws of Manu, Gautama, etc., are meant not for Kaliyuga only but for all Yugas. Therefore, they naturally contain some matters such as Anuloma marriage, Kshetrāja Putra, etc. which are meant for other Yugas than Kali. The explanations of those matters must naturally occur in their commentaries also. They do not indicate the existence of the customs during their own time. It should be mentioned in this connection that even in other Yugas Anuloma marriage was valid when performed after having taken a wife of the person's own caste.

(2) As to Sagotra or Samana-pravara marriage:— Such a marriage is a misnomer. 'Bharyatubhava na syat' (Mitakshara). The issue born of such marriage are

regarded as Chandalas and are ineligible for inheritance. Katyayana says:—

Akarmorha sutascharivasagotrad yastu jayate.

Pravrajya vastaschariya na rikthama teshu charbat.
.....Issue born of marriage performed in violation of due order (viz. irregular Anuloma and Pratiloma) and of Sagotra marriage and one has reverted to the life of a Grihi from the life of a recluse—are not eligible for inheritance. For a detailed discussion of this point, please see our note on this point in the opinion given on the Bill relating to Hindu marriage. With regard to provisions in Clause 18 of the proposed Bill the Sabha considers that a wife should be divested of the property inherited from her husband if she goes astray. She is rendered unfit to render the spiritual obligations of her husband and thus unfit to inherit his property. In this view the Sabha is supported by the author of the Dayabhaga.

Clause 20 is directly against the Shastras. See Manu IX 201. We do not pose to be more wise and kind-hearted than our ancient sages.

It is pertinent to investigate how far interference contemplated under the proposed Hindu Inheritance and marriage laws, are within the competence of the present law-making powers enacted under the Constitution Act of 1935. A mere look at the new inheritors proposed to be made heirs under the Hindu Law, will convince all fair-minded and unbiased persons that the doctrine of pinda or spiritual benefit has been thrown to the winds. It has been assumed that the right of inheritance is only a secular concern of the Hindus. It is certainly highly improper either for the Committee or for the Hon'ble the Law Member to airily and summarily brush aside the spiritual side of law affecting so many millions of Hindus.

Certainly, the Constitution Act, empowers legislation regarding inheritance and marriage, but to prejudicially effect by disingenuous circumvention, the religious rights of Hindu Sradha and sacrament of a marriage and thus to reduce Hindu religion to individual personal affair, is not within the competence of the legislature constituted as it is, leaving open the question whether it can ever be within the competence of any secular body to legislate about spiritual life of any association.

No Judiciary worth the name can question the propriety of the observations of the Earl of Halsbury regarding 'articles of faith' made and endorsed in his judgment in (1904) A.C. 515. We gratefully acknowledge that rightly does Kumaraswami J. remind us of those observations in 53 Mad. 737. Apart from principles laid down by the Noble Earl, there are other obvious facts. By Sec. 85 of the charter of 1833, the Governor-General in Council was enjoined to protect "By laws and regulations" the natives from insult and outrage in their persons, religions or opinions. This law remained in force till 1890. The power given by the Constitution Act of 1861 requiring the previous sanction of the Governor-General to the introduction of laws affecting religious and religious rites in face of the existence of the said Section 85, was obviously made for the responsibility of the Governor-General laid on him by the said 85th section. This provision of previous sanction continued in the law of British India upto the repeal of all previous constitution Act by the Act of 1935. "Religions and religious rites" which are much familiar subjects from 1861 are not in the lists of the Act of 1935 although the subject of Marriage and Inheritance are there. The natural interpretation will be that the Legislatures are empowered to legislate on Marriage and Inheritance without prejudicially affecting the 'religions and religious rites' involved in them. Thus, they may be competent to interfere with Civil marriage and Inheritance regulated by Indian Succession Act but not with sacramental marriage and Hindu Law of Inheritance.

It is true that by Sec. 301 of the Act of 1935 the guarantee of respect for Shastras and Koran has been taken away. But that does not amount to giving any positive power to legislate on Shastric and Koranic matters. The position is this:—

Before 1935 the legislatures were empowered to legislate on religions and religious rites but the guarantee for protection was retained by the paramount power. Now that the legislatures are no longer empowered to legislate on religions and religious rites the guarantee for protection is taken away perhaps as being superfluous. In other words, now that there is no possibility of mischief the

question of guarantee does not arise at all. Hence it has been taken away.

It may also be added that the memorable Proclamation of the gracious Queen Victoria, confirmed by subsequent Royal announcements, is looked upon by the Sanatanist Hindus (in spite of modern opportunist interpretations to the contrary) as the Magna Charta of their Religious Liberty.

In this connection the Sabha submits most emphatically that whether there is guarantee or no guarantee, no power on earth however great, should have any power to interfere with the religions and religious rites which are based on Revelation.

In the light of the above facts and arguments it will be sufficiently clear that the Bill is subversive of Hindu culture and will be ruinous to Hindu society and should therefore be thrown out.

In conclusion, in protesting against this Bill the Sabha is not to be understood to approve in any way all the provisions of the Act of 1937. It has serious objections and the Sabha suggests that immediate steps should be taken for amending the objectionable provisions contained therein.

Senior Government Pleader, Calcutta.

The responsibility of the Bengal Government in this matter seems to be greater than that of any other Provincial Government. The proposed Bill does not apply to the properties which would be taken by the right of survivorship under the Mitakshara Law. So far as the Dayabhaga Law is concerned it governs most of the Hindu population in Bengal. The right of survivorship has no place in the Dayabhaga Law. The result is that where as in the other provinces ancestral properties will be kept in the family by virtue of the right of survivorship, in Bengal all properties will devolve under the law of intestate succession as proposed. I may further point out that although the Central Act will not apply to the agricultural land it will be very inconvenient to have different laws of intestate succession—one applying to all properties except agricultural land only. If the Central Act is passed, I can well foresee that the Provincial Legislatures will have no other alternative than to adopt the same law of succession to the agricultural lands also.

I do not propose to go into the History of the law of succession or to the constitution of the Hindu Society in early days. I shall take the society as it stands now and consider the effect of the proposed legislation upon the Hindus of Bengal of the present day from the Social and Economical point of view.

1. Economical point:—

It is not desirable to have overfragmentation of the property as the wealth would in that case lose its potential value. It is well known that the people of Bengal are generally poor. If by legislation new heirs as mentioned in section 5, class 1 (1) as amended by the committee are introduced, the result inevitably would be that small properties left by an intestate would be divided in such a way as it will not appreciably benefit any of them. There is a parallel law amongst the Muslims but the risk of overfragmentation amongst the Muslims is counteracted by their marriage laws and by the present Wakf act. Moreover, having regard to the present society there is a very great risk of some of the heirs, specially the daughters selling away to strangers their rights which they now get absolutely. I further think that this legislation will have the effect of increasing litigation amongst the heirs. As for instance if the intestate leaves a trading concern, the introduction of a large number of heirs in place of the sons would most likely result in closing of the business or hampering it and consequently legal proceedings for its dissolution.

There is a strong feeling amongst the Hindu people of Bengal that their homestead (Bastubhita) must not pass into the hands of the strangers. Even as the Hindu Society stands in the present days, the women are mostly uneducated or half-educated and they are, led by the advice of their husbands and or their husband's relations who are regarded as strangers to the family of the intestate. Owing to the facilities of communication, the girls are often married in distant parts of the country and it will be difficult for them either to enjoy or manage the share of the homestead as also the other immovable properties. The result in most cases will be that they will

be compelled, or advised to sell their interest either to their other relations or to strangers. All these will ultimately tend to the increase of litigation.

2. Social:—

(a) Under the proposed legislation if an intestate leaves a widow of a predeceased son and a daughter's son the former takes the whole of the estate absolutely and the daughter's son gets nothing—a position which I think is almost intolerable, having regard to the feelings of the Hindu Public. —So also is the case with son's daughter. In my opinion daughter's son or son's daughter should have at least been given the same position as the widow of a predeceased son. My view is that having regard to the fact that most of the women being illiterate and having no experience of business affairs—they should not be given anything more than life estate, as under the present Hindu Law.

(b) In Section 5 clause 1(1) the words "parents if dependent on the intestate" would create uncertainty and lead to litigation. I would rather omit the words "if dependent on the intestate".

(c) The funeral and Sradh ceremonies are regarded as essential for the benefit of the soul of the intestate. Under the law as it stands the sons or the widow or the daughter as the case may be become the sole owners and they bear the cost of such ceremonies. Under the Dayabhag Law one who offers Pinda or oblation gets the property. Therefore if there be a number of heirs as contemplated in Section 5 clause 1(1) they should be made proportionately liable for expenses of these ceremonies although they will have to be performed by son, widow, daughter and daughter's sons one after another in accordance with the order laid down in Sradhatattwa.

(d) In Bengal amongst the Hindus the daughter's sons rank very high both from blood and religious connections. Under the proposed legislation the parents and the widow of a predeceased son cannot perform the Sradh of the intestate in the presence of the daughter's son. As far as my experience goes it is inconceivable amongst the Hindus of Bengal to think of a daughter's son performing the Sradh and the inheritance going to other people.

(e) In almost all well-to-do families in Bengal there is a family Thakur, and the Seba Puja of the deity are maintained by the members of the family out of its property. If the intestate be the head of the family and his property is divided in the manner proposed the chances are that the daughters married in different family in distant parts of the country will not care to maintain the Seba Puja of the family Thakur and the whole burden of the Seba Puja will fall on the son though his share in the property will be reduced by the corresponding share of the daughter.

(f) *Stridhan property*.—So far as the property inherited by a female from her husband or her husband's father is concerned, it shall devolve upon the husband's heirs and not on her own heirs, though she will have absolute right in the property during her life. The result will be that she will be tempted to sell her share inherited from her husband or her husband's father during her life time. That contingency could be avoided if she had been given only a life estate in such property. In case of other Stridhan property the position of daughter's son or of son's son in case a son or a daughter is alive is that the former gets nothing. In my opinion there is no logic why a predeceased son's son or predeceased daughter's son should get nothing when either a son or a daughter is alive.

I have considered some of the aspects of the Bill as stated above and I think that the Bill as framed should be dropped for the present, and in any case drastic amendments in the provisions of the Bill should be made if it is proposed to proceed with the contemplated legislation.

INDIAN STATES

No. 17—Mysore

The Chairman, Third Annual Conference of the Mysore State Varnashram Swarajya Sangh, Mysore.

I beg to forward you the copies of two resolutions passed in the third Annual conference of the Mysore State Varnashram Swarajya Sangh, held at Mysore on 3rd June 1944, at 6 P.M.

GIPD—L118 LAD—14-10-44—400.

Resolution No. 1.—This meeting resolves that as in its considered view neither the Government of India nor any of the Provincial Governments does possess or has at any time possessed any right to legislate upon matters of private laws of the Hindus, the present policy of the Government of India codifying the Hindu Law through the agency of the Central Legislature specially under its present form and Constitution most reprehensible and its contemplated action thereon *ultra vires*.

Resolution No. 2.—This meeting further resolves (a) that with prejudice to the contents of the first resolution, the action of the Government of India in constituting the Hindu Law Committee for the preparation and drafting of the Hindu Code is fully unwarranted and unjustifiable and (b) that the Hindu Intestate Succession Bill and the Hindu Marriage Bill contain so many provisions quite opposite to the spirit and letter of the Dharmashastras and detrimental to the Hindu culture and civilization that Government should be asked to withdraw both of these Bills and abandon any further attempt of legislating upon any subject of the Hindu Law.

Protest against the Bill

The following identical protest has been signed by four hundred and thirty three persons, belonging to Mysore State:—

We, the undersigned pray to the Central Government that they should not interfere in any manner in our religious and social life. The Hindu Law Committee which has been constituted for codifying Hindu Law be abolished and the Hindu Code Part I (Intestate Succession) Bill; and the Hindu Code, Part II (Marriage) Bill, be withdrawn.

No. 18—Hyderabad

All-India Women's Conference, Hyderabad Branch

Hyderabad Branch All-India Women's Conference expresses dissatisfaction intended postponement Hindu Marriage Bill also strongly supports Intestate Succession Bill urges Legislative Members kindly expedite its passage.

No. 19—Morvi (Kathiawar)

President, Sanatan Vaidic Dharma Sabha, Morvi (Kathiawar)

I have the honour to enclose herewith resolution passed at the meeting of the Orthodox Sanatani Hindus on the 15th Instant.

This meeting of orthodox Sanatani Hindus emphatically denies Government's right to interfere with timehonoured religious principles and protests in strongest terms proposed Bills regarding inheritance rights and Civil marriage.

Vyavasthapak, Ambike Kirtanashram, Morvi Principal, Ravajiraj Patashala, Morvi

Earnestly pray Government not interfere time honoured religious principles sincerely Abolition Rao Committee and its Bills.

No. 20—Kashmir

Resolution passed in a public meeting in Anantnag (Kashmir) on 25th May 1944 by Sanatan Dharmi Hindus, under the Presidency of Pandit Janki Nath Ji Dassi, B.A., LL.B., President, Dharam Sangh Branch Anantnag, Kashmir

Resolved that the Rao Committee's action in making modifications and alterations against the spirit of Dharmashastra in the Hindu Law regarding inheritance and marriage is practically a stroke to Hindu religion and this Sangh appeals the Government of India that the religious susceptibilities may be respected and any interference in Hindu Law against the spirit of Dharmashastra may be disallowed.

NOT FOR PUBLICATION

(For use of Members only)

GOVERNMENT OF INDIA
LEGISLATIVE ASSEMBLY DEPARTMENT

PAPER No. III

OPINIONS

ON

THE HINDU CODE, PART I (INTESTATE SUCCESSION) BILL

(Introduced by the Hon'ble Sir Sultan Ahmed)

Opinion Nos. 21—25

THE UNITED PROVINCES

Page

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INDIAN STATES

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No. 25—Rajkot (Kathiawar), Jaipur, Jammu and Kashmir, Rewa, Alwar and Morvi States 188—189

No. 21.—THE UNITED PROVINCES.

Government, United Provinces.

In continuation of this Government's letter No. 173/VII-334-1942, dated June 7, 1944, I am directed to forward further opinions received from non-official bodies and individuals on the above Bill.

AKBAR HUSAIN, Secretary.

Pandit Madan Mohan Malaviya, President, Sanatan Dharma Mahasabha, Benares

With reference to the notification published in the U. P. Gazette inviting the opinion of the Hindu public on the two bills which attempt to codify and amend the Hindu Law of intestate succession and of marriages, pending before the Central Legislature, on behalf of the All India Sanatan Dharma Mahasabha, I beg to submit that the Central or the Provincial Legislatures, particularly as they are constituted at present, have no right to legislate upon the personal laws of the Hindus. Furthermore I submit that the changes proposed in the said bills are directly opposed to the beliefs of the Hindu Dharma-shastra and are detrimental to the best interest of the Hindu religion and culture. I therefore beg to submit that the two bills should be abandoned and the idea of codifying the Hindu Law should be given up.

I request you to submit this opinion to the Government of India in the Legislative Department for the consideration of the Committee.

Opinion in favour of the Bill

The following opinion in favour of the Bill has been received from 58 Arya Hindu ladies of United Provinces whose names are given in the Annexure.

We the following Arya Hindu Ladies are strongly in favour of the Intestate Succession Bill which is before the Government at present for consideration. We are very grateful to the originator of the resolution, Rao Committee and the U. P. Government, who have started their efforts to wipe out this utter injustice of long

standing to the Ladies of India. At an appropriate time some selfish people succeeded in getting this unjust law passed after impressing the newly formed British Government in India that according to Hindu religion daughters have no rights to inherit parental property. Selfish people of the same type, now, when a few justice loving and truly religious men are busy to devise ways and means to eradicate this injustice from Hindu Law are putting forward many obstacles in their ways. In these obstructionists are included so called Pandits who never hesitate to do high-handedness and injustices of unimaginable type in the name of religion, but it pains us to think that even Aryasamaj originated by Swami Dayanand a great Rishi, apostle of truth, and axe for injustice—is now busy in putting obstacles in the passing of this bill. We learn that U. P. Arya Pritinidhi Sabha has sent resolutions against the bill after getting them tactfully passed by all the samajes of U. P. We are absolutely confident that had Swami Dayanand been living today, these few selfish office beavers of Aryasamaj would have never dared even to think of it. We assure you that Vedas give equal rights to men and women. There is no doubt, however, that due to inadequate Sanskrit learning, people in the past, have interpreted many Richas in different ways and mostly in a fashion to serve their own purpose and confirm their own ideas. That is the reason why different religions of India are said to have originated from the same Vedas. But Swami Dayanand was not a man of that type. His learning in Sanskrit was very vast and deep. His writings and interpretations of Vedic Mantras are full of truth, justice and selflessness. His books contain teachings to give equal rights to sons and daughters. At many places, where he has quoted sloke from Manusmriti smelling of partiality, he has added to their word by word meaning in order to make them absolutely impartial and just. In the annexure to this we give some such examples taken from his famous book "Satyarth Prakash". This shows the greatness and justice loving nature of Swami Dayanand. This also proves that with the ideal teachings of Sruties and Smritis are mingled selfishness, partiality and injustices. We do not say that authors of these books were partial and unjust but later some selfish and unjust people distorted those slokes for their own benefit.

On the attached paper we quote some Richas from Vedas and Slokas from Manusmrities with meaning by well known Rishies, which clearly indicate that men and women have absolutely equal rights. When Vedas order to perform all the sixteen Sanskars in absolutely the same way for male and female, their dissimilarity in rights cannot be understood. Sanskar for sacred thread is meant for both sons and daughters. This thread represents the duties which one (boy or girl) has towards their parents and teacher. Clearly when parents expect equal services from sons and daughters, why they should have any objection to give them equal rights. The truth is that most of the present followers of Swami Dayanand never perform any Sanskar for their daughters and consider them others' property. Although in Sanskarbidhi or Satyarth Prakash there is no mention of Kanyadan, the followers of these books give their daughters in marriage as if they have given some property in charity and then they break off all relations with them. This is the tragedy, which is responsible for this partial treatment of parents with their daughters and that is the reason why Aryasamaj is unwilling to give equal rights to their daughters as to their sons and oppose all the efforts of others who do so.

In the end we would add that before passing the resolution against this bill the male members of Arya Samaj have not taken the opinion of their women folk (wife, mother, sister and daughters). Thus their resolution cannot be said to represent all the Arya community but it is, in fact, an expression of a few selfish male members who happen to hold high offices in Aryasamaj and who by tact got this resolution passed to fulfil their own selfish motives. Aryasamaj considers a wife as half body of male member and there is no reason why their opinion should be so neglected.

We hope you would kindly spare no efforts to pass this bill into law as early as possible and would not pay any heed to the contradictory resolutions passed by Arya Samaj.

Annexure.

- (1) Vishnu Kumari Sinha, wife of B. Jia Lal, President, Aryasamaj, Narhi, Lucknow; (2) Durga Devi, wife of B. Raghunath Sahai, Vice President, Aryasamaj, Narhi; (3) Gayatri Verma (Sahitya Madhyama), daughter-in-law, B. Ram Chandra, former President of Narhi Arya Samaj and now a member; (4) Shushila Devi (Sanataka), daughter-in-law of B. Ganesh Pd., former Vice-President and now treasurer, Narhi Aryasamaj; (5) Sarala Devi, wife of B. Shanti Narayan, Deputy Inspector of School—Member, Aryasamaj, Narhi, and daughter-in-law of B. Ganesh Prasad (as above); (6) Manorama, wife of B. Jaya Chandra, Asstt. Engineer, A. I. R., and member of Aryasamaj, Narhi, Lucknow; (7) Sharbati Devi, B.T.C., c/o B. Manmohan Mathra, Auditor, Co-operative Societies, Lucknow; (8) Krishna Kumari, Seth Ramjas Road—Mahabir Bhawan, Lucknow; (9) Ratan Kumari Misra, Sanghai Singh Girls' School, Narhi, Lucknow; (10) Shyam Sundari Devi—Misra, Vidya Mandir Girls' College, Lucknow; (11) Shyam Devi Sahu, c/o Shiva Prasad Sahu, Overseer, Narhi; (12) Krishna Sahu, Seth Ramjas Road, Narhi, Lucknow; (13) Gulabrani, c/o Chhola Lal Ji, Bahadurganj, Brahma-nivas, Grand Trunk Road, Allahabad; (14) Shanti Sinha Vidushi, wife of B. Gyanendra Mohan Sinha, Assistant, Civil Secretariat, Lucknow, daughter-in-law of B. Jia Lal, President, Arya Samaj, Narhi, Lucknow; (15) Mithlesh Kumari Asthana, c/o B. Mahadeo Prasad Asthana, Society Park Area, Narhi, Lucknow; (16) Chandra Kala Devi, c/o Pt. Shanti Swarup Shastri, Snatak, Gurukul Kangri; (17) Shushila Arya (Bachelor of Music), c/o Pt. Shanti Swarup Shastri, Snatak, Gurukul Kangri; (18) Kavawati, c/o Raj Vaid Shri Baman Das Kavi Raj, 140, Harison Road, Calcutta; (19) Nandrani Khanna, c/o S. R. Khanna, Esq.; (20) Sawitri Khanna, c/o S. R. Khanna, Esq.; (21) Sita Khanna, c/o S. R. Khanna, Esq.; (22) Shanti Devi Bedi, Lady Dentist, c/o Mr. Nipal Singh Bedi, B.A., LL.B., Asstt. Manager, Punjab National Bank; (23) Ikbal Rani, c/o 2nd Lt. S. S. Kapur, 4, Park Road, Lucknow; (24) Urmila

- Kapur, c/o 2nd Lt. S. S. Kapur, 4, Park Road, Lucknow; (25) Phulmati, House No. 813, Narhi, Lucknow; (26) Lilavati, 4, Park Road, Lucknow; (27) Indradevi Kakar, c/o L. Narendra Pratap Sahi, 4, Park Road, Lucknow; (28) Madhuri Kakkar, c/o L. Narendra Pratap Sahi, 4, Park Road, Lucknow; (29) Shanti Devi Srivastava, c/o Mr. Jagat Narayan Srivastava, 4, Park Road, Lucknow; (30) Mukund Devi, Narhi, Lucknow; (31) Nanhi Devi, Narhi, Lucknow; (32) Jadu Rani, Narhi, Lucknow; (33) Shanti Devi, c/o B. Gorakh Prasad Asthana, New Narhi, Lucknow; (34) Shushila Asthana, 876, Narhi, Lucknow; (35) Jai Devi, c/o Rai Bahadur Pt. Shambhu Nath, M.B., Benarsi Bagh, Lucknow; (36) Satya Bala Devi, c/o Rai Bahadur Pt. Shambhu Nath, M.B.E.; Benarsi Bagh, Lucknow; (37) Raj Dulari, c/o Rai Bahadur Pt. Shambhu Nath, M.B.E., Benarsi Bagh, Lucknow; (38) Vidya Vati, 753, New Narhi, Lucknow; (39) Padma Misra, c/o A. N. Misra, Esq., 4, Park Road, Lucknow; (40) Prabhvati Singh, c/o C. P. Singh, Esq., 4, Park Road, Lucknow; (41) Krishna Vati Singh, c/o C. P. Singh, Esq., 4, Park Road, Lucknow; (42) Kamla Chaturvedi, wife of Hari Shanker Chaturvedi, Civil Judge, Lucknow; (43) Mrs. Hira Devi Verma, wife of B. B. S. Verma, Esq., I.P., S.P., Barabanki; (44) Dharamvati Verma, wife of 2nd Lt. Dr. L. M. S. Verma, I.A.M.C., Lucknow; (45) K. S. Saxena, Head Mistress, Govt. Girls' High School, Bulandshahr; (46) Mohini Verma, c/o B. B. S. Verma, Esq., I.P., S.P., Barabanki; (47) Sarojini Verma, c/o B. B. S. Verma, Esq., I.P., S.P., Barabanki; (48) Prabhavati Bhatnagar, c/o R. S. Kailash Chandra Bhatnagar, Secretary, Legislative Assembly, Anandniketan, Latouche Road, Lucknow; (49) Urmila Bhatnagar, c/o R. S. Kailash Chandra Bhatnagar, Secretary, Legislative Assembly, Anandniketan, Latouche Road, Lucknow; (50) Sudha Bhatnagar, c/o R. S. Kailash Chandra Bhatnagar, Secretary, Legislative Assembly, Anandniketan, Latouche Road, Lucknow; (51) Indu Bhatnagar, c/o R. S. Kailash Chandra Bhatnagar, Secretary, Legislative Assembly, Anandniketan, Latouche Road, Lucknow; (52) Padma Rashtogi, c/o R. S. Rashtogi, Esq., Superintendent, Jails, Allahabad; (53) Subhadra Devi, c/o Lakshmi Chand Agrawal, Narhi, Lucknow; (54) Miss S. Soorma, Manageress, Vidya Mandir Girls' College, Lucknow; (55) Mrs. L. Soorma, Wingfield Park, Lucknow; (56) Miss B. Soorma, Wingfield Park, Lucknow; (57) Miss P. Soorma, M.A., Wingfield Park, Lucknow; and (58) Miss O. Soorma, Wingfield Park, Lucknow.

Resolutions against the Bill.

The following identical resolutions were unanimously passed at 193 meetings of the Hindu residents of different places in the United Provinces, the names of which are given in the Annexure.

This meeting resolves that as in its considered view neither the Govt. of India nor any of the Provincial Govts. does possess or has at any time possessed any right to legislate upon matters of private laws of the Hindus, the present policy of the Govt. of India of codifying Hindu Law through the agency of the Central Legislature specially under its present form and constitution is most reprehensible and its contemplated action thereon *ultra vires*.

Resolution No. 2.

This meeting further resolves (a) that without prejudice to the contents of the first resolution, the action of the Govt. of India in constituting the Hindu Law Committee for the preparation and drafting of the Hindu Code is fully unwarranted and unjustifiable. (b) That the Hindu Intestate Succession Bill and the Hindu Marriage Bill contain so many provisions quite opposite to the spirit and letter of the Dharmashastra and detrimental to the Hindu culture and civilisation, that Govt. should be asked to withdraw both of these bills and abandon any further attempt of legislating upon any subject of the Hindu law.

Annexure.

- Narbar, P. O. Narora, Dist. Bulandshahr; Ghughli, P. O. Ghughli; Pachrapur, P. O. Sandi, Dist. Hardoi;

Rāmāsiṅgaj, P. O. Sandi, Dist. Hardoi ; Dist. Gorakhpur ;
Faijajpur ; P. O. Sandi ; Dist. Hardoi ; Mitimitipur ;
P. O. Sandi ; Dist. Hardoi ; Kujariyapur, P. O. Sandi,
Dist. Hardoi ; Nawabganj, P. O. Sandi, Dist. Hardoi ;
Nawabganj, P. O. Sandi, Dist. Hardoi ; Mandari, P. O.
Sandi, Dist. Hardoi ; Markara, P. O. Basuj, Dist. Gorakh-
pur ; Bilaspur, P. O. Basuj, Dist. Gorakhpur ; Barhaj,
Dist. Gorakhpur ; Gaura, P. O. Barhaj, Dist. Gorakhpur ;
Umab, P. O. Barhaj, Dist. Gorakhpur ; Baradisi, P. O.
Barhaj, Dist. Gorakhpur ; Damira, P. O. Barhaj, Dist.
Gorakhpur ; Parthiyajhil, P. O. Barhaj, Dist. Gorakhpur ;
Karnalganj, Dist. Gonda ; Mahleshar, Dist. Azamgarh ;
Mandanpur, P. O. Sagri, Dist. Azamgarh ; Alipur, P. O.
Muhammadabad, Dist. Azamgarh ; Dagoli, P. O. Balidpur,
Dist. Azamgarh ; Goharpur, P. O. Khurhat, Dist. Azam-
garh ; Chhaupur, P. O. Khurhat, Dist. Azamgarh ; Mir-
pur, P. O. Khurhat, Dist. Azamgarh ; Kasari, P. O.
Khurhat, Dist. Azamgarh ; Amari, P. O. Khurhat, Dist.
Azamgarh ; Kasimpur, P. O. Khurhat, Dist. Azamgarh ;
Baijapur, P. O. Khurhat, Dist. Azamgarh ; Vairatpur,
P. O. Mau, Dist. Azamgarh ; Banora, P. O. Mau, Dist.
Azamgarh ; Hasanpur, Dist. Moradabad ; Rani, P. O.
Mau, Dist. Azamgarh ; Atari, Dist. Banda ; Gaziabad,
Dist. Meerut ; Bareilly ; Meerut ; Kurapaddiripab, P. O.
Nagar bazaar, Dist. Basti ; Raghuvirpur, Dist. Aligarh ;
Piruthi, P. O. Amila, Dist. Azamgarh ; Rampur Sohnd,
P. O. Alima, Dist. Azamgarh, Barbalai, Dist. Azamgarh ;
Salteh, Dist. & P. O. Azamgarh ; Kurhus, P. O. & Dist.
Azamgarh ; Mithapur, P. O. & Dist. Azamgarh ; Kothia-
gram, P. O. & Dist. Azamgarh ; Tangera, P. O. Mathari,
Dist. Azamgarh ; Piatul, P. O. Amila, Dist. Azamgarh ;
Captainganj, Dist. Gorakhpur ; Lakhimpur, P. O. Khiri,
Dist. Kheri ; Maidanipur, P. O. Maya, Dist. Faizabad ;
Khapradil, Dist. Faizabad ; Mochaya, P. O. Dipalpur,
Dist. Sultanpur ; Bichpuri, P. O. Ginnaur, Dist. Badam ;
Narvar, Dist. Bullandshaher ; Aligarh ; Hardoi ; Baban,
Hardoi ; Kalkijiri, P. O. Bashan, Dist. Aligarh ; Karla,
Dist. Hardoi ; Pachranb, P. O. Kirwar, Dist. Mirzapur ;
Banpur, Dist. Jhansi ; Pirsui, P. O. Sultanpur, Dist.
Azamgarh ; Sonadigosaipur, P. O. Amilla, Dist. Azam-
garh ; Alipur, P. O. Muhammadabad, Dist. Azamgarh ;
Taraidih, P. O. Bibipur, Dist. Azamgarh ; Chapust, P. O.
Gursari, Dist. Jhansi ; Sudda, P. O. Gursai, Dist.
Jhansi ; Samaygarh, P. O. Soayagarh, Dist. Patna ;
Jomanna, P. O. Kotana, Dist. Meerut ; Vishunpur, P. O.
Swarupur, Dist. Azamgarh ; Gokka, P. O. Amulla, Dist.
Azamgarh ; Shikohpur, P. O. Badout, Dist. Meerut ;
Lavalpur, P. O. Badout, Dist. Meerut ; Barragnab, P. O.
Muhammadabad, Dist. Azamgarh ; Sultanpur, P. O. Goshi-
pur, Dist. Azamgarh ; Luhari, P. O. Khasiulahi, Dist.
Meerut ; Ahilyabad, P. O. Mohanabad, Dist. Ghazipur ;
Taisupar, P. O. Sultanpur, Dist. Azamgarh ; Jagdishpur,
P. O. Navan, Dist. Hardoi ; Ahraura, P. O. Ahraura,
Dist. Mirzapur ; Madapur, P. O. Ahraura, Dist. Mirzapur ;
Bhadrapur, P. O. Bhadrappa, Dist. Rai Bareilly ; Tirba,
P. O. Triba, Dist. Farrukhabad ; Ghazipur City, P. O.
Ghazipur, Dist. Ghazipur ; Zhillapur, P. O. Shivana, Dist.
Benares ; Narvar, P. O. Naroura, Dist. Bullandshaher ;
Dhnaussay, P. O. Sikanderabad, Dist. Bullandshaher ;
Kachauri, P. O. Kachaura, Dist. Aligarh ; Thanabhavan,
Dist. O. Thanabhavan, Dist. Muzaffarnagar ; Kariha Bazar,
P. O. Banailly ; Kundabanj, P. O. Laramuth, Dist. Gorakh-
pur ; Bajhera, P. O. Raveir, Dist. Aligarh ; Muntra ;
Bahoola, P. O. Kutanz, Dist. Meerut ; Sikanderabad, Dist.
Bullandshaher ; Addari, P. O. Bilmimgh, Dist. Hardoi ; Hil-
bari, P. O. Badout, Dist. Meerut ; Duddi, Dist. Gorakhpur ;
Shahpur, P. O. Pisava, Dist. Aligarh ; Banpur, Dist.
Bahraich, Garh Gauz, Dist. Jaunpore ; Nagali, P. O.
Sakhava, Dist. Jaipur ; Chhapra, Dist. Ballia ; Badhrapa,
Dist. Bareilly ; Muhamadpur, P. O. Indara, Dist. Azam-
garh ; Lairo, P. O. Kopaganj, Dist. Azamgarh ; Indara,
Dist. Azamgarh ; Asgata, P. O. Baripal, Dist. Cawnore ;
Chhaprauli, Dist. Meerut ; Tajpur, P. O. Gamaniya, Dist.
Jazipur ; Kuchai, P. O. Bibipur, Dist. Azamgarh ;
Juraindi, P. O. Bibipur, Dist. Azamgarh ; Lucknow ;
Lunkh, Dist. Muzaffarnagar ; Kudana, P. O. Bnat, Dist.
Muzaffarnagar ; Saron, Dist. Etah ; Chatia, Dist. Basti ;
Sujhat, P. O. Bhokardari, Dist. Muzaffarnagar ; Durga-
anj, Muzaffarnagar ; Sakalnobad, Dist. Gaziupr ; Kalik-
pur, P. O. Dibai, Dist. Bullandshaher ; Khodia, P. O. Dibai,
Dist. Bullandshaher ; Kharhwa, P. O. Dibai, Dist.

Bullandshaher ; Mohammedpur, P. O. Dibai, Dist. Bullandshaher ; Dibai, Dist. Bullandshaher ; Naladevi, P. O. Dibai, Dist. Bullandshaher ; Kandora, P. O. Dibai, Dist. Bullandshaher ; Kutabpur, P. O. Dibai, Dist. Bullandshaher ; Shamsabad, Dist. Farrukhabad ; Gazipur, Aunbilai, P. O. Hariharpur, Dist. Basti ; Duobnbara, P. O. Hariharpur, Dist. Basti ; Suriapur, P. O. Bhailui, Dist. Basti ; Prajapatipur, P. O. Ghanghata, Dist. Basti ; Agathuwa, P. O. Daudi, Dist. Faizabad ; Sadauli, Dist. Sultanpur ; Borapur ; P. O. Nawabganj, Dist. Gonda ; Dhannobra, P. O. Mahuli, Dist. Basti ; Dhannobra, P. O. Mahuli, Dist. Basti ; Dasbanpur, P. O. Bhiu, Dist. Faizabad ; Jainpur, P. O. Utarthur, Dist. Faizabad ; Faizabad ; Narayanpur, P. O. Masganba, Dist. Gonda ; Bhatgamb, P. O. Gorabazaar, Dist. Basti ; Gaduri, P. O. Uratpur, Dist. Partargarh ; Ayodhya, Dist. Faizabad ; Mitrabalia, P. O. Harpur, Dist. Gorakhpur ; Ilrurpur, Dist. Gorakhpur ; Atarsan, Dist. Partargarh ; Kiholi, P. O. Udaigir, Dist. Partargarh ; Jankihat, P. O. Ayodhya, Dist. Faizabad ; Kapardhika, P. O. Bharonganj, Dist. Champaran ; Jannapur, P. O. Chuitpur, Dist. Chhaprasan ; Manipur, P. O. Bathuabazaar, Dist. Chhaprasan ; Nada, P. O. Bharonganj, Dist. Champaran ; Akhalpur, P. O. Sandi, Dist. Harid ; Kaganji, Dist. Etah ; Rambhoni, P. O. Koser, Dist. Bullandshaher ; Tassanpura, P. O. Pandrawal, Dist. Bullandshaher ; Rampur, P. O. Narora, Dist. Bullandshaher ; Chodera, P. O. Keserta, Dist. Bullandshaher ; Karwasinghpur, P. O. Dibah, Dist. Bullandshaher ; Daughda, P. O. Jordara, Dist. Bullandshaher ; Ratanpur, P. O. Kesati, Dist. Bullandshaher ; Khushalabad, P. O. Dibah, Dist. Bullandshaher ; Ganeshpur, P. O. Hansnar, Dist. Faizabad ; Ajodhya, Dist. Faizabad ; Ajodhya, Dist. Faizabad ; Bhatpuri, P. O. Hansbar, Dist. Faizabad ; Ayodhya, Dist. Faizabad ; Nathpur, P. O. Parscrampur, Dist. Basti ; Magurb, P. O. Dudara, Dist. Basti ; Rajgopal Mandir, P. O. Ayodhya, Dist. Ayodhya ; Khurma, P. O. Peepergaur, Dist. Sultanpur ; Ayodhya, Dist. Ayodhya ; Khoria, P. O. Guruli, Dist. Basti ; Cawnpur, Dist. Cawnore ; Chutai Mahal, Dist. Cawnpur ; Gupta Ghat, Cawnore ; Badooli, Dist. Meerut ; Jugsana, Dist. Muttra ; Kotana, Dist. Meerut ; Etah, Dist. Etah ; Kapurthika, P. O. Ghamsaur Ganj, Dist. Champaran ; Gajpur, P. O. Hariharpur ; Dharpura, P. O. Mundairwa, Dist. Basti ; Chikora, P. O. Banpur, Dist. Jhansi ; Amroha, Dist. Moradabad

Protests against the Bill.

The following identical protest has been signed by twenty-one thousand nine hundred and thirty-five (21,935) residents of the United Provinces :—

"We the undersigned pray to the Indian Government that they should not interfere in any way with our social and religious life. The Hindu Law Committee appointed to draft a Hindu Code should be abolished and both the Bills, Hindu Code, Part I (Intestate Succession), and Hindu Code, Part II (Marriage) be withdrawn".

Opinions for the Bill.

The following opinion in favour of the Bill has been signed by two hundred and seventeen (217) residents of the United Provinces :—

"We are in favour of the Hindu, Intestate Succession Bill which is before the Legislative Assembly and pray to the Government that it should be made into law at the earliest opportunity so that daughters, widows and orphan girls may be able to get a part of the paternal property, and thus may have no difficulty in leading unblemished lives without feeling the necessity for begging from others for their daily necessities of life".

Mr. Avodhya Prashad Yadava, and two others.

I am opposed to the attempt of the Government to radically modify the age-long customs and traditions of the Hindus in the name of codification of Hindu Law and urge upon the Government that the Rao Committee be done away with and the Hindu Intestate Succession Bill and the Hindu Marriage Bill now pending before the Central Legislative Assembly be dropped.

The Hindu Intestate Succession Bill provides for succession in a manner quite contrary to the present system in vogue and, if passed, will lead to endless litigations and defragmentation of property. I strongly condemn (i) the right of inheritance given to the daughters simultaneously with the sons as this is directly against the dictates of Shrutis and Smritis (ii) the right of inheritance given to distant female relations who are not even heirs under the present law and (iii) the wide definition of Stridhana property and the manner in which such property is proposed to be inherited.

For this reason, among others, I pray that the bill be not passed into law.

Opinion against the Bill

The persons whose names are given below have sent the following identical opinion against the Bill.

Messrs. Kailash Pati Tewari, M.A., LL.B., Aurangabad, P. O. Kashi, Dist. Kashi; Sarthu Parshad, M.A., LL.B., Rama Pura, P. O. Benares; Rai Kishore Sahib, Rais and Zamindar, Director of 'Leader', Allahabad; Pandeypur, Benares; Samblu Sinha, Gautama, M.A., LL.T., Kavathirtha, M. R. A. S., Jagatganj, Benares; Purnan Chaud Charya, Secretary, All-India Varnasharma, Benares; Shri Gopal Shastri, Kashi Pandal Sabha, Benares; Byayanand Tewari, All-India Dharma Sangh, Benares; Dharm Datt Shastri, Benares.

In my humble view as neither the Govt. of India nor any of the Provincial Govts. does possess or has at any time possessed any right to legislate upon matters relating to the private laws of the Hindus; (a) the present policy of the Govt. 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 Govt. of India in constituting the Hindu Law Committee for the preparation and drafting of the 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 letter of the Dharmashastra and are detrimental to the Hindu culture and civilisation.

I have the honour to request you to communicate to the Government of India my above opinion on these Bills, though my opinion on the Law of marriage Bill might be held as premature) and to recommend to the same for their rejection.

Hindu Public of Atarra.

Hindu Public Atarra strongly protests against intestate Succession Bill and Marriage Bill, in protest largely attended public meeting was held. Complete hartal observed.

Anshaa kept. It impresses Govt. withdraw both Bills and abandon further attempts to interfere in religious and social matters.

Resolution against the Bill.

"This meeting of the Hindu of Rasna, Meerut strongly condemn the attempt of the Government to radically modify the age-long customs and traditions of the Hindus in the name of codification of Hindu Law and urges upon the Government that they should do away with the Rao Committee and drop the Hindu Intestate Succession Bill and the Hindu Marriage Bill now pending before the Central Legislative Assembly.

The Hindu Intestate Succession Bill provides for succession in a manner quite contrary to the present system in vogue and, if passed, will lead to endless litigations and defragmentation of property. This meeting strongly condemns (i) the right of inheritance given to the daughters simultaneously with the sons as this is directly against the dictates of Shrutis and Smritis (ii) the rights of inheritance given to distant female relations who are not even heirs under the present law and (iii) the wide definition of Stridhana property and the manner in which such property is proposed to be inherited."

No. 22.—DELHI.

Chief Commissioner, Delhi.

In continuation of my letter No. F-4(11)/44-General dated the 26th June 1944, I have the honour to forward a resolution, dated the 9th July 1944, passed by the Dharam Sangh Mahavidyale, Delhi, together with a joint representation of about 800 Hindus who are against the Hindu Code Part I (Intestate Succession) Bill.

Resolutions against the Bill.

The following resolutions were unanimously passed at meetings of the Hindu Residents of Delhi held at Gauri Shankar Mandir and Pipal Mahadev.

Resolution no. 1.

This meeting resolves that as in its considered view neither the Govt. of India nor any of the Provincial Govts. does possess or has at any time possessed any right to legislate upon matters of private laws of the Hindus the present policy of the Govt. of India of codifying Hindu Law through the agency of the Central Legislature specially under its present form and constitution is most reprehensible and its contemplated action thereon *ultra vires*.

Resolution no. 2.

This meeting further resolves (a) that without prejudice to the contents of the first resolution, the action of the Govt. of India in constituting the Hindu Law Committee for the preparation and drafting of the Hindu Code is fully unwarranted and unjustifiable (b) That the Hindu Intestate Succession Bill and the Hindu Marriage Bill contain so many provisions quite opposite to the spirit and letter of the Dharmashastra and detrimental to the Hindu culture and civilisation, that Govt. should be asked to withdraw both of these bills and abandon any further attempt of legislating upon any subject of the Hindu law.

Protests against the Bill.

The following identical protest has been signed by 768 residents of Delhi.

We, the undersigned, pray to the Central Govt. that the Government should not interfere in our social and religious life. The Hindu Law Committee, appointed for codifying Hindu Law be abolished, and both the Hindu Code Part I (Intestate Succession) Bill, and the Hindu Code Part II (Marriage) Bill, be withdrawn.

No. 23.—MADRAS.

Government of Madras.

I am directed to forward copies of the opinions of the Hon'ble the Judges of the High Court, selected officers and other persons and associations who were consulted on the provisions of the Bill. In my letter Ms. No. 3903, dated 21st October 1942, the Madras Government supported the original Bill and agreed with the views expressed by the Hon'ble Judges of the High Court on the provisions of the Bill. The Madras Government adhere to the views expressed therein.

2. I am directed to invite the attention of the Government of India to the opinion of the Government Pleader, Madras on clause 3 of the Bill. He suggests insertion of a proviso to the effect that on filing a declaration before a duly constituted authority by a person governed by the Marumakkattayam, Aliyasanthana and Nambudri Law of inheritance, he or she should be permitted to be governed by the law of inheritance laid down in this Bill.

3. The Bill with the statement of objects and reasons was published in the Fort St. George Gazette in the following languages on the dates noted against each:—

English.	1st February 1944.
Tamil, Telugu, Malayalam and Kannada.	8th February 1944.

In as much as the Bill does not apply to inheritance under the Marumakkattayam and Aliyasanthana laws, I have no remarks to offer.

The Hon'ble Judges have nothing to add to their views already forwarded with High Court's letter No. 77 M-42-B1, dated 22nd Sept. 1942, except to draw attention to the difficulties which will arise out of the absence of parallel legislation in the Provinces with regard to agricultural land. In this connection attention is invited to the Hindu Court's judgement in Appeals Nos. 311 and 380 of 1942 (copy enclosed).

Bar Council, Madras.

Piecemeal dealing with Hindu Law in the manner suggested is much to be deprecated.

Already we have the Hindu Women's Inheritance Act which has given rise to several problems which remain to be solved. Hindu Law of joint family has its rules as to management with immunity from accountability *inter se*. One way in which joint family is kept up is by inheritance from direct male ancestor. This is to be abolished for the future. As a result, there must in every family be two kinds of property, one held according to Hindu joint family system, another held jointly as under the Act by a different though to certain extent overlapping body of people. No indication is given in the Act as to how this latter category of properties is to be managed in future, and what the liabilities *inter se* between the various members should be. The Dayabhaga while recognising tenancy in common nevertheless prescribes management on the same basis as the Mitakshara family. Under the proposed Act the question is left apparently to be decided by courts. Liability for maintenance and marriage expenses and for debts is also similarly left to be dealt with by courts. Is the right to maintenance to be superseded by the right of inheritance newly created or is it to stand in tact or is to be affected *protanto*? There is no accounting at present as between joint family members *inter se* or as between the manager and the junior members. Is that rule superseded and an accounting on the basis of strict tenancy in common substituted for the old rule? In fact, how far are the old Hindu Law rules still intact? In fairness, the Act must make this point clear.

So far, Hindu families could go on without suits for partition for quite a long time. They also do without appointments of guardians by court. Hereafter all these process have to be gone through in almost every family with the evils incidental to litigation, not to speak about the uncertainties of law already indicated as to the precise footing in which members of such families stand to each other.

The main question, *viz.*, as to whether daughters should be given a share is bound up with the question as to whether the joint family system is worth preserving. Hindus must make up their mind on this question. If they think that joint family system is an anachronism and should go it is better to abolish it altogether making members of existing joint families tenants in common and applying to their shares the rule prescribed for inheritance to separate property. The method now adopted must inevitably lead to confusion with no great benefit of any sort. There are large numbers of people who think that the joint family system serves a useful purpose making on the whole for thrift, fellow feeling and solidarity among near relations obviating the necessity for old age, sickness and accident insurance and the rest. With the new rules of inheritance and ideas of tenancy in common bringing in all sorts of divergent elements in the family fold the old family sentiment must necessarily disappear. In a poor country like India, we should think that the disappearance of the joint family system would be a wide national calamity.

The further question is one as to whether women should be given absolute rights in property inherited by them.

It may prevent a body of litigation that at present is occupying the courts' attention, *viz.*, suits by reversioners but Hindu sentiment is not we think in favour of this change and it may be even doubted whether time has yet come for this change especially with reference to properties inherited from males. In this kind of stridhana, the least that is required is that the property should go in case of intestate succession in the same manner as the property of a male dying intestate.

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As the law is understood in most of the provinces, descendants born outside the Hindu fold do not inherit. The Act definitely says that descendants outside the caste would inherit but it does not say whether descendants outside Hindu Community inherit or not. It would outrage the sentiments of Hindus and in fact would constitute a wrong to Hindu community if descendants outside the Hindu fold should be entitled to inherit when no such concession is shown by other faiths. There is much to be said for the view that apostasy must be a ground of disqualification for inheritance though it should not operate to divert vested rights. The Act would seem to go beyond the Caste Disabilities Removal Act. It is fancied that the remarriage of widows is still retained as a ground of divesting though it is not clearly stated that it is so retained.

While there may be some justification in giving shares to widows of deceased members of the family, there does not seem to be any justification to give them right of inheritance in the ancestor's separate property. No legislature has gone so far in any western country and there is no reason why a rule should be enacted here in advance of those countries which we think is wholly in disconformity with Hindu sentiment solely because of the benevolent rule of Hindu law recognising their right to maintenance even in this kind of property. To put women who have no prospect of descendants on the same footing as sons or daughters who are likely to have a family of their own is wholly unjustifiable and is an instance of people conscious of the wrongs done to women in one sphere rushing to extremes, oblivious of the wrongs they may do by their proposed measures. The committee has partially recognized this by allowing them a smaller share than sons. Right of maintenance is circumscribed by the needs of the individual while the right to a share recognised in the Act is not so circumscribed. Fragmentation is an evil that has to be guarded against. The Mitakshara rule kept fragmentation within bounds. While the new rules have the merit as giving due recognition to the claims of nature, they augment the evil of fragmentation.

Coming to the rules of inheritance laid down by the Act, one does not see why the father's father's sister's son in case IV should be preferred to mother's brother's son or the mother's sister's son contrary to the hitherto established rule or why some of the distant cognates should be preferred to one's own descendants like daughter's son's son or son's daughter's son or the daughter's daughter's son. Nor is one certain that the preference of son's daughter or daughter's daughter to the paternal grandfather or grandmother or the brother or brother's son is in accordance with popular sentiment. Nor is it clear why the mother's sister is not given some place nor other in the group of enumerated heirs while so many female relatives are brought in there.

Rule 10 is an anachronism and may well be omitted.

There seems to be no reason why the provisions of the special marriage act which apply the succession act to parties to intercaste marriages within the Hindu fold should not be repealed having regard to Section 17. It would seem to be also advisable to preserve the Hindu Law except in so far as it is expressly or impliedly repealed by this Act.

The Public Prosecutor, Madras.

I am in favour of codification of Hindu law but am not in favour of piecemeal legislation which has got various drawbacks. In a case under the Hindu Women's right to property Act 1937, their Lordships Wadsworth and Patanjali Sastri J. J. pointed out the drawbacks and the difficulties of administering a piecemeal legislation to the said Act. The legislature should codify the Hindu Law in order to meet with the general consensus of the Hindu community of the present generation so long as it does not offend against the fundamental religious concept of the Hindu community especially when custom is re-organized as a source of Hindu Law.

One curious feature to be noted is that the right of women over property varied inversely as their social independence. In England women enjoyed equality with men in social activities from very early times but could

not own any property until the Married Women's Property Act was passed. In India their position was subordinate to their male relations, but within that compass they had great latitude of action and their rights over property was a limited estate and they were not the stock of a fresh descent. But in Mohammedan countries they were goshas so far as social activities were concerned but they could own property as absolute owner, inherit property and leave it to their heirs. In the way in which Mohammedans are trying to extricate their women from their social inequality, Hindus should try to improve their rights over property in consonance to the prevailing ideas of the present day. To oppose it on the ground that the ancient Sastras conceived their position in a particular way to suit the conditions of society in the remote east, about which there is considerable difference of opinion, is unreasonable.

Hindu Intestate Succession Bill aims at (1) Uniform law for all Hindus, (2) Removal of sex disqualification so far as inheritance of property of Hindu intestate is concerned and (3) Abolition of Hindu Women's Limited interest and giving absolute right of property to the women over all inherited estate. No exception could be taken to the above. So far as the present bill is concerned the Dayabhaga Law has to be altered in material respects more than the Mitakshara law. So there is greater opposition from Bengal for the bill. But if the legislature were also codifying the law relating to right by birth of a Hindu governed by the Mitakshara Law which has been mutilated beyond all recognition by his pious obligation to discharge his father's debts, the Mitakshara law may have to be altered so as to make it conform more to the Dayabhaga Law. If the legislature is codifying the whole of Hindu Law there would be more give and take from persons governed by the two systems of law.

Cl. 3. *Proviso*: There is no necessity for perpetuating the limited estates of widows, daughters, etc., after the passing of the Act. The limited estates should all be converted into absolute estates under the Act.

Cl. 5. Cl. 1: Parents are said to be entitled to succeed only if they are dependant on the estate of the deceased. There is no justification for qualifying or limiting the right of parents to succeed while no such restriction is placed on the right of other heirs. So the condition with regard to dependence should be deleted.

Among the enumerated heirs widow of a predeceased son is put in, which has the effect of excluding a daughter's son if they are the two competing heirs. This is unfair since his rights are derived as "putrika putra" from ancient texts. He is equal to a son with oblational capacity. The Act should not have the effect of excluding such near heirs.

Where the son's widow is the only heir she may exclude son's daughter and daughter's daughter. Considering the intimacy of relationship of the two latter heirs it is preferable that they take together when they are the only heirs.

Where son's daughter and daughter's daughter compete it seems only fair that they take together.

Cl. 13 (a): Even in respect of the stridhanam property enumerated in this clause she might be treated as a stock of fresh descent as in clause (b). There is no necessity for perpetuating the distinction derived from the source from which she got the stridhanam.

The absolute rights of disposal for women even in inherited property recognised by Cl. 12 will have to be more clearly defined. When it descends to her heirs, what will be the character of the property in their hands? Is it their self-acquired property? If so, do they not get higher rights than the heirs of the sons of the original propertor? It is only a complete codification of the Hindu Law that can avoid such startling anomalies.

According to Hindu Law an Apostate is civilly dead. An Apostate must be held to be disqualified to inherit and to that extent the Caste Disabilities Removal Act may be amended.

Government Pleader, Madras.

The main objects of the bill are to give effect to the following two principles:—(1) an uniform law of intestate succession for all Hindus in British India and (2)

the removal of sex inequality in the matter of intestate succession. I do not think that any body can seriously object to these principles. Every effort should be made to make the law uniform and easily intelligible and to remove sex disqualification. In my opinion, the bill does not go far enough. I had indicated my views on the matter in my opinion No. 56, dated 20th Aug. 1942, regarding the original bill.

Clause 3 of the bill exempts followers of maramakkattayam, Aliyasantanam or Nambudri law from the provisions of the bill. As suggested in one of the memoranda submitted to the Joint Committee, a provision may be inserted to the effect that on filing a declaration before a duly constituted authority by a person governed by any law of inheritance above-mentioned, he or she should be permitted to be governed by the law of Inheritance laid down in this bill. Such an option given to individuals will in course of time tend to make the law uniform all over the land. It may be noted in this connection that the Madras Legislature has passed an enactment (Act 1 of 1918) by which self-acquired property of a Mohammedan governed by the Marumakkattayam or the Aliyasantanam law of inheritance, is made to devolve upon his heirs according to the rules of Mohammedan law, notwithstanding any custom to the contrary.

In my view the daughter, whether married or unmarried should not only be a simultaneous heir along with the son but should take an equal share with him in the father's property. Under the Marumakkattayam and Nambudri Acts—Madras Acts XXII of 1933 and XXI of 1933—no difference is made in the shares taken on the ground of sex. No valid reason exists in the present day to make any discrimination merely on that ground. I am therefore in entire agreement with the memorandum submitted to the Joint Committee by the representatives of women of Simla that the inequality that exists in the present bill between the share of the son and that of the daughter, should be altogether removed. For the same reason the share allocated to a son in the stridhanam property of his mother should be the same as that of the daughter. Clauses 7 and 13 should be suitably amended.

There is in my opinion no necessity to have a provision like the one contained in clause 10. I have already dealt with the matter in my opinion, dated 20th Aug. 1942, and it is unnecessary to reiterate the reasons here.

Women's Indian Association.

The Women's Indian Association has great pleasure in supporting the main points of the bill. The absolute estate to the widow and a share to the daughter of the outstanding provisions which we welcome wholeheartedly. We are glad to note that the widowed daughter-in-law also has been given a share.

The Great War and the too many crowded events preceding the changed conditions of the present day society have proved beyond all dispute, that the sex disqualifications can no longer be countenanced.

The Hindu Woman through her all-round progress has earned her right to all the privileges and responsibilities of a citizen of an enlightened nation.

We find that some of the opinions expressed by the individual members of the joint committee are not very complimentary to our sex.

We are capable, and, if not, we must be made capable to shoulder the responsibility of managing an absolute estate, without any fear of mishandling it.

Whatever the opinion of the orthodox section of the Hindus may be, the rights of a daughter, whether married or unmarried; for a share in her father's property are long over-due and must be made available to her.

The theory of Socialism and Individual rights with preference for doing away with inequality between classes and sexes, is spreading in a large measure in the present day Hindu Society. Therefore the argument that the vested interests and privileges of large holdings should be safeguarded, and that the family estate should not be fragmented is not such a one that would appeal to the Hindu public in general.

In some provinces such as Madras, women have been excluded from inheriting agricultural property. Her

right of inheritance to agricultural property should also be recognised in the Governor's provinces as well. The committee should urge the provincial legislatures to pass such an amendment immediately.

We concur in the provision of the bill that the daughter's share should be half of a son's share. We should like to state that the daughter-in-law of the predeceased son should be treated along with the daughter, unless she has a son to inherit his own share, in which case she may be allowed one-fourth of a share.

In section 5, clause I, entry I of the enumerated heirs "among simultaneous heirs" we would like to include the son's daughter also, for we would believe that situations may arise, where she would be left with no provision for her maintenance.

We should like to illustrate this point by a concrete case.

A is the daughter of B who is the predeceased son of C. A has lost her mother also. She is therefore an orphan grand-daughter of C, who dies intestate. Now she has no share in her grand-father's property since both her parents are dead. In her mother's father's property also, she would come only as a fourth and the last in order in the list of heirs after these two (i.e.); daughter's son and son's daughter. Though she may come in clause 5 second in the list in the property of her father's father she could never be a simultaneous heir.

We accept the order of succession to Stridhana, the property inherited by a woman from her husband's side, should devolve upon her husband's heirs. The other stridhana through her father's side should devolve upon her own heirs, in order mentioned—daughter—full share, son—half share and so on.

In section 7 as to the manner of distribution among simultaneous heirs, we object to the clause that a divided son also should take a share. It is not clear from the bill whether the divided son has already been given his share in his father's property during the life-time of the intestate. If he has already been given a share, he should not be entitled to another share after the death of the intestate.

We agree with the other sections such as 14, 15, 16, 17, 18, 19, 21, 22 and 23.

We entirely agree with H. N. Kunzru, P. N. Sapru and S. N. Mehta, (1) that Apostasy should be added to the grounds for disqualification of inheritance and (2) conversion to the sects or creeds of Hindu Origin should not be regarded as a disqualification.

Advocate General, Madras.

In my opinion No. 28 of 1942 dated 10th September 1942 I have given my views in detail on the provisions of the Bill to amend and codify the Hindu Law relating to intestate succession. The Bill as then framed while conceding rights of succession to daughters in their father's property did not concede similar rights to the sons in the stridhana of their mother. I suggested that it was both logical and equitable that the sons also should be given a share concurrently with the daughters in their mother's heritage. That suggestion has now been adopted by the Joint Committee and Clause 13 has accordingly been amended. The daughter under the amended Bill takes half the share of a son in the father's property and it is only right that the son's share in the mother's property should half that of his sister.

2. A distinction is drawn in the amended bill between parents who are dependant on the intestate and parents who were not so dependant and the former category of parents is included in the "simultaneous heirs" under Clause I. I am not in favour of the parents, however indigent they may be, competing for a share with the descendants of the intestate. I should think that the object the Joint Select Committee had in view in proposing this change could be achieved by providing for maintenance for such indigent parents from out of the estate instead of giving them a share.

3. In the case of predeceased sons a right of representation is given to their sons and grandsons. If a right of

representation is conceded to a pre-deceased son, there is no reason why a similar right of representation should not be given to a predeceased daughter. Again, I do not see why any distinction should be drawn between a pre-deceased son's son and a pre-deceased son's daughter.

4. The Bill confers an absolute estate on the widow in respect of her share in her husband's property. I should like to draw attention to the practical effect of this provision in the event of her remarriage. The Hindu Widow's Remarriage Act is not proposed to be in terms repealed and through it may be possible to contend in theory that she would on remarriage forfeit her interest in her husband's property by reason of Section 2 of that Act, that section would be rendered nugatory by the widow making a gift of the property to the husband she is going to marry or to any other nominee of hers. I doubt whether such a position would be in accordance with Hindu sentiment.

5. According to Hindu Law the self-acquired property of a father who is divided from his sons goes exclusively to the sons born to him after the partition. This is as a kind of off-set for their being deprived of a share in the joint family property equal to that of their divided brothers by the prior partition. The effect of Clause 7 of the Bill is to do away with this preference in favour of the undivided sons of the father.

6. The position will have to be seriously considered as to whether an undivided and a divided son should have the same rights in regard to the father's heritage. The father might be living with his minor sons and the minor son might have separated himself without any regard to the interest of the minor sons. I am not very much impressed by the principle of logicity.

7. The Bill draws a distinction in the order of succession to a woman's stridhanam between property which she inherited from her husband and property that she otherwise acquired. Though it is possible to urge that once an absolute right is conceded to the widow in her husband's estate there is no point in keeping up a distinction in the matter of succession between that property and property which she has otherwise acquired, I think the differentiation is in accordance with Hindu notions.

7. I am totally opposed to the proviso to clause 13. There is no machinery provided in the Bill for a husband obtaining a declaration as to his wife's unchastity in a court of law and even if there were such machinery the obloquy and publicity attaching to such proceedings would deter husbands from availing themselves of that machinery. The effect of the proviso would be to remove in practice unchastity as a disqualification. If insistence on chastity is considered unnecessary the disqualification may be straightaway removed but if it is considered necessary there is no sufficient reason why unchastity should not be left to be proved in a court of law in the same way as any other fact. In this connection it has to be borne in mind that the burden of proving unchastity is on those who set up that disqualification and a declaration, if any, of the husband regarding the wife's unchastity in a Bill or other document is only one piece of evidence and is not conclusive.

8. The clause disqualifying a murderer requires improvement in drafting. As it is, it reads as though a murderer is disqualified only if he commits the murder with a view to get at the property. It should be made clear that under no circumstances can a murderer succeed to the property of his victim and it is immaterial whether he committed the murder with the intention of getting at the property or not.

Sir Vepā Ramssan.

(a) As to Clause 7 (d) in Part II.—I have already expressed my view on this matter in my former opinion. I then relied on Smritichandrika which allotted to a daughter 1/4 share of a son's share. After I sent my opinion I happened to read Mann for some other purpose and found that Mann also allotted 1/4 share to a daughter. This reasonable provision of ancient Hindu Law somehow fell into disuse—rather unfair to the daughters. It is but proper to restore it at once. If necessary the further step of giving a half share may be taken here after

if circumstances justify after trying the first step of giving 1/4 share. My reasons for not immediately providing a larger share are as follows :

At present as Hindu Society is now constituted particularly in the Madras Presidency (I do not know much about other provinces) fathers and brothers are very anxious to marry their daughters and sisters respectably in a decent manner. They want to see that the girls are well-married. On account of this anxiety there is a regular competition for getting good bridegrooms. The competition takes the shape of offering large Varakatanau or bridegroom price. And as there are more girls than the youngmen available there is a regular bid as in an auction and the bridegroom price is heavily raised. And in the case of middle class and low class families some families are practically ruined at the end of 2nd or 3rd daughters' marriages. The sons are left penniless. I know several cases where the fathers have reduced themselves to poverty. I know one case in which the bridegroom price is Rs. 25,000 in a middle class family. On account of these facts I am at present against giving 1/2 share to a daughter. It is sometimes said that the custom of bridegroom price has arisen because no share is given to the daughter. But I do not agree with this explanation for the origin of the custom. My view is that the custom arose because of competition and I have no hopes of the undesirable custom disappearing merely because a decent share is given to the daughter. The best way of testing the two views is by making a beginning and giving 1/4 share to a daughter as a first step. If as a result of this, the other custom shows signs of gradually disappearing we may take the further step of increasing the daughters' share to 1/2. My fear is that even if we begin to give 1/2 share to the daughters the desired repercussion on the other custom will not be coming forth and sons in many families will be ruined by reason of the double burden of marriage expenses and shares to the daughters. I am aware that there is a demand from the women for full share. The demand proves nothing and until society is reformed in the other direction also the demand at present cannot be fully satisfied. It is natural that women do not see other side of the picture. Any how, a cautious step is always a safe method in such matters and a violent change is undesirable.

(b) In Clause 13 (b) Part II. After sub-clause (5) I would insert before (6) " (5) A—Brothers and sisters and (5) B—brothers and sisters' children," before bringing in (6) husband's heirs". My reasons for this suggestion are as follows :

1. A woman's desire would be to favour her brothers and sisters in preference to husband's heirs. So far as husband himself is concerned he is rightly put in clause 3 because normally a husband is everything for a woman but in default of the husband and parents she would like to help her brothers and sisters rather than the husband's heirs and a law of intestate succession should as far as possible reflect the attitude of the propositus. At least 5 (A) is unobjectionable even if 5 (B) is omitted.

2. In cases where a bridegroom price is paid by the parents it is reasonable that at least when the girl dies, her family who have stinted themselves for her marriage should benefit by her death rather than the husband's heirs who have done nothing for the marriage. It may be noted that I make this suggestion in clause (b) only and not in clause (a) which relates to property got from her husband. It is reasonable that the property in clause (a) should go to the husband's heirs as you have provided. But such a provision in the cases of other classes of Stridhan is unfair. For instance as to property she got from her father what is the justice of going this property to husband's heirs rather than to her sisters and brothers. Other instances when your proposed rule would work very unfairly can be suggested. Generally parents do not survive children and your sub clauses (4) and (5) rarely benefit the parents of the girl.

(C) In clause 18 of part 2 to the proviso I would add " or unless the husband discarded the wife on the ground of unchastity". My object in suggesting this is very plain. There are many cases where a husband discarded the wife on the ground of unchastity and the

supersession has been submitted to without any questioning. In such cases we cannot expect a finding in a court of law. As to the proof of the ground of the discarding I suppose the fact can be proved by correspondence or otherwise. If it cannot be proved the woman will have the benefit of it. I know at least two such cases in Madras and undoubtedly there are many more in the country.

Mr. K. S. Sankara Aiyar, Advocate, Madras.

Piecemeal legislation is defective. The draftsman has not a complete picture before him. He seizes a bit here and a bit there and in his reformatory zeal shapes them into a code. How this fits in with other parts of the law, he fails to see. Anomalies therefore result. The Hindu Women's Right to Property Act was one such piece of legislation. Its defective character has been adverted to in many judicial pronouncements.

The framers of the bill must have had a definite objective in view ; either codification of existing law, or codification of the law as it should be. The Hindu Law, until recently legislation cut into it, developed, like the English Common Law ; Customs, lawgivers, commentators and judges all had their contribution in its make up. The local variations developed the different schools of law each branching from certain point, and each exhibiting its individual growth in many parts of Law. School differed from school, and in the same school, divergences grew from place to place and community to community. If codification is to be of the existing Law, some part of it has to be selected as the normal type which should govern all who follow the Hindu Law. The result is that a large sections of the people will have to adjust themselves to the new Laws.

While it is true that uniformity in Laws is a desideratum and a Uniform Territorial Law for all India has a fascination, we cannot overlook the fact that human society is not plastic clay to be moulded as the legislator wishes, but a tough mechanism rooted in a conservative past and with a strong tendency to oppose any change. In matters of succession in particular, unless enlightened public opinion is strongly for a change, no serious change should be attempted.

The Bill deals with heritable property, and regulates intestate succession to it. It seeks to introduce a more equitable distribution and to bring in the presumed proximate kins in the natural order of the presumed affection and attachment of the dead person.

At the very outset some general remarks fall to be made. The bill does not deal with succession in general. At present we have the theory of survivorship as to coparcenary property and heirship as to separate property. This bill will introduce a further division even in separate property, because, it leaves untouched agricultural lands and what may compendiously be termed Impartible Estates. The Hindu Law is now regarded a personal Law and therefore governing all persons who followed it wherever they may be. That the Law follows them even after migration is well settled—of course subject to the territorial Laws of the foreign countries. Domicile as affecting the Law of the person did not occur. This bill has introduced Domicile as a factor of prime importance ; and it determines the right to moveables and immoveables. Here again differences would arise between the case of one domiciled in British India and one domiciled outside it, such, for instance, as a Native State, or foreign country like Burma : whether the heritable property is moveable or immovable ; and its location is in British India or otherwise : Much confusion will result if this new test is introduced for regulating succession : One will be guided by personal Laws as to joint family rights, as to succession to agricultural lands and Impartible Estates and to foreign immoveables : If one happens to have a domicile in Ceylon for instance this bill will affect only his immovable property in British India.

Is the bill intended to regulate Succession in the case of foreign immoveables of a person domiciled in British India ? Cl. 3 leaves foreign immoveables out of its scope. It is reasonable that in respect of foreign immoveables,

the Indian Legislature cannot legislate on the principles of International Law. But Hindu Law is a personal Law. In Cl. 1 (3) it applies to any person who would be governed in matters of Intestate Succession by the Hindu Law. It is necessary to bring together the personal nature of the Laws, and the territorial character of the legislation. The matter requires further thought.

In the enumeration of simultaneous heirs, the introduction of parents and daughter-in-law and providing them with the share mentioned will result in much greater fragmentation than is consistent with the orderly progress of the society. In no other system is the daughter-in-law made the heir along with wife and sons and daughters. The progressive ideas may require provision to be made for the daughters, though it is difficult to fit it into the accepted system of the family. In actual practice, the daughter is not left unprovided for in the large majority of cases though the law may have made no provision for it. Their marriage expenses in poorer families exceeds by far any provision which the law may contemplate to give her.

In the case of adopted son, this bill recognises three kinds of adopted sons Dattaka, Dwayamushyayana and Kritrima. In the devolution of property all sons whether natural born or adopted are placed in a single category without any difference between them. Is it so intended? The present law gives the adopted son 1/4, the exact way in which that share is to be calculated being a matter on which there is difference of opinion between schools, and provinces. Does the bill dealing with adoption recognise any adoption except Dattaka?

Is it intended to remove the character of limited estate known as woman's estate in respect of property inherited by certain women heirs? It is preserved in the bill in the case of parents—and this includes the father too, a new category of limited owner—vide cl. 7 (e). It is also preserved in the case of women who at the commencement of the Act, i.e., 1 January 1946 had a limited estate cl. 3, proviso. The daughters' and the daughter-in-law's estate become absolute estate. Even the female heirs of Stridhanam property get absolute estate, or is it that this bill regulating only succession, leaves the quality of the estate obtained by the heir to be determined by the present Hindu Law? The juxta position of the heirs makes such a hypothesis untenable.

The bill deals only with legitimate Kinship. The liberal spirit of the Hindus, recognised heritability in the illegitimate sons in certain classes of the community. Their theoretical disapproval did not overlook the realities. This bill excludes them altogether. Is that necessary? Would it not be more in consonance with the spirit of codification to leave the law where it is as to this branch.

In cl. 2 (d) there must be 'or she' before dies and 'or female' before issue. What about two widows or two daughters inheriting; they have survivorship. Is it not heritable property? The bill makes such property her own property. The general rule that masculine gender includes the feminine is excluded by sub-rule (2).

Cl. 7 (f) requires further clarification. In the simultaneous heirs, son, predeceased son's son, and sons of predeceased sons of a predeceased son are recognised: when the widow of predeceased son is given a share, is it intended that 1/4 of the share is set apart for her and the balance 3/4 is divided between her sons and grandsons. In conceivable circumstances the share she gets may be more than what each of her son or grandsons take. Is that the intention?

The widow of a predeceased son may not have a son or grandson, but may have a stepson, or stepgrandson, the cowife not living. Does she then take 1/2 the share of her husband.

Sub cl. 5 does away with the preferential right of agnates and clubs together agnates and cognates in the enumerated list. There is a faint recognition of the preference of father over the mother as classes 3 and 4 preference in before cl. 5. In cl. 9, however, the rule of preference among non-enumerated heirs is recognised in an attenuated form in 9 (3) by the preference of the male over the female line where otherwise no other way of pre-

ference is, to be found to distinguish between one heir and another. Among heirs other than those enumerated the preference of agnates over cognates is recognised in cl. 4 (b). But there is no limit placed as to the heritable agnates.

In the order of succession to Stridhanam in cl. 13 (a), is there any case of inheritance to husband's father's father's father. Is it intended to trace the heirship from husband or the person from whom the property was obtained? After abolishing limited estates, is there any reason to preserve the distinction between what was inherited by a woman from her husband, his father, etc., and other kinds of Stridhanam. Would not one uniform rule be more appropriate? The bill does away with the differences between the several kinds of Stridhanam.

Rule 18 does not disinherit a widow who becomes unchaste after the death of her husband. Is it because having inherited, the property has become hers?

Sec. 3 (1) of Hindu Women's Right to Property Act is repealed. What becomes of the property of the joint family to which the widow succeeds under S. 3 (2) of that Act. It remains untouched—Is it property got by a woman by inheritance. The conflict between the two provisions has to be reconciled.

In cl. (2-d) the illustration treats property in the hands of the last surviving coparcener as heritable property. It obviously refers to what was joint family property but has come into the hands of a sole surviving coparcener. It is no doubt true that he can dispose of it. But if his widow subsequent to his death makes an adoption, the adoption son takes it, by survivorship, divesting even those to whom it has passed subject to limitations recognised by the law. Is that intended to be affected?

It is a nice question whether such property falls in 3 (i) of Act XVIII of 1937, or in 3 (2) of that Act. If it is the former, this Act replaces it. If it is the latter, that Act will give it to his widow, and as this Act by its definition of heritable property takes in such property, this Act gives that property to others also. There will be a conflict between the two which will require to be solved.

President All-India Varnashrama Swarajya Sangh, Madura Town.

I am sending herewith the considered opinions of our Sangh and six other public bodies in Madura regarding the Bill No. 26/42 of the Central Assembly on the Hindu Code, Part I—Intestate Succession—in the shape of Resolutions, (copy of which has been annexed) passed at a public meeting held in the presidency of His Holiness Jagadguru Sri Sankaracharya Swamikal of Avani Sringeri Mutt, under the auspices of—

- (1) The Dharma Sabha Sabha, Madura,
- (2) The All-India Varnashrama Swarajya Sangh, Madura Town,
- (3) The Austhika Madhar Sangh, Madura,
- (4) The Dharma Sevaka Sabha, Madura,
- (5) The Vaidika Sanajam, Madura,
- (6) The Sri Vaishnava Satsampradaya Sabha, Madura,

and

- (7) Sri Vedanta Desika Bhakta Sabha, Madura.

The meeting was held at Lala Choultry on 2-4-1944 at 9 P.M.

The report of the Committee is also annexed herewith.

Text of Resolutions of the Committee, dated 24th April 1944.

1. The Committee is of opinion that this is an attempt to virtually uproot and blow up the basic principles of Hindu Law and substitute an alien and antagonistic set of rules, quite opposed to the sentiments, sacred religious texts and the beliefs of the Hindus in general. This bill and the kindred bills have to be vehemently opposed.

2. The Hindu public does not require any such codification. Unfortunately, the Bill has not had sufficient publicity. The times are also such that a free and public discussion is not possible. Hence, legislation ought to be stayed on this and other kindred matters affecting the religious and socio-religious matters of the Hindus in general.

3. What is known as the Common Law of Hindu Law is a unique system of jurisprudence founded on a principle applicable to all times and to all men. It has the following advantages:—

(a) Liberty is given therein for the development and growth of various schools of thought provided the basic principle is accepted and followed.

(b) Its adaptability is inimitable. It aims at creating unity in diversity.

(c) The different schools of Hindu Law are but natural and logical and contribute to the growth of Hindu Law in a land of numerous people. The rigidity attempted by this bill will prevent any such spontaneous growth and will finally end in chaos and confusion.

(d) The Hindus believe in the divine origin of their law. It is obeyed not because it has a physical sanction behind it, but because it is also based on natural justice and common sense and its potency to maintain the solidarity of Hindu society. By this codification, the command of a political power is substituted and the very basic principles of Hindu Law will lose their moorings.

(e) The Hindu Law, as it is, may appear to be complicated, but is perfectly logical.

4. The Bill, though it claims to codify Hindu Law, aims at substituting an alien, arbitrary and an illogical set of rules. The working of the same will mean needless litigation, expenses and worry, and will ultimately result in breaking up Hindu society and destroy the Hindu Religion.

5. There is no need for such a legislation. The vast majority of the Hindus do not want it. If a few want to have a change in the order of succession to their separate property, a simple testamentary instrument will effectively bring it about. Why then this bill? Why then this indignation on an unwilling public with the help of a foreign power at the point of the bayonet?

6. The attempt at piecemeal legislation defeats the very aim of the supporters of the bill.

7. The Committee regrets the insult offered to Hindu religion in the Select Committee report in the unworthy passage—“It must be premised and all the scholars agree, that most of the last vedic literature has been lost; little remains in it of positive law.” This Committee prays that the Government will at once arrange to expunge the same from the Select Committee report.

8. This Committee regrets that the opinions of experts well versed in the texts on Hindu Law should have been ignored.

9. This Committee regrets that the Select Committee should have taken as an advisor a gentleman who confessed that he was not a Sanskrit scholar.

10. This Committee regrets the breach of the convention that, in the consideration of social measures affecting one community only, members belonging to other communities should not take part.

11. This Committee, therefore, prays that the further consideration of the Bill by the Legislature may be dropped.

Resolutions passed at the meeting on 2nd April 1944, at 9 a.m.

This public meeting of the citizens of Madura held in the presidency of His Holiness Jagadguru Sankaradharva Swamikal of the Arani Sringerigiri Mutt under the auspices of—

1. The Dharmasastra Sabha, Madura.
2. The All-India Varnasrama Swaraja Sangh, Madura Town.
3. The Asthika Medhar Sangham, Madura.
4. The Dharma Sevaka Sabha.
5. The Vaidika Samajam, Madura.
6. The Sri Vaishnava Satsampradaya Sabha, Madura.
7. Sri Vedanta Desika Sabha, Madura.

Unanimously resolves that the proposed Amendment of Hindu Law relating to Intestate Succession in the manner or on the lines proposed by the Bill No. 26/42 as revised

by the Select Committee is contrary to and conflicts with the primordial principles upon which the Hindu Law of Succession is based in the Smritis, as they have been traditionally interpreted and followed and is calculated to offend against, disturb and bring about chaos in the field of family life, relationship and mutual love and regard obtaining between children male and female in the family besides breaking up and frittering away the property conception and its use amongst Hindus. The Meeting further emphasises that the object of the Bill to introduce into the Hindu Law of Succession, principles and practices, alien and repugnant to and inconsistent with the foundations of Hindu Religion and Society and the socio-religious system upon which the Hindu Law has been based and has been smoothly, agreeably and willingly accepted, followed and honoured. This meeting further urges that no such gratuitous changes are either necessary or called for to be imposed upon the Hindu public, especially in the absence of any such cry or demand from them for any flagrant changes of their personal laws.

II. This meeting further urges that, for the above-said reasons, the Marriage Bill is also calculated to offend against the long established laws of the Hindus relating to Marriage, unnecessary and unequal for.

III. This meeting further resolves that the revival of the Ryo Committee and the attempt to impose new laws upon the Hindus in the garb of codification is a step quite unwelcome to the Hindus, especially at this time of War which has brought in its wake very many troubles to all Indian homes, as it is an interference in the socio-religious institutions guaranteed to us as fundamental rights.

IV. This meeting deeply deplores the methods taken by the Government independently or on the advice of interested people to agitate questions religious, socio-religious, when there is really no opportunity to give vent to feelings during this critical War period.

V. Resolved that to these resolutions be attached the detailed memorandum prepared by the Committee appointed for the said purpose by the Sabha assembled on 30th January 1944.

K. N. Rajagopal Sastri, M.A., B.L., Sub-Judge of Tanjore.

I have the honour to request that the following suggestions, i.e. the Hindu Code, Part I (Intestate Succession) Bill may be forwarded to the proper quarter.

(1) The dominant intention of the Bill appears to be to confer rights of inheritance simultaneously on brothers and sisters, a sister taking half as much as a brother in the father's properties and a brother taking half as much as a sister in the mother's properties. But this intention is not expressed in the same language in clauses 7 and 13(c) of the Bill. In clause 7 the whole estate to be distributed is taken as the sum total of the shares which the several heirs are designated to take, whereas the intention is expressed more directly in clause 13(c). In legislative enactments it is desirable that the same language should be used to convey the same idea throughout.

(2) In clause 7(f) of the Bill, it is said: “The widow of a pre-deceased son, if she has no son or son's son surviving, shall take half the share which her husband would have received if he had been alive at the time of his father's death.” It is not clear whether the intention is that such a widow should take half a share (as, for instance, a daughter of the propositus would take under clause 7(d) of the Bill, or only one-fourth of a share. The language, as it stands, would lead to the latter interpretation, as in the well-known case of the illegitimate son of a Sudra. (See Kamulamma v. Viswanathaswami Naicker, I.L.R. 46 Madras 167, Privy Council, as explained and applied in Maharaja of Kolhapur v. Sundaram Ayyar, I.L.R. 48 Madras 1, at pages 76 and 226 to 228). For instance, suppose an intestate Hindu Male leaves as his

only heirs a son, and a predeceased son's widow who has no male issue. If the scheme of distribution is one share to the son and a half share for the widowed daughter-in-law, it will be in the ratio 2/3 and 1/3. But if we must imagine that there were two sons, the distribution will be half and half; and then if the widow of one of them is to be given half of what her husband if alive would have received, she will take one-fourth and the surviving son (her brother-in-law) will take three-fourth. The intention of the legislature in this matter must be so expressed as to leave no room for controversy at all. There is no difficulty when a predeceased son's widow has male issue, for she and the issue together take the share which the predeceased son would have taken if alive, though she herself takes only a fourth of that share.

(3) It will be better to refer in clause 7(f) of the Bill, to the son or the son's son, not of the widow of a predeceased son of the intestate, but of the predeceased son himself. For the male issue intended to be referred to may be his by another wife than his surviving widow (that is, a step-son or a step-son's son of the surviving widow); and, conversely, it cannot be the intention to refer to the son or grandson of the widow by a previous husband. By the definition in clause 2(g) of the Bill, "son" does not include a "step-son".

(4) In clause 7(e) of the Bill, provision is made for the devolution of the property inherited by a parent, on the latter's death intestate. The reference to intestacy in the context, as well as the scheme of the Bill ever as to the quality of the estate taken by female heirs, show that no restriction on the power of alienation *inter vivos* of any heir is intended. But the clause as it stands may give room for an argument that an alienation from a parent gets only an estate defeasible at the parent's death. It is therefore suggested that after the words "but any property so inherited", the following words be inserted: "and remaining undisposed of by the parent".

(5) A necessary consequence of the multiplication in the number of simultaneous heirs will be excessive fragmentation of estates. The effect can, however, be minimised and discord lessened, if a right of pre-emption in the heirs or any of them is created when one or more of the heirs alienate his/her or their interest or share in the estate of the deceased.

(6) In the definition clause, the phrase "dying intestate" may be defined to mean "dying leaving no will capable of taking effect in respect of the property in question according to the rules contained in the Indian Succession Act".

Honorary, Secretary, Bar Association, Madras.

I have the honour to communicate the resolution of the general body of the Madras Bar Association held on 14th July 1944. (The Bar Association is of the opinion that it is inadvisable to proceed further at this juncture, with the intestate succession bill part 1 Hindu Code and that the bill itself should be dropped.

OPINION AGAINST THE BILL

The following identical opinion has been received from 278 individual belonging to Madras Province, whose names are given in the Annexure.

In my humble view, as neither the Government of India nor any of the Provincial Governments possess or have 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, especially under its present form and constitution, is most undesirable and its contemplated action therein undesirable; (b) the action of the Government of India in constituting the Hindu Law Committee for the re-drafting of the Hindu Code is totally disliked by the Hindus; and (c) the Hindu Intestate Succession Bill and the Hindu Marriage Bill contain many provisions which are quite contrary to the spirit and letter of the Dharmashastras and are detrimental to Hindu culture and civilisation.

I have the honour to request you to communicate to the Government of India my above opinion on these Bills, although my opinion on the Law of Marriage Bill might be held to be premature) and to recommend to them their reject on.

Annexure.

Messrs. —

Seetharam Shroff, Manager R. C. & Co., Madras; M. R. Venkatchelam, Madras; R. Kishandas Merchant, Madras; M. Sitarama Sastri, Madras; N. Ramasankar Davay, Madras; B. Ramesen, Madras; T. P. Naidu, Madras; S. Tyagarajan, Tanjore Distt.; M. Seshachariar, Retd. Teacher, Madras; A. K. Seshadri, Ranipat; P. G. Venkatespathy Raju, Sowcarpet, Madras; P. G. Lukshman Raju, Madras; K. S. Rao, Mylapore, Madras; P. C. Balakrishnan, Madras; Jai Raj Karandas, Park Town, Madras; Jambadas Jai Raj, Park Town, Madras; C. T. Krishnany, Madras; K. M. Kaulasee Pillay, Madras; A. C. Saingh Sowcarpet, Madras; K. S. Mehta, Chemist, Madras; Purusha and Shiva Chand Joshi, China Bazar, Madras; Gopi Krishan Ram Gopal Jhaver, China Bazar, Madras; B. Chajju Lal Mangal, Sowcarpet, Madras; Ram Chand Chamlak, Sowcarpet, Madras; Pursshotram, Madras; Damodaradas Vallabhdas, Sowcarpet, Madras; P. Khandaswamy Sastri, Madras; O. K. Venketraman, Madras; Haridas Lakshmi Chand, Sowcarpet, Madras; Valldas Lakshmi Chand, Sowcarpet, Madras; D. S. Kannappan, Triplicane; Bhaidas, Madras; V. K. Srinivasan, Madras; J. Pursshotam Rao, Madras; P. S. Srinivasan, Thyagarayanagar, Madras; E. G. Ghanashyam Das, Madras; R. L. Kotadia, Madras; V. Gopaladas, Sowcarpet, Madras; J. M. Thyayagahwan, Thyagarayanagar P. V.; J. Krishnamacharya, North Arcot Distt.; M. Veeraswamy Chetty, Park Town, Madras; A. Munuswamy Chetty, Park Town, Madras; M. Sundarajadesey, P. R. Madras; M. D. Jagathusann, Madras; M. Venkatarao, Madras; Kasseiah, Madras; G. V. Emberrabaz, Park Town, Madras; Girdhar Lal Bhaddam, Madras; A. Punnamechand Biyas, Madras; Molay Lal Sri Krishan, Madras; Madan Gopal Meonthda, Madras; M. Narayanaswamy Nayer, Madras; Sohan Lal Monthday, Madras; Ram Chander Bhalami, Madras; Ganesh Lal Ji Keertaniya, Park Town, Madras; Rattan Lal Pomer, Madras; Jayanarayan Daga, Madras; R. S. Ghaver, Madras; S. L. Daga, Madras; H. Balakrishandas, Madras; Radhakrishnan Joshi, Madras; Y. D. Joshi, Madras; Dhan Raj Bhutala, Madras; Joravarnal, Madras; Badrinaryan, Madras; Sha Retbanchand Bhurmal Salen, Sha Ramsodmull Khurichand, Madras; S. Makanchand, Madras; Sha R. abdash Bhurmail, Madras; Fozimall Mulchand, Madras; Sabraj Ranka, Madras; Thilokchand Poozajee, Madras; B. Vallabhdas Shah, Hyderabad Deccan; S. Gopalakrishnan, Madras; Gmuraj Paichand, Madras; Rattunji Shankerlal, Madras; Danalal Manchala, Madras; Premchand Gulabchand, Madras; Jagannath Shankerlal, Madras; Motya Pakraj, Madras; Hazarimal Jivara, Madras; Vamechand Pefozmul, Madras; Tarachand Ghanashyamdas, Madras; Motilal Pionra, Madras; Tarachand Kundannul, Madras; Hindumal Dali Chand, Madras; Munroopjee, Lakmichand, George Town, Madras; Maganlal Jain, Madras; Tikkaradas Isardas, Sowcarpet, Madras; M. V. Garpast, Madras; N. V. Sutharanamnia, Madras; M. V. Narayanaswami Iyer, Triplicane, Madras; S. V. Ramanyan, Madras; S. N. Veerarasayana Naidu, P. B. Madras; E. R. Narasimhan Naidu, P. B., Madras; P. V. Subbarao, Nellore; P. S. Krishnamoorthi, Madras; M. Andikesavar, Madras; S. Parthasetty, Madras; K. J. Sivaprakasam, Madras; V. P. Rao, Madras; K. N. Ramaswamy Mudaliar, Madras; Mangalal M. Dolia, P. T. Madras; S. Kaminatha Rao, Madras; T. A. Thirunavanasu Chetty, Madras; Narayanaswamy Chetty, Madras; R. Govindarajan, Madras; E. Lanjatharam Chetty, Madras; B. Sundaraja Iyengar, Conjeevaram; Ganeshamall, Madras; G. Sadashiva Bhatta, Madras; V. K. Subramnia Iyer, Tanjore District; Dewan Bahadur Govindoss Chathoorboojasosa, Madras; V. S. Naro Moham, English Asstt. Madras; L. S. Chngahamyachetty, Madras; K. R. Rajagopalachari Siromani Assistant,

No. 24.—INDIAN STATES.

Hon'ble the Resident for Central India, Indore.

I forward a copy of letter from the Prime Minister, Indore State, Indore with its enclosures.

Prime Minister, Indore State.

I have the honour to forward herewith applications from the President, Shree Sanatan Dharma Rakshini Sabha, Indore; President Prantiya Dharma Sangh, Indore; President, Madhya Bharat Sanatan Dharma Sammelan, Indore; and President Shri Varnashram Dharma Rakshini Sabha, Indore.

1. President Shree Sanatan Dharma Rakshini Sabha, Indore.
2. President, Prantiya Dharma Sabha, Indore.
3. President, Madhya Bharat Sanatan Dharma Sammelan, Indore.
4. President, Shree Varnashram Dharma Rakshini Sabha, Indore.

In our humble view neither the Government of India nor any of the Provincial Governments does possess or has at any time possessed any right to legislate upon matters relating to the private and Religious laws of the Hindus. 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, ill-advised, uncalled for measure, harmful, highly detrimental to the religious, social and economical interests of the Hindu community and its contemplated action thereon, unstatesmanlike. The action of the Government of India in constituting the Hindu Law Committee for the preparation and drafting of the Hindu Code is wholly repugnant to the Hindus who form the bulk of the loyal subjects of our emperor and the action is directly against the Imperial Proclamation. The Hindu Intestate succession Bill and the Hindu Marriage Bill contain many provisions quite contrary to the spirit and letter of the Dharmashastra and are detrimental to the Hindu culture and civilisation.

I have the honour to request you to communicate the Government of India my above opinion on these Bills (though by opinion on the law of Marriage bill might be held as premature) and to recommend to the same for their rejection.

No. 25.—RAJKOT, ETC.

Protest against the Bill.

130 residents of Rajkot State (Kutchiawar) have signed a protest against the Bill.

121 residents of Jaipur State have signed a protest against the Bill.

Resolutions against the Bill.

The following identical resolutions were passed unanimously at different places in Indian States, the names of which are given in the Annexure.

Resolution no. 1.

This meeting resolves that as in its considered view neither Govt. of India nor any of the Provincial Govts does possess or has at any time possessed any right to legislate upon matter of private laws of the Hindu, the present policy of the Govt. of India of codifying Hindu Law through the agency of the Central Legislature specially under its present form and constitution is most reprehensible and its contemplated action thereon ultra vires.

This meeting further resolves (a) that without prejudice to the contents of the first resolution, the action of the Govt. of India in constituting the Hindu Law Committee for the preparation and drafting of the Hindu Code is fully unwarranted and unjustifiable (b) That the Hindu Intestate Succession Bill and the Hindu Marriage Bill contain so many provisions quite opposite to the spirit and letter of the Dharmashastra and detrimental to the Hindu culture and civilization, that Govt. should be asked to withdraw both of these bills and abandon any further attempt of legislating upon any subject of Hindu law.

Annexure.

Jammu Town, Jammu and Kashmir State, City Chowk, Jaipur, Jaipur State Rangarh, Dist, Jaipur, Jaipur State Village Brach, Rewa State.

Madras; G. Pakssiraja Iyengar, Asstt. Madras; T. S. Srinavasa Iyengar Headmaster, Madras; G. M. A. Raghavachariar, Madras; I. N. Alogusingam, Madras; Gopaladas Goverdhandass, Madras; Meijayam Naidu, Madras; C. Manicka Devar, Madras; K. Sashuiyu, Madras; P. D. Kittachi, Madras; T. S. Srinivasan, Madras; V. Venkatacharian, Madras; T. Kanan, Madras; M. Bizisatham Davey, Madras; J. P. Venkotharan, Madras; Jannadas Jivraj, Madras; Trikanadas Jamholal, Madras; Veljee Pragjee, Madras; Ramadas Dwarkadas, Madras; Paramandas Jaikishan Das, Madras; Chimanlal Mohanlal Hakeol, Madras; Shantilal Okhalal, Madras; R. Nilkanta Kosadia, Park Town, Madras; M. Gokaldas, Madras; L. Shankarananayana Sethe, Madras; T. S. Subbraya Sukkal, Madras; B. V. Sukkal, Madras; R. Padmanaba Sukkal, Madras; G. Ramachandreda Davay, Madras; K. Vishnudas, Madras; P. Ulumalai Chetty, Madras; S. Rangui Rau, Madras; S. Bhimarathi, Madras; S. Subba Rani, Madras; G. Ramachandera Iyer, Madras; S. Puroshotama Rao, Madras; F. Varada Rao, Madras; S. Radhakrishna Iyer, Madras; A. Lakshmidat Pandya, Madras; C. Sindararao, Madras; S. Kuppaswamy Kyengar; T. Gopaladas, Madras; P. Munuswamy Chetty, Park Town, Madras; A. V. Davey, Madras; S. Ramanatha Davey, Madras; T. S. Krishnamurthi Rao, Park Town, Madras; Haridas Giridharas, Mint Street, Madras; Ramakrishna Davey, Mint Street, Madras; S. Govindas, Madras; V. Subramania Sastry, Madras; B. Jeevandas, Madras; Baldevdas Govindas, Madras; Laldas Govindas, Mint Street, Madras; B. S. Muthi, Madras; B. Govindadas, Sowcarpet, Madras; S. Srinivasagopalan, Madras; V. S. Srinivasa Raghavan, Madras; Dwarkadas Hamandas, Madras; Bhagvandas Laldas, Mint Street, Madras; Khushaldas Hovindas, Madras; Kisendass Giridharas, Mint Street, Madras; Revashankar Dav, Madras; Duraisami Gurrukul, Madras; P. Theppemmaliah, Madras; V. Venugopalaaiyar, Triplician, Madras; I. K. Lakshmana Aiyar, Madras; V. M. Armachalan, Madras; Kuitu Balu Naidu, Swacarp, Madras; G. Muthuyo, Madras; Veerarasagaviah, Madras; E. Cheregabeeraya Naidu, Madras; K. Venkatesa Naidu, Madras; G. Radhakrishnan, Madras; L. Srinavasan, Madras; V. N. Sawdesivanu, Madras; Shivama Krishnan, Madras; R. Padmana Bhan, Madras; R. Saosmanabi Rao, Madras; K. Sundarumit, Tinnevely; S. Ananthanarayanan, Madras; Y. Parthasarathy, Madras; T. Sambantha, Madras; A. Thiyyengaranjan, Madras; B. Bhaktarathachuloal, Madras; A. Lakshminah, Madras; Gokaldas Narayanji, Madras; S. Choudhmal, Madras; S. Chouthmal, Madras; Ratilal Parikh, Swacarp, Madras; Dwarabhdas Chatturbhujdas, Madras; B. Govinddas, Madras; Kanheiyala Sharma, Swacarp, Madras; Gopaladas Bhagvan Das, Madras; Jaisingh Lalju, Madras; Bhagvandas Parmanavari, Madras; Falchand Bhagvandas, Madras; Venkalidas Goverdhandas, Swacarp, Madras; Ramdas Venkati Das, Madras; Ganeshlal, Sowcarpet, Madras; V. Krishnadas, Madras; P. Sankar Rao, Madras; Ganpatram Kalidas, Madras; A. K. Narainshachariar, Madras; R. Sundra Bhattachari, Madras; Sthanpan Abansha Bhattachari, Berumkender, Madras; S. Santhana Bhattachari, Madras; A. K. Narasiniha Ramanujachari, Madras; E. A. Arananada Bhattachari, Madras; C. M. Sambandam Chetty, Park Town, Madras; S. M. Muthukumara Swamy Chetty, Madras; K. Krishna Pillay, Chittoor; S. Masilamani, Park Town, Madras; B. Kamalandon, Madras; A. Vedagiri, Park Town, Madras; C. Narayandasawamy, Madras; Saljee Jannadas Asher, Park Town, Madras; G. Ramanujoksh Kutty, Madras; Vidupulapati Alwarolia Chetty, Madras; Dayalji Shivaji, Park Town, Madras; Muthyala Baliah Chetty, Madras; M. Pulliah Chetty, Madras; Muthyala Subharanjib Chetty, Madras; B. Gurumanthial, Madras; N. Seshayi Rao, Nellore; V. Srinivasun Chetty, Madras; K. Chinna Subba Reddy, Chinglapet; A. Venkutakrishnaiah, Madras; C. S. M. Rao, Madras; Kamisetty Andisishiah Chetty; Nellore; P. Rajagopal, Madras; A. N. Radhakrishnan, Madras; S. Senkara, Madras; N. Balesutramanyam, Madras; N. Raghaviah, George Town, Madras;

Pandit Vinayak Dutt, Munsiff and Magistrate 1st Class, Judge Insolvency and 'Small Cause Court', Tyara (Alwar State).

I, as a member of the Hindu Society and "Sanatan Dharma", wish to convey you my protest in the strongest possible terms, against the introduction of the Bill, which in fact which virtually, in the result aims at revising the Hindu Law, and any other Bill or Bills, which would offend against the religious sentiments of the Hindus.

I am sure the Indian Legislature will realise that it owes a very great and in fact the primary responsibility to the Hindus of this soil, and it will not depart, from its established policy and practice of dissociating from any such action as calculated to offend against a people's religion, in the present case and would creditably discharge the obligation and play the role instead of being a true, reliable and trustworthy guardian in trying to maintain and perpetuate the "pious sanctity" of the "great principles and precepts" of our "Great Religion," which have remained intact to this day through the test of all times, more because every whit of them, has got invariably a big scientific principle behind, and which have existed in "Bharat-Varsh"—the "Great Land" of ours—from the "Beginnings of Time" and "Shown Light" to every nook and corner of the Globe.

L23LAD(25)—400—4.11.44—GLPS

Hoping to be excused for this indulgence which by itself being easily imagined and treated as speaking the whole rather universal Hindu mind, (for it may, well be, and that in fact has been the case, that the information could not reach them all whom it concerns and those who could get it may not have been all in a position to ventilate their feelings against it or at any rate make them reach the quarter concerned, else it is impossible that a Hindu, who has got the least living feeling or germ in him, would not go to the extent of easily staking his life for the sacred cause of the holy Religion and Motherland of ours) will receive the attention it deserves and claims and will achieve, without shadow of a doubt, the end for which it is meant, for though late, rise as they (feelings) with a spontaneity from the farthest seat of the Religions and Hindu sentiment, they are bound to touch and arouse the similar strength of feelings in the hearts of those to whom they are addressed and so succeeding, allay the mortifying panic that has presently taken hold of the Hindu mind and nerve.

Swa: Raghavanandji President Satsang Mandal, Morvi.

Lad: and gentlemen Satsang Mandal Morvi emphatically "nies Government rights interfere time honoured religious principles strongly protests Hindu law code one two ges abolition Rao Columittee.

ON THE HINDU CODE.

(Introduced in the Legislative Assembly on the 11th April 1947 and published in the Gazette of India, Part V, on the 19th April 1947.)

Anuswasamovindas, Madras; Kissaendass Girdhardas,
 Mint Street, Madras; Revashankar Dav, Madras;
 Duraisami Gurrukkal, Madras; P. Theppemnaiah,
 Madras; V. Venugopalsaiyar, Triplican, Madras;
 I. K. Lakshmana Aiyar, Madras; V. M. Arnachalan,
 Madras; Kuty Bahu Naidu, Swacarpet, Madras; G.
 Muthuyo, Madras; Veerraghaviah, Madras; E.
 Cheregabearoya Naidu, Madras; K. Venkatesa Naidu,
 Madras; G. Radhakrishnan, Madras; L. Srinivasan,
 Madras; V. N. Sawdeosivanu, Madras; Shivama
 Krishnan, Madras; R. Padmana Bhan, Madras;
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 nevelley; S. Ananthanarayanan, Madras; Y. Par-
 thasarathy, Madras; T. Sambantha, Madras;
 A. Thiyyengaranjan, Madras; B. Bhakthara-
 chuloo, Madras; A. Lakshminah, Madras; Gokaldas
 Narayanji, Madras; S. Chouthimal, Madras; S. Chouthi-
 mal, Madras; Ratilal Parikh, Swacarpet, Madras;
 Durlabhdas Chatterbhujdas, Madras; B. Govinddas,
 Madras; Kanheiyala Sharma, Swacarpet, Madras;
 Gapaldas Bhagvan Das, Madras; Jaisingh Lalji, Madras;
 Bhagwandas Parmanayari, Madras; Falchand Bhag-
 wandas, Madras; Venkalidas Govendhandas, Swacarpet,
 Madras; Ramdas Venkati Das, Madras; Ganeshlal
 Sowcarpet, Madras; V. Krishnadas, Madras; P.
 Sankar Rao, Madras; Ganpatram Kalidas, Madras;
 A. K. Narainsachari, Madras; R. Sundra Bhattachari,
 Madras; Shayan Anansa Bhattachari, Berumkendev,
 Madras; S. Santhana Bhattachari, Madras; A. K.
 Narasimha Ramanjuchari, Madras; K. A. Arananuda
 Bhattachari, Madras; C. M. Sambandam Chetty, Park
 Town, Madras; S. M. Muthukumara Swamy Chetty,
 Madras; K. Krishna Pillay, Chittoor; S. Masilaman,
 Park Town, Madras; B. Kamalandon, Madras; A.
 Vedagiri, Park Town, Madras; C. Narayandasawamy,
 Madras; Saljee Jannadas Asher, Park Town, Madras;
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 Madras; Muthyala Baliah Chetty, Madras; M. Pullich
 Chetty, Madras; Muthyala Subharanjib Chetty,
 Madras; B. Gurumanthial, Madras; N. Seshyni
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 K. Chinna Subba Reddy, Chinglapet; A. Venkutakris-
 niah, Madras; C. S. M. Rao, Madras; Kamisetty
 Andisishiah Chetty, Nellore; P. Rajagopal, Madras;
 A. N. Radhakrishnan, Madras; S. Sankara, Madras;
 N. Balasutramanyam, Madras; N. Raghviah, George
 Town, Madras;

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Resolutions against the Bill

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 of which are given in the Annexure.

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 its contemplated action thereon ultra vires.

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 letter of the Dharmashastra and detrimental to the Hindu
 culture and civilization, that Govt. should be asked to with-
 draw both of these bills and abandon any further attempt
 of legislating upon any subject of Hindu law.

Annexure.

Jammu Town, Jammu and Kashmir State, City Chowk,
 Jaipur, Jaipur State Ramgarh, Distt, Jaipur, Jaipur State
 Village Brach, Rewa State.

NOT FOR PUBLICATION.
(For use of Members only.)

GOVERNMENT OF INDIA.
MINISTRY OF LAW.



PAPER NO. 1.

OPINIONS

ON

THE HINDU CODE.

(Introduced in the Legislative Assembly on the 11th April 1947 and published in the
Gazette of India, Part V, on the 19th April 1947.)

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OPINIONS ON THE HINDU CODE.

BOMBAY

FROM THE SECRETARY TO THE GOVERNMENT OF BOMBAY, HOME DEPARTMENT, TO THE SECRETARY TO THE GOVERNMENT OF INDIA, LEGISLATIVE DEPARTMENT.
NEW DELHI. No. 2207/5-B, dated the 22nd August, 1947.

Subject :—THE HINDU CODE.

With reference to your letter No. F. 229/47-C and G (Judl.), dated the 16th April 1947, on the subject noted above, I am directed to forward herewith copies of the papers mentioned in the accompanying list and to state that the Government of Bombay is in general agreement with the principles of the Bill.

2. The Bill was published in the Bombay Government Gazette in English on the 15th May 1947 and Marathi on the 31st July 1947 and in Gujarathi on the 31st July 1947.

THE GOVERNMENT PLEADER, HIGH COURT, BOMBAY :

I am in complete agreement with the framers of the draft Hindu Code.

THE SECRETARY, SANATAN VEDIC DHARMA SABHA, AHMEDABAD :

On behalf of the Sanatan Dharma Sabha and under instructions of the Managing Committee I have to forward the following opinion of the Sabha on the Hindu Code Bill :—

- (1) This Sabha is wholly against the very principles & provisions of the Bill, for, it destroys the sanctity of the Divine Hindu Law and introduces revolutionary changes in the Hindu Society.
- (2) This Sabha strongly objects to the powers of the mixed Legislature to bring in such anti-religious legislation.
- (3) The Sabha's full opinion dated 28-3-44 on the Hindu Code has been sent in formerly as reproduced in the accompanying pamphlet named "Exposure of the Hindu Code" on p. p. 18 to 26 which has been edited by Prof. J. B. Durkal, the president of this Association.
- (4) The whole Hindu Community as will be seen from the accompanying pamphlet (excepting the pseudo-Hindu Reformers) is against the Bill and the Legislature will be wise in dropping this whole Bill. Three copies of the Pamphlet are sent by Registered Book post separately.

THE SEVA SADAN, GAMDEVI, BOMBAY :

The Council of the Seva Sadan Society supports the provisions of the Hindu Code and only wishes it will soon become law, as then there will be no necessity for piecemeal legislation and the various Bills that are sought to be introduced in the Legislative Assembly.

THE HON^{BLE} SECRETARY PRARTHANA SAMAJ, BOMBAY :

The Managing Committee of the Bombay Prarthana Samaj have no particular views to offer regarding the Bill.

ASSOCIATION OF THE ALL-INDIA WOMEN'S CONFERENCE, POONA :

In the first place, the Conference commends the fundamental underlying principles of the Hindu Code Bill.

Secondly, the Conference suggests that complete legal equality be established between son and daughter in matters regarding intestate succession.

The Conference fully endorses the view that a woman shall be invested with an absolute estate over her "Stridhan" Property as is adumbrated in the Bill.

As regards marriage, the Conference welcomes the possibility of the solemnization of sacramental marriages between Hindoos of different castes and also of those belonging to the same Gotra, and the necessity for compulsory registration of all marriages, as being of evidential value. It also supports the institution of monogamy with no exception.

The Conference feels dissatisfied that while provision is made for dissolution of marriages, no such provision has been made as regards the grant of alimony in cases of dissolution. It once more emphasises the urgent need for the recognition of the inherent right of the divorced wife for alimony.

As regards matters of adoption, the Conference feels that adoption is not only for spiritual purposes, but also for material, and as such, urges the permission of a daughter being adopted in preference to a son, if any person so desires.

The Conference deploras the legal disability imposed upon a widow not to adopt in cases of prohibition by the husband, and advocates an equality of privileges between the two sexes, thus enabling the widow to adopt despite the wish of the deceased husband to the contrary. In case this is not made legally possible, the Conference at least feels, that a son adopted by a person against the wishes of his wife shall not be entitled to inherit the "Stridhan" property of the dissenting wife.

The Conference feels hopeful that the amendments, suggested above, will be given their due importance and will be incorporated in the final draft of the Hindu Code Bill.

THE REGISTRAR, HIS MAJESTY'S HIGH COURT OF JUDICATURE (APPELLATE SIDE), BOMBAY :

In view of their Lordships' policy as set out in their letter C. 0110, dated the 1st July 1946, addressed to Government in the Finance Department, Their Lordships refrain from expressing any opinion on the Hindu Code.

THE DISTRICT JUDGE, SATARA :

I have no remarks to offer (or any changes to propose) on the provisions of the Hindu Code.

THE DISTRICT JUDGE, DHARWAR :

I agree with the provisions of the Hindu Code. I have no suggestions to make.

THE DISTRICT JUDGE, THANA :

The Bill seeks to codify the Hindu Law after embodying in it such modifications as are required by the progress made by the Hindu society and the suggestions made by the reformers. The Bill will go a long way in giving finality to certain disputed questions of Hindu Law. The provisions regarding registration and dissolution of marriages are welcome features. With the march of progress in the society the right of divorce has to be an integral part of the Law. On the whole the provisions of the Bill are progressive in character and deserve the support of the Hindu society.

THE DISTRICT JUDGE, SURAT :

I have the honour to give the following opinion :—

1. PART II. SECTION 5. CLASS II.

The sixth heir in this class is daughter's son's son and the third in this class is son's daughter's son. But as daughter's son is preferred to son's daughter, the son of the former must therefore be preferred to the son of latter: that is daughter's son's son must be preferred to son's daughter's son. For the same reason daughter's son of a daughter must be preferred to son's daughter of a daughter that is heir no. 8 in class II must be preferred to heir No. 7 in class II.

2. PART II. SECTION 9.

The rules of preference contained in this section are logical but they leave a loophole. For instance, let me take father's son's daughter's daughter and father's father's daughter's son's son that is F F S D D and F F D S S. According to the rules of preference contained in section 5 the former would be preferred to the latter although daughter's son is preferred to son's daughter and *inso facto* son of the former must be preferred to daughter of the latter. Other illustrations can also be given M F S D D and M F D S S.

3. I would make an entry of several groups of entries like the following.

- (a) brother's daughter and sister's daughter.
- (b) father's mother and father's father.
- (c) Father's brother's daughter and father's sister's daughter.
- (d) Mother's mother and mother's father etc etc so that the heirs in each entry may inherit simultaneously.

4. The position of sister and sister's son vis a vis father's mother and father's father requires further consideration as the new Code makes a departure from the existing order of preference.

5. para iv, chapter 1.

The question whether a marriage performed according to customary rites and ceremonies will not be a sacramental marriage or will be an invalid marriage if the bridegroom was under 18 years of age or the bride under 14 years of age does not appear to have been considered.

MR. M. B. HONAVAR, DISTRICT JUDGE, BELGAUM :

For some years in the past there was a cry from all parts of the country for codifying Hindu Law so that it may be uniform in all the provinces and it may fit in with the views of the progressive Hindu society. On account of this cry the Central Government was pleased to appoint the Hindu Law Committee for drafting a Hindu Code, and the Bill in question reproduces the Draft Hindu Code. Now that our country is to be divided, I do not think that it is advisable to have the Bill

now passed. Further, it will appear from s.1 of part II, of the Bill that the provisions regarding intestate succession will not apply to agricultural land. This is due to the fact that the Central Legislature cannot legislate with respect to agricultural land which is included neither in the concurrent list nor in the federal list of the Government of India Act 1935. So, even if the present Bill is passed, intestate succession to agricultural land will be governed by the Hindu Law as at present administered, i. e., on the strength of the Hindu Law texts as interpreted by the commentators and as given effect to by a long course of judicial decisions. In our country most of the Hindus are illiterate and their property is chiefly agricultural land. They do not know the advantages of making any will or a trust of their property, and so the succession is generally intestate. So, even if the present Bill is made into law, inheritance to agricultural land will be governed by the law, as it stands at present and not by the provisions of the Hindu Code to be newly enacted. This state of affairs will create needless complications, because succession to a person's property which is not agricultural land will be governed by the provisions of the Hindu Code, whereas succession to his other property, namely, agricultural land, will be governed by the Hindu Law as at present administered. So, although I agree with the view that it is high time that Hindu Law should be codified and that it should be uniform, I do not think that under the present circumstances the Bill should be considered by the Central Legislature. When the country is divided into two Dominions, if the Central Legislature of the Hindu Dominion is given the power to pass the succession laws etc. with respect to all kinds of property, then surely the Bill can be passed into law. At present the province of Bombay has passed several Acts of the provincial Legislature with respect to several of the provisions in the Bill; and so our province will not be very much affected even if the Bill is not passed into law. With these preliminary remarks about the necessity or otherwise of the Bill at the present time I proceed to consider the scheme of the Bill and its various provisions.

2. The Bill is divided into several parts and the clauses in each part are given separate numbers instead of all clauses in the whole Bill being given consecutive serial numbers, with the result that when referring to a particular clause it will have to be said 'clause No. so and so of part No. so and so'. I should think that it would be more convenient to give consecutive serial numbers to all clauses of the Bill, though they might be in different parts.

3. The first part is preliminary, and s.2 rightly makes the Bill applicable to all Hindus, removing thereby the doubt raised in certain quarters whether Lingayats, Brahmo, Prarthana, Arya Samajists, and Budhists, Jains or Sikhs are all included in the expression Hindu. I would only like to say that the Illustrations to s.2 of part I should be styled as Explanations and not merely as Illustrations, because Illustrations are generally not considered as part of the Statute. The definitions are in my humble opinion quite perfect, and so also the amendments and repeals of certain enactments.

4. Part II speaks of intestate succession to property other than agricultural land. Although the object is to make the Hindu Law uniform, it will be seen from the provisions of clause 5 of part II that the law of succession prevailing in the province of Bombay is not made applicable to other provinces but is made applicable only to this province. I have no comments to make on clauses 1 to 12 of part II. Clause 13 says that "a woman shall have the same rights over stridhan acquired by her after the commencement of this Code." I should like to suggest that she should have the rights over stridhan not only acquired after the commencement of this Code but also acquired before the commencement of this Code; but those rights she will get only from the commencement of this Code. That is, titles to stridhan property which have vested in others before the Code will not be disturbed, but the rights to the stridhan with a woman on the date of the commencement of the Code will be those given by the Code, although that property may have been acquired by her before the commencement of the Code.

5. In sub-clause (3) of clause 14 it is stated that "in stridhan devolving on children under entry (1) in sub-section (1) a son shall take half the share of a daughter". I do not really understand why preference should be given to a daughter in the matter of inheritance to stridhan by giving her double the share of a son. Under the Indian Succession Act and even in Parsi intestate succession a woman's property is distributed in equal shares among her children. I should therefore like that the children should take equal shares, whether they are sons or daughters.

6. I have no comments to offer on part III, part III-A, part IV and part V. I agree that those who want to marry according to Vedic rites should have the liberty to do so and that those who want to have only a registered marriage should also have the liberty to do the same. I also agree that even sacramental marriages may be registered and that where they are registered a certified extract from the register should be conclusive proof of the marriage, so that it may not be called in question long after oral evidence of the marriage has disappeared. I also agree that should be no polygamy or bigamy, and that divorce should be allowed. As I said before, our province has recently passed legislation in this behalf.

7. I have no comments to offer on the last part of the Bill, i. e., part VI, relating to adoption. Most of the provisions are in accordance with the Bombay view which is very much advanced so far as the question of Hindu adoption is concerned. The Bill has in clause 13 of part VI restricted the

choice of the boy to be adopted. I am in complete agreement with the view that there should be these restrictions. The provisions relating to registration of adoptions and the entry in the register being conclusive proof of the adoption are very salutary provisions, because they will put an end to so much needless litigation.

8. On the whole, I am in general agreement with the provisions of the Bill and I should certainly like it to be passed into law.

H. K. CHINANI, ESQUIRE, I. C. S. DISTRICT JUDGE, AHMEDABAD :

I am in agreement with the main principles of the bill. The bill, if enacted will simplify the Hindu law to a considerable extent and will remove the confusion which has been created by conflicting interpretations of old texts, and by conflicting judicial decisions. Some of the provisions of the bill e. g. those relating to divorce make a radical change in the Hindu law, but as they are in accordance with the modern Hindu thought, they will command wide support.

2. I have the following remarks to make on the detailed provisions of the bill:

PART II.

- (1) Section 3: The proviso to this section should, in my opinion, be deleted and the Act made applicable even in cases where a widow has succeeded to the property before the commencement of the new Act.
- (2) Section 7 rule 4: In my opinion, the daughters should be given the same share in their fathers' property as the sons.
- (3) Section 14 sub-section 3: This provision should be amended so as to provide that the sons shall take the same share as daughters in their mother's property.

PART III.-A

- (4) Section 6: I do not think the past relations between the dependant and the deceased should be taken into consideration in determining the amount of maintenance. Clause (f) in sub-section (1) may, therefore, be deleted.

PART IV.

- (5) Section 3 clause 3: I do not think it can be seriously disputed that a girl at the age of 14 is not fit to undertake the serious responsibilities of motherhood. It is also injurious to health to have marital relations at this age. The age limit for marriage in the case of girls should therefore be increased from 14 to 16 years. The corresponding provision in section 7 will also need modification.
- (6) Section 7 clause 5:—If the parties to the marriage have attained the age of 18 years, I do not see why it should be made necessary for them to obtain the consent of their parents or guardians for contracting a civil marriage. No such provision has been made in respect of sacramental marriages. This clause may, therefore, be modified so as to require the consent of the parents or guardians only if the parties to a contemplated Civil marriage have not attained the age of majority i. e., 18 years.
- (7) Section 26 sub-section 2: Under the Hindu married Women's Right to Separate Residence and Maintenance Act, 1946, a Hindu wife can claim separate residence and maintenance, if her husband had married another. Similar provision may also be made in this section.
- (8) Section 30: The period of desertion, which will entitle a party to a marriage to obtain divorce, should be reduced from 5 to 3 years. In my opinion, adultery should also be made a ground for divorce.

D. V. VYAS, ESQUIRE, I. C. S., REMEMBERANCER OF LEGAL AFFAIRS :

I have the honour to offer my remarks on the subject noted above, as under.

2. Some of the salient provisions of the Bill which mark a departure from the customary Hindu Law administered till now in British India are :

- (1) abolition of the coparcenary with its incidents relating to :—
 - (a) coparcenary property, i. e., devolution by survivorship
 - (b) ancestral property, i. e., interest by birth,
- (2) devolution of heritable property of a male intestate on the heirs including his widow or widows and daughters with an absolute right of disposal,
- (3) absolute right of females over stridhana including property inherited from males,
- (4) provision for obtaining a decree of the nullity or invalidity of the marriage and for dissolution of marriage,
- (5) debarring a *de facto* guardian from dealing with the minor's property, and
- (6) no adoption by a Hindu without the consent of his wife or wives.

3. The framers of the Bill appear to have been influenced mainly by one objective, namely, the augmentation of the rights of the females with a view to redeem them from the present position of sub-

ordination, exposing them as it does to harassment, ill-treatment, undue influence etc. etc. It is a desirable objective, and none can have any quarrel about it. Even the orthodox section must bend before the ever-growing public opinion for a better treatment of the females. There is one circumstance, however, which requires to be considered in this connection. On a Hindu dying intestate, his widow or widows and daughters are entitled to a share in the property, and on inheritance they are entitled to treat it as their stridhan with absolute power of disposal. Nobody can object to a share in the intestate property. But it is feared that this absolute power of disposal is likely to be taken advantage of by some interested persons who might adopt any sort of unconscionable means and contrive to deprive the widows of the property and leave them without even sufficient means for maintenance. It appears, therefore, that it would be more appropriate to give the widow a limited interest in such share so that her maintenance at least might be guaranteed. The property might, on the death of the widow, revert to the male heirs. This would cause no bitterness of feelings in anybody's mind and would serve the purpose better.

4. Admission of a daughter to a share in the intestate property is likely to cause opposition from the public. This may not be a good ground for dropping the provision altogether. All reforms cannot have equal reception from all quarters. It is not, therefore for fear of the opposition from the public that I comment rather adversely on this part of the Bill. It is common knowledge that the majority of Hindus belong to the middle class and reside in villages. Admission of daughters to a share in the property is likely to lead to litigation and uneconomic fragmentation of property leaving behind a trail of bitterness of feelings. In short, this proposal is likely to affect adversely the economic structure of the Hindu society.

5. The end of coparcenary is a long awaited reform. This system has encouraged lethargy and discouraged the spirit of initiative among the Hindus.

6. Provisions regarding the nullity, invalidation and dissolution of marriages constitute a much needed reform. There is no provision for a judicial separation or dissolution of marriage by mutual consent. When parties agree to divorce each other, there is no reason why they should not be permitted to do so and be forced to go to court and expose their domestic unhappiness to the public.

7. I have no other remarks to offer.

THE ARYA MAHILA SAMAJ, BOMBAY :

The draft Hindu Code seems to be a very complicated piece of legislation and the Arya Mahila Samaj is not in a position to survey it critically at a short notice. The Code touches the whole Hindu Community and the Samaj merely wishes to say that the Samaj is in general agreement with the framers of the Code.

THE GUJARATI HINDU STREE-MANDAL, BOMBAY :

The Mandal welcomes the Hindu Code Bill as an attempt is made in it to evolve a uniform and progressive code in certain branches of the Hindu Law for all Hindus. The Mandal has accepted the provisions and recommendations contained in the Hindu Code subject to the following amendments.

ALTERATIONS AND ADDITIONS :

1. PART II, Clause 10—Heirs who are not related. The words 'upon his preceptor' be substituted by 'upon the state for charitable purposes for the benefit of Hindu Community like Educational Institution, Hospitals, social welfare work etc.,' and the remaining lines following the word 'Preceptor' be deleted. *g. 5(2)*
2. PART III A, Division ~~II(2)~~—Mandal is against giving of maintenance to concubines, Legal recognition concubinage would encourage the breach of the spirit of monogamous marriage contemplated in the Code; Maintenance may be given to minor children as suggested in the Code.
3. PART IV (3)—According to the modern condition of the Hindu society we suggest that the marriageable age of the bride should be fixed at 16 years instead of 14 years as mentioned in the code.
4. PART IV—Regarding clauses dealing with Civil Marriage the opinion was divided. Majority of members were of the opinion that as all the benefits which result from a Civil Marriage are under the Bill made available for a sacramental marriage, the provisions with regard to civil Marriage should be deleted and that registration should be made compulsory for sacramental marriages and clause 18 should be made effectual till the time sacramental marriages are made compulsarily registrable.

BOMBAY PRESIDENCY WOMEN'S COUNCIL, TOWN HALL, BOMBAY.

The Council welcomes the Hindu Code as an attempt is made in it to evolve a uniform and progressive Code of Law in certain branches of the Hindu Law for all Hindus, and accepts the same with the following suggestions :—

(1) In part II, clause 10 the words "upon his Preceptor (acharya)..." be substituted by "upon the State for charitable purposes such as Educational Institutions, Hospitals, or Social Welfare work for the benefit of Hindu Society".

has experience of the administration of the Hindu Law. I am offering the following remarks on the provisions of the Hindu Code. I find the Code has been divided into six parts, but the arrangement does not seem to be uniform.

Section 2(c) excludes a "Dasi Putra" from the definition of son, which implies the maintenance of the distinction of the four "Varnas". These "Varnas" have long lost their meaning and distinction; and it is against the present day public conscience to try to perpetuate them any longer, "Dasi Putra" should, I think, be included as son.

Rule 4 ~~Clause (b)~~ under section 7 allows half a share to a daughter by making the daughter simultaneous heir along with the son and widow. As the daughter goes into another family after marriage and acquires interest and is entitled to maintenance and a share on being a widow in that family, she should not have any share in the family of her origin. She may, if at all, be allowed to have $\frac{1}{4}$ share.

Recently the Bombay Legislature has passed some Acts regarding Bigamous Marriages and Divorce; and a Bill restricting the Dowry system is on the anvil; and is likely to become law within a month or so. Part IV of the Code which deals with marriage and divorce should be in line with the laws of the Province.

The draft Code does not provide for the adoption of orphans; and does not restrict the power of the widow to adopt so long as there is son or his widow living. Practical consideration requires that there should be a special provision enabling the adoption of an orphan in whose case there can be no giving ceremony as he has no parents nor any body to give in adoption. May be the boy has been brought up by the party intending to adopt with a view to adopt him and the party should not be prevented from doing so merely because the boy has nobody to give him in adoption.

THE COMMISSIONER, SOUTHERN DIVISION :

The Hindu Law Committee seems to have considered the view of the public before drafting this Bill. The Bill aims at codifying the Hindu Law and introduces many reforms such as divorce etc.

2. A codified Hindu Law was a great necessity since there was no uniform practice in the Civil Courts while administering the Hindu Law. This code will put a stop to attempts to promote and pass piecemeal legislation on different topics of Hindu Law both in the Central and Provincial Legislatures. The Bill deserves to be passed into Law early though most of the provisions of the Bill are of a permissive or enabling character.

3. In trying to codify the Hindu Law it is necessary to respect the sentiments of all sections of Hindus as far as possible. Attention should be paid to the old and hoary traditions of the Hindus so far as they are not incompatible with the modern trend of thought.

4. Under clause 21 Part II, a convert's descendants are disqualified from inheriting the property of any of their Hindu relations. But if such descendants are reconverted to Hinduism they should have a share in the ancestral property according to Hindu Law. The clause may be suitably amended.

5. PART II, CLAUSE 23.—Congenital idiocy or Lunacy should be made a ground of disqualification to inheritance; but the burden of providing for their maintenance should of course be placed on the other co-sharers.

6. PART VI CLAUSE 13.—Since adoption is accepted as a principle, there seems to be no propriety in putting unnecessary restrictions on the qualifications of the person to be adopted. Sub-clauses (II), (III) and (IV) may therefore be deleted or suitably modified.

7. The Assistant Public Prosecutor, Bijapur has submitted his suggestions which are valuable and may be taken into consideration.

THE COLLECTOR, BIJAPUR :

I am enclosing herewith a copy of a letter from the Assistant Public Prosecutor. Many of his suggestions are valuable and may be taken into consideration.

THE ASSISTANT PUBLIC PROSECUTOR, BIJAPUR :

1. In the first place when such vast changes are taking place in political situation of the country there is no need to rush through such a highly controversial subject like codification of the Hindu Law. It may better be left to the legislative Chamber that may be elected after the new constitution is framed and brought into effect. This subject may well wait a few months or even a few years more.

2. It is not possible to make a detailed survey of the various topics included in the draft code of 32 printed pages. But only the broad features can be scrutinized and comment directed to.

PART I & OF THE DRAFT CODE.

3. A thing of the utmost importance in trying to codify the Hindu Law, is to continue the old and hoary traditions as far as possible, unless, of course, modern necessities require a violent change. To start with the definition of "Stridhan" (Clause 5j) is so framed as to include property which a widow gets for her share in a partition which is contrary to the notions of property which have

been current in India for thousands of years. Equity too would require that the family property should not be thrown into the hands of a young widow who can squander it or will it away in any way she pleases. On the other hand nothing would be lost if the old notion of a widows Estate is kept up in this respect at least. I would therefore respectfully suggest that in the definition of the word "Stridhan" an addition should be made that "except property which a widow, mother or grandmother would get in a partition which shall be held by her as a widow's estate". A suitable definition of widows Estate" should then be added as clause 5 (k).

PART II.

4. Clause 1 (i) says that it shall not be applicable to agricultural land. This has reference to a time when the provincial Governments had the exclusive power of legislation regarding agricultural land as per Government of India Act of 1935, Sch. VII, List No. 2 (21). But that was because of the peculiar circumstances attendant then. When the new constitution is now on the anvil certainly the legislature regarding "land" should be a subject within the competence of the Central Legislature and it should not be left to the whim of each provincial legislature to legislate or not regarding agricultural land, particularly because the major portion of an ordinary Hindu's property would be consisting of agricultural land. Hence clause 1 (i) should be deleted.

5. In clause 5, a revolutionary change is made by allowing a share to a daughter also. This is in conformity with the trend in other communities e.g. Christians and Parsis. If therefore we are going to follow those principles, we should as well allot a share to the father and mother also in clause 14 and not exclude them in favour of children. The father and mother should therefore be put in category (1) and not as (4) and (5) clause 14 and should be given the same right as parents of parsis as provided for in section 51 of the Indian Succession Act.

6. In clause 14, while dealing with the mode of succession to Stridhan, children of a predeceased daughter would not get any thing, where there are other daughters or sons alive. This would certainly work a hardship as the motherless grandchildren deserve more sympathy and support than even the living daughters and sons. So also, in the case of succession to males their children by predeceased sons do get a share. Hence "grandchildren" should be included in the first category which should read as "daughter, son child of a predeceased child (who shall succeed per stirpes)".

This category should also include the husband as in the case of parsis, and the husband should be given the same rights as in section 52(2) of the Indian Succession Act.

7. The proviso to clause 19 practically nullifies the first part. A husband who goes to a court and obtains a judgment regarding the unchastity of his wife may be expected to disinterest her by a will. Hence the proviso should be dropped.

8. Clause 21 raises another very controversial topic. There is no such thing as "Conversion" in Hindu Law. The Arya Samaj and some other sects. now purport to convert non-Hindus to Hinduism.. It is high time that legal recognition should be given to conversion to Hinduism.

9. In clause 23, congenital idiocy or lunacy as is now the rule, should be made ground of disqualification from inheritance. The burden of providing for their maintenance should of course be kept on the other cosharers.

PART III-A

10. In this Division II, there is no mention anywhere what the maximum amount of maintenance shall be and every thing is left to the discretion of the Court. There ought to be a provision that the amount of maintenance allowable by Courts should in no case be more than the value of the share to which that person would have been entitled under part II out of the estate under consideration. This should be incorporated in clause 4 as proviso 2.

11. In clause 5 (2) provision for the maintenance of concubine is made. But this is not to be found in any other system of jurisprudence. The tendency of law should be to eliminate and discourage concubinage and not to perpetuate it. Hence 5(2) should be entirely eliminated.

12. In clause 5^{(1)(c)} the illegitimate daughter should not be given maintenance beyond a certain age i.e. 18, whether married or unmarried. This clause is a direct invitation to an illegitimate daughter to lead a life of unchastity and not to marry at all.

PART IV.

12. In clause 23 (1) (b), the maternal grandfather and uncle should be preferred to the paternal uncle as in practice it is found that the maternal uncle and grandfather take much more interest than the paternal uncle.

14. Clauses 7 to 17: There is no reason why there should be two forms of Registered marriages. There is already one under the special marriage Act III of 1872 (as amended by the Act of 1923). But the drawback therein is that under that Act, the succession is governed by the Christian succession rules. And when option is given even for sacramental marriages to be registered, there is no reason to have this third form of marriage, which at the most, may cater for the very few conscientious objectors who do not want to have a sacramental marriage and at the same time do

not wish to be governed by the Christian succession rules. Hence all this elaborate procedure may be entirely deleted, and clause 27 may be amended so as to include inheritance to all Hinguns who contract a special marriage under Act III of 1872.

15. Clause 26:- This clause is not very happily worded. The Central Legislature has recently passed Act XIX of 1946 in this respect and the necessary portions thereof may very well be incorporated in this clause.

16. Clause 27: please see last portion of para 14 above.

17. Clause 28 (1) and (2):- There is no reason why the trust property should belong only to the wife. It should be left to the parties or their guardians as to whether it should belong jointly to both sharers or in specific portions to them.

18. Clause 29 to 32 are absolute innovations introduced in Hindu law, and a Hindu Mind would be very slow to assimilate the idea of a divorce. In this respect if at all we want a model, we should better keep the parsis Marriage and Divorce Act III of 1936 as our model. Sections 30 to 52 of that Act should form the basis of this topic. Subjects like temporary and permanent alimony, custody of children, help of delegates to matrimonial courts, disposal of joint property of the sharers, should all follow the rules in parsi marriage and Divorce Act.

PART VI.

19. Clause 5: There is no reason whatever as to why a husband who wants to adopt, should have the consent of his wife. If the husband were to die intestate, the wife does get a share in his property along with the adopted son and if he were minded to make a will and cut her off with a penny, he can still do so without taking any one in adoption. Hence this proposed restrictions on the power of the husband to adopt, is more illusory than real. It is much better to take away that power of adoption, which is not really necessary in the 20 century, as none but the very orthodox care for the existence of a son for the salvation of his soul in the next world.

20. Clause 7: The same remarks as in para 19 apply hereto.

21. Clause 13: Sub Clause (ii) and (iv) are contrary to the law of adoption now prevailing in the Bombay Presidency and Central Province. There is no reason to put these extra restrictions as it may not be possible to find persons capable of being adopted who can satisfy all these conditions, amongst the kith and kin of the person wanting to make an adoption. Hence sub-Clauses (ii) (iii) and (iv) should be deleted. Sub-Clause (i) should be altered to "He must belong to the same caste of Hindu".

CONCLUSION.

23. The whole scheme of the proposed legislation is of a very revolutionary type. It seeks to brush aside ideas under which the Hindus have lived for centuries in the past and hence all that can be said is that very great caution should be used in getting through the legislation.

PLEADER, SATARA CITY :

Before proceeding to consider in detail the various provisions in the Draft Bill, I wish to invite the attention of the General Legislature, to certain general aspects of the Bill, a careful consideration of which is in my opinion essential before the Bill becomes Law. It must be borne in mind that a very large proportion of the population of India is living in rural areas depending principally on agriculture for their livelihood. Already the standard of life of this agricultural population has been adversely affected by their illiteracy, indebtedness, and the fragmentation of the agricultural holdings. The joint family system was and has been in some measure at least a check on fragmentation implying as it did, unity of possession and some form of co-operative management of the agricultural holdings. With the abolition of the joint family system which is one of the principle objectives of this Bill, the evil of fragmentation is likely to be aggravated. This in its turn will swell the numbers of unemployed landless labourers. This must be anyhow prevented. Industrialization of this country is yet far too distant a goal which will take decades to be realized. Nor can primogeniture or impartibility be relied upon as the effective means of preventing evil; for they smell too much of the old feudal order of society. No doubt, the provisions, in the Bill relating to inheritance and succession are not made applicable to agricultural lands. But this is because agricultural lands are beyond the scope of the Central Legislature, while the general trend of public opinion, is to apply all these provisions relating to inheritance and succession to agricultural lands also by provincial legislation. Unless, therefore, some way is found to prevent these evils, I think it would not be desirable to abolish the joint family system.

With these general observations I proceed to offer my suggestions about the various provisions in the Bill. These suggestions are mostly by way of proposed amendment to the various sections in the Draft Bill :—

PART I.

Sec. 5 (i) after the words "to their mother" sec. "also to their father when the father can be ascertained as in the case of a Dasiputra".

Sec. 5 (j) After the word "in lieu of maintenance" add "unless otherwise restricted in the grant itself".

PART II.

Sec. 3 Delete words beginning with "in the following cases namely "end of clause".

Sec. 14. In giving the order of succession to Stridhan property, why are daughter and son not mentioned? Therefore insert at the beginning as (1) Child or children of the intestate the son getting half the share of a daughter, and delete sub-section 3 (1) and put sub-section 3 (iv) below entry No. 2 in subsection 1, and consequential change in the next number.

Sec. 19. Omit the words in the proviso "to which she and her husband were parties" And substitute instead "by or against her and of which the husband had notice." In the first part before the word "condoned" add "unequivocally".

PART IV.

Sec. 1. After the words context add "herein or in any provision of any provincial enactment in this behalf".

Sec. 7 (b) Delete the words beginning with "provided upto the end.

Sec. 14. Delete the words "Except in the case of a widow"

Sec. 30 (f) After the words "has been" add "proved to be" and delete all the words beginning with "for a period" upto "or".

PART VI.

Sec. 11 (B) After the words "dies" and "After the latter".

Sec. 11 (2) Add the proviso "provided that such right shall be deemed to have revived when during her lifetime there is no male continuing the line of her husband or no widow capable of adopting and continuing the line of her husband".

Sec. 12 Add another clause £. "if during the life-time of either parent he or she is incapable on the ground of unsoundness of mind of giving in adoption, the stepmother if any, or the next natural guardian may give his ward in adoption with the previous permission in writing of the District Court.

Sec. 13 (3) Omit the whole sub-clause.

Sec. 13 (4) Substitute the word 18 for the word 15.

Sec. 15 (2) Add after the last word "except in the case of twice born belonging to different Gotras.

Sec. 19 (1) in place of the words "Three years" substitute "six years".

Sec. 21. After the Section add the following proviso "provided that in the case of an adoption within the period prescribed by sub-section 1 of sec. 19, the alienation prior to the adoption by the then heirs in excess of the shares they would have got along with the son or sons if any at the time of the intestate's death, shall be voidable at the option of the adoption son".

THE ALL-INDIA VARNASHRAMA SWARAJYA SANGHA, BOMBAY :

The All India Varanashram Swarajya Sangha Bombay, is opposed to the proposed Hindu Code in its present form on principle as it is repugnant to the sacred precepts of the Dharma Shastras, ancient religious traditions and immemorial customs. The Sangha also contends that the Indian Legislature is not entitled to modify radically the basic principles of Hindu Law by the proposed Hindu Code so as to revolutionise the existing Hindu Law by flouting the fundamental principles of vedic Law on which Hindu Law is based. Without prejudice to the above contentions, I submit the following considered opinion of the Sangha:-

(1) The proposed Legislation makes drastic and sweeping changes in the existing Hindu Law and most of its provisions are devoid of religious basis of the ancient vedic law and seem to have been made only to please a minor section of social reformers in spite of vehement opposition of the orthodox Hindu constituting a large bulk of the total Hindu population of India.

(2) Several provisions of the Bill are mandatory in character and coerce the orthodox Hindus to submit to fantastic changes sought to be made in the ancient Vedic law, which is deprived of all religious significance and made secular.

(3) There is no justification for removing the existing difference between the Mitakshara and Daya-bhaga schools on several topics of Hindu Law.

PART II INTESTATE SUCCESSION.

(4) The Legitimate right of Succession to full ownership enjoyed by an aurasa son is seriously curtailed by giving shares to widows and daughters of the deceased simultaneously with the son grandson and great grandson so as to make compulsory fragmentations of properties and thereby depriving the sons upto 4 degrees of full rights of ownership in their father's property upto 4 degrees but with exclusive burden of meeting the expenses due to (1) the maintenance of minors, the infirm and sick members of the family and (2) making provision for education and marriage ex-

PART IV.

(9) Clause 3 (1) supports Sagotra marriages as valid though they are prohibited at present as sinful.

(ii) sub-clause (1) prohibits polygamy in all circumstances even though it is allowed by such a great Smritikar like Manu in certain exceptional cases, as when the wife was (1) barren (2) diseased (3) vicious and (4) when she has freely consented to the husband that he may marry a second wife to beget a male child, and thus discharge the pious debt that he owed to his forefathers. The proposal to make monogamy absolute is thus positively against the religious basis and purpose underlying Hindu Marriage, which is a religious sacrament, specially meant to promote the spiritual welfare of their forefathers. It is therefore submitted that in any event certain exceptions must be allowed before monogamy is made compulsory.

(iii) It is nothing short of oppression to declare polygamy as an offence as provided in clause 24.

(10) Legislature is supposed to safeguard existing ancient rights but in the present case the Legislature ruthlessly deprives the Hindu community of their ancient right enjoyed by them since times immemorial without any justification except to satisfy the whims of a small section of social reformers who are saturated with western notions of culture.

CHAPTER III.

(11) Clause 30 sanctions divorce of Hindu sacramental marriage under certain circumstances even though it is expressly prohibited by Manu. Hindu marriage being a religious sacrament and not a mere contract is one and indissoluble as the marriage tie continues even after death of either spouse. If divorces are freely allowed by law it would lead to constant quarrels between married persons and encourage them to seek dissolution even on petty ground of ill-adaptability of temper and so on so as to render it unsafe for the petitioner to live with the other party.

(12) Divorce, if allowed by law, would deprive the sacramental marriage of high sanctity attached to it and degrade the Hindu society to a lower level of living life merely for secular purposes of a material character as opposed to the high spiritual ideal of the Veda.

CONCLUSION.

(13) The proposed Bill makes a serious inroad and encroachment on the cultural rights and religious freedom enjoyed by the Hindus since times immemorial, is most revolutionary in character and directly opposed to the sacred precepts of the Vedic Law, and is condemned by an overwhelmingly large majority of orthodox Hindus all over the country as opposed to their religion. I therefore submit that the proposed code in the present form may either be radically altered in the light of the remarks made above or it may be withdrawn in the best interests of the Hindu community, otherwise there would be a disintegration of their solidarity and there would be discontent and dissensions in the whole country.

BABIBEN MOOLJI DAYAL, SHANTARAM NARAYAN LANE, WALKESHWAR, BOMBAY :

I have perused a copy of the supplement to the Bombay Government Gazette of May 15th 1947 and I have read the notice requesting any person desiring to submit an opinion on the Code of Hindu Law to do so through the Government of Bombay. I am taking advantage of this to express my opinion in the matter.

I am a social worker serving ten different Womens' Organisations, as well as one of the Secretaries of the Representative Committee of Hindu Ladies regarding Hindu Law, which was formed by eighteen different Women's Organisations banding together. Thus, I have had the unique opportunity of meeting orthodox and unorthodox Hindus and getting a general idea of the trend of public opinion.

I feel that a time like the present, when the country is in such a state of chaos, when riots are constantly breaking out all over the country, and when we are going through turbulent changes like the division of India, the Bill would be rather precipitate. The Government should wait for at least six months, and allow public opinion to settle down a bit before it passes a reform as important as providing uniformity to all branches of Hindu Law. The Bill deals with highly controversial points requiring serious and careful attention. At present it is rather impossible for the general public to express its opinion when very few copies of the Bill are available and hardly any publicity has been given to it, so that very few people or organisations are aware of it.

Hence it is fitting that the Government should give some more time to the public before introducing the Bill, as well as publish and circulate widely copies of it in THE VERNACULAR LANGUAGES, and not only in English.

THE CHAIRMAN, THE REPRESENTATIVE COMMITTEE OF HINDU LADIES REGARDING CODIFICATION OF HINDU LAW, BOMBAY:

Our Committee had gone into the first draft of the Hindu Code published by the Rao Committee and had carefully considered its provisions and given its opinion thereon.

When the Rao Committee had come to Bombay in the course of their deliberations our Committee had also been granted an interview when we gave our views to the Rao Committee.

The revised draft Hindu Code had been published by Government in the form of a Bill to be introduced in the Legislative Assembly. It was with considerable difficulty that our Committee were able to secure a copy of the said Bill published in the Supplementary issue to the Bombay Government Gazette for the May 1947. Opinions are required to be submitted to the Government of Bombay within a very short time. It has not been possible for our Committee to go into the details of the said final draft. The views of our Committee have already been expressed in the opinion formerly submitted by them to Government.

Broadly speaking, we wish to lay particular emphasis on the following provisions of the said Bill.

PART I--PRELIMINARY, SEC. 2.

This Section contains provisions which are too vague and wide and there is the risk of the Hindu code applying to such persons who have never been contemplated to be included within the purview of the Hindu Code. We wish to emphasize that the Hindu Code should not apply to any person who does not profess the Hindu religion. By Hindu religion we wish to include all its forms and developments as mentioned in sub Clause 1 of Sec. 2. The presumption under Sec. 2 (3) (a) will not work in practice. For an individual to prove the contrary would be an impossible and highly complicated and extremely expensive task. We would rather wish the definition should be precise. To whomsoever the Hindu Code has to apply, such person should profess Hindu religion and should not have been converted from the Hindu religion.

PART IIIA-GENERAL PROVISIONS CONNECTED WITH DIVISION I. - SUCCESSION :

We find the above Bill entirely abolishes the joint Hindu family system with its incidents and ingredients. We are not in favour of the entire abolition of the joint Hindu family system. The views expressed by us previously contained clearly what we emphasize. We would suggest that the joint Hindu family be retained with its implications and ingredients but rights be accorded to Hindu women in the joint family in the same manner as they are accorded to the Hindu widows under the Desmukh Act so that daughters as well as widows in the joint family should get rights similar to the rights they get as on succession.

PART IV. - MARRIAGE :

We are against the introduction of Civil marriage as a form of Hindu marriage. The provision for sacramental marriage as provided in the Bill is sufficiently liberal to allow inter marriage between different sections of Hindus and we do not see any utility of a contractual marriage form as a form of Hindu marriage. The basis of the Hindu marriage is essentially religious rites and we do not desire the abolition of this healthy and desirable principle by introducing civil marriage.

Further, we suggest that a sufficiently long time should be allowed to the general public for understanding the provisions and implications of the Hindu Code Bill and arrangements should be made for giving wide publicity to the Bill. So far as we are aware, no vernacular translations are available and copies in English are available with difficulty. The Bill was published on the 15th May last and opinions were invited by the 1st instant., i.e., a period of about six weeks. Moreover, being the Summer vacation time in Bombay for a large part of said period institutions and other public activities were closed. So really, on our side it was only a period of about three weeks at the most which is too short for any serious and careful consideration of such an important social legislation. As Hindu law which is sought to be codified for the first time in history. We understand the time for opinions has been extended till today. But even that period is too short. We therefore suggest that Government should extend the period by at least six months more.

Moreover, it is not desirable to rush through such legislation as the proposed Bill at a time in India's history when the country is being partitioned into two and the new constitution is on the anvil. An important social change and legislation like the Hindu Code should only be considered by the Legislature when the normal life in the country is functioning. The Bill therefore should not be taken for consideration until after a reasonable time is elapsed for the normal legislature to function under the new Government.

Our Committee has for a number of years been continuously taking an active and intelligent interest in legislation relating to Hindu law. We would, therefore, request Government to give us timely intimation of at least two months in advance of the time it is proposed to introduce the Bill in the Legislative Assembly.

THE PRESIDENT, BHATIA STREE MANDAL :

Our organisation is very much interested in Hindu Law and has in the past done some good work in that direction. We secured with great difficulty a copy of the supplement to the Bombay Govt. Gazette of May 15th 1947. We perused with great interest the notice requesting any person or organisation desiring to submit an opinion on the code of Hindu Law to do so through the Govt. of Bombay, and we are taking advantage of this to express our opinion in the matter.

We feel that at a time like the present when the country is in such a state of chaos, when riots are constantly breaking out all over the country, and when we are going through turbulent changes like the division of India, the Bill would be rather precipitate. The Government should wait for at least six months and allow public opinion to settle down a bit before it passes a reform as important as providing uniformity to all branches of Hindu Law. The Bill deals with highly controversial points requiring serious and careful attention. At present it is rather impossible for the general public to express its opinion when very few copies of the bill are available and hardly any publicity has been given to it, so that very few organisations and people are aware of it.

Hence it is fitting that the Government should give some more time to the Public before introducing the Bill as well as publish and circulate widely COPIES of the Bill in the VERNACULAR LANGUAGES and not only in English.

We trust that the opinion will receive some consideration from the Government.

THE COLLECTOR OF KOLABA :

I have no remarks to offer on the Legislative Assembly Bill "The Hindu Code" by the Honourable Mr. Jogendra Nath Mandal.

ASSAM No. 2

FROM SECRETARY TO THE GOVERNMENT OF ASSAM, JUDICIAL AND GENERAL DEPARTMENT.

TO THE SECRETARY TO THE GOVERNMENT OF INDIA, LEGISLATIVE DEPARTMENT.
No. J.J.D. 80/47/103. Dated the 14th August, 1947.

I am directed to forward herewith copies of the opinions received from various public bodies, officers and other persons consulted in the matter.

The Bill was published in English in the Assam Gazette, dated 7th May, 1947.

THE SECRETARY, BAR ASSOCIATION, DHUBRI :

Personally I am against Daughter's inheritance along with son. This is a legislative measure of a far reaching character cutting at the root of many Hindu Social Customs and convention. In view of the impending constitutional changes this legislation should better be taken up after India constitution takes a definite shape.

THE JOINT SECRETARY, GOALPARA DISTRICT ASSOCIATION :

I, on behalf of my Association beg to state that my Association fully supports the codification of the 'Hindu Laws' as provided in the Bill.

THE GOVERNMENT PLEADER, DHUBRI :

I am in favour of the provisions made in the Hindu Code.

THE SUB-DIVISIONAL OFFICER, GOALPARA :

I fully agree with the principles of the Hindu Code.

DR. D. BHUYAN, M. B., CIVIL SURGEON, LUSHAI HILLS :

The proposed bill is in keeping with the progressive Line spirit of the Modern Hindu Society, containing as it does many long felt and much needed social reforms to the existing Hindu marriage so far as its legal aspect is concerned. The enactment of the bill into law will remove many of the disabilities from which the Hindu Society is at present suffering in matrimonial matters.

THE DISTRICT JUDGE, SYLHET :

In my opinion the proposed Hindu Code will be very much appreciated by a considerable section of the Hindu Community and do a lot of good to the said community.

I might however observe that the local Bar Association is of opinion that the proposed bill for codification of Hindu Law should be dropped.

THE PRESIDENT, DISTRICT BAR ASSOCIATION, SYLHET :

In the opinion of the members of the District Bar Association the present Bill for the codification of a Hindu Code being opposed to the rules contained in Dharmasastras and being antagonistic to the customs and approved usage of the country should be dropped.

The sacred literature of the Hindus is divided into two main Groups—the Sruti and Smriti the former being synonymous with the Vedas, while the latter comprises most of the early post-vedic literature which are always regarded as sacred. The laws enjoined are regarded as records of revelation. Then again there are customs in the country which have come down by immemorial tradition and which have acquired the dignity of law. These time honoured customs and usages have always been respected as Sastric injunctions.

In this connection, the text of Jajnavalkya (I-343) may be referred to, where the customs, practices and family usages were ordained to be preserved. This was in spirit given effect to in the Queen's proclamation of 1858 and section 37 of the Bengal N. W. P. and Assam Civil Courts Act (XII of 1887).

Attempts have been made in the present Bill to bring about so radical a change in the law regarding succession, inheritance and marriage etc that the majority of the Hindus must protest against it.

We are therefore humbly of opinion that the present Bill should not be proceeded with.

MR. N. C. SYAM, GOVERNMENT PLEADER, SILCHAR :

The codification of Hindu Law is long overdue. Social ideas even in conservative Hindu society are rapidly changing. With regard to property, rights and marital relationship it is specially noticeable. Inter caste marriages are taking place inspite of prohibition, parties taking recourse to Act III of 1812. Law must adopt itself to changing circumstances to canalise and regulate progressive urges of our social life. In order to meet the conservative section of the people the provisions made in some instances are halting. However I am of opinion that the code will receive the general approval of all people who really think and have got imagination to look beyond.

SECRETARY, BAR ASSOCIATION, SILCHAR.

We are in favour of the bill as framed.

THE SUB-DIVISIONAL OFFICER, GOLAGHAT.

The Bill was widely circulated. People have generally accepted with certain modifications which are as follows:-

(a) PART II. Intestate succession—unnecessary as the existing Hindu Law is sufficiently comprehensive.

(b) PART IV Section 3.

Sub-Clause (1) This should not be a bar to a man for marrying a second time if his first wife is barren or has not given birth to any issue for 10 years or up-wards.

Sub-Clause (2) The following word may be put after the word lunatic e. g. or in-capable of consummating marital obligations due to inherent defect in the organs of generation.

(c) PART IV. The Civil marriage should not be mixed up with the sacramental marriage.

I beg to submit the following criticisms on the issues raised by the people of this Sub-Division.

(a) The proposed Hindu Code has got to be all comprehensive and hence a list of eligible successors should be enumerated. Criticism on this point is, therefore, vague.

(b) Sub-Clause (1) - This is one sided. It may be applied to male members with equal force. If this is at all introduced it should be introduced for the benefit of both sexes, but since sacramental marriage cannot be so easily modified for the benefit of the women folk, I think it should be best for the husband and wife to swamp it. I do not recommend this one sided amendment.

Sub-Clause (2) - It may be incorporated

(c) I do not agree with the suggestion of the people. We must change with the times. Divorce in some form or other has got to be introduced and I think, a compromise as suggested in the proposed Hindu Code, is the best solution. If this introduced, Hindus will not be generally attracted to the Civil Marriage, Act. The very necessity to do so at times is a disgrace on the Hindu system of marriage.

In conclusion, I beg to say that the proposed Hindu Code is generally accepted and should be given effect to at a very early date.

THE JUDGE ASSAM VALLEY DISTRICTS, GAUHATI :

The matters may be left till matters such as present constitution and partition have been settled. The case should in no case be proceeded without the consent of the authoritative bodies of the sections and groups mentioned in Section 2 (1) (2) and 3 (a) of the Code. For example Non-Christian Khasis should not be legally considered Hindus without their express consent. Section 7 (5), the age should be 18, as if a party over 18 has no natural guardian they cannot procure one from the Court under Section 3 of the Indian Majority Act.

THE ADDL. DISTRICT MAGISTRATE KAMRUP :

I have the honour to enclose herewith the opinions received from Gauhati and Barpeta Bar Associations along with the opinion of the Subdivisional Officer, Barpeta. I regret I can not agree with the views of the Gauhati Lawyers which seems to be out of date and against the present day of progressive tendencies in Hindu Society which can not be checked at this date. I give my criticisms to the views of Gauhati bar below. I cannot subscribe to the view that the proposal to give equal rights to women can be disputed nowadays.

Daughters - I would point out that in this materialistic age no body is satisfied with spiritual benefit referred to by the Gauhati Bar. A son-in-law is not a stranger to the family but one who is entitled to the privileges of a son.

Stridhan - Principles of natural justice and equity demand that a woman's absolute right over property inherited from male owners is recognised.

Clause 17 - Hindu society in order to save it from gradual dwindling away, should freely give sanction to intercaste marriages, in view of the fact that caste system, whatever its utility in by-gone ages, is nowadays an impediment in the path of progress.

Clause 23 - I do not agree to penalisation of a person for deformities and diseases over which he had no control. On the other hand he may be more in need of such property in order to be able to enjoy some of the amenities of life.

PART IV. - Marriages and Divorce - According to Manu Chapter IX verse 80 a Hindu husband is allowed to take a second wife if the wife is inimical towards her husband or extravagant. It thus appears that a man has been given a wide latitude in taking a second wife. It is only fair that a wife should have a right to divorce her husband under the exceptional circumstances referred to in the amended code. It is difficult to accept the fairness of the theory that a woman should be tied for life to a husband who (in the case of an orphan) might have been chosen by her relations who did not have her best interests at heart even if he is insane or suffers from incurable diseases or is habitually immoral. Marriage to be successful must be considered a contract between two equal partners. It would be unfair to give one of the partners to the contract rights to vary it by taking another wife while the other partner will have no right to dissolve the contract. Whether monogamy is an unmixed blessing or not it is based on laws of equity and natural justice.

For reasons enumerated above I am in favour of the proposed Bill in order that the gradual deterioration of the Hindu Society may be checked to an extent.

THE SECRETARY, LAWYERS' ASSOCIATION, GAUHATI :

The Hindu Law regarding succession, inheritance, marriage or caste is based on our religious beliefs which have come down from the sages of old. The framers of this Code seek to devise a law according to their own choice and liking, ignoring the old texts and the decision of the highest courts of law.

PART II, CLAUSE 5, CLASS I :—

Under Mitakshara and Dayabhaga daughters do not inherit during the lifetime of sons and female heirs viz., widows, daughters, mothers etc., all whom used to have limited estates. But the code gives them absolute right like men. The argument is that women of other religions enjoy full rights and it is difficult to maintain that Hindu women, amongst whom we have now legislators, lawyers, ministers etc., are incompetent to enjoy full rights of property. The analogy is dangerous. Each religion has its own peculiar law for the guidance of its followers and it is no logic to ask one religion to follow the rules of the other. The argument has never been advanced by any other religion to alter its law. The other ground of there being women legislators, ministers, lawyers etc., has no substance or force at all. The law can not be changed for the benefit of a few.

DAUGHTERS :—Here the doctrine of spiritual benefit has been lost sight of. They will have double benefit of inheriting their fathers and husband. Thus family property will go to strangers leading to very small uneconomical holdings.

OTHER HEIRS :—The old order has been arbitrarily changed and new heirs created against the principles of the Hindu Law.

STRIDHAN :—The definition (Cl. 5 (i), Part 1) is faulty and objectionable. No system of Hindu Law recognised absolute right of women over property inherited from male owners.

CLAUSE 17 :—The code seeks to introduce "Anuloma" or inter caste marriages which have been interdicted in "Kaliyuga". This will unsettle the whole caste system of the Hindu-Society. Doctrine of factum Valet should not be invoked to lend support to any wrong committed against the laws of society.

CLAUSE 23 :—This code disregarded the clear injunction of Hindu Texts excluding from inheritance certain persons on grounds of physical and mental deformity and diseases. These disqualified persons may be given maintenance, but they can not be entrusted with ownership and management of property as it will be lost in no time.

PART IV - MARRIAGE AND DIVORCE :—Marriage has been divided into (I) Sacramental & (II) Civil.

SACRAMENTAL :—Marriage among Hindus is a sacrament and not a Civil contract. It can not be altered or changed according to the opinion of person or persons. In abolishing polygamy the code quotes Manu Chp. IX verse 107. This is a wrong quotation. This verse does not deal with any such thing.

The Hindu law does not allow divorce vide Manu IX, verse 46 which enjoins that the relation between husband and wife shall not cease by sale or gift of the wife or by abandonment. But under certain circumstances a second wife is allowed by Manu Chap. IX verse 81, 82, 80. Verse 80 says that when a wife is addicted to drinking, is a bad character, is enmical towards her husband, afflicted with incurable disease, extravagant, and spends husband's money improperly, then the husband may marry a second wife.

Verse 81 says if a wife remains barren for 8 years, gives birth to dead child for ten years and gives birth to female child only for 11 years then another wife may be taken. If the wife habitually uses bitter words towards her husband then he can take another wife without delay.

Verse 82 says if the wife is dear and well behaved but is a permanent invalid then the husband may take a second wife with the consent of the 1st wife but the husband's behavior towards her should never be insulting.

The Hindu law givers found that under certain circumstances it was necessary to take a second wife as there was no rule of divorce. They specified the circumstances when a second wife might be taken. The framer of the Code in clause 4 (a) has not taken this aspect of the case.

Monogamy is not always an unmixed blessing. In countries where judicial separation is allowed, the husband or the wife can not remarry but they do not always pass an unblemished life. In taking a second wife the Hindu Law prescribes suitable restriction.

A male child is a necessity in a Hindu house for the present and as well for future life. The giving of a Pinda is an essential thing for the benefit of the departed soul, and Hindu Sages allow a second wife for begetting a son for both the purposes.

Clause 7 (a) is an indirect attempt to legalise intercaste marriage which the Hindu Law interdicts. Every Hindu knows that a marriage outside his caste is not allowable and if he infringes this important and essential rule it would be most improper to bring to his aid the doctrine of factum valet.

CIVIL MARRIAGE :—Act III of 1872 was enacted for persons who did not profess the Christian, Jewish, Hindu, Muslim, Parsi, Buddhist, Sikh or Jaina religion. In 1930 the law was amended and made applicable to Hindu Buddhist, Sikh and Jaina and the rest Muslim, Christian, Jewish and Parsi were left out-side this law. In 1930 when the law was amended Muslims raised strong protest against their inclusion in the Act and their protest was successful but the equally strong protest of the Hindus remained unheeded. The Hindu who wants to marry under the Act will now come under the law.

I have nothing to say on this point.

ORISSA No. 3

FROM SECRETARY TO GOVERNMENT, LAW DEPARTMENT ORISSA :
TO THE SECRETARY TO THE GOVERNMENT OF INDIA, LEGISLATIVE DEPARTMENT No. 3511 L. Dated the 2nd August 1947.

With reference to your letter No. F. 229/47-C & G. (Judl.) dated the 16th April 1947, on the above subject, I am directed to say that the preponderance of opinions received on the Bill from the officers and Public bodies consulted (of which very few have so far responded) is in favour of the Bill although the orthodox section of the public are opposed to it. One of the public bodies consulted suggests the postponement of passing of the Bill till the political situation becomes normal or at least till the new Government is formed at the centre. I am to add that the provincial Government are generally in agreement with the principles underlying the Bill.

The Bill was published in part VI of the Orissa Gazette dated the 23rd May 1947, in English-Copies of the Bill were also placed in the Library table of the Provincial Legislature.

AJMER-MERWARA NO. 4

FROM THE CHIEF COMMISSIONER, AJMER-MERWARA.
TO - THE SECRETARY TO THE GOVERNMENT OF INDIA, LEGISLATIVE DEPARTMENT :
NEW DELHI : No. F/17-17 (CC) Dated the 31st July, 1947.

1. Judicial Commissioner, Ajmer-Merwara,
2. Mr. T. Ramabhadran, I.C.S., District Judge,
Ajmer-Merwara.
3. Mr. P. L. Agarwala, Sub-Judge First Class, Ajmer.
4. Mr. B. K. D. Badgel, Sub-Judge First Class, Ajmer.
5. Mr. G. D. Badgel, Sub-Judge First Class, Beawar.
6. Secretary, Ajmer Bar Association.

I have the honour to refer to the, Legislative Department letter No. F. 229/47-C & G (Judl), dated the 16th April, 1947, and to enclose copies of the opinions expressed by the marginally noted officers and persons (in duplicate) on the Hindu Code.

JUDICIAL COMMISSIONER, AJMER-MERWARA :

I am in general agreement with the principles underlying the codification of Hindu Law as brought together for the first time in the proposed Hindu Code. These principles as now codified in the Hindu Code are bound to raise heated controversy between the orthodox and the progressive sections of Hindu Society. And from this point of view the present time when the country is engrossed in discussing constitutional issues of a far-reaching character is perhaps not suited for a sober and dispassionate consideration of the many social and legal issues that have been raised in the proposed Code. On the other hand considering the long and arduous labours of the Hindu Law Committee, I think it will not be appropriate to suggest that the matter should be re-opened and examined over again after the two Dominions have begun to function.

2. It is clear from the statement of Objects and Reasons that the only effect of the provisions of this Code "is to give a growing body of Hindus, men and women, the liberty to lead the lives which they wish to lead without in any way affecting or infringing the similar liberty of those who prefer to adhere to the old ways." In view of this clear statement, I think the provisions of the proposed Code should be accepted and allowed in due course to become law in the Dominion of India, subject to such verbal alterations as may be necessary because of the impending constitutional changes. I can see no objection to the proposal provisions being made applicable to that section of Hindu Society which wants to move with the times and is anxious to secure uniformity in all branches of Hindu society. I think a unified Hindu Code will give strength and cohesion to Hindu society and from that point of view the measure now proposed should I think be welcomed.

DISTRICT JUDGE, AJMER-MERWARA :

I am in general agreement with the opinion of Mr. Panna Lal, Sub Judge, Ajmer.

I agree with him that some changes in the first para of part I will now be necessary in view of the fact that Pakistan is more or less an accomplished fact. I strongly oppose the abolition of the right of survivorship as well as the proposal to give daughters a share in the father's property. The provision that a daughter should take half a share is presumably on the analogy of Muslim Law. I do not see why we should copy the Muslim Law in this respect. As is well known, a daughter is a distinct liability to the father till she is married and in case the father dies before performing the daughter's marriage, the liability rests on his estate. Among the Muslims, on the other hand, the daughter is entitled to dower from her prospective husband and is not therefore so much of a liability.

The provision for divorce in certain circumstances is to be welcomed though I agree with Mr. Panna Lal that divorce has been made extremely difficult. Perhaps the law will be relaxed in this respect with more experience.

In general, I feel that this is not the time to embark upon legislation of such a sweeping character when the entire constitution is in the melting pot. I think the job of recasting the entire law applicable to Hindus should be handled by the new Government after it has had time to settle down.

MR. P. L. AGARWALA, SUB-JUDGE, AJMER :

The Bill under consideration reproduces the draft Hindu Code prepared by the Hindu Law Committee which was appointed by the Central Government by their Resolution dated 20-1-1944 for formulating the Code of Hindu Law which should be complete as far as possible. I have gone through the provisions of the Bill and it, no doubt makes provisions for most of the matters that are likely to arise under the topics which are now dealt with by the incodified Hindu Law.

2. I am however of opinion that it is not the right time to push in with legislation of the type under consideration which would govern the rights of about 30 Crores of people. Everything is in a state of uncertainty in view of the political crises through which the Country is passing. Imminent changes are ahead regarding the form of Government and it may be that the present Bill may not be found suitable in the altered circumstances in which India may find itself in the near future.

3. However, I proceed to give my opinion on the Bill. Para I of the Bill provides that it would extend to the whole of British India but this will have to be modified view of the fact that in all probability India will have to be divided between Hindustan and Pakistan. Some changes will have to be made in para 3 also. Para 3 limits the application of part II of the Bill in respect of moveable property. According to it, moveable property situate within the dominions to which the Bill would apply would not be governed by its provisions if it was proved that the deceased was residing outside the realm. I do not think this would be proper. All property whether moveable or immoveable situate within the territories to which the Bill would apply should be governed by its provisions. An example would make it clear. A man may be having shares in a corporation like the Tata Iron & Steel Company and he may be residing say in Jaipur. According to para. 3, the share would not devolve according to the provisions of the Bill. I am of opinion that such sort of things should not be permitted. All moveable and immoveable property situate in the realm should be governed by the proposed legislation.

4. The vital changes that the Bill under consideration seeks to introduce in the existing Hindu Law are :—

- (1) Giving a share to a daughter who will take half the share which her brother would take.
- (2) Abolition of the right of survivorship.
- (3) Providing a limited divorce.

5. I am in favour of (3). But not in favour of (1) and (2), I know that I am taking a view which will not find favour with most of the progressive people but on this ground I do not hesitate to express my views. As the Hindu society is constituted, a daughter and her descendants remain a life-long liability to her father or his descendants and the Hindu Society provides a large number of functions and ceremonies on which the father or his descendants have to spend considerable sums of money. It would be impossible to carry on all those things if the daughter was to be given a share in the property also. There are cases in which the father may not have left any property but still brothers and other relations spend considerable amounts over the marriages of their sisters. Giving a share to a daughter would weaken family ties and would destroy the integrity of the property.

RIGHT OF SURVIVORSHIP.

It is a very valuable right which the Hindu Law confers. Due to it a large number of properties which would have been wasted have remained in tact. Its abolition would, therefore, not be proper.

DIVORCE :

Paras 29 to 34 lay down the provisions regarding nullity, invalidation and dissolution of marriages. Experience has shown that several of the marriages have proved very unhappy for one reason or the other. No useful purpose in such cases can be served in keeping those marriage ties in tact. I, therefore, welcome the move for making provision for dissolution of marriages. I, however, think that the provisions for dissolution of marriages are very strict. Under para 30 in various sub-paras limit of 5 years has been put down. In order to entitle a party to claim dissolution of marriage, desertion, insanity, suffering from venereal diseases, etc., have to be proved for a period not less than 5 years before the presentation of the petition. This, in my opinion, is too long. Average married life of a man may roughly be taken at 25 years and if perchance that marriage is not happy parties will have to wait at least for 5 years before they can get any relief. The period of 5 years can, therefore, be safely cut down to 2 years.

ADDL. SUB-JUDGE, AJMER :

I agree with the views expressed by Mr. Agarwala.

The Bill to codify Hindu Law has far-reaching effects upon, inter alia, (i) succession, (ii) Marriages and (iii) adoption and minority among Hindus and in my opinion will be harmful to the interest of Hindus in general and should not be codified.

A. SUCCESSION.

A. Coparcenary will have no place after the Bill becomes Law. No one would be able to claim rights in the property by the mere incidence of birth thereafter. The Holder will be able to transfer the same by acts inter vivos or testamentary. The limitations attached to the transfer of what is known as ANCESTRAL property will absolutely disappear.

B. Females will have defined shares in the property left by the last sale-holders as his heirs and the property thus inherited by them will be their absolute property. To the extent of property inherited by such female heirs as sisters and daughters, it will pass out of the family with the consequence that it will discourage accumulation and encourage distribution of property in one place.

C. Shares inherited by the several heirs, named in the Bill, are to be determined in accordance with indications given therein. Succession by survivorship will be a thing of the past.

D. The main institution, known as Joint Hindu Family system of the Hindu society will disappear.

(ii) MARRIAGES.

A. Polygamy among the Hindus has been totally banned. Defaulters will open themselves to prosecution under the Indian Penal Code. Any marriage contracted in the presence of First wife will be null and void.

B. Marriages may be performed validly between members of the same GOTRA provided they cannot come within the definition of terms 'SAPINDA' as given in the bill.

C. Sacramental marriages also will not be indissoluble. Right of divorce has been acceded in the circumstances mentioned in the bill.

(iii) ADOPTION.

A. Authority to adopt to a Hindu widow is to be presumed and she will have the authority to adopt unless her power to do so has been, in any way, restricted by her husband by a registered document or a Will.

B. Since no right in the property accrues by the mere incidence of birth, an adopted boy will have no right in the property of the adoptive father by mere fact of this adoption.

C. A married boy, and, except in the case of a boy belonging to the same GOTRA as the adoptive father, a boy whose, 'Upnayan' ceremony has been performed cannot be adopted. And also so a boy who has completed the age of fifteen years cannot be adopted.

D. In the case of adoptions made within 3 years of the death of the adoptive father, the adopted son will have the same rights in the property, as the natural son would have had, of the adoptive father. In cases of adoption after 5 years the adopted son will be entitled to one half of the estates inherited by his adoptive mother, except in the case of impartible estate, and will not divest the estate vested in any other heir of the adoptive father on the latter's death.

E. The only essential for a valid adoption is "Giving and Taking" with the intention of transferring the boy from his natural family to that of the adoptive father.

(iv) MINORITY OF HINDU CHILDREN.

Any alienation of the minor's property by natural guardian without the previous permission of the court will be voidable at the instance of any other party affected thereby and if made by defacto guardian will have no effect.

SUB-JUDGE, BEAWAR.

The proposed code deals with :—(1) Intestate succession, (2) Testamentary succession, (3) General provision connected with succession, (4) Marriage and Divorce, (5) Minority and Guardianship and (6) Adoption. In my opinion there was a great need for having a consolidated and uniform code dealing with the aforesaid topics of Hindu Law, which might be applicable to all Indian Provinces and all sections of the Hindu Society. The Hindu Society has changed its character in recent years and there was necessity to alter the law so as to fit in with the new pattern adopted by the Hindu Society. I am of the opinion that the proposed code will provide for that necessity. The said code would also simplify the old complex and intricate provisions of Hindu Law. The orthodox section of the Hindu community would not be affected by most of the provisions of the proposed code and they would be at liberty to adhere to their old ways. In my opinion the proposed code would be liked by the majority of the Hindu community.

COORG No. 5

FROM CHIEF COMMISSIONER OF COORG,
TO THE SECRETARY TO THE GOVERNMENT OF INDIA; LEGISLATIVE DEPARTMENT,
NEW DELHI dated the 21st July 1947. No. 1381D R. DIS. 72-47.

Reference—your letter No. 229/47- C & G. (Judl.), dated the 16th April 1947.

2. Copies of the Hindu Code received with your letter referred to above, were sent to the Assistant Commissioner, the District and Sessions Judge, the Judicial Commissioner of Coorg, the Presidents of the Mercara Coorg Association and of the Coorg Temple Funds Committee. The President of the Mercara Coorg Association has not so far replied. The President of the Coorg Temple Funds Committee has no comments to offer, while the District and Sessions Judge, Coorg states that the Bill has his full support. I enclose copies of the views furnished by the Assistant Commissioner of Coorg and the Judicial Commissioner of Coorg. The views expressed by the Judicial Commissioner of Coorg apply to all Hindus in general and I generally agree with him. The views of the Assistant Commissioner relate to the people of Coorg Community in so far as intestate succession is concerned.

3. In this connection I invite your attention to this office letter No. 11201/D. Dis 2068-42, dated the 23rd/25th November 1944, addressed to the Chairman, Hindu Law Committee, Madras, when the

Committee camped there. A copy of this letter and of its enclosures is enclosed for ready reference. A copy of the Manual of Coorg Civil Law as codified by Major General Rob Cole, referred to therein is also enclosed for the information of the Government of India. Even though agricultural land has been excluded from the operation of the Act as regards intestate succession, the line of succession differs considerably from that in force among Coorgs as outlined in Chapter XI of the Manual of Coorg Civil Law by Major General Cole referred to above. The principle underlying the traditional custom and usage of the Coorgs is the preservation of original family and its continued prosperity. It is therefore strongly urged that so far as intestate succession is concerned the Code should not be made applicable to the Coorg Community and that necessary amendment be made to section I(iii) of Part II of the Code.

4. The Code was published in English in the Coorg Gazette Extraordinary dated the 20th May 1947.
ASSISTANT COMMISSIONER, COORG.

I have already in my report No. 8900, dated 21st September 1944, expressed my view regarding this Code.

The Code has undergone certain important changes subsequently and according to Part II, Section (i) and (ii), the ancestral agricultural lands in Coorg and the lands the title of which descends to a single heir by customary rule of succession etc., i.e., all lands except house property, owned by a Coorg parent appear to have been excluded from the operation of the New Act. The Coorg Community which follows the Coorg customary Law as codified by Major General Rob. Cole, may yet continue to follow it, provided as said in section 4 of Part I that the rule is certain and not unreasonable or opposed to public policy. The daughters and their sons according to this Act can claim share only in heritable properties vide rule 3 Part II - i.e., movable property, cash, shares, Insurance policies and in houses built on self acquired properties. Hence such of the disastrous effects envisaged and detailed in paragraph 1 and 2 of my previous report may not become operative after this Act comes into force.

JUDICIAL COMMISSIONER, COORG.

This code is a result of prolonged labours by an expert committee which has heard several witnesses, perused the opinion of innumerable persons, held elaborate discussions and consultations among themselves. So, the provisions are as good as can be expected in a Bill trying for the first time to codify a law more than 6000 years old and of such complexity that even trained jurists and veteran lawyers are terrified at it. I am of opinion that the provisions of the Bill represent the maximum agreement that can be got now regarding these matters even among enlightened Hindus. Of course, there are many provisions in it which some Hindus may not agree with. But, in all such cases, the law has to take a middle course, between two extreme views.

Thus I consider that there is little justification for giving daughters HALF the share of sons, in intestate succession, as in Muhammadan law. No Hindu father loves his daughter less than he does his son. But, then the Hindu law, has, from days of old, given daughter NO SHARE AT ALL, but has made it a duty on the family to marry them off according to their status, and to meet the expenses of various ceremonies thereafter. Often, the sons of a Hindu have to incur debts to meet these expenses, and only get a share of these debts as their family patrimony, in the case of poor and lower middle class families. Of course, in rich families, they will get far more than is spent on the daughters, but, then, the daughters will, usually, be married off to equally rich people, and, so, may have little reason to complain. The ideal course will be to give equal shares to sons and daughters, both in ordinary and in Stridhanam properties (where the SONS get a half share under this code), and to deduct from the daughters' shares the amount spent on them for marriage and other ceremonies from the joint family properties. But all this will be a complex procedure, and may only lead to endless litigation and expense to the sons and daughters alike. Hence, the Hindu Code has cut the Gordian knot by giving the daughters a half share in their fathers' properties, and the sons a half share in STRIDHANAM properties. Though this is not ideal, it is expedient, and therefore, reasonable.

So, too many a Hindu may not agree to give women absolute rights over their STRIDHANAM property. But even Vignaneswara, in his Mitakshara, written more than 900 years ago, was for such a reform. In these days, only reactionaries will oppose it.

Again, some Hindus may not like CIVIL MARRIAGES, by Registrars with all their incidence and consequences. But, as there will be a large section of Hindus wanting such marriages, it is only reasonable to provide for them, as this code does.

The same thing applies to the provisions for decrees of nullity or invalidity of marriage, and for dissolution of marriage. It is notorious that most Hindus, brought up in the old tradition, feel it almost obscene to think of divorce, or to bring a suit for nullity of marriage. But there are a good few among the forward sections wanting such provisions, and I think that they are entitled to it. After all, nobody is forced to apply for nullity or divorce.

I may also add that it seems to me that a Hindu who has no daughter may also be, in these enlightened times, given the right TO ADOPT A DAUGHTER. The original object of adopting a son was to save his parents' soul from the hell called "Put" by performing SHRADDHAS, offering PINDAS etc. This has become more and more honoured in the breach than in the observance. Many a Hindu who has no daughter may like to adopt a daughter to save his aesthetic soul. I see no reason why a provision giving liberty to such a Hindu to adopt a daughter should not be incorporated in this Code, and why the provision of the Code, "No daughter shall be adopted by or to any male or female Hindu" should not be amended. If the object of that provision is merely to prevent adoption of girls for the purposes of prostitution, as in the case of adoption of girls by dancing girls, the code may specifically enact a provision prohibiting the adoption of girls for such a purpose, or by a dancing girl IN ANY CIRCUMSTANCES. To prevent adoption of girls altogether, even by a respectable male or female Hindu having no girl, and for honourable purposes, is, in my opinion, an unnecessary sacrifice at the altar of antiquarian old-world prejudice. This prohibition in this code becomes all the more Serious when the Code allows KRITRIMA or GODHA adoptions under which even a father, grand-father, father-in-law, or grand-father-in-law can be adopted as a SON (!) by an adult Hindu who has attained the age of 18 and can take advantage of this custom.

Of course, the above observations do not, in any way, detract from the value or desirability of this Code. It is high time that Hindu law is codified and made precise, exact and uniform throughout the country. No time is better suited for this than the present time, when India is becoming free, and is taking on a new lease of life, with infinite possibilities for good.

THE PRESIDENT, ALL COORG KODAVA SABHA, MERCARA :

I have the honour to place before you the views of Kodava Sabha opposing many provisions of the proposed Code of Hindu Law so far as their operation to Coorg is concerned.

The major portion of landed gentry of Coorg are the Coorgs by race and they are about forty thousand in number. Their estates are indivisible and inpartible and they have been governed by the customary law of the Coorgs from time immemorial in respect of succession, marriage, divorce, adoption, etc. Theirs is a peculiar land tenure which is a privileged one being incapable of alienation. They are also exempt from Arms Act. The customary law by which they are governed is quite conducive to their growth and compactness and any abrogation or supersession of it is viewed by this Sabha detrimental to the future of the Coorgs.

The Kodava Sabha is, therefore, definitely opposed to the provision of the Code in respect of the Code in respect of intestate succession for the following reasons :

Firstly, it must be brought home to the Law Coommittee that this part shall not be made applicable to the agricultural land of Coorg also, just as that of the major provinces is expected, in view of the fact that Coorg having a Legislative Council of its own can legislate, if necessary, with the assent of the Governor General in Council extending the operation of the Code in respect of the succession, etc., by elaborate discussion on the floor of its own Council to the said lands.

Secondly, it is a commonplace idea that the Coorgs, though Hindus, are having a land tenure singularly distinct from that of other Hindus. They are having a privileged land tenure which is not alienable. There is no partition among the Coorgs as it is extant among the other Hindus. Theirs is an indivisible joint family the members of which can exercise only the right of maintenance division and not partition. Consequently, the operation of the Code to Coorg in respect of their privileged land tenure called Jamma, Jahagir and Umbli lands as formulated by the Law Committee will increase the fragmentation of the land which is detrimental to the interests of the Coorgs.

Thirdly, the Coorgs are governed by their customary law from time immemorial. The abrogation of these customary laws by the Code would bring about such a radical change in the customs and practices of the Coorgs in respect of their succession, maintenance and ownership of ancestral immovable property as to cause complete disruption of the Coorg families which would bring in its trail ever lasting family feud causing havoc to the society.

It is further detrimental to the future of the Coorg community to treat the ancestral immovable property which devolves on an individual as if it is one of his absolute right capable of being transferred as his own self acquired property. Further to deprive the son of his right in the ancestral property by birth is something which is repugnant to the Coorg tradition.

It is, therefore, the considered opinion of the Kodava Sabha that the Code must not be made applicable to Coorg Community so far as the provisions in respect of intestate succession are concerned and be excepted just as Marumakka-Thayam and Alayasanthana law of inheritance.

II. MAINTENANCE.

The Kodava Sabha has no objection to the operation of the Code in respect of maintenance being extended to Coorg also except in the case of illegitimate children, as the customary law, which Coorgs illegitimate children as entitled to right of maintenance in the Code. The Sabha opposes the recognition of the deceased.

IV MARRIAGE AND DIVORCE.

The sacramental form of marriage as performed according to customary rites as is in vogue among Coorg community be continued as before.

NULLITY AND DISSOLUTION OF MARRIAGES.

The Kodava Samaj urges that the divorce as allowed by custom among the Coorg Community be also continued in addition to the provision of the Code as made specific in S. 32 in page.32.

PART V. MINORITY AND GUARDIANSHIP.

The Kodava Sabha urges that a mother re-married shall be appointed the guardian only for the person of her minor son or daughter from her deceased husband and not for the properties of the minor, in-as-much as according to the customary law it is difficult for her to enter the house or properties of the deceased husband and manage the same.

PART VI ADOPTION.

The Coorgs, though Hindus, are governed by their customary law in respect of adoption. The application of the Code to Coorg Community in respect of adoption is likely to supersede the customary right of adoption according to Vokkapparije and Makka-parije which is rarely resorted to in the case of families about to be extinct. The indivisibility of a Coorg joint family does not warrant adoption, when there are other living members of the family. The provision of the Code is harmful to Coorg. It is, therefore, urged that the customary law of adoption in Coorg be still maintained.

In conclusion the All Coorg Kodava Sabha will deem it a great honour if the Law Committee is pleased to except Coorg from the operation of the Code and give a hearing to the Sabha for the clarification of the points raised.

DELHI No. 6

FROM THE HOME SECRETARY TO THE CHIEF COMMISSIONER, DELHI.
TO THE SECRETARY TO THE GOVERNMENT OF INDIA, LEGISLATIVE ASSEMBLY
DEPARTMENT, NEW-DELHI : No. F. 3 (43) /47-R&J, Dated the 4th August, 1947.

1. Letter No. 876, dated the 8th July 1947 from the Honorary Secretary, Shree Sanatan Pratinidhi Sabha Punjab, New Delhi with enclosures.
2. Letter dated the 9th July 1947 from the Honorary Secretary Shree Sanatan Dharma Sabha, New Delhi, with enclosures.
3. Letter No. 1103-T, dated 10th July 1947 from the Honorary Secretary Shree Sanatan Dharma Sabha, Lakshmi Narain Temple Trust, New Delhi, with enclosures.
4. Letter dated 10th July, 47 from the Secretary Arya Samaj (Dewan Hall) Delhi.
5. Letter dated 10th July, 47 from the Secretary International Aryan League, Delhi.
6. Letter No. 1/Misc/47, dated 17th July 1947 from the President the South India Club (Regd.) New Delhi.
7. Letter dated 26th July 1947 from the Honorary Secretary Bhartiya Hindu Suddhi Sabha, New Delhi.

With reference to your letter No. 229/47-C & G (Jude) dated the 16th April 1947, on the above subject, I am directed to forward in duplicate the marginally noted papers containing the views expressed by certain non-official Hindu Organisations. In all thirteen important organisations were requested to offer their views on the proposed Bill, but only the above seven have cared to reply.

2. The Chief Commissioner holds the view that the Bill is bound to be controversial as it seeks to codify various changes in the fundamental principles of Hindu Law. These must be opposition from the Orthodox section who would naturally consider such codification as secular interference with a sacred religion while those with advanced ideas would welcome the proposed changes as eliminating the unfair and unjust practices now prevailing under the sanction of the existing law.

3. The bill has been drafted by the Hindu Law committee after prolonged deliberations and will again be considered by a joint committee of both chambers when public opinion will be exhaustively consulted.

4. In the circumstances the Chief Commissioner has no further comments to make except that the present Hindu Law does certainly need amendment to bring it into line with the advanced thought and ideas of the modern times.

THE HONORARY SECRETARY, SHRI SANATAN DHARMA PARTINIDHI SABHA, PUNJAB :
NEW DELHI :

The matters of inheritance, marriage, and other allied subjects as dealt with in the Hindu Code are without any doubt religious ones, hence the legislature or administration has no right whatsoever to take them up even for codification. It is a violation of a sacred privilege and cannot be tolerated.

2. The Hindu Code is not only confined to codification of certain branches of the Hindu Law, but it has taken up the task of amending them too which to our mind is definitely a breach of the sanctity of the Hindu Law and is condemnable as strongly as possible.

3. The innovation made in these branches of Hindu Law are themselves full of dangers and risks for the Hindus Society, and are bound to weaken its solidarity.

4. In the case of inheritance allowed to girls in the Hindus is such an action of legislation, which is bound to create bitterness in hitherto sweet and harmonious relations. This amendment is uncalled for, but it seems that Sir Sultan Ahmed-the then Law member wanted to convert the Hindu Society into a Muslim one by it.

5. The innovations suggested to be brought in the marriage affairs are in fact to introduce divorce in the Hindu Society somehow or other to ruin homes, family life and children's lives as is to be found in Western Christian Countries.

6. Thus whatever is being done in the name of reforms by this code is bound to bring great deal of miseries and misfortunes in the Hindu Society.

7. All this is brought forward to encourage renegades from Hindu Laws and to legalise their irregularities, instead of correcting them and maintain the sanctity of the Hindu laws and Society.

8. This Sabha is definitely of opinion that such an attempt on the part of legislatures and the Government is beyond their jurisdiction and is harmful for the Hindu Society. Hence the Sabha strongly condemns the said code and urges upon the authorities concerned to refrain from proceeding in this matter and drop it here and now.

THE SECRETARY, ARYA SAMAJ. (DIWAN HALL) DELHI :

I am sending the following opinion of this Samaj on the provisions of the Hindu Code Bill :—

"The Arya Samaj, Dewan Hall, Delhi, welcomes the idea of a consolidated and uniform Code dealing with the different topics of Hindu Law for all the provinces and for all sections of the Hindu Society. But it suggests the following changes in the draft of the 'Hindu Code' sent by the Government for eliciting public opinion :—

1. In part I dealing with intestate succession Section 21, not only the descendants of the convert to other religions, but he himself should also be disqualified to get the property of a Hindu father, unless he has got himself reclaimed to Hinduism.

2. With regard to the provisions made in the proposed Code for separation and dissolution of marriage on certain grounds, the Arya Samaj Dewan Hall, Delhi, wants to make it clear that such a thing as separation or divorce is foreign to the Vedic ideal of marriage and therefore most undesirable. - But taking into consideration the present circumstances, cannot altogether oppose the provisions, though it would like to make them more rigid, severe and limited.

For instance, in Part IV Section 30(a) instead of other party has without just cause deserted the petitioner for a period of not less than five years it may be put as seven years as was proposed in the previous draft. In part IV Section 30 (d) and (f) also instead of 5 years, 7 years may be stated as the minimum period for the treatment of lunacy and venereal disease in communicable form.

The Samaj would like to emphasize that the provisions regarding the matter may be applied only to the very rare and incorrigible cases, so that the Vedic ideal may not be lost sight of.

The Samaj is in general agreement with other proposals, though there may be difference of opinion with regard to details.

THE SECRETARY, INTERNATIONAL ARYAN LEAGUE, DELHI :

I am sending the following opinion of this Sabha on the provisions of the Hindu Code Bill :—

"The Sarvadeshik Arya Pratinidhi Sabha welcomes the idea of a consolidated and uniform Code dealing with the different topics of Hindu Law for all the provinces and for all sections of the Hindu Society. But it suggests the following changes in the draft of the 'Hindu Code' sent by the Government for eliciting public opinion :—

(1) In part I dealing with intestate succession Section 21 not only the descendants of the convert to other religions, but he himself should also be disqualified to get the property of a Hindu father, unless he has got himself reclaimed to Hinduism.

(2) With regard to the provisions made in the proposed Code for separation and dissolution of marriage on certain grounds, the Sarvadeshik Arya Pratinidhi Sabha wants to make it clear that such a thing as separation or divorce is foreign to the Vedic ideal of marriage and therefore most undesirable. But taking into consideration the present circumstances, it cannot altogether oppose the provisions, though it would like to make them more rigid, severe and limited. For instance, in Part IV Section 30(a) instead of other party has without just cause deserted the petitioner for a period of not less than five years, it may be put as seven years as was proposed in the previous draft. In part IV Section 30(d) and (f) also instead of 5 years, 7 years may be stated as the minimum period for the treatment of lunacy and venereal disease in a communicable form.

The Sabha would like to emphasize that the provisions regarding the matter may be applied only to the very rare and incorrigible cases, so that the Vedic ideal may not be lost sight of.

The Sabha is in general agreement with other proposals, though there may be difference of opinion with regard to details.

THE PRESIDENT, SOUTH INDIA CLUB, NEW DELHI :

The South India Club (successors of the late South Indian Association) are in full agreement with the proposed Hindu Code Bill and its various provisions.

THE BHARATIYA HINDU SHUDDHI SABHA :

The Sabha is in favour of a consolidated and uniform code dealing with the various topics of the Hindu Law for all provinces and for all sections of the Hindu community subject to the following modifications :—

(1) Part I, Section 21, Intestate Succession. - Both the renegade from the Hindu religion and the descendants should be disqualified from getting the property of a Hindu father unless they are re-converted to Hinduism again.

(2) The provisions regarding separating and dissolution of marriage are foreign to the Hindu ideal of marriage and should be made more rigid, severe and limited. For instance in Part IV, Section 30(a) and 30(d), the period of 5 years may be extended 7 years.

The Sabha agrees generally with the other proposals.

Emerald Printing Works Limited, Calcutta.

GOVERNMENT OF INDIA
MINISTRY OF LAW

PAPER No. II

OPINIONS

ON

THE HINDU CODE

(Introduced in the Legislative Assembly on the 17th April 1947 and published
on the 19th April 1947)

Opinions Nos. 7—12

PAGES.

DELHI

No. 7.—Letter No. F. 3(43)/47-R. & J., dated the 6th October 1947, from the Home Secretary to the
Chief Commissioner, Delhi

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No. 8.—Letter No. 3432, dated the 5th September 1947, from the Secretary to the Government of Madras,
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CENTRAL PROVINCES AND BERAR

No. 9.—Letter No. 1995-881/XXI, dated the 2nd September 1947, from the Secretary to the Government of
the Central Provinces and Berar, Judicial Department.

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BOMBAY

No. 10.—Letter No. 2207/5-B, dated the 6th September 1947, from the Secretary to the Government of
Bombay, Home Department.

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No. 11.—Letter No. 1203-47, dated the 4th October 1947, from the Chief Commissioner, Andaman and
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No. 12.—Letter No. 7805-J/A-22/1947, dated the 3rd September 1947, from the Secretary to the Government
of Bihar

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No. 7—DELHI

OPINIONS

LETTER FROM THE HOME SECRETARY TO THE CHIEF COM-
MISSIONER, DELHI, TO THE SECRETARY TO THE GOVERN-
MENT OF INDIA, MINISTRY OF LEGISLATURE AFFAIRS,
NEW DELHI, NO. F. 3(43)/47-R. & J., DATED THE 6TH
OCTOBER 1947.

Deputy Commissioner, Delhi.

I agree with the Crown Pleader that the bill is of a
progressive nature and should be supported.

SUBJECT:—The Hindu Code Bill

Crown Pleader, Delhi.

I am directed to forward the views expressed by the
Deputy Commissioner, Delhi and the Crown Pleader on
the provisions of the Hindu Code Bill.

I have gone through the provisions of the Hindu Code
Bill. As stated in its objects and reasons, it is an
attempt to alter the old Hindu Law so as to make it fit
the new pattern to which Hindu society is rapidly ad-
justing itself. The bill deals with most important

branches of Hindu Law, viz., intestate and testamentary succession, marriage and divorce, minority and guardianship and also adoption.

Registrations of adoptions have been provided although it is optional. This will be very useful for easily proving an adoption in a court of Law.

Divorce has also been provided and the provisions of the Indian Divorce Act have been freely availed of. This is an important and a welcome alteration to the old Hindu Law.

Re: succession, a share has been provided for the daughter as well, along with the son and the widow. Women have been allowed full power to dispose of their Stridhan.

The provisions of the bill are desirable and most of them being of a permissive or enabling character, they would not be opposed even about the orthodox section. I therefore recommend the provisions of the bill in their Stridhan.

District and Sessions Judge, Delhi.

I am of opinion that the provisions of this Bill will certainly satisfy the much needed reform in Hindu Law. The times, under which we are moving, certainly require such legislation in order to allow the Hindu community to keep in pace with the existing circumstances. The old complex, intricate and different provisions of Hindu Law need simplification, which appears to be the underlying object of this Bill, and it will certainly afford all Hindus of different shades of opinion to adopt any ways they like.

Sub-Judge, 1st Class Delhi.

For lack of time, I regret I could not examine the provisions of the Hindu Code Bill in detail and, for this reason, I am not in a position to offer any detailed and exhaustive notes on the provisions of this Bill. One thing, however, I would like to point out.

The proposed Bill provides for the share of a daughter's intestate succession at one-half of that of the son vide Section 7, Rule 3(ii). This provision, to my mind, is unjust, ill-advised and uncalled for. It is the subject matter of lot of adverse comments in the public and I think that the criticism levelled against it is quite justified.

The placing of a daughter's share at one-half of that of the boy finds place only in one system of law, i.e. the Mohammedan system and the working of this rule in that law has not, to my mind, justified its retention much less its extension to other systems of law. As far as the Hindu Law is concerned, both its spirit and tradition are against making a discrimination between a son and a daughter in this manner. It would have been much better if a discrimination, if at all required to be made, would have been made with reference to the nature of the property of the estate, e.g., she might have been excluded altogether from landed or house property and given an equal share with the son in the moveable and other properties. This provision embodies a sudden and drastic change from the past and like all such changes is not likely to be received by the persons concerned with equanimity. There is another strong reason against this provision, which is that the public opinion has not been prepared and marshalled in its favour as yet, with the result that it would be politically wrong and inexpedient to thrust this measure upon them. The other provisions in the Act, which record a departure from the established Hindu Law, such as the provisions relating to marriage and divorce do not suffer from this defect, because ground has already been prepared for them and strong public opinion has been created in their favour, but this is not the case as far as the provision under consideration is concerned. The only possible reason that can suggest itself to anyone for this provision is that it is a compromise between the two schools of thought, one favouring equality of rights of succession for the girl with the boy and the other denying it altogether to the girl, but, in such matters, a compromise is always much worse than either of the two contending propositions. It is nothing better than falling between two stools. A reform to be effective must go the whole length. Mere tinkering with the problem cannot be any substitute. If the Legislators think that this

reform is advisable, then they should give an equal status to the girl, otherwise they should leave the law, as it stands at present.

Sub-Judge, 1st Class Delhi.

The Hindu Code Bill satisfies the much needed reform in Hindu Law.

All India Shradhanand Dalitodhar Sabha, Delhi.

"The All India Shradhanand Dalitodhar Sabha, Delhi, welcomes the idea of a consolidated and uniform code dealing with the different topics of Hindu Law for all the provinces and for all sections of the Hindu society. But it suggests the following changes in the draft of the Hindu Code sent by the Government for eliciting public opinion:-

(1) In part I dealing with intestate succession section 21, not only the descendants of the convert to other religions, but he himself should also be disqualified to get the property of a Hindu father, unless he has got himself re-claimed to Hinduism.

(2) With regard to the provisions made in the proposed code for separation and dissolution of marriage on certain grounds, the All India Shradhanand Dalitodhar Sabha, Delhi, wants to make it clear that such a thing as separation or divorce is foreign to the Vedic ideal of marriage and therefore most undesirable. But taking in to consideration the present circumstances it cannot altogether oppose the provisions, though it would like to make them more rigid. Severe and limited, for instance, in part IV section 30(a) instead of other party has without just cause deserted the petitioner for a period of not less than five years, it may be as seven years as was proposed in the previous draft. In part IV section 30(d) and (f) also instead of 5 years, 7 years may be stated as the minimum period for the treatment of lunacy and venereal disease in a communicable form.

The Sabha would like to emphasize that the provisions regarding the matter may be applied only to the very rare and incorrigible cases, so that the Vedic ideal may not be lost sight of.

The Sabha is in general agreement with other proposals, though there may be difference of opinion with regard to details.

No. 8-MADRAS

LETTER FROM THE SECRETARY TO THE GOVERNMENT OF MADRAS, HOME DEPARTMENT, TO THE SECRETARY TO THE GOVERNMENT OF INDIA, LEGISLATIVE DEPARTMENT, NEW DELHI, No. 3432, DATED THE 5TH SEPTEMBER 1947.

I am directed to forward copies of the opinions of the Hon'ble the Judges of the High Court of Judicature at Madras and of other officers, associations and private persons consulted by this Government on the provisions of the Hindu Code and to say that the Government of Madras are generally in favour of the provisions of the Bill and that they agree with the views expressed by the Hon'ble the Judges of the High Court and by the Advocate-General Madras.

2. The Bill together with the statement of objects and reasons was published in Part III-A of the Fort St. George Gazette in English on 18th May 1947 and in Tamil, Telugu, Malayalam and Kannada languages on 27th May 1947, with a prefatory note on the lines indicated in para. 4 of the letter cited.

V. L. Ethiraj, Esq., C.I.E., Bar-at-Law.

I have no special opinion to offer to this Bill.

The Servants of India Society, Madras.

At a meeting of the Madras Branch Members held at Poona on 17th June 1947 the following resolution was passed.

"This meeting approves the bill to amend and codify certain branches of the Hindu law."

Secretary, Bar Association, Kumbakonam.

The resolution of the Kumbakonam Bar Association passed by the General Body at the meeting held on 19th June 1947.

"As the Hindu Code Bill was published only in the Gazette of 13th May and embodies important and radical changes affecting the entire Hindu community and as the time for consideration of the Bill is short and as in the present political atmosphere the minds of the public and the legal profession also are focussed upon the future constitution which will take shape only on the 15th August and the bill will come up only after the new constitution is framed and the new legislature chosen under the same meets, this Association is of opinion that the time for objections to the draft bill should be extended for some reasonable time till after the coming into force of the new constitution."

District and Sessions Judge, Nellore.

In regard to the Hindu Code, the Bill codifying certain branches of the Hindu Law, I was one of the persons invited to tender evidence in writing. I have done so and I have nothing to add to it and I am an enthusiastic supporter of the Bill and consider that the Bill if passed would do for the Hindus what Macaulay's Indian Penal Code did for the entire British India in regard to Criminal Law. It will provide uniformity in all branches of Hindu Law and for all sections of people. There can be no possible objection to any one of the provisions as they are mostly of permissive and enabling character and for the rest they merely incorporate the authoritative interpretations of Hindu Law as laid down by various High Courts. I respectfully agree with the Hon'ble Mr. Jogendra Nath Mandal that this Hindu Code will give a growing body of Hindus, men and women the liberty to lead the lives which they wish to lead without in any way affecting and infringing the liberty of those who prefer to adhere to the old ways.

District Judge, South Kanara, Mangalore.

I have the honour to offer the following remarks on the provisions of the bill.

(2) Part I—Preliminary—cl. 5(a) and 5(c) (Definitions)—*Gotrajas* and *Banathas* are defined without limit of degrees. Since these expressions are used in prescribing devolution of heritable property, it would have far reaching consequences, as it would exclude a near cognate in favour of a very remote agnate, even beyond the fourteenth degree (which appears to be the limit at present set by the decisions with regard to agnate or gotraja succession). A limitation with regard to degrees in the definitions appears necessary.

(3) Similarly the present limit of cognate succession is confined to 5 degrees only. The provisions of the Bill contain no such limitation.

(4) Part II—Intestate Succession—cl. ...1.—The Bill as it stands excludes agricultural land, owing to the inability of the Central Legislature to legislate in that regard under the present Constitution Act. Generally speaking, the largest part of heritable property is agricultural land. If that is left out, the Code ceases to be comprehensive and would, in a sense, be piece-meal legislation. It is desirable, therefore, that the Central Legislature should get invested with jurisdiction, by consent of the Provinces, to legislate for succession to agricultural land as well.

(5) Clause 5.—Though even under the present law, mother and father are heirs in that order, there appears to be authority for the position that they should take together. If the son and the daughter can be simultaneous heirs, there is no reason why both the parents should not take together and why one should be preferred to the other. If necessary, a distinction might be made in the shares that the mother and father should take. The same would apply to (1) father's mother and father's father (clause iv), father's father's mother and father's

father's father (clause v), mother's mother and mother's father. Similarly in the case of succession to Stridhana, mother and father might take together.

(6) Part II cl. 10.—This clause deals with a person who has no heir of any of the classes mentioned in clause 4. For all practical purposes he is attempted to be governed by a provision analogous to that applicable to hermits, etc.

(7) While this is no doubt based upon Hindu Law Texts, this principle has not, as far as I am aware, ever been applied. To that extent, the introduction of these "heirs" is an innovation and appears unsuited to modern conditions.

(8) Cases of failure of even the remotest of the numerous heirs enumerated, agnate or cognate, would be very rare. If any such case should however, occur, the present provision would lead only to greater uncertainty and open the door to litigation. There is no reason why in such cases there should not be escheat.

(9) Clause 23.—As the whole of the Hindu Inheritance (Removal of Disabilities) Act, 1928, is being repealed except in so far as it affects agricultural land, the saving provided for in that Act in respect of religious office or management of religious or charitable trust would also stand repealed. As the Bill at present stands, there is no disqualification even in the case of a lunatic in relation to administration of trust properties. I presume that is not the intention of the authors of the Bill. Suitable explanation or savings must therefore be embodied in the Bill.

(10) Part IIIA—Division I, Clause 1.—This removes the principle of survivorship, the distinguishing feature of the Mitakshara Joint Hindu Family. Joint Family is, however, recognised. It is desirable to state so expressly, so that the management of the Family and the powers of the manager might continue under the existing law.

(11) Division II, Maintenance.—These provisions are bound to raise a storm of protest. Hindu Law, at present, does not recognise a legal right in all these numerous dependants defined in clause 5. A moral liability on the part of a Hindu to maintain or provide for these dependants is now sought to be converted into a legal liability. What is more important is that the testamentary capacity of a Hindu, which is apparently recognised is almost taken away by these provisions. This is objectionable in principle. Further, these provisions will lead to endless litigation between the statutory heirs and the statutory "maintenance holders". It will be difficult to work out these provisions in practice.

(12) A person taking the property of a Hindu by testamentary disposition can hardly call the property his, till the last of these dependants has agitated his or her claim to maintenance in a court of law.

(13) Clause 6(f).—"The past relation between the dependants and the deceased" is laid down as one of the factors determining the quantum of maintenance. This is very vague. It is indeed difficult to understand why this has been included. It would be even more difficult to apply it in practice.

(14) The deletion of this sub-clause would in no way affect the remaining provisions.

(15) Part IV—Marriage—Ch. II—Maintenance—Clause 26.—A Hindu wife is given separate maintenance in cases coming under clause 26(2). There is no clause disentitling her to maintenance in case of unchastity or other similar cause. While conjugal infidelity on the husband's part is made a ground for claim to separate maintenance, there is no reason why a like conduct on the wife's part should not effect her claim.

(16) The right to separate maintenance if the husband "keeps a concubine" might be limited to such period as the husband persists in such conduct. There should be no objection to the husband getting the benefit of the restoration of conjugal harmony, if he gives up his offending conduct. Probably the clause can be recast to suit such a case.

(17) *Chapter III—Decree for dissolution of marriage.*—The provision 30(c) seems to be radical departure from the principles accepted in other analogous enactments, where even a single case of proved adultery is deemed sufficient for dissolution or divorce. The above clause requires that the wife should be "the concubine of any other man", or "leads the life of a prostitute". Apart from the difficulty of proving either of these requirements, this clause, I fear, is out of all keeping with Hindu sentiments.

(18) *Part VI—Adoption—Ch. I, Division I.*—The Bill does not DEAL WITH THE RIGHTS *inter se* of an adopted son and an afterborn natural son. Since the different High Courts have interpreted the Hindu Law Texts differently, it may be desirable to include a provision to meet such cases, the more so as cl. 16(1) and the explanation thereto partly deal with them.

(19) *Divisions II and III, clauses 26-28.*—The customary rights of the Kritrima and Godha forms of adoption are recognised in clause 26. Clause 27 prohibits all forms of adoption other than the dattaka, Kritrima and Godha. Clause 28 probably saves the dwyamushyayana form of adoption as it obtains among Nambudris.

(20) Dwyamushyayana and Illatom adoptions are referred to in clause 2, Part II, but the customary rights of these 2 forms are not saved in the chapter on Adoption. Either this should be done or such adoptions should be expressly prohibited.

(21) *Special case of persons governed by Marumakkathayam and Aliyasantana laws.*—The code, in general, attempts to deal only with persons governed by various schools of Hindu Law. An attempt has been made to exclude its application to those governed by Marumakkathayam and Aliyasantana laws in the chapters on Intestate Succession and Adoption. But all other parts of the Bill would apply to them.

(22) The matriarchal system is the foundation of the personal law in these two cases and it is fundamentally opposed to the patriarchal system on which Hindu law is based. But the chapters relating to maintenance and marriage minority and guardianship are made applicable regardless of the difference in the two systems.

(23) For instance, the estate of a male governed by Aliyasantana devolves upon his mother's branch. Aliyasantana law does not recognise any rights to maintenance in the father, son's widow etc., who are defined as "dependants" in the Bill. In fact, the expressions, father, son's widow etc., do not have the same legal import to followers of Aliyasantana law as to those of Hindu Law.

(24) The opinion prevalent in the areas, where the above systems are in force, is that sufficient publicity about the proposed legislation has not been given; and that the opinion of these areas has not been ascertained at all.

(25) The Provincial Legislature has made enactments dealing with succession, Marriage etc., in relation to Marumakkathayam Law. Since those governed by Aliyasantana Law are not very numerous and are confined to one or two districts only, the Bill may exclude them altogether from its scope and the Provincial Governments left to legislate for them in the same manner as it has done for the Marumakkathayam, such a course would ensure that public opinion is adequately ascertained and a comprehensive enactment is made.

District Judge, Chingleput.

The Bill will require a thorough revision in view of the constitutional changes that are taking place now, before it is finally put before the Assembly.

I am in general agreement with the main provisions of the bill. It seems, however, better that a uniform system of inheritance is prescribed with reference to all kinds of property inclusive of agricultural lands to which this legislation is not intended to apply.

Registration of adoption should be made compulsory. I am also of opinion that dowries given in respect of married daughters will have to be taken due account of in case they are to be given right to inherit their fathers' properties.

The Manager, Camp, Office, His Holiness Jagadgaru, Sri Sankaracharya Swami Mutt.

Sri Sankaracharya of Kanchi—Conjeevaram, South India is of opinion that the Hindu Code Bill by the Law Member, Government of India ought not to be allowed to become law as it directly infringes upon the tenets of Hindu Religion.

Mr. V. Viswantha Iyer, 112, Thirumarajakulam Street, Chingleput.

The Hindu public of Chingleput in meeting assembled emphatically protest against.

(i) The Legislature passing any bill affecting the Hindu Religion and customs; and

(ii) that the Child Marriage Restraint Amendment Bill by Sri Thakurdas Bhargava and Hindu inter-caste regulating and validating Bill by Sri Prakasa are against the Hindu Religion and Sastras and subversive of the same and ought not to be allowed to be passed as law.

(iii) That they and the Hindu Code Bill by the Honourable Law Member only represent ideas of social reforms imbibed from western association with the western culture and should not be countenanced by the present legislature.

(iv) This meeting reinforces their protest against the Hindu Code already sent to the Government.

(v) That all the three bills are infringements upon the tenets of Hindu Religion and culture and ought not to be allowed to become Law.

Government Pleader, Madras.

I have indicated my views regarding Part II of the Bill which deals with intestate Succession in my opinions dated 20th August 1942 and 7th May 1944. I have also expressed my views regarding Part III of the Bill relating to Testamentary succession and Part IV relating to Marriage and Divorce in my opinion dated 30th December 1944. I have nothing further to say about the provisions of the Bill.

Collector of Chingleput District, Saidapet.

I have no remarks to offer.

Government Pleader, Chingleput.

In view of the constitutional changes this bill will have to undergo changes. Is this Act intended to apply to Hindus in the contemplated Pakistan? What about Hindus in the States? These are matters which have to be considered before the bill could be taken for consideration. This legislation cannot and is not intended to apply to rights in "Agricultural" lands, as the Central Legislature is not competent to legislate with reference to that subject. It is better that there is a uniform system of inheritance with reference to all kinds of property. Apparently in the new constitution this subject may not be dealt with by the union.

The idea to introduce changes in the line of heirs, the order of succession etc. is wholesome, as the object is to provide for nearer heirs in preference to remote gnatis

and Bandhus. Is this to have retrospective effect and if so from when should be made clear? One difficulty is likely to arise. There are instances where daughters have been amply provided for by way of large dowry etc. If such married daughters are to be given right to inherit father's property they will be having double benefit while the sons and others would be deprived of their legitimate share. Such a contingency has to be provided against.

As regards Stridhana the idea to do away with the distinction regarding the rights to property of persons married in a Brahma form and of those married in Asura form of marriage, is welcome as the existence of such a distinction has led to lot of difficulties and often times to perjury in Courts of law.

The right of birth which a member of a joint Hindu family possesses on the date of the Act is preserved. This may lead to complications. What about a person born after the date of the commencement of this Act? Does he get a right in the property of the joint family of which he is a member? This position requires clarification.

This Act is intended to provide for maintenance of deserving members who had hitherto no claim. The method adopted for determining the rate of maintenance though somewhat cumbersome is based upon equity and reason.

The chapter on marriage is on a line with the "Inter-caste marriage" bill and I have dealt with those provisions *in extenso* in my opinion regarding the provisions of that Bill.

The registration of marriage is absolutely necessary. The provision for punishment for bigamy, irrespective of the fact whether the offender is a male or female is salutary.

The provisions regarding the dissolution of marriage might offend against the notions of Hindu ideals of marriage, marriage being regarded not as contract but as a sacrament. The consequence of such a provision is that remarriage is allowed even in case of women. While provision might be made for maintenance, dissolution of marriage may not be permitted.

Registration of adoption might be made compulsory as it will avoid uncertainty of rights, unnecessary litigation and scope for perjury and forgery etc.

K. N. Anantaraman Esq., I.C.S., District Magistrate, Bellary.

The provisions of the Bill to amend the Hindu code are acceptable in the whole and they do simplify a lot of complicated questions like marriage and adoption over which many law suits have been fought out. My suggestions are;

(1) Page 11, Section 21, Part II. *Converts and descendants disqualified*.—The provision to disqualify a convert and children appears to be quite drastic and I think it is not fair to place the convert on the same level as a murderer who profits by the commission of an offence.

(2) Page 16, Part IV, Sec. 7, Sub-Section 5.—It is provided that each of the parties must if he or she has not attained the age of twenty one have obtained the consent of his or her guardian etc.

As far as widows are concerned no such consent is needed—while admitting that old fashioned guardians of widows do not usually give consent to widow remarriages and that remarriage of widow is a very essential step of and that remarriage of widow is a very essential step of social reform. I am afraid that there are dangers of giving the liberty to a widow while denying this liberty to other girls of the same age. I would even say that in order to escape from unhappiness they may enter rashly into marriages with unreliable parties and may have to regret for ever. I would put in a safe-guard that in the case of a widow the consent of a guardian if the guardian does not consent of any close adult male relative like a brother should be necessary.

Page 24, Part VI, Sec. 5.—*Capacity to take adoption*.

Proviso under section 1.—In my opinion it is unworkable. Adoption is a religious ceremony of great importance done in the belief that the spiritual future of the ancestors in the other world would be safe-guarded. It is the belief of orthodox Hindus that the annual ceremonies done by every Hindu benefit not only his adoptive father but also the ancestors of the father.

It will be very hard to deny this valuable privilege to any Hindu because his wife withholds her consent. It is natural for a woman to withhold her consent as her share of the property is likely to be diminished by the adoption.

Page 28, Part VI, Sec. 13, Sub section (iv).—The age limit of 15 is arbitrary especially in modern days where upanyanam is preferred only about the 16th Year.

Page 26, Part VI Sec. 13 Sub section (V).—The prohibition against giving a man already adopted again in adoption is sound provided that the adoptive father does not beget another son by his married wife after adoption.

Page 9, Part II, Section 14.—Order and modes of succession to Stridhana.

"Mother's heirs" come as 7 in the order of succession. It will be better if their order is given as "6" and the present 6 "Husband's heirs" renumbered as "7".

Sri V. G. Ramachandra Aiyar Advocate, Tirukoilur
A meeting of Hindus held on 7th July 1947, at Tirukoilur (South Arcot District) the following resolutions were unanimously passed.

1. This meeting is of opinion that the Hindu Code Bill introduced by the Law Member, Government of India, is against the religious injunctions of the Hindus, is disruptive of joint family system and will cause disharmony in family life among the different sections of the Hindu communities. Therefore this meeting protests against the Bill being passed into Law.

Collector, Madura.

The bill seems to be a good attempt at codification of some of the main topics of the Hindu Law. It has been drafted by the Hindu Law Committee after elaborate enquiries and ascertaining public opinion, and is likely to be of immense use.

2. It is suggested that some of the provisions given as illustrations appear to be so important that they can be more usefully added as explanations to the sections themselves.

Shri O. Viswanatha Rao

At a meeting held at Nellore, Nellore District on 4th July 1947, under the presidency of Rao Bahadur, O. Viswanatha Rao, Advocate it was resolved as follows:—

3. The Hindu Code Bill introduced by the Law Member of the Government of India, is based mostly on the views of social reformers and has not taken into account the numerous protests sent by Sanatanist Hindus against the provisions of the Bill, and is fraught with serious consequences and is disruptive of the Hindu joint family system in vogue from time immemorial. This meeting therefore, protests against the Bill being passed into Law.

4. The Hindu public protest against the Legislature passing any bill affecting the Hindu religion and customs.

District Judge.

2. The codification of Hindu Law has been quite a long-felt need. The various schools of Hindu Law held divergent views even on basic and fundamental principles. Judicial decisions on the subject could not naturally be consistent in the interpretation of the Law since it differed from province to province. Customary law was increasing in volume and was changing from time to time. The present Bill is therefore designed to render the administration of Hindu Law efficient and easy. It has manifold excellent features about it. It is marvellously concise. Great care has been bestowed in introducing changes and variations tending to liberalise existing law and custom to suit the advancing views and needs of the Hindu society. Care has been taken to avoid compulsion or obligation on the orthodox section of the community by making the provisions permissive and enabling so that as mentioned in the statement of Objects and Reasons "their only effect is to give a growing body of Hindus, men and women, the liberty to lead the lives which they wish to lead without in any way affecting or infringing the similar liberty of those who prefer to adhere to the old ways".

Part I. Application of the Code.—The present Bill is a striking departure in respect of the application of the Hindu Law from the prevailing law. Buddhists, Jains and Sikhs are comprised within the definition of Hindus. In fact the application is so liberal and comprehensive that all persons who are not muslim, Christians, Parsis or Jews are classed as Hindus. In respect of others the Code is applicable to them unless they prove they are not governed by Hindu Law or custom or usage having the force of law. This definition is calculated to enlarge the Hindu fold and obviate complications when disputes arise whether a person is a Hindu or not.

Part II. Intestate Succession.—The exclusion from Intestate Succession of agricultural land in Part II Clause (1) (i) will work a serious hardship in the case of agriculturists, bulk of whose property is agricultural land. Intestate succession should comprise agricultural land by removing succession to agricultural land from the purview of Provincial Legislatures.

Part III Division (II) Maintenance.—Maintenance to unprovided daughters, married and unmarried, and daughters-in-law under the circumstances specified is made obligatory. Previously the obligation was merely a moral one. The change effected is a very desirable one and is calculated to avoid vagrancy.

Part IV. Marriages and Divorce.—Chapter I.—Clause 7(5) requires that parties who have not completed the age of 21, except widows, must obtain the consent of his or her guardian for marriage. It is advisable to lower the age limit to 18.

Chapter II: Section 26.—It is stated that a Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance if he keeps a concubine. This is too general and vague. The prohibition has to be limited to cases where the husband has continuously kept concubine; otherwise it is quite possible that the provision may be abused by the wife.

Part V: Section 6.—The previous permission of the Court is insisted on before a natural guardian can deal in any manner with the immovable property of a minor. This provision, though salutary, is bound to adversely affect the minor's interests whenever money is urgently needed for the protection and benefit of the minor. The permission will take a long time to obtain, and to insist on the previous permission of the Court in all cases is bound to cause hardship to the minor. Permission is necessary but the word 'previous' may be deleted.

District Judge of South Arcot, Cuddalore N. T.
The authors of the Code seem to have approached the question bearing the three broad principles in mind. (1) The institution of the Hindu Joint Family with its connected idea of coparcenary property and rights taken by birth should be done away with. (2) The conception of the widow's estate with restrictions on her alienations which could be disputed by reversioners, should be ended. (3) A statutory right to divorce should be given to married women and married men.

2. As one auxiliary to carrying out the above substantial changes, they propose to make the rules of inheritance more precise and logical, more easily workable, and with the added proviso that a daughter should be given rights of inheritance to her father's property. As another auxiliary, they seek to make more precise provision for marriage, including a definition of prohibited relationships, and seek to embody in the Code itself provisions for the registration of marriages by the civil authorities. In this portion of the provisions they have sought to make monogamy obligatory also for males.

3. While making these substantial inroads into the law that has existed in this country for several thousands of years, they have sought to retain one ancient institution, that of adoption.

4. While the existing law in the country has preserved a broad basis of uniformity all over the country, it has also been at the same time remarkable for variations from province to province, especially in the matter of rights of inheritance and rights of women. One concession which the code seems to make towards the existing provincial distinctions, is found in explanation to section 15 of Part

II where it is stated that in the province of Bombay, the widow of a person related to an intestate by full blood shall be preferred to the widow of a person related to him in the same way by half blood. Another concession to provincial variations is found in the exemption granted in Section 1 of Part II to properties of a Hindu governed by Marumakkathayam, Aliyasantana or Nambudri law of inheritance. While the framers of the Code in the preamble say the bill is intended to amend and codify certain branches of the Hindu Law, the scheme of the act seems to be designed to provide as complete a code as possible, leaving as little as possible to be dealt with either under other special laws or local custom.

5. Within the short time at disposal, it is not possible to examine minutely individual provisions especially in the sphere of order of heirs to succession, and in the sphere affecting the rights of women; to find out how far they are in conflict with well-known decisions. But since the Code does not propose to adhere to well known decisions in their entirety, but propose only to adhere to them and existing law as far as possible such an examination may not be very necessary. Perhaps the most drastic change is rule 4 of section 7, which gives the daughter a half share irrespective of the question whether she is married or unmarried, rich or poor. More than one critic has commented on the fact that this would, in cases where the daughter also gets her husband's properties as well as her mother's stridhana property, place her in a more advantageous position than the son. The answer to this from a moral point of view is a very obvious one: why should a daughter of the flesh and blood of the father be deprived of an interest in his property? Why not follow the rule of Muslim law about her right of inheritance?

6. Probably the most attractive features of this portion of the recommendations is the short and simple rule for determining preference among non-enumerated heirs. It removes a great deal of ambiguity and confusion, and seems to follow, as far as possible, well-established decisions and text books of commentators. This simplification achieved by the framers of the bill, is one which is worthy of retention.

7. Probably the provision which will attract the largest measure of criticism is the abolition of the conceptions of the joint family the coparcenary estate, and rights taken therein by birth by coparceners. One hears on every side, statements that the joint family has contributed to much domestic unhappiness especially among women and widows. That it has contributed to a very large volume of litigation is also an undeniable circumstance. But on the credit side of the account should be placed the very many cases of material advancement of orphans both boys and girls born in undivided families, the great acts of sacrifice, love and joint effort which form perhaps the most prevalent instances of collective effort for a common good, in a land where individualism is the curse. These acts of joint effort are also conspicuous in the sphere of joint trade and business especially in trading communities like Marwaris and Nattukottai Chettians.

8. The joint family system and coparcenary property, in the past, have provided a substantial check to the subdivision and fragmentation of holdings. Instances of dispute and difference leading to partition suits can be listed out only with reference to cases in civil Courts, there is also probably a good number of instances of division which have taken place by agreement before panchayatdars. But leaving these out there will be a still larger number of instances of cases where properties have remained intact for years together, at least for 2 or 3 successive generations, providing a bulwark, however temporary, against the large current of fragmentation of land. Within recent years, in Travancore a legislation has been passed abolishing the idea of a Karavanam's property and giving all the heirs a share forthwith to be made available on demand. The experience there, is that this provision has led to a great deal of fragmentation with a spreading out of small parcels of land among a large number of needy members, who find themselves suddenly poorer. A similar consequence will follow the abolition of the joint family and the idea of coparcenary estate.

9. In my view, the abolition of the joint family and the coparcenary estate though it will be a logical step in accordance with the spirit of the times, may be postponed, at present, when poverty continues to be general, to a period when the economic condition of the people will have improved and alternative methods of living other than dependence on the land, have been evolved by progressive industrialisation, and the spread of village and cottage industries. This alone will prevent widespread economic chaos in areas where people largely depend on and for their livelihood.

10. The second principal change is one regarding the institution of the widow's estate. The limitation on a widow's power of alienation can be traced to a conception of a much lower status for women in an earlier scheme of society, and a distrust of her capacity for management. It is no longer necessary to retain any such inhibition. The broadening of a widow's rights effected no doubt in regard to non-agricultural property by Act XVIII of 1937, has been well received in the country. That provision still restricts the widow's interest in the property, to a limited one. The proposal to abolish limited interest is a salutary one, and gives the wife a much higher status in the family and consequently in society.

11. As regards the legislation for marriage: In my view the balance of opinion will be in favour of the codification of marriage laws, including 'precise' provisions about consanguinity and prohibited relationships and the provision for registration of marriages both sacramental and civil. This will no doubt necessitate a large number of petty officials charged with the duty of registration of marriages. In Malabar when such a provision of registration of marriages was introduced some years ago, Registers were directed to be maintained by the Tahsildars in the Taluk Offices. Perhaps a similar provision will have to be introduced with the consequent large increase in the volume of work.

12. I would like to make one comment regarding degrees of prohibited relationships. In part IV Chapter I Section 1, sub-clause (b) the relationship of uncle and niece is stated to be a prohibited one for marriage. Marriage between persons so related are not uncommon in the south and may continue for some years, and popular opinion is not positively averse to such marriages. Section 29 of Chapter III of Part IV protects such marriages if they had been celebrated before the commencement of the Code. Sub-clause (5) of Section 29 gives the status of legitimacy to children of parents whose marriage is declared null and void on the ground of bigamy or on the ground referred to in Sub-clause (2) or (3) of sub-section (2) (referring to Sapinda Marriage between idiots and lunatics or to marriages without consent of either party or obtained by force or fraud). But this same privilege will not be given to children of parents whose marriage is invalidated on the ground of prohibited relationship. In this country, sentiment gives much higher importance to Sapinda Marriage and it is apt to be more lax in the case of degrees of prohibited relationship. For example, in the case of uncle and niece, or children of sisters. In the west the idea of sapindas is not known, and in its absence prohibited relationship assumes importance. It is therefore for consideration whether the same privilege of legitimacy to children may not also be given to children born of parents within the prohibited degrees of relationship, in cases where such marriage takes place after the Act, and such marriages were considered valid under local law or custom before the Act came into force.

13. The next important provision is the one for divorce. No doubt, as held by more than one critic, this would take away the sacramental character off Hindu marriage, and will introduce a provision much abused in other countries into our society. Recognition of marriage as a sacrament, and the absence of provision for divorce, have always gone hand in hand. The realisation that marriage provides an indissoluble bond, has led to more happy marriages in this country than elsewhere, but if monogamy is made compulsory by law, men will be the most forward in demanding a provision for divorce, as a remedy in the cases of the wife's unsuitability for one or more of the reasons, which are stated to form grounds for a divorce. It will be undeniable on moral grounds that the same

privilege should be extended to women. If all the circumstances are weighed and we come to the conclusion that monogamy should be obligatory a provision for divorce also should follow. The existing law allowing polygamy for man and monogamy for woman, has all along left the woman at a disadvantage.

14. Through the medium of a provision contained in the section relating to marriages *vis.* Part IV, Chapter 2, section 27, the entire law of succession to heritable property under the Marumakkathayam, Aliasandana or Nambudri law of inheritance is overthrown. It is provided that when a person governed by these laws of inheritance contracts a civil marriage or registers a sacramental marriage as a civil marriage and thereby acquires the rights under such a marriage, his property will be governed by the provisions of this Code and not by his personal local law. This provision leaves the followers of such local laws with little or no option, except to remain contended with a sacramental but unregistered marriage, if they want to retain their own laws of inheritance.

15. The main question for consideration will be whether the time is approximate for enacting a complete Code, applicable to all Hindus in India, overriding provincial variations, and overriding certain aspects of the existing law, relating to joint family property, which have been long sanctioned by custom, or whether such of the desirable reforms could be effected by separate piece-meal legislation. By the 15th of August this year, the country is going to be split up into two broad divisions, and a very large number of Hindus in an advanced state of civilisation, will be found in Bengal, the Punjab and Sind who will not be affected by any legislation to be undertaken by the Indian Legislature. It is extremely doubtful if Hindus in Bengal will agree to adopt a legislation which modifies their provincial variations of the existing Hindu Law. In any event, the law to be enacted will not affect agricultural property, for which again provincial legislation will be necessary, unless the proposed constitutional enactments change or modify the scope of the subjects for central legislation. Assuming that a uniform piece of legislation for the rest of India excluding Pakistan provinces is necessary, then it will be advisable to have at the same time simultaneous legislation in the provinces, so that all property including agricultural property should be governed by identical provisions. It would only lead to economic confusion, if one set of laws governs non agricultural property, and another set of laws governs agricultural property.

16. With the division of India, the need for vivifying Hindu Society, has become more urgent than at any time before in the past. The experience of history teaches us that vitality is found only in protestant movements who have behind them the core of a central burning idea. Buddhism, Sikhism, Vaishnavism and in our own days Aryasamajists, are instances. The example of Islam is sufficient to convince any one that the framing of a proper personal and property law forms part and parcel of a religious or communal revival. It has also been the experience, that when the orthodox and the conservative seek to oppose any change, their opposition lacks force, not because of the logical weakness of their case, but because vitality and force are not in their party but are found in the opposite party of protestants. In the proposed change also, the same experience, namely, that the orthodox will object and that their objection will have no force behind it, will be repeated. But the absence of a strong opposition, will not by itself, prove to be the sole justification for a change. Those who have the welfare of the Hindu community at heart, must satisfy themselves that the forces of change, have a moral core within them and that change will leave behind not old institutions in a state of destruction, but will provide the means by which, a new and better society could be built up.

Collector of Kurnool and District Magistrate.

I recommend the provisions in the bill and also suggest the following amendments to it.

Part III-A division II (Maintenance section 5 enumerates dependants who are entitled to maintenance of I am of opinion that after widowed daughters, widowed sisters also may be included, of course with the same

conditions as are applied to widowed daughters. In part IV in section 3 clause 2, in addition to idiocy and lunacy the words SUFFERING FROM A LOATHSOME AND CONTAGIOUS DISEASE may also be included.

Registrar, High Court, Madras.

The Honourable the Judges have nothing to add to the views expressed in High Court's letter B.O.C. 77 M/42-BI dated 22-9-42 regarding the general provisions of the Hindu Code Bill.

With regard to persons governed by the Marumakkatayam and Nambudiri Laws, I am to point out that they have always formed a distinct body among the Hindus with customs and usages radically different in important respects. The Marumakkatayam and Nambudiri Acts of the Madras Legislature have codified their law in a comprehensive and satisfactory manner reconciling custom with modern and progressive views. The proposed Hindu Code saves the provisions of these two Acts only in respect of matters relating to Intestate and Testamentary Succession (Parts II, III and Division 1 of Part III-A) Dissolution of Marriage (Chapter 3 of Part IV and Adoption (Part VI). The provisions of the Bill relating to Maintenance (Division II of Part II-A) Marriage (Chapters 1 and 2 of Part IV) and Minority and Guardianship (Part V) would conflict with the corresponding provisions in the two Madras Acts though the former would eventually prevail by virtue of its being enacted by the Central Government on a subject in the concurrent list. It is obviously unsatisfactory to leave the state of the law in such ambiguity as to require settlement by judicial interpretation and the Honourable the Judges would accordingly suggest that in respect of these conflicting matters the position should be clearly defined.

I am to add that their Lordships do not see any reason why the existing law, about which there has been no dissatisfaction or complaint, should be disturbed and would therefore suggest that all the matters for which specific provision has been made in the two Madras Acts be left unaffected.

Secretary, Bar Council, Madras.

Part II. Intestate Succession.—Section 5(i). If the rights conferred upon the heirs in Sec. 5 and the order of succession are based upon natural affection of the person dying intestate, the widow of a predeceased son or the widow of predeceased son of a predeceased son has no place in clause (i) sub clause (i). The provision as to maintenance in Part III(a) as dependants is sufficient. If however the object is to provide them with a share in the estate they ought not to be preferred to a brother or sister and must find a place much lower down in class 4 or class 5. It cannot be said that it is based upon the principle that they take the place of the son or son's son as the case may be who would have taken a share if he had been alive in view of the fact that the right by birth of the son or son's son is not recognised in the Code.

(2) Having regard to the fact that an absolute estate is conferred by the code on females, it is not right to postpone the father to the mother, both the parents must be clubbed together and given equal shares. This would equally apply to the paternal grand parents and great grand parents and maternal grand parents.

(3) The order of heirs mentioned in the code does not seem to correspond to the usual order of affection which the person dying would have to his relatives. Taking that as the basic principle, the brother has to be given a place only after the grand children and the sister should come immediately after the brother. These would be followed by the great grand children mentioned in class 2. The brother's son, sister's son, brother's daughter, sister's daughter and brother's son's son may be provided in the order mentioned above in class III.

Stridhana: Succession to.—The husband must succeed

to his wife along with the daughter and son. If a widow succeeds to a male dying intestate along with his son and daughter there is no apparent reason why the same principle should not be adopted in the case of succession to a woman's property and the husband given the same place as the daughter and son, and given the same share as a daughter.

As pointed out in the chapter relating to succession to males the mother and father must be clubbed together and given equal shares.

Part IV. Marriage and Divorce.—Section 11. The period of 90 days given for persons to object to the marriage is too short. A period of 90 days might be allowed. In a land of distances it is probable that persons interested may be far away from the place of marriage in which case 90 days will not be sufficient.

Section 24. Bigamy.—Having regard to the importance attached by a Hindu to the birth of a son and the spiritual benefit conferred by his birth upon his ancestors, it is a very common occurrence in India that the wife who is not able to bear a son to her husband—advises him and even encourages him to marry again. In such cases both the wives live harmoniously with their husband. Further an invalid wife might prefer to retain her status as such rather than be divorced, even though her husband marries another woman. These and other considerations for the good of the first wife require that the divorce should not be thrust upon a married woman who does not want it. The definition of bigamy should be suitably amended. It is therefore suggested that at least so far as sacramental marriages are concerned, bigamy in cases where a man marries again with the consent of a sonless or invalid wife should not be made an offence. On the other hand a second marriage may be made one of the grounds for divorce thus giving the wife a chance to obtain a divorce from her husband in case she finds life intolerable in her husband's household in the presence of a second wife.

Section 30. Grounds of divorce.—(a) The minimum period of desertion prescribed viz. 5 years is too long. Under the Matrimonial Causes Act of 1937 a period of 3 years is provided and the same might be adopted.

(b) **Veneral disease.**—An exception may be made in the case where the spouse seeking to obtain divorce is himself or herself responsible for communicating the disease to the other spouse. It is hardly fair to allow a spouse who has infected the other spouse with virulent venereal disease to make that a ground for divorce. Of course this does not prevent the latter if he or she so chooses to seek divorce on that ground.

Adoption. Part VI. Section 15.—It is suggested that actual giving and taking should not be insisted upon. Experience in courts has shown that it is invariably difficult to prove such giving and taking when a long period has elapsed after the adoption. It would be sufficient if adoption is done by means of a registered instrument. In any event it might be provided that proof of giving and taking in adoption may be dispensed with, if it is done by means of a registered deed. It may be pointed out that a provision has been made for registration in the case of sacramental marriage in order to serve as evidence of marriage; a similar provision may be made in the case of adoption too.

Section 19. Sub section (i).—Provides for the divesting of the estate of the widow in the case of an adoption made within 3 years after the death of the husband. If the widow gets an absolute estate, this would lead to complications if alienations had been made in the meanwhile. If the deceased had left a daughter in addition to the widow the daughter would get one third of his estate which would be reduced to one fifth if an adoption is made by the widow which would lead to innumerable difficulties especially if the daughter had made alienations in the meanwhile. The provision in sub-clause 3 viz., the adopted son inheriting one half of whatever estate his adoptive mother inherits from her husband or from her son as it exists at the time of the adoption may be applied to all cases irrespective of the question as to when the adoption takes place.

Sir K. Raja Iyer, Advocate General.

I regard the codification of the Hindu Law as a welcome step in the right direction.

PART I—PRELIMINARY

I have no particular comments to offer.

PART II—INTESTATE SUCCESSION

Section 5. Enumerated Heirs. Class I.—I would suggest that the mother and the father should be bracketted together as joint heirs taking a half share each. Previously when the mother was taking only a limited interest, the father had a chance of succession. But as under the code the mother takes an absolute estate, the father's chance of succession will arise only in a case where there is no mother. There is no reason why both the parents should not take equal shares. The same reasoning would apply equally to the paternal grand-parents and great grand-parents and also to the maternal grand-parents.

Class II.—I would suggest that heirs No. 1 and 2 in Class II, i.e., son's daughter and daughter's daughter, should be brought in before the brother and brother's son and immediately after the parents. Under the Hindu enticement, grand-children are generally favoured in preference to brothers, and though a daughter's son may have to be placed in a slightly superior position on account of special considerations, the others might properly come under Class I, viz., Heirs in the compact series.

I do not also see why the sister should be placed so low in the list. She was assigned a place next to the daughter's daughter by the Act 2 of 1929 (Inheritance Amendment Act) and the public opinion was in its favour at that time. I would suggest that the brother and sister can be placed together immediately after the daughter's daughter and that they should be given equal shares. This will also be in consonance with the other provision in the Code that the daughter takes along with the son.

As regards the daughter's son and sister's son, a son adopted by their respective husbands after their death need not be recognised as an heir. This is also the logical consequence of the provision that a man cannot adopt without his wife's consent. See Section 5. Vide also the provisions of Act. 2. of 1929, re: the sister's adopted son.

Generally in the classes of enumerated heirs dealt with under Section 5, I would suggest a different re-grouping altogether based upon the principle of natural family affections and propinquity, rather than following the principle of exhausting particular groups of descendants however remote, before taking up the next class. To illustrate my point, I would say that mother's mother, mother's father, mother's brother, and mother's sister, who are placed in Class VI should come very much above all the members of V class, such as father's father's sister's daughter, the father's father's brother's son's son and such other remote relations.

Section 14.—I would suggest that in the order of succession to Stridhana, the heirs of the mother and the father may be placed above the heirs of the husband. Otherwise brother and sister will be postponed to the remotest sapindas of the husband.

Section 21.—The benefit of succession is given to the children of converts who are Hindus at the time the succession opens. This is as it ought to be, but there is no reason why the convert himself, who remains a non-Hindu should have the benefit of succession to the Hindu relations, especially as succession to his properties is governed by his personal law under which Hindus are excluded. The modification or repeal of the Caste Disabilities Removal Act, 1850, might be considered in this connection.

PART III—A

Division I.—The abolition of right by birth is no doubt a drastic change, but the progressive tendency of the age which is in the direction of individual ownership of properties, justifies the change. It is well known that in South India at any rate the joint family system has been rapidly breaking down.

Division II—Maintenance.—(a) No provision seems to

have been made for the maintenance of dependents during the lifetime of the last holder. Under the Hindu law there is a legal obligation to maintain minor sons, unmarried daughters, and aged parents, whether a Hindu possesses any property or not. The obligation is personal and arises from the very existence of the relationship.

(b) I would also suggest that provision for maintenance might be made in the case of persons who till now had rights by birth in the property with the consequential right to partition, but who under the present code are deprived of all these rights. In cases where they are unable to earn their livelihood on account of unavoidable causes, they should be entitled to get maintenance from their father.

(c) Regarding unmarried daughters they are given the marriage expenses as "maintenance" only when they do not take a share. There is no reason why they should be deprived of their marriage expenses in addition to a share, in exactly the same way as daughters married during the lifetime of the father get.

PART IV—MARRIAGE AND DIVORCE

Section 3 (1).—As regards the condition that there should not be a 'living spouse', an exception might well be made to cover cases where a childless or sonless, or ailing wife already living, expressly agrees in writing to her husband marrying a second wife. It can even be provided that in such instances, the first wife may apply later on, if necessary, for dissolution, i.e., if the other conditions of the Code are satisfied.

Section 11.—The period of one month given for raising objections to a civil marriage is too short. Similarly the period of residence fixed in Section 9 seems to be inadequate, as a couple may be enabled to enter into hasty marriages without sufficient consideration or advice from elders.

Section 24.—The said exceptions under Section 3 (1) must be suitably incorporated in Sections 24 and 29 (1) also.

Section 30.—The minimum period of 'desertion' fixed at 5 years seems to be too long. In the Divorce Act, it is two years and in England it is three years under the Matrimonial Causes Act of 1937. The period can be fixed as 3 years here also.

PART VI—ADOPTION

I think it may be desirable to provide that every adoption should be by a registered document or at any rate by a document in writing attested by witnesses, instead of leaving it to the parties to apply for registration. In Section 12, it can be provided that the physical act of 'giving' can be delegated in writing by either of the parents.

Section 19.—The provisions as to divesting are no doubt simpler under the Code but still questions as to the validity of intermediate alienations and rights of bona fide transferees are sure to crop up.

The attempted Codification cannot in its very nature cover the entire field of problems and questions, which are likely to arise in actual practice. So many changes have been introduced into the current accepted notions that a variety of problems leading to unforeseen litigation may crop up which may have to be solved only by courts of law. Merely with a view to illustrate the position, I refer to the following:—

(1) The legal position under the Code, of the members of an existing joint family is far from clear. It is not expressly stated, though it seems to be the underlying idea, that the rights now vested in the junior members are not to be divested so as to make the father an absolute owner of all the properties. If their vested rights are not affected, the question arises as to whether the status of the family continues to be joint, or whether the shares of the various members become defined. If it is the latter, is the family to be considered as being divided in status by operation of law?

(2) In such families, what are the rights of subsequently born sons, and do the shares increase or decrease by subsequent deaths and births, respectively?

(3) Similarly what are the rights of the father in respect of the management of family properties? Does the pious obligation of the sons continue?

(4) In the Chapter on adoption, it is provided that, if the adoption is made within three years, the adopted son takes the estate as it stood at the time of the father's death. This would prevent the widow from raising a loan even in a case of dire necessity. Similarly as regards adoption after three years, it is provided that the son takes the estate "as it stood immediately before the adoption". It is not clear as to what is to happen where creditors have *bona fide* advanced simple loans to a widow on the faith of her absolute ownership.

(5) I have already referred to the absence of provision in the Code for maintenance of dependants during the lifetime of the owner.

It seems to be therefore desirable that the provisions of the Code may be a little more exhaustive, and that legislation may be enacted after full consideration of all such questions.

The exemption of agricultural lands from the Act constitutes a serious handicap in the practical utility of the Code, unless all the Provincial Legislatures concerned consent to legislation by the Federal Legislature or unless they themselves initiate legislation to extend the Code, so as to cover agricultural lands as well. The bulk of the property of a Hindu Will be agricultural, and it will lead to anomaly if two systems of law are to prevail in respect of two sets of properties of the same individual.

There is agreement about the need for codifying the Hindu law. In Part I, Section 5 clause (J) of the Bill, the definition of Stridhan may be restricted to a limited estate of the inherited property as most of the women are not able to protect or preserve their properties.

Regarding the rules of inheritance now introduced by this Bill more provisions of the Indian Succession Act of 1925 may be made applicable as the rules now contemplated will create opportunities for testate succession.

Intestate Succession Proviso to Sec. 19 of Part II.—The introduction of this proviso is not agreed to. Even if a wife is unchaste the husband does not come to the court and say that his wife is unchaste so long as the wife voluntarily leaves the husband, lives separately, does not seek maintenance from him and thus does not disturb his equanimity. If the husband dies, there is none competent to question her chastity in a court. It will lead to serious results particularly in the case of joint family properties. Then there will be two sets of principles, one for agricultural lands to which Part II does not apply and another for other properties.

Succession to Stridhan Properties (Sec. 14, Sub. Cl. 3).—Sons and daughters should have equal shares for the reason that ordinarily the son stays with the mother or the mother stays with the son throughout her life.

Maintenance [Part II-A, Divn. II].—The general clause 6 may include also the following considerations to be taken into account.

1. Other dependants who would be equally entitled to maintenance when one dependent files a suit and others do not.
2. Circumstances of the family, present, and prospective of the person who is sought to be made liable for payment of maintenance.
3. In settling maintenance, what the man is capable of paying and not what the dependent may need, should be taken into consideration.

Accordingly Sec. 6, Sub-Cl. 2 may be made wider.

Part IV, Chapter III, Section 29, Sub-Cl. 3.—Sub-Clause 3 may not be made applicable to marriages before the commencement of this Code, as many forcible marriages have taken place in the past which have been later on accepted and acquiesced in, by the relations and the community.

Part V—Minority and Guardianship.—It is not sufficient if, the natural guardians get court's permission to alienate

minor's immovable property. There may also be a provision for the minor on attaining majority to assail the alienation on the ground that permission was obtained by misrepresentation. Secondly, Section 10 as it stands will have very serious consequences to the minor, for similar restrictions laid in the prevailing Muhammadan Law have given no beneficial results in its application and its strict enforcement has only led to dishonest results. So, it is necessary that *de facto* guardians who are recognised as such by the Hindu Law as administered now may be given power to apply under Section 29 of Act. VII of 1890 for permission.

Part VI—Adoption.—As the religious aspect of adoption has become wholly obsolete, it may be abolished together. Even without adoption, any Hindu, without a son, can make satisfactory arrangements in his life-time for the performance of the funerals of himself and his wife. Adoption has only contributed to a lot of litigation, and has been the cause of ruin of many respectable families. If at all the principle of adoption were to exist it may exist only for religious and not for secular purposes. The adopted boy should not have any rights to the properties of his adoptive parents or succeed to any other collaterals of the adoptive parents and if adopted for religious purposes he may be given property *inter-vivos* or by will as a part of adoption arrangements, but may not be allowed to inherit.

Nothing is said in the Bill about a widow taking adoption with the assent of sapindas. Some written rules and restrictions may be introduced and the question of assent may not be left for court's decisions on perjured evidence. All provisions relating to plurality of wives and co-widows in Part VI under adoption may be removed and all provisions may strictly proceed on the basis of monogamy. But in so far as adoptions which have already taken place before the Code, the old personal law may be allowed to prevail.

In general a number of minor details in the Chapter of Inheritance require reconsideration in order to prevent in Hindu community the evil effects which now prevail in the case of devolution among Muhammadan heirs. Splitting up small holdings among innumerable heirs is not agreed to as it helps none of them. It seems essential to keep such holdings in a compact state as far as possible while at the same time recognising the individual rights of the several heirs enumerated. But to have the above results a certain amount of alterations relating to Hindu Joint Family and partition are necessary.

Hence at least some suitable alterations can be made in the extent of shares and enumeration of heirs set out in Part II of the Code. Further in as much as in the general definitions "agnate" is defined the word "Sapinda relationship" (in a restricted form) which confers a heritable right to property may also be defined. There may be agnates not in the line of heirs. To what degree of agnatic relationship the line of heirs can go, may be clearly defined as it is still a vexed question.

No. 9.—Central Provinces and Berar.

LETTER FROM THE SECRETARY TO THE GOVERNMENT OF THE C. P. AND BERAR, JUDICIAL DEPARTMENT, TO THE SECRETARY TO GOVERNMENT OF THE DOMINION OF INDIA, LEGISLATIVE DEPARTMENT, NEW DELHI, No. 1995-88/XIX DATED THE 2ND SEPTEMBER 1947.

I am directed to enclose in duplicate a copy of the summary of the opinions of the High Court, public bodies selected officers, organised bodies and individuals who were consulted by the Provincial Government. The Provincial Government regrets it is unable to formulate or communicate any opinion in regard to such a controversial matter.

2. The Bill was published in English only in Part I of the Central Provinces and Berar Gazette, dated the 16th May 1947.

Summary of the opinion on the Hindu Code

Name of officer or person	For	Against	Remarks
(1) Bar Association, Amraoti	...	The Code should not be passed into law.	Bar Association suggested that in view of the present Political condition in the country this bill should be dropped.
(2) Pensioner's Association, Amraoti.	...	The bill is harmful to the interest of Hindu society from religious, social and economic point of view and so it should be altogether dropped.	
(3) Deputy Commissioner, Mandla.	I support the bill.		
(4) Sub-Divisional Officer, Dindori-Niwase.	A very timely bill.		
(5) Sub-Divisional Officer, Mandala.	Ditto.		
(6) Deputy Commissioner, Bhandara	I consider the bill as a step in right direction.		
(7) Sub-Divisional Officer, Gondia.	The scope of the present bill is limited in as much as it deals only with succession and marriages. Hundreds of urgent social problems as the abolition of caste system etc. have been left out for consideration. The object must be to effect legislation without much opposition and from this point of view the Bill may be supported.		
(8) Mr. S. L. Verma, E. A. C.	The provisions of the Bill do not appear to be in any way arousing the religious sentiments of the orthodox section. The bill is quite suitable to meet the needs and conditions of the present Hindus.		
(9) Mr. J. N. Datta, Additional District Judge, Bhandara.	There has been a long felt want for a codified Hindu law and in my opinion the Bill in question would meet and satisfy that demand.		
(10) District Magistrate, Wardha	I am in favour of the Bill as it has simplified some of the old complicated provisions and brought uniformity in different branches of the Hindu law for all provinces and sections of the community.		Has remarked in view of the sudden turn in the political situation on account of which India will be divided into two dominions; it is now a question whether this bill be passed as an Indian Act.
(11) Mr. B. V. Degwekar, M.A., M.Sc., LL.B., Vaidya Jubbulpore.	There can be no objection to the codification of the certain branches of Hindu Law with a view to provide uniformity for all provinces and for all sections and the bill is welcomed so far as that object is being served. There are bound to be two opinions about the amendments.		This bill should be postponed and withdrawn for the present.
(12) President Dharma Sangh, Jubbulpore.	...	Without the common consent of the heads of various Hindu religious schools of thoughts the leaders of Hindu religious and society this code should not be turned into law.	
(13) Nagar Hindu Sabha, Jubbulpore.	...	Strongly opposes the Bill as it is not beneficial to the Hindu Community.	
(14) President Municipal Committee, Chanda.	The present bill, is simple and easy to understand and in my opinion there is nothing which will offend any section of Hindu Society Hence I would like that it may be (supported) ?		
(15) Sub Divisional Officer, Chanda.	I am in full agreement in the various provisions made in the Bill and it may be enacted into law.		
(16) Sir M. B. Niyogi	I am in favour of the principles and the considerations underlying the proposed amendments of the various branches of the Hindu Law comprised in this draft Bill.		
(17) Jain Research Institute, Yeotmal.	...	There should be independent legislation for the Jains in India as a Jail Law Code and in view of this the present Hindu Code must not be made applicable to the Jains.	

Name of officer, or person	For	Against	Remarks
(18) Mr. G. B. Deshmukh, M. L. A.	...	In view of the present political situation this bill should be opposed if introduced. I oppose the Bill.	
(19) Mr. Y. R. Oka, Public Prosecutor, Akola.	This bill is satisfactory in details if principles of inheritance by daughters along with sons is accepted.	...	
(20) Deputy Commissioner, Raipur (Mr. Kerawalla).	The necessity of codifying the Hindu law is long felt and although the present bill does not embrace the whole field it is a step in the right direction.	...	
(21) Mr. Dixit, E.A.C., Raipur...	Has suggested certain changes in certain section.	...	
(22) Sen J.	There is no demand for codification and there is no justification for the introduction of such a bill now when the constitution is in a state of flux.	...	
(23) Hameen J.	...	...	No comments.
(24) Honourable the Chief Justice.	...	...	I can express no opinion in so short a time.
(25) Bar Association, Jabalpur.	...	Opposes the Bill. It does away with the basic principle of Hindu culture and religion.	
(26) District and Sessions Judge, Hoshangabad (Mr. Lele).	I am entirely in favour of the Code.	...	
(27) District and Sessions Judge, Nimar (Mr. Dande).	---	I am not in favour of the proposed Bill.	
(28) Bar Association, Khandwa	...	The Bill is much revolutionary. It should not be pressed further.	
(29) Deputy Commissioner, Betul (Mr. Bahl).	...	The Bill appears to be very drastic and revolutionary in character. It is necessary to go slow, educate and prepare the society and then bring about the reforms more on voluntary basis than on such compulsory basis.	
(30) Mr. B. K. Mehta, E.A.C., Betul.	...	I oppose the entire bill as being not at all necessary.	
(31) Deputy Commissioner, Hoshangabad.	I do feel that the amendment of the Hindu Law on which the Code under reference is based has been long overdue. I whole-heartedly agree with the principles underlying the proposed amendments.	...	
(32) District and Sessions Judge, Wardha.	I am of opinion that the Bill to amend the Hindu Code as introduced in the Central Legislative Assembly may be passed.	...	
(33) District Magistrate, Bilaspur.	The bill appears to be a whole some measure.	...	
(34) Arya Samaj, Bilaspur	Arya Samaj agrees the bill except diversion of the property between brothers and sisters	...	
(35) Mr. T. Y. Dehankar, Advocate, Nagpur.	...	The present members of the Assembly have been doing many things of fundamental character for which they have no authority from the electors. This is one of them. It will be better if the matter is put up before the electorate and its opinion obtained.	
(36) Secretary, District Congress Committee, Raipur.	...	Is not in favour of the bill.	
(37) Nutan Dharma Granth Sangrahalay, Amraoti.	...	The proposed Hindu Code is revolutionary in character and destructive of the economic and religious life of the Hindu community and cuts out the root of the basic principles of Hindu religion.	
(38) Rigvedi Brahmin Sangh, Amraoti.	...	Ditto.	

Name of officer or person	For	Against	Remarks
9) Gujrahi Brahmin Association, Amraoti.	...	The proposed Hindu Code is revolutionary in character and destructive of the economic and religious life of the Hindu community and cuts out the root of the basic principles of Hindu religion	
10) Marwari Brahmin Association, Amraoti.	...	Ditto.	
1) Sarafa Association, Amraoti.	...	Ditto.	
2) Shree Datta Sansthan Ved Shastra Sanskrit Vidyalaya Samiti, Amraoti.	...	Ditto.	
3) Yajurvedi Brahmin Sangh, Amraoti.	...	Ditto.	
4) Varnamshram Swarajya Sangh, Amraoti.	...	Ditto.	
5) Thakur Phul Bhanu Sheh, M. L. A.	...	I strongly oppose the Bill in question.	
6) Mr. S. C. Soni, Public Prosecutor, Ohindwara.	I feel pleased to express that the consolidated uniform code of Hindu Law is a welcome measure. It was long overdue.	...	
7) Sub Divisional Officer, Seoni.	...	...	It is desirable that such a important legislation should be left and to the new legislative for consideration.
8) Mr. G. S. Pandya, Pleader, Seoni.	I respectfully agree with the Bill except the few provisions.	...	
9) Bar Association, Bhandara	This attempt to codify Hindu Law though belated is much needed and a welcome one.	...	
10) District and Sessions Judge, West Berar.	I agree with the main changes proposed in the Bill though I will have to offer some criticism regarding details and drafting.	...	
11) Bar Association, Akola	...	...	Due to the constitutional changes it should be held up.
12) Sub-Divisional Officer, Burhanpur.	The provisions of the draft bill are quite suitable and are in accordance with the changing times and customs of the Hindus.	...	
13) Mr. S. S. Pande, Public Prosecutor, Khandwa.	I am in full accord with the proposed Hindu Code.	...	
14) Mr. D. N. Tiwari, Pleader, Drug.	...	I am against the codification of the Hindu Law at all.	
15) Mr. P. R. Dongsonkar, M. L. A.	...	I am against the proposed Legislation.	
16) Mr. N. R. Dhanagare, Pleader, Basim.	The Bill as it intends to unify all the branches of Hindu Law, and make one uniform law applicable to Hindus of any form is a great boon to the Hindu society.	...	

The Bombay Presidency Social Reform Association

No. 10.—Bombay.

LETTER FROM THE SECRETARY TO THE GOVERNMENT OF BOMBAY, HOME DEPARTMENT, TO THE SECRETARY TO THE GOVERNMENT OF INDIA, LEGISLATIVE DEPARTMENT, NEW DELHI, No. 2207/5-B, DATED THE 6TH SEPTEMBER 1947.

I am directed to forward herewith a letter dated the 27th August 1947, from the President, Bombay Presidency Women's Council, Bombay.

Bombay Presidency Women's Council, Bombay.

The opinion of the Council relating to Civil Marriage and Sacramental Marriage is in favour of keeping both forms of marriages among Hindus as provided at present in the Hindu Code.

The Statement of the Objects and Reasons appended to the Bill mentions that the Bill aims at providing uniformity in all branches of Hindu Law for all Provinces and for all sections. 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 place where they reside. Any one who speaks of Hindu Unity must realise that unity of law would operate as a great force in bringing about that unity. The existence of different schools of Hindu Law has rendered it beyond the competence of a layman to understand for himself the exact legal position on any particular point of Hindu Law. The Association therefore heartily welcomes the Bill in question which is a consolidated and uniform Code dealing with the different topics of Hindu Law for all the Provinces and for all sections.

The main features of the Bill are (1) the abolition of the right of inheritance by birth and the principle of survivorship and the substitution of the principles of Dayabhaga for the Mitakshara in the Mitakshara Provinces, (2) the giving of half a share to the daughter, (3) the conversion of the Hindu woman's limited estate into an absolute estate, (4) the introduction of monogamy, and (5) the introduction of certain provisions for divorce.

The Association, while expressing its opinion on Dr. Deshmukh's Hindu Women's Rights to Property Bill, had suggested that if the provisions of the said Bill were considered to be too drastic making a radical departure from the existing Hindu Law, it may be simply enacted that the interest of a member of a joint family should not accrue by birth under the Mitakshara Law but that the interest of a coparcener in a joint family should be according to the principles of Dayabhaga, so that a coparcener could dispose of his interest in a joint family by gift or will. The right to a share in the ancestral property acquired by a son, grandson and great-grandson on birth has worked a great hardship on the Hindu community inasmuch as it had rendered it impossible for a Hindu to undertake any venture or successfully carry on any trade or business as no Bank would be prepared to advance him money on the security of the family property in his hands. Further during recent years there have been insistent demands for the removal of the restrictions on the powers of a Hindu female in respect of the disposal of the property in her hands. One of the main features of the Bill under consideration is the removal of these restrictions. To retain the acquisition of interest by birth and the principle of survivorship after the removal of these restrictions would have been unfair and inequitable. The Association is therefore in favour of the abolition of birth right and the principle of survivorship.

The Association has all along been in favour of the recognition of the claim of a daughter to a share in her father's property along with her brother. The Association had recorded its protest against the understanding arrived at between the Hon. the Law Member to the Government of India and Dr. C. V. Deshmukh in excluding the daughter from the benefits of the Hindu Women's Rights to Property Act, 1937. The Association has been pressing the claims of the daughter before the Hindu Law Committee and is therefore glad to note these claims have to certain extent been recognised in the Bill under consideration.

Dealing with what is known in Hindu Law as 'Widow's Estate', Rao Bahadur Paul Appaswamy in his book, *Legal Aspects of Social Reforms*, observes:—

"Jurisprudence knows about an absolute estate and an estate for life, but the unnatural combination which is given to a widow, which is for some purposes an absolute estate and for others a merely life estate, has been at the root of all the trouble and litigation relating to women's property."

In *Vinayak Anandrao V. Lakshmi Bai* (1861) 1 B. H. C. R. 117, the Bombay High Court has held that the cutting down of the quantum of the estate to a life interest when the inheritance descended upon a female found no support in the early canons of inheritance. Writing about this very subjects, Sir M. Venkat Subba Rao, a retired Judge of the Madras High Court, observes:—

"The rule of limited estate, the greatest single obstacle to the emancipation of Hindu woman has been needlessly engrafted on Hindu Law. This is a gift by the Privy Council to the forces of conservatism and has caused considerable harm to Hindu Society."

The Association had never been in favour of these restrictions but has been pressing for their removal. The Association therefore is gratified to note that in the Bill under consideration the limited estate of a Hindu woman has been converted into an absolute estate.

To encourage the ideal of monogamy has been one of the objects of the Association. Manu (Ch. V. 167-168) prescribed mutual fidelity until death, and it would be wrong to say that Hindu religious texts enjoined polygamy. The law has so far been unjust to Hindu woman

inasmuch as it exacted strict monogamy from them but left a Hindu male free to take as many wives as he liked. There was also a substantial body of evidence before the Hindu Law Committee which showed that cases of desertion and remarriage on the part of Hindu males are increasing. The introduction of monogamy would only mean the restoration of monogamy as a rule of Hindu Law in conformity with Manu's ideal. It would further remove the inequity inflicted on Hindu woman as referred to above.

A law enforcing strict monogamy without the escape of divorce would be incomplete. To insist on monogamy and feel shy of divorce would lead to extra marital relations. The Association therefore had always insisted upon the view that while legislating for the enforcement of strict monogamy among Hindus, provision must be made for divorce. It would be highly unreasonable and inequitable to tie down one of the parties to a marriage to the sacramental obligation when the other party has violated the same by desertion or otherwise. The Association is therefore entirely in favour of the introduction of the provision for divorce made in the Bill under consideration.

At this stage the Association would like to refer to one more point. In the tentative draft of the Hindu Code that the Hindu Law Committee had published in 1944, the right of females coming into a family by marriage to inherit as widows of Gotraja Sapinda which the Bombay School had recognised for over one hundred years had not been recognised. While offering its view on the said draft Hindu Code, the Association had urged that this omission was a retrograde step and that the long cherished sentiments of the Hindu Society or rights already acquired should not, in the zeal for achieving uniformity, be lightly interfered with. The Association is glad to note that the Hindu Law Committee had accepted this suggestion of the Association and has by sub-clause (2) of clause 5 recognised the right of some females coming into the family by marriage to inherit in their husband's family at least in the Province of Bombay.

The Hindu Law Committee in paragraphs 24 and 43 of their report, suggested that the Legislature may, if it prefers that course, take the Code chapter by chapter and proceed with each chapter separately. The Association however does not share that view and desires that the Code should be considered and passed as a whole and not piecemeal. In the course of their report, the Hindu Law Committee of 1941 have pointed out the disadvantages of piecemeal legislation and the said disadvantages would not be avoided if, as suggested by the Committee, the Code is passed piecemeal, that is, chapter by chapter. The Association therefore urges that the Code should be considered and passed as a whole.

PART I.—PRELIMINARY.

Clause 2: Application of Code: This clause seems to have been redrafted with a view to meet the objections that were urged against the clause as it stood in the previous draft. In the clause as it stood then there was no mention about Veerashaivas or Lingayats and illustration (d) to the said clause made the Code applicable to a person who joins the Brahmo or the Arya Samaj. The said illustration was misleading. A person who is a Mahomedan, Christian, Parsi or Jew can join the Brahmo or Prarthana Samaj but he does not thereby cease to be a Mahomedan, Christian, Parsi or Jew and become a Hindu. The present clause clears the ambiguity on this point.

Sub-clause 3(a) and (b) are new. The clause in its present form makes the meaning of the word 'Hindu' more clear and is therefore an improvement on the clause as it stood in the previous draft.

Clause 5: The definition of 'Agnate' as contained in Sub-clause (a) would exclude females coming into a family by marriage. Upon her marriage, a Hindu woman passes out of her father's 'gotra' into her husband's gotra and to exclude her from being an 'agnate' (gotraja) is revolting to Hindu ideas and sentiment. In the previous draft there was no reference at all to 'uterine blood'. In view of the provisions contained in the Code relating to divorce

and remarriage of a divorced wife, it was necessary to define the word 'uterine blood' and this has now been done in para. 2 of sub-clause (c).

PART II—INTESTATE SUCCESSION.

Clause 5: Sub-clause 1: Enumerated heirs: Class 1: In the previous draft, the widow of a predeceased son and a widow of a predeceased son of a predeceased son were not included in this class. The claim of these two widows was for the first time recognised by the Hindu Women's Rights to Property Act, 1937, and the injustice done to them was redressed. Had the husbands of these widows died after the Succession had reopened even for a single day, these widows in the absence of a male issue would have inherited the share to which their husbands had then become entitled. To exclude them was to penalise them for their misfortune. The Association had placed this position before the Hindu Law Committee and had urged that they should be included in this class of heirs. The Association is glad to find that its suggestion has been accepted by the said Committee and the widow of a predeceased son and the widow of a predeceased son of a predeceased son have now been included under this class.

Class IV. The Association is in favour of the addition of father's brother's daughter and the father's sister's daughter as heirs under this class.

Classes V & VI: Two more heirs are added to each of these two classes, and the Association is in favour of the change proposed.

Sub-Clause 2: Under the Hindu Law as at present administered females coming into a family by marriage acquire the 'gotra' of their husbands. The Bombay School of Hindu Law, relying on this principle, had recognised the right of such females to inherit in their capacity as widows of a *gotraja sapinda* and this right has been enjoyed by them for over a hundred years [See *Roopehand V. Foolchand*, (1824) 2 Ber. 670]. The Association, while submitting its views to the Hindu Law Committee on the previous draft, had protested against the exclusion of this class of widows as being a retrograde step. The Association is therefore glad to find that by Sub-clause 2 the right of some of the females coming into a family by marriage to inherit in that family has been recognised by assigning to them places in the different classes mentioned in Sub-clause 1. The Association is however unable to understand why the application of Sub-clause 2 should be restricted to the Province of Bombay. Its extension to other Provinces would have been more welcome.

Clause 7: Rule 3 deals with the share that the branch of a predeceased son is to get on distribution. Under Sub-clause (C) of clause 7 of the previous draft the branch was to take the share which would have been taken by him (i.e. the predeceased son) if he had been alive at the time of the intestate's death. The present rules lay down that the branch of each predeceased son shall take one share if there is a son or son's son of such predeceased son and half a share in other cases. This means that if the only representative in that branch is the widow of such predeceased son the share that she would get would be only half. Under the Hindu Women's Rights to Property Act, 1937, the widow of a predeceased son (if she be the only representative of that branch) would take a share equal to that of a son. The proposed distribution is a retrograde step and the Association is not in favour of it. As has been pointed out before in pressing the claim of a widow of a predeceased son in the property of her father-in-law, such a reduction in the share would be penalising her for her misfortune. Further such a reduction would amount to taking away a right vested in her under the Hindu Women's Rights to Property Act, 1937. The Association is therefore opposed to the reduction in the share as proposed in this Rule and would urge that the branch of a predeceased son should get one share irrespective of the fact whether there is a son or son's son of such predeceased son or only a widow of such predeceased son as representing such branch.

Clause 8: Sub-clause (4) of Clause 8 in the previous draft which excluded a female coming into a family by marriage from inheriting as an agnate of her husband's agnates or a cognate of her husband's cognates, has been

omitted in the Bill under consideration. The Association is glad to note that the suggestion made by it in this respect has met with the approval of the Hindu Law Committee.

Clause 10: This clause gives the heirs who would succeed in the absence of any cognate capable of inheriting. The Association feels that there is no necessity for this provision. In the views that the Association had forwarded to the Hindu Law Committee on the previous draft Code, the Association had stated that in modern times it is difficult to ascertain who would come under the terms 'Acharya', 'Shishya' and 'Sabrahmachari'. This difficulty has however been met by the Explanation added to this clause in the Bill under consideration. The Association however still feels that this clause should be deleted.

Clause 12: The Association had in its reply to question No. 14 from Questionnaire I issued by the Hindu Law Committee (1941) suggested that the male heirs should be given the option to pay to the female heirs the money value for the share that they would be entitled to get on inheritance. The present clause is a great improvement on the clause as it stood in the previous draft Code. Firstly in addition to immoveable property its application is extended to business carried on by the intestate. Secondly it divides the heirs into two classes; namely, (1) sons, son's sons, or son's son's son and (2) other relatives. Thirdly it places the latter class of heirs in the same place as transferees of a share in a dwelling house. Thus all fears of any disruption in the business or fragmentation of immoveable property which were the grounds urged against giving a share to the daughter or widowed daughter-in-law would now be set at rest.

Clause 14: The distinction that was made in the previous draft Code between (1) property inherited by a woman from her husband and (2) other property has been removed and all Stridhan property whatever its source would devolve in the same manner. This change would now prevent the confusion that would have otherwise arisen if the woman had mixed together the two kinds of Stridhan property mentioned above. Sub-clause (4) has been newly added. It does away in express terms the distinction between daughters, son's daughters and daughter's daughter on the basis of their being unmarried, married or a widow, as also on the basis of their being rich or poor and with or without issue or possibility of issue. The Association is entirely in favour of the clause as now amended.

Clause 21: This clause disqualifies the descendants of a converted from inheriting the property of any of their unconverted relatives. There is however no such disqualification in the case of the convert himself. This is because of the provisions of the Caste Disabilities Removal Act, 1850. It has however to be remembered that if such a convert were to die intestate succession to his estate would be governed by the law applicable to the religion to which he had been converted [See *Mitar Sen V. Magbal Husen*, (1930) L. R. 57 I. A. 813]. In *Chidambaram V. Ma Nyein Ma*, (1923) I. L. R. 6, Rangoon 243, where a married Hindu became a convert to Mahomedanism and married a Mahomedan wife, it was held that the persons who were entitled to his estate on his death were his Mahomedan wife and children and not his Hindu wife. Under these circumstances the Association is of the opinion that even a convert should be disqualified from inheriting to his unconverted relative as there is neither justice or equity in favour of allowing him to retain such right of inheritance accruing even after his conversion.

In the opinion of the Association the provisions of the Caste Disabilities Removal Act, 1850, be similarly amended so as to make it clear that no Hindu who has become a convert to any other religion would be entitled to any property after his conversion to which he would have been entitled but for his conversion.

The Association is opposed to the views of the Hindu Law Committee expressed in paragraphs 121 to 124 of their report.

It may be mentioned that the feeling among the Hindu community is very keen on this point and amendment on the lines suggested above alone would satisfy the community.

PART III A—Division II.

Clause 3: The word 'maintenance' was, as defined in the previous draft, to include 'provision for food, clothing and residence.' While the present definition also includes provision for education and medical attendance and treatment. The present definition is surely an improvement on the old definition and the Association is in favour of it.

Clause 4: The clause as it stands now is an improvement on the clause as it stood in the previous draft Code. The Association had objected to the previous clause on the ground that it would be unreasonable to make provisions for maintenance in the case of a dependant who has obtained a share but the share so obtained was considered inadequate for his or her maintenance. It was difficult to understand why the other heirs who succeeded to the property of the deceased should be made to pay for the maintenance of such a dependant. The present clause requires the inadequacy of share to be considered only in the case of testamentary succession. The other objection raised by the Association has been to some extent removed and the Association would accept the clause as it now stands.

Clause 5: Among the dependants is now included 'a married daughter, provided and to the extent that she is unable to obtain maintenance from her husband or from her son, if any, or his estate.' The Association is entirely in favour of this inclusion especially when cases of desertion and remarriage by the husband are increasing.

In Sub-clause (2) for the words 'so long as she remains chaste and does not marry or remarry' occurring in the previous draft the words 'unless she becomes the concubine of another man or leads the life of a prostitute or marries or remarries' have been substituted. The words added do clarify the meaning and the Association is in favour of the clause as now amended. The Association would however prefer the deletion of this sub-clause in view of the fact that concubinage is not recognised as a ground for inheritance or maintenance under any other system of civilised law. Such recognition would also encourage the breach of the spirit of monogamous marriage contemplated by the Code.

Division III.

Clause 10: This clause is a new addition and deals with the question of presumption of survivorship in regard to claims to property. Under this clause, until the contrary is proved, the presumption would be that the younger survived the elder. The presumption would arise only when two persons have died in circumstances rendering it uncertain to ascertain who was the first to die. The Association entirely supports this clause.

PART IV—Marriages and Divorces.

CHAPTER I.

Clause 1: Interpretation (a) (i): The former draft laid down that the "Sapinda relationship" would extend as far as the fifth generation (inclusive) in the line of ascent through the father. The Association had then stated that there was no reason for the continuation of this difference and that the same degrees of ascent, namely, five should be laid down both through the father and the mother. Under the present bill the "Sapinda relationship" extends to third degree (inclusive) through the mother and fifth degree (inclusive) through the father. This seems to have been based on the dictum of Patthanasiyoni जीव मातः पञ्चमिह्यन् पिताः. The Association would have preferred to have the same degrees of ascent in both the cases but would not however object to the change made in the present Bill. (b) By the addition of the words 'or of two sisters' the children of sisters are brought in under the degrees prohibited relationship. The Association approves of this change.

Clause (3): Requisites of a Sacramental Marriage: While expressing its views on the previous draft Code, the Association had suggested the addition of an explanation to this clause stating that the provisions of the Child-Marriage Restraint Act, 1929, shall continue to be applicable to Sacramental Marriage under this clause. The

Association is glad to note that this suggestion has appealed to the Hindu Law Committee. Instead, however, of adding an explanation as suggested, the present Bill adds a new Sub-clause, namely (3), which lays down that the bridegroom must have completed the age of eighteen years and the bride the age of fourteen years.

Condition (1) 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 Widow's Remarriage Act, 1856, should be removed and the Act repealed. This is more necessary in view of the fact that by clause 13 of Part II of the Code a woman has been given full and absolute powers of disposal over the property acquired by her through any source whatsoever. If the Hindu Widow's Remarriage Act, 1856, is not repealed but is allowed to remain on the Statute Book many complicated questions are likely to arise.

The Association is therefore of the opinion that the Hindu Widow's Remarriage Act, 1856, should be suitably amended so that the provisions of section 2 thereof would not affect the property that a widow had already inherited and which she would, under the provisions contained in this Code, inherit as an absolute estate. She may after remarriage be disqualified from inheriting in the family of her first husband in any capacity whatsoever.

In the former draft it was not laid down in express terms that the parties to a marriage must not belong to the same gotra or pravara. The absence of any such provision implied that a sagotra or sapravara marriage would have been valid under the clause as it then stood. The Association is however glad to find that in the present Bill by the addition of an Explanation, the validity of a Sagotra or Sapravara marriage solemnised even before commencement of the Code has been placed beyond doubt.

Clause (6): Optional Registration of Sacramental Marriage: It was absolutely necessary to make some provision for the purpose of facilitating proof of Sacramental marriage. The absence of any such provision has caused great hardships in cases where it becomes necessary to prove sacramental marriage after some lapse of time. The Association would prefer to make such registration compulsory, at least in municipal areas where Registration is compulsory in the case of births and deaths.

Civil Marriage

There is a section of the Hindu Community which is opposed to the inclusion of provisions relating to civil marriages in the Hindu Code. The Association does not share that view and is in favour of the inclusion of these provisions in the Code. It has to be remembered that the code is not intended only for the orthodox but is also intended for those who have deviated from the standards of orthodoxy. If the provisions relating to Civil Marriages were incorporated in the Hindu Code, it would retain such persons within the Hindu fold.

Clause 9:—The Association is glad to find that the suggestion made by it on the previous occasion to the effect that the notice of an intended civil marriage must be given by both the parties, has met with the approval of the Hindu Law Committee.

The Association while on the question of notice of an intended Civil marriage, would like to make one suggestion in the form of the notice of marriage as given in the third schedule. By an additional column in the form the parties should be required to state their birth dates.

Clause 10:—The Association had on the former occasion urged that provision should be made in this clause requiring the Registrar to give a public notice of the marriage. The Association therefore welcomes the addition of sub-clause (2) which lays down that the Registrar shall also publish every such notice in such manner as he may consider suitable. The Association however feels that it would have been better if this clause had required the Registrar to give a public notice as he is required to do under clause 18 in cases of application for registration of a sacramental marriage as a Civil Marriage.

Clause 18.—Registration of Sacramental marriage as Civil Marriage: This clause has undergone considerable changes. The former draft had laid down that a Sacramental marriage, when registered as a Civil marriage, shall be deemed to have been a Civil Marriage for all purposes, as from the date of the original ceremonies. This suit was far from the real state of affairs. The present clause has instead laid down that the marriage shall be deemed to have been a civil marriage valid for all purposes, as from the date of the application. If any children were born of the marriage between the date of the Sacramental marriage and the application for registration as a Civil Marriage, they would be deemed to be legitimate children of their parents. So the reason for making the Civil Marriage effective from the date of the Sacramental marriage has been sufficiently provided for. Thus the changes made clarify the position and are therefore welcome.

There is a Section among the Hindu Community who asked that there should be a provision in the Code which would permit of a Hindu marrying a non-Hindu while continuing to remain a Hindu himself or herself. The demand of this section has been conceded to some extent by the explanation added to this clause.

The Association however feels that now that provisions relating to Civil Marriage have been incorporated in the Code, the application of this clause should be restricted to marriages solemnised before the commencement of the Code and that the words 'or after' occurring before the words 'commencement of this Code' be dropped.

Clause 23.—Guardianship in Marriage: The corresponding clause in the former draft Code was silent on the question of the age of the guardian in marriage. This defect has now been remedied by the addition of sub-clause (2) which requires such guardian to be a person who has completed his or her twenty-first year. The Association is in entire agreement with the change made.

CHAPTER II.—CONSEQUENCES OF MARRIAGE ETC.

Clause 26.—Maintenance of wife: This clause has undergone considerable changes at the hands of the Hindu Law Committee since the application of the tentative draft in 1944.

The most important change is the one which makes the father-in-law liable for the maintenance of the daughter-in-law after the death of her husband. According to the caselaw a father-in-law is not under any legal obligation to maintain a widowed daughter-in-law; out of his separate property. It is only a moral obligation. Principal Gharpure, in his book on Hindu Law has observed that this position in law is against the spirit of a Hindu family and offends also against the principles of justice and equity. The Association entirely agrees with that view and is therefore glad to note that this clause as amended makes the father-in-law legally liable for the maintenance of the daughter-in-law after the death of her husband. This liability is there whether the property in his possession is joint or separate. The Association wholeheartedly supports the clause as it stands now.

The proviso to sub-clause (2) gives the grounds on which a Hindu married woman can stay separate from her husband without forfeiting her right to maintenance. Some changes have been made in those grounds on the lines indicated by the Association in the views submitted by it on the tentative draft Hindu Code. The Association is in favour of the clause as it now stands.

Sub-clause (3) which is a new addition defines the extent of the liability of the father-in-law to maintain his widowed daughter-in-law and the Association sees no objection to it.

Clause 28.—The evil custom of taking a dowry still persists in the Hindu Community and attempts are being made to put a stop to it by introducing in the Provincial Legislature Bills to eradicate this evil by imposing punishment on persons taking a dowry. The clause

under consideration which seems to have been based on the observations made by the late Pandit Golep Chandra Sarkar Sastri and the Association hopes that it might check the evil. The Association however feels that if the evil is to be eradicated, it should be done directly and not indirectly as is sought to be done by this clause.

CHAPTER III.—NULLITY, INVALIDATION AND DISSOLUTION OF MARRIAGES.

Clause 29.—The Association is glad to note that the application of this clause has now been extended to marriages celebrated before the commencement of the Code as was suggested by the Association while expressing its views on the tentative draft Hindu Code. The Association also notes with satisfaction that its suggestion as to prescribing special period of limitation for suits for declaration that a marriage is a nullity has also been accepted by the Hindu Law Committee.

In the clause as it stands marriages are divided into two classes, namely (1) those which are null and void, and (2) those which are invalid. The first class of marriage are covered by sub-clause (1) in which case the petition may be filed at any time. The second class is covered by sub-clause (2) and in the case of those marriages the petition has to be filed within three years. The Association supports this classification.

Sub-clause (3) deals with marriages when the consent of the party or that of the guardian in marriage was obtained by force or fraud. The petition in this case would lie only to the High Court and has to be filed not more than a year after the force has ceased or the fraud had been discovered. The Association is in agreement with the special period of limitation prescribed but is unable to understand why in this case alone the petition should lie to the High Court and not also to the District Court as in the other cases contemplated by sub-clause (1) & (2). A petition to the High Court would be more expensive and distance might also cause hardship to the applicant. The Association would therefore suggest that in this case also the petition should lie either to the District Court or to the High Court.

Clause 30.—Dissolution of marriage: The Association notes with satisfaction that the suggestion made by it for the extension of this clause to marriages celebrated before the commencement of the Code has been accepted by the Hindu Law Committee. It is also glad to note that in cases of grounds (a), (d) and (f) the period has been reduced from 7 years to five years as suggested by the Association. The Association also approves of the addition of a new ground, namely, cruelty such as would render it unsafe for the petitioner to live with the other party.

The Association would urge that two more grounds on which divorce can be had ought to be added. They are (1) adultery by husband or wife and (2) that the husband had married again before the commencement of the Code and such wife is living at the time of the institution of the suit. This second ground has already been accepted as a valid ground for divorce in the Bombay Hindu Divorce Act, 1947 and the Association feels that there should be no difficulty in the same being made a ground for divorce under the Code. As to adultery, it has to be remembered that in England, where adultery is not a crime, adultery has been recognised as a ground for divorce if committed since the celebration of the marriage [See Section 2 of the Matrimonial Causes Act, 1937, (1 Edw. 8 & 1 Geo. 6, c. 57)]. Even under Section 10 of the Indian Divorce Act, 1869, Adultery has been recognised as a ground for divorce. This ground was placed before the Hindu Law Committee for its consideration, but the Committee has given no reason whatsoever for its rejection. The Association is of opinion that the inclusion of both these grounds is necessary and desirable.

Clause 32.—This clause is new. It authorises the Provincial Governments to make rules for associating assessors with the District Court or the High Court as the case may be. Under the Parsi Marriage and Divorce Act 1936 also members of the Community are associated with the Judge in this trial of cases under the said Act. The Association entirely approves this clause.

PART V.—MINORITY AND GUARDIANSHIP.

The Association considers it necessary that there should be some provision 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.

Clause 4.—The proviso to this clause has been newly added saving the inherent jurisdiction of the High Court to appoint a guardian in respect of undivided interests of minor. There do arise cases in which such appointment is necessary (See *Shamrao G. Banf V. Shashikant R. Rane*, 49 Bom. L.R. 499) and some provision in that respect was necessary.

PART VI—ADOPTION

Since the publication of the tentative draft, the Hindu Law Committee has made some salutary changes in the provisions contained in this Chapter. They are as follows:

- (1) The age of the adopter and the person giving a boy in adoption has been raised from 15 to 18 years both in the case of males and females.
- (2) A son should not be adopted by a husband whose wife is alive, without her consent or where he has more than one wife, of one of such wives.
- (3) As regards the giving of the boy in adoption also, the father has been prohibited from giving a son in adoption without the consent of the mother when alive and capable of giving her consent.
- (4) Restriction that the boy to be adopted must be of the same caste as the person adopting has been abolished.

As regards change No. 1, the Association itself had suggested that the age of the adopter and the person giving in adoption should be fixed at 18 years and is glad to note that the suggestion has been accepted by the Committee. Under the Indian Majority Act, 1875, a person below the age of 18 years is a minor and as such in law he is incapable of entering into any contract which would be binding upon him. As adoption in effect is a potential transfer of interest in the property of the person adopting and it is therefore necessary that he should be a major or at the time of adoption. The same reasoning would apply in the case of a person giving a boy in adoption.

As regards change No. 2, the boy when adopted is to be reared and brought up by the wife of the person adopting. From the date of adoption it is she who is to bestow motherly love and affection on the adopted boy and it was unjust and unreasonable to ignore her in making an adoption as would have been the case if the adoption was to be made without any reference to her and notwithstanding her dissent as was contemplated by the corresponding clause in the tentative draft. In the case of giving a boy in adoption also the consent of the mother is absolutely necessary. The adoption would destroy the affectionate tie that binds the child and the mother. It is she who has brought him up and it would be more unjust in this case to ignore her altogether. The Association therefore strongly supports changes (2) and (3).

Under clauses 4 and 7 of Part IV of the Code the parties to a marriage whether Sacramental or Civil need not belong to the same caste. The prohibition which exists at present in that respect has been removed. If under these circumstances the restriction based on the ground of caste were allowed to remain in the case of adoption, strange results would have followed. Supposing a Brahmin male were to marry a Kshatriya female and the husband wanted to adopt, it would have been impossible for him to validly adopt a boy from the caste to which his wife originally belonged. The Association

has always been in favour of intercaste marriages both Anuoma and Pratiloma and is therefore anxious to see that the caste does not interfere with individual choice of a person whether in respect of marriage or adoption. It has further to be remembered that the clause is only a permissive one and does not compel a person to adopt outside his caste. There should therefore be no objection to this clause. The Association is therefore in favour of the change No. 4.

Clause 8.—Under sub-clause (d) a widow having a right to adopt may renounce it in favour of the next senior widow by a registered document. The words underlined have been newly added. Inasmuch as the authority to adopt given by the husband otherwise than by a will is, under clause 8, required to be under an instrument registered under the Indian Registration Act, it is but reasonable that the renouncing of the right should also be under a registered instrument. The Association had pressed for such a change while expressing its opinion on the tentative draft and is glad to note that the suggestion has been approved by the Committee.

Clause 11.—Sub-clause 1 states that a widow's right to adopt terminates (a) when she remarries, or (b) when any Hindu son of her husband dies leaving him surviving a Hindu widow or son's widow. The word Hindu has been newly added. The existence of a son or a grandson who has become a convert to another religion would not thus come in the way of her making an adoption. The Association is in favour of this change inasmuch as it is in accordance with the cherished Hindu sentiments in regard to adoption.

Clause 14.—This clause introduces a much desired change in the law of adoption. Under the present law, because of the interpretation placed on the text of Sannak by the British Indian Courts, daughter's son, sister's son and mother's sister's son—though nearer from the point of views of natural love and affection—could not be adopted. This restriction was unreasonable and has been rightly removed.

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 given rise to a good deal of litigation and controversy about vesting and divesting of the estate. It was therefore necessary to put an end to the controversy and doubts by having a legislation laying down the period within which an adoption should be made if the adopted son were to divest the estate which had already vested in somebody else than the widow adopting. It was necessary to allow the widow sufficient time to reconcile herself to the position in which she was placed on the death of her husband and the Association is of the opinion that the period of three years is quite adequate for that purpose.

The Association however feels that a provision stating that in cases where the adoption had not been made as a result of the fraud practised by persons who stood to gain if there was no adoption, the period of three years should commence from the date on which the fraud was discovered.

SCHEDULES.

Second Schedule.—The Arya Marriage Validation Act, 1927, was enacted to remove doubts about the validity of inter-marriages between parties belonging to different castes or sub-castes. Under clause 3 of chapter 1 of 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. The said Act should therefore be wholly repealed by including it in this Schedule.

The Anand Marriage Act, 1909, was enacted to set at rest doubts that might be raised as to the validity of the marriages rited prevalent among the Sikhs called 'Anand'. Under Section 4 of Part IV of the Code a sacramental marriage may be solemnised in accordance with the customary rites and ceremonies of either party thereto. These rites and ceremonies would include the rites of the 'Anand' form of marriage. There is therefore no necessity to retain the Anand Marriage Act, 1909, on the Statute Book. Moreover during recent years the Anand form of marriage has been resorted to by

persons for effecting a second marriage during the lifetime of the first wife. Since the Code seeks to enforce strict monogamy it is necessary to remove all loopholes which would facilitate a bigamous marriage. The Association therefore feels that the Anand Marriage Act, 1909, should be repealed by including it in this Schedule.

No. 11.—Andaman and Nicobar Islands

LETTER FROM THE CHIEF COMMISSIONER, ANDAMAN & NICOBAR ISLANDS, TO THE SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF LAW, NEW DELHI-3 No. 1-202-47, DATED 4TH OCTOBER 1947.

I have the honour to state that I invited the opinion of such public bodies and selected officers as considered necessary. The consensus of opinion with which I agree is that the contemplated legislation is a piece of progressive work in Hindu Law and will not only do away with the many schools of Hindu Law prevalent at present but also bring about uniformity in the Administration of the Hindu Law.

No. 12.—Bihar

LETTER FROM THE SECRETARY TO THE GOVERNMENT OF BIHAR, JUDICIAL DEPARTMENT, TO THE SECRETARY TO THE GOVERNMENT OF INDIA IN THE LEGISLATIVE DEPARTMENT, No. 7805/A-22/1947-J., DATED THE 3RD SEPTEMBER, 1947.

As desired by you the Provincial Government requested the Hon'ble Judges of the High Court, the District Judges, Bar Associations at district headquarters, Bar and Advocate Associations of the High Court, all recognised non-official Hindu Associations and members of the Legislature to favour Government with their views on the provisions of the Bill. The Bill was published in English in the Bihar Gazette of the 14th May, 1947.

None of the Hon'ble Judges of the High Court except Hon'ble Mr. Justice B. P. Sinha had any opinion to offer. Mr. Justice Sinha agrees generally with the principles underlying the Bill. Copies of the opinions received from District Judges, Bar Associations and others are enclosed.

The Provincial Government have no comments to make.

The Registrar of the High Court of Judicature at Patna.

I am directed to say that the Hon'ble Mr. Justice B.P. Sinha agrees generally with the principles underlying the Bill. The other Hon'ble Judges have no opinion to offer.

The Honorary Secretary, Advocates, Association, High Court, Patna.

The Association considered the bill to amend and codify certain branches of the Hindu Law and after a careful consideration it was unanimously of the opinion that in view of the impending constitutional changes in which this subject may not be included in the unions the consideration of the bill should await the framing of the new constitution.

District Judge, Santal Parganas, Dumka.

Almost all the amendments suggested in the bill with the exception of 2, viz., (1) by which the daughter is to be given share in the family property and (2) by which polygamy is sought to be abolished, are of revolutionary character and try to do away with laws which have been in existence for centuries in this country and which have been accepted as good laws by almost the entire Hindu community. The proposed changes if given effect to will materially alter the character of the Hindu law for which every devout Hindu has great respect and regard. The time honoured conception of the Hindu Law is sought to be done away with by the proposed drastic amendments. Amendments with regard to marriage and divorce are sufficiently revolting to the Hindu society. In one word I do not find any justification for supporting the proposed changes in Hindu Law except the two pointed out above.

Secretary, Bar Association, Dumka.

This association is not in favour of any amendment in the existing Hindu Law, in that such laws have been in force for many centuries and are rooted deep down in hoary antiquity and the reasons for their being still accepted as authoritative and reasonable are that they were all fortified by cogent reasons propounded by seers of old, well conversant with the temperament and tradition of Hindu India past and present. The proposed changes are too drastic and too meagrely reasoned to stand the test of a spiritual and legal scrutiny. Further more the present time, according to the opinion of this Association is not at all favourable for effecting any such fundamental changes of the existing Hindu Law.

District Judge, Purnea.

I have the honour to say that while I am in favour of codification of Hindu Law, I think that we should wait for one or two years more till the constitution picture clarifies. The uncodified system has been in force for several centuries and a few years more would make no difference. Already there are local variations and if now there is codification by the present Legislature we would still be unable to know which States and which provinces will be accepting the Code, and which will be rejecting it. So the Codification instead of simplifying, might in fact add to the confusion. If the matter is taken up after sometime we would at least know over what areas the new Code would be operative.

Secondly, it is difficult to understand why there should be so much of haste as given in paragraph 2 of the letter of the Legislative Department of the Government of India. There is a good deal to be said for quick reform but there should be much more publicity and the procedure of a circulation motive need not be dispensed with.

The new points raised by the Code are highly controversial. There is a good deal to be said for a half share of a daughter in heritable property but it is so much against the ancient principles of the Hindu Law, that it can be introduced only after good deal of publicity is given, and the opinion of the more conservative section is obtained. Again the same remarks would apply to the question of invalidating a polygamous marriage. Actually during the last one or two centuries polygamy has become increasingly rare among Hindus; a good proportion of the cases which would be affected by this rule, may be those where a divorce would have been allowed in other countries. The matter has to be considered carefully by organisation of enlightened women and till their opinion is ascertained by hasty legislation would affect the women's interest.

The abolition of the woman's estate should also be considered in the light of general education of women. Even if this abolition which is only a theoretical benefit is put off by ten years it would not matter.

The principles of survivorship and right by birth in property are so essential in most schools of Hindu Law that it is doubtful if we can alter it by a fiat. For historical reasons another set of principles has come into force in one Province but that did not happen by a single enactment but during several centuries when an independent school of thought developed. I should also think that the survivorship and right by birth are by no means an evil.

The best is to give wide publicity to the proposed Code and take it up after the constitution picture becomes clear.

District Judge, Monghyr.

In my opinion it is very dangerous to revolutionise the Hindu Law and the Hindu Society. We need not forget that the Hindu Law was framed by the ancient Rishis of this country and we cannot form an idea of the intentions of the ancient law givers unless we study those laws very carefully. If we could appreciate that when they framed these laws they considered them to be the best in the world and intended them to be good laws for all time to come and if we could further realise on going through all their writings that they were people possessing a very superior calibre, then we would not so easily come to the

conclusion that the laws framed by them have now outlived their utility. It is very easy to say that these laws have outlived their utility but we can not pass a judgment like that without even caring to study the original texts and without knowing the intentions with which such laws were framed. It would be most regrettable if we proceed to revise the old laws without fully understanding what they contain and without knowing with what intentions they were framed.

As for example the joint family system which is now being criticised so badly and which the present bill seeks to destroy completely can be regarded as one of the main pillars of strength for the Hindu society. I do not understand how we can be proud of legislation which destroys the ancient Mitakshara and Dayabhaga Laws and makes provisions for giving shares to daughter, daughter's son mother, son's daughter, daughter's daughter, son's daughter's son and such other heirs thereby sanctioning the division of property into infinitely small parts. We should not take this hazardous step without giving due weight to the consideration how far a law like this has helped our sister communities who have followed it for ages. If I remember aright there was a time when it was considered necessary to extend the law of primogeniture to all classes of Hindus, and certainly the intention behind such a move was to preserve the properties. We have still to take into consideration how the law of primogeniture has helped preservation of properties in countries in which it has been prevalent.

Similarly before engrafting the law of divorce on the Hindu society we should make a searching enquiry as to the effect of this sort of law on the societies which have followed it up till now. I do not think it is the intention of the present day legislators to frame laws for the Hindu society irrespective of the consideration how far it would effect the morality and the character of the society.

I have read all the parts of the proposed Hindu Code and in my opinion, we should not think of further amending the old Hindu law in any other respect except with regard to adoption. The reason for my generally agreeing with the provisions of part VI is that as the law of adoption is not a kind of law with which the people in general are familiar, and as it is ordinarily very difficult to find out the original texts with regard to this law, it would be better if the law is simplified. It seems desirable to do away with some of the rituals connected with this ceremony and the performance of Dutt Homan should not be regarded as essential to the validity of an adoption. On the whole the provisions embodied in Part VI may be adopted.

Secretary, The Monghyr Bar Association

I have gone through the Bill. Some of the changes proposed are revolutionary and will completely alter the existing special fabric of the Hindu Society. I am wholly averse to the whole bill and on principle I would oppose legislative interference with the law laid down by the Rishis.

District Judge of Manbhum-Singbhum

I am in favour of the proposed Bill for it aims at providing a consolidated and uniform Code dealing with the different branches of Hindu Law for all the provinces and for all sections of the Hindu society. It seems desirable that the growing body of Hindu men and women, should have liberty to lead the lives according to their own liking and the Bill makes provisions for the same without imposing any compulsion or obligation on the orthodox section of the community.

President, Bar Association, Purulia.

We have the honour to submit our considered opinion as set forth below on the Draft Hindu Code.

1. The present time is most inopportune for introducing a Bill like the present one which is of vital importance to three hundred millions of people of India to whom it concerns regarding their religious, social and economic welfare.

2. We are passing through a crisis the like of which has never been experienced in history of any nation in any country at any time. We are struggling hard for fooding, clothing, safety and honour of our women folk

in fact for our very existence our hearts are heavy and minds full to devise means for solving the above problem of immense magnitude. We are not expected to be now in a position to divert our attention and apply for hearts and minds to a subject like the present which can certainly wait until we settle down in peace and plenty. Whatever is done in haste is bound to be faulty.

3. The Hindu Law otherwise called "Dharma Sastra" framed by great sages and seers of antiquity like Manu, Yajñabalka and others, whose versatile genius sagacity and wisdom is beyond question based on the rocky bed of *sruti smriti*, custom and what was considered conducive to the soul (not to personal comforts and conveniences) has consistently and ungrudgingly been respected and followed for Centuries that should not be lightly handled like a child's toy. It should not be separated from its firm basis and built upon the quicksand of contract as has been done in the Bill. To do so, would be to give the branch a separate existence independent of the tree itself.

The draft code is not complete and exhaustive as it should have been. We are sick of peace-meal day to day amendments like postal guides.

4. Religious efficacies popularly known as "doctrine of spiritual benefit" has altogether been ignored in the matter of inheritance and in its place has been introduced "cut and dry list of Enumerated heirs" which cuts at the very root of its underlying principle and is objectionable for many obvious reasons.

Religious forms and rites have altogether been discarded in matters of marriage and adoption caste system ought not to be and can not be altogether brushed aside and overlooked in matters of marriage succession and adoption. *Sagotra* marriage should always remain unlawful and invalid.

Cosmopolitanism should not find place in a Bill like Hindu Code. Differences there must be in forms rites and procedures in matters of marriage and adoption amongst the three twice-born classes and those who are not so. These forms rites and procedures should not be left to the option of the orthodox class. Rigidity should be strictly enjoined. Relaxation would prove harmful and should be scrupulously forbidden.

Hindu Home which is still the envy of all other nations of the world should not be spoiled by introducing "Divorce and Remarriage" amongst the three regenerate classes; it is a contradiction in terms. A Hindu marriage is never dissolved even by death. This Chapter should be altogether omitted from the Code. We should not dig our own grave. The pierian spring should not be touched by polluted hands. Spurious imitation of western civilisation, making marriage a creature of contract has been introduced which is harmful and should cease for good.

We are strongly against giving absolute estate to female heirs in matter of inheritance and that for obvious social and economical grounds. New female heirs have been introduced from time to time and despite vehement objections from the press platforms and on the floors of both Houses they have received legal sanction. This time it has raised its head with renewed vigour which should be brought down by every means.

We are not unaware of the slogans of the opposite party viz. that we of the old school belong to the minority section numerically we are weak, and powerless and as such we should make room for the young generation, the world is moving fast and we should keep pace with time. True, nevertheless we should do well to remember that man-made laws may change with time but not so the "Sanatan Dharma Sastra". If we stick to it we live long as we have lived so long, if we dissociate ourselves from it we die. Let us choose between the two—Do or Die.

District Judge of Shahabad.

The Bill is open to objection on principle as it is a direct inroad upon many of the recognised rules of Hindu Law which are not based on merely secular considerations.

2. The whole chapter on Intestate Succession, as laid down in Part II of the Bill, is opposed to many of the fundamental principles of Hindu Law and is aimed at doing away with the rules of inheritance under different schools of Hindu Law. This is open to serious objection.

3. The extension of the rights of woman over property inherited by them from their husbands, or obtained on partition, beyond their life time, as contemplated in section 13 of Part II of the Bill is open to objection, as it involves the risk of the family property going into the hands of undesirable strangers.

4. The restriction sought to be put on a male person by section 5 of Part IV to take more than one wife is also opposed to the religious belief of the Hindus that they must have a son to perform funeral oblations and eridical *shraddh* for them and their ancestors after their death.

5. The registration of sacramental marriages, as contemplated by section 6 of the same Part is wholly unnecessary.

The Secretary, Arrah Bar Association, Arrah

The proposed Hindu Code is a death knell to the Hindu culture. It is not based on any principle and all the provisions which are meant to have a departure from the old law, are unsound, unprincipled and made on the basis of personal ideas and thoughts of some persons who form a very insignificant part of the Hindu Society. No doubt the ideas of these persons have undergone a revolution, but those ideas have been borrowed from foreign culture which is very antagonistic to the Hindu culture and if at all a legislation is required to suit such persons they may have it and the legislation may be formed as law of person not willing to be governed by the Hindu Law or some such name, but it is most unfair to inflict a legislation on the entire Hindu Community the largest section of which does not approve of such a change.

The Bill in effect makes the old, scientific, consistent and well seasoned Hindu Law complicated, unscientific and unprincipled and unacceptable to the Hindus in general.

Demonstrations of strong protest to this Bill have been made throughout the country and there is very strong public opinion against it.

The Bill is therefore, to be condemned.

District Judge, Champaran

In my opinion, amendment and codification of certain branches of the Hindu Law aimed at by the provisions of the Bill appear to be necessary in view of the present conditions of the Hindu Society and I am, therefore in favour of the Bill being passed into law.

The Secretary, Bar Association, Motihari

I have the honour to submit that the "Hindu Code" and its provisions were considered by the members of this association.

They have come to the conclusion that while the codification of the Hindu Law is much to be desired, certain radical changes that are sought to be introduced by the provisions of the said "Hindu Code," will seriously affect the provisions of law as laid down by the ancient sages and Rishis on which the modern Hindu society is based and they are of such revolutionary character that they do not commend themselves to the members of this association.

District Judge, Bhagalpur

I am in favour of the principles underlying the Bill.

The Secretary Bar Library, Bhagalpur

The Bar Association is of opinion that the proposed "Hindu Code" should not be passed into law as it is revolutionary in character and harmful to the Hindu Society in general and will bring no good to anybody, rather it will disintegrate the Hindu Society.

District Judge

I am submitting below my opinion.

Although the Bill under consideration is salutary so far as it goes and it could be made the law of the realm for the Hindus with certain modifications and clarifications, in view of the impending fundamental changes in the political structure of the country with every prospect of the provinces, which have different customs and usages having the sanctity of age and the force of law behind them and becoming autonomous, it appears to me that the reasons given in the Bill for its enactment disappear to a great extent. Therefore it seems to me that at the present moment this Bill should not be passed into an Act. It has become out of time and out of date.

The Bill as it is however seems to make fundamental changes in the most vital parts of the Hindu Law such as succession, marriage and joint family system. While it is true that in certain parts of India which is a vast country with diverse customs and ideas in different stages of development, and advance the changes proposed in the bill will be suitable, it cannot be denied that there are certain parts of this country not negligible in the least, where the revolutionary changes adumbrated in this Bill, are likely to be most unwelcome even amongst the intelligentia not to speak of the people of the Lower scale in the society, let alone the people of sanatani type whose number in those parts is considerable. The Bill, no doubt, does not seek to affect the agricultural property but that, in my opinion, does not change the position just mentioned above.

As regards the provisions of the Bill as they stand, in my opinion, they require modifications and clarifications. These are set out below.

(a) *Clauses (3) & (4)*:—There should be distinction between "Usage and custom" indicated by refraining the definition as given in clause (4). Usage is not the same thing as custom. Only the former should be superseded regard being had to the sanctity of customs amongst the Hindu.

(b) *Part III A (page 12 of the Bill)*.

Clause 1. The law should provide that those families who want to continue their *status quo* as *Mitakhshara* joint families, may have the right to do so provided they indicate it in a prescribed manner. This is advisable in the present stage of the advance of the society as a whole.

(c) *Clause (5)*.

Consequent changes have to be made, if the above is accepted. These should be provision for the maintenance of husband by wives in proper and suitable cases. There is reason why this law should ignore husbands.

PART IV. CHAPTER I.

(d) *Clause (1) Sub-clause (b)*:—

The definition of "the degrees of prohibited relationship" is rather narrow. It should be widened and made clearer. This is necessary in view of the cherished belief of the Hindu in exogamous marriage. It should include cousins and their children of certain degrees.

CHAPTER II

(e) *Clause 26*.

A corresponding provision should be made in favour of the husband in suitable cases indicated above.

CHAPTER III.

(f) *Clauses 29 & 30*

In view of sub-clause (5) of clause (29) in my opinion there seems no good reason to keep a distinction between these two clauses. They should be amalgamated.

There should be power of delegation to subordinate Courts for trial of cases arising under these clauses. This is necessary in view of the volume of work a district court has ordinarily to deal with.

District Judge, Muzaffarpur.

I agree with the proposed legislation.

The Secretary, Bar Association, Muzaffarpur
The members of this Bar Association are of opinion as follows:—

PART II. INTESATE SUCCESSION—INTRODUCTORY

Page 2.—1. To the number of cases enumerated it is necessary to add a further viz. the joint immoveable property of a Mitakshara joint Hindu family.

Page 4.—Succession to the property of males.

4. Devolution of heritable property of male. The word "Separate" should be put after the word "The" and before the word "Heritable".

5. Enumerated heirs.

In class III other descendants of Father. In this class of heirs it is necessary to include the "Brother's daughter's son". He should be placed after the "Brother's daughter". It will be found that he is preferential heir under the existing law than many of the heirs enumerated in class II.

7. Manner of distribution among enumerated heirs in entry (1) 3 class 1.

Rule I—the rule as proposed will be operative of very great hardship and appears to be very unfair as it intends to curtail an existing right. The rule should be recast and should read as follows:—

The intestate widow or if there is more than one widow, each of the widows shall take one share.

Rule II—the rule as proposed is inequitable in as much as it intends to remove the distinction between a joint member and a separate member. Perhaps a man would never like that the son who was separate from him should take his property equally with a son who was joint with him.

The rule should be recast as follows:—

"Each surviving son of the intestate whether undivided or reunited shall take one share. If there is neither an undivided son nor a reunited son then each surviving son divided from the intestate shall get a share".

Rule 3, Clause (2).

The word "together" after the words "or widows" appearing within brackets should be deleted.

Stridhana.

Page 9.—13. Rights of women over stridhan.

The rule as proposed in its present form will have very far reaching effects. It will be more so in the case of young widows who are issueless, when it would be fraught with very grave dangers, to wit the case of a person dying intestate leaving an issueless young widow and a predeceased daughter's son. In the presence of the widow the daughter's son would be precluded. The widow may become susceptible to outside influence especially of unscrupulous persons, and the chances are ten to one of her so becoming, and spoil the property leaving nothing for the daughter's son, although the deceased intestate himself would never have liked to deprive his daughter's son of the latter's reversionary interest in the property left by him. It is, therefore, necessary that a distinction should be made in the case of stridhana which a female would get as an heir of her father, husband or son, in which cases she should have a limited power of disposal. In all other cases she may have absolute right as proposed in the rule.

Page 10.—14. (3) (ii) The distribution of stridhan among grandchildren should be *per capita* instead of *per stirpes* as proposed. If the right of a woman in her stridhan property is restricted as suggested above then *per capita* rule will have to be retained. Some provision should be made for the daughter's sons especially when the daughter's son is dead in the life time of the daughter.

Page 11.—28. This rule requires modification on the ground of Religious efficacy. To a Hindu the idea of spiritual benefit derived through the offerings of funeral oblation is uppermost in his mind. Hence those incapable of offering the funeral cake or oblation should be excluded from inheritance. It is, therefore, suggested that after the word 'deformity' the following should be added, 'except on the ground of religious incapacity, deformity and unfitness for social intercourse arising from the virulent and disgusting nature of the disease, or on the ground of the disqualifications given for sacramental marriages'.

Page 12.—Part III A. general provisions connected with succession. Division No. 1. (2) No right by birth in property devolving after commencement of code. The proposed rule is most unwholesome, pernicious and unwarranted. It would be most prejudicial to the interest of those for whose benefit it is proposed to be enacted. It will result in creating confusion and jealousy among the people governed by the mitakshara school of Hindu law. The members of the committee have practically lost sight at the fact that the people of Bengal where the Dayabhag School prevails still repeat the inequity with which they have been putting up so long due to the wrong interpretation put on the texts by the Law Courts. The absolute rights of the father with regard to the ancestral property of the family might be supported to some extent on moral grounds, but when we come to consider the fact that all the junior members of the joint family look upon the property as a source of their maintenance the arguments in favour of the fathers' absolute right melts away more so when it is considered that property was not acquired by the father out of his hard earned money. The weakness of the Dayabhaga system becomes much more manifest when one finds the hardship caused to the sons by the predeceased wife when old father is merged in young wife, or when a father gets addicted to vices. When the old father is under the influence of his young wife he not only makes a hell of the lives of the children of his deceased wife but goes a step further and wills away or transfers all the family properties including even the dwelling house to his young wife. I have had an opportunity of discussing the merits and demerits of the two schools with regards to 'Heritage' with some of the well known Bengalee scholars of Hindu Law and I always found them in favour of the Mitakshara school. It is indeed strange to find that the members of the law committee without any mandate from the people who are governed by the mitakshara school and who will be the most affected should have proposed such a change in the personal law of those people. The committee so far as we remember a right was appointed to modify the Hindu Law and not to propose such sweeping changes without a demand for the same by the people. I am sure that if a referendum is made to the people who will be affected by the change over, it will be 99 per cent against the proposed change. These provisions of the bill should be dropped altogether.

Page 15.—Marriage & Divorce.

3(a) Requisites of a sacramental marriage 3 (1). The following should be added except in the following cases; (a) when the wife is suffering from some congenital defect, which is incurable, on account of which she is incapable of bearing children and the husband has no child either male or female or a grand child living, (b) when the wife had no issue and is past child bearing age. Provided the free consent of the wife in writing is obtained at least 3 months before the marriage and adequate provision has been made for her to live comfortably.

EXPLANATION

The explanation as it is given is pregnant with mischief and if accepted will lead to much trouble. In the first place it should be made applicable to marriages solemnized after the passing of the act, and the words 'belonged to the same gotra or pravara, or' should be deleted. The explanation if allowed to remain as it is would validate such marriages as have been considered so long as invalid marriages and thus render legitimate all the off-springs of such marriages who have been con-

sidered illegitimate up till now. No exception has been made of those cases in which the legal machinery has set the matter at rest. Now, if the rule as proposed is accepted it will lead to divesting of properties in many cases.

Regarding the marriage in the same gotra or pravara it should be considered that both the schools of Hindu Law have given mandatory injunctions against contracting such marriages and this has been strictly followed so long by the Hindu society. The very idea of such marriage is obnoxious to us. This should be rejected altogether. If, however, it is retained then the following should be added at the end of the explanation:—Provided that it shall not affect those cases regarding which there would have been judicial pronouncement before the date the new law comes into force.

Sacramental marriages.

Provisions should be made for compulsory registration for all such marriages after a certain date. I would like to propose 1st Jan. 1954 as the date after which all such marriages must be registered. 3. Requisites of a sacramental marriage. The following should be added to the condition no. 1 "except in the following cases"—

(a) Whether the wife is suffering from some congenital defect, which is incurable on account of which she is incapable of bearing children, and the husband has no child either male or female or a grand child living. (b) When the wife has no issue and is past child bearing age. Provided the free consent of the wife in writing is obtained at least 3 months before the marriage and adequate provision has been made for her to live comfortably". This amendment is necessary in view of the fact that the desire for a son who should continue the line of the ancestors and confer spiritual benefit on him after death, is uppermost in the mind of a Hindu.

Page 19.—General Provision. 24. Punishment of Bigamy:—In view of the proposed change in Rule 3 (1) the following may be added to this rule after the word "a husband or wife living" except in the cases enumerated in rule 3 (1) Page 20, Chapter III. Nullify. Invalidation or Dissolution of marriages. 29. Decree of Nullify or invalidity of Marriage:—The word "before" occurring after the word "celebrated" should be deleted. This is necessary in view of the fact that it is not desirable to nullify the marriages celebrated before the passing of the act on various grounds such as: parties who have lived happily up till now and there are offsprings of the marriage. On account of some misunderstanding there springs up some difference between the parties and one of the parties in a weak moment presents such a petition. The result would be that not only there would be a break up for all times to come, but the position of the children would be worsened.

Page 21.—Rule 29 (2) Ground No. (iii) after the word "marriage", the following should be added and the marriage was celebrated by fraud or under duress, coercion and undue influence, and the party seeking the dissolution has not derived any benefit there under since after the marriage". Provided that if the party seeking the dissolution of the marriage shall be found to have appropriated to his own use any property of the other party since after the marriage such party shall have to restore the same to or compensate the other party to the extent of the appropriation made by such party before the dissolution could be granted to him by the court.

This amendment is necessary in view of the fact that in some such cases young man of modest or slender means consent to marry such girls of rich family with a view to improve their own position and after they are handsomely paid for it. Now after the proposed enactment becomes law such men will have an opportunity of showing for the dissolution of the marriage even after they have received handsome amounts from the girl's father, or they may adopt this artifice for muleting large sums of money from the guardian of such girl. So the position of such girls would be worsened under the new act rather than bettered.

(3) The proposed rule with the proviso is altogether an uncalled for legislation. The remedy proposed would be worse than the deceased itself. On most trivial difference recourse will be had to the proposed enactment and result in making unhappy many a home otherwise quite peaceful. Besides, it will be an easy tool in the hands of unscrupulous father who has been promised a handsome rewards for the transfer of their girls from the house of proper people to the villas of richer men.

80. Decree for dissolution of marriage.

(c) The ground as it stands is wanting in certain matters and there in its place the following may be substituted, if a husband has any other woman as concubine since not more than two years before the date of presentation of the application and without the knowledge or consent of the wife and if a wife is a concubine of any other man or leads the life of a prostitute since not more than two years before the date of the application, without the assent knowledge or connivance of the husband. (f) and (g) of the grounds should be deleted from here and put under a separate heading Judicial separation" (f) In case it is decided to retain this grounds in its place then it should be worded as here under:—"has been suffering from venereal disease, not congenital in origin, contracted after marriage in a communicable form for a period of not less than five years immediately proceedings the presentation of the petition, and the disease is of such a nature that if contracted would be positively detrimental to the health of the petitioner. Provided that no order for (separation) or dissolution of marriage will be passed by the court without first obtaining the considered opinion of a medical board constituted for the purpose in this behalf. (g) A proviso to the rule should be added—"Provided that no orders for the dissolution of the marriage will be passed by the court without the evidence of repeated actual violence on the person of the petitioner, amounting to cruelty, having been committed within the period of 6 months of the filing of the petition".

The proviso to (f) and (g) are necessary as these will act as a check of the finding of bogus applications and prevent abuse of the exercise of the right which to all intents and purposes is meant to be exercised only in extreme cases. Chapter VI Adoption.—4. Condition of valid adoption. (iv) After the word "taking" add the words "accompanied with Dattak Hawan". The Hawan is an essential accompaniment to adoption as it gives religious sanctity to it. (2) (a)—This proposed rule gives very wide power to the widow which is fraught with grave dangers. The rule gives to the widow such powers which she could never think of getting from her husband. This rule should be deleted and in its place the following should be substituted "he has authorised her in writing registered to adopt a son to him". The defects in the proposed rule are so very patent that they need no comment. This will be apparent in the case of young widows who live under the influence of their own people. Adoptions will be made by the widow as a matter of course after the death of the husband although the latter might not have liked it at all on account of various considerations. Suppose a man dies intestate leaving a young widow, daughter's son or brothers and nephews. The widow under the influence of her own relations or unscrupulous people might adopt a boy even though the husband would not have liked to adopt a son considering the existence of the daughter's son, the brother or the nephew. The result will be although the man might have desired that the ultimate benefit should go to the daughter's son, brother or the nephew, the widow without the approval of the husband, and of her own sweet-will puts in a clog and defeats their expectancy without any mandate from her deceased husband to that effect.

10. Widows right to adopt not exhausted by previous exercise: after the words "The death of another" the entire portion will be deleted and in its place the following will be substituted. "If so authorised by the husband."

Page 26.—14. Certain persons declared capable of being adopted: (ii) The clause should be deleted and in its place the following will be substituted:—"Daughter's

son". The adoption of daughter's son had been in practice some times back. But the adoption of sister's son and mother's sister's son have at no time been in practice. There are clear injunctions in the texts against such adoptions. 15. Actual giving and taking essential but not Dattak Hawan: It is absurd to say that Dattak Hawan is not essential to the validity of adoption. Dattak Hawan is an essential part of the ceremony of adoption and gives religious sanctity to it.

District Judge of Gaya

I agree with the opinion given by the Additional District and Sessions Judge, Gaya. It aims at providing uniformity in all branches of Hindu Law for all Provinces and for all sections.

Additional District Judge, Gaya

The Bill has brought in very fundamental changes in Hindu Law. It has introduced daughter as the heir along with the son which of all other provisions is most revolutionary in character. The Hindu Law as the laws of any other community is founded on and is developed from the structure and frame of the Hindu Society, that is to say, family units based on descendants in the male line. The Hindu Law is also deeply rooted in Hindu religious practices and thoughts and from its sacramental usages and the structure of the society the daughter after the marriage completely severs her connections with the parental family and is transferred and settled in the family of her husband. The proposed bill cuts at the very root of the principles of the Hindu Law by making the daughter the heir along with the son. It also goes against the structure of the Hindu society and violates the religious sentiments on which the whole law is founded. The proposed bill in the same manner also violates the essential principles of Hindu sacramental marriages by making the provisions for divorce. India is a vast country with different provinces and areas having their own local manners, customs and conditions. In such circumstances it will not in my opinion, and such has also been the view expressed by many eminent persons be appropriate to impose any rigid uniform law for the whole country, in total disregard of the local variations in manners, customs and ways. Where the law by the change of times has become out of touch with the prevailing conditions the necessary amendment may be made. Such amendment in fact has also already been made by giving the special rights to the widows by Hindu women's Right to property Act. The sisters and her sons too in consonance to the present conditions have been made heirs.

The Hindu Law where it may have become completely incongruous may be amended in regard to the particular matter. But in my opinion it will not be proper to impose a rigid system of the Hindu Law with uniform details over the whole country in total disregard of the variations, in the local conditions. Next the act provides that it will not be applicable to agricultural lands. This will have the effect of there being one system of law applicable to agricultural lands and another system of personal laws to govern other kinds of properties. This can only bring in confusion. It cannot be a very happy state of things. So from these considerations I do not agree with the proposed bill.

Bar Association Gaya.

We disapprove the Bill entirely because it seems to be based on supposed equitable considerations quite divorced from basic ideas of the sources of Hindu law.

District Judge, Darbhanga

Some of the provisions of the Bill are not beneficial to Hindu Society nor do they appear to be necessary.

The provisions about succession attempt at introducing and copying other systems of inheritance of which the Hindu Law gives would have never dreamt of. In class III under section 5(1) of the Bill, brother's daughter and Sister's daughter have been classed as heirs along with

brother's son's son, sister and sister's son. These relatives are not recognised as heirs even according to Mahomedan Law. Their introduction as heirs in Mitakshara Society will mean that properties held by a Mitakshara Hindu will disintegrate in the course of one or two successions. Heirs nos. (8) to (9) of class VI are unknown to Hindu Society.

The provision in the Bill that a woman will have absolute right in the property inherited by her from a male, would nullify the Hindu texts on the point as well as the *curius curia* that in such a case she gets only a limited interest and can alienate it only for legal necessity. The provision will practically negative the right of the reversioner of a Hindu to inherit the property of the last male owner unimpaired by any act of waste or mismanagement by the intervening limited owner.

Marriage is a religious sacrament according to the Hindus. By the proposed legislation the very notion of it is going to be changed and it is sought to be treated as a contract which is opposed to Hindu Law.

District Judge of Saran.

In my opinion the Bill relating to Hindu Code is in keeping with the growing public opinion in favour of a uniform code dealing with different topics of Hindu law for all the Provinces and for all sections of the Hindu society.

Chupra Bar Association.

At a general meeting of the Chupra Bar Association held on 21-5-47, the following resolutions were passed:—

* * * *

Resolved that this association does not agree with the criticisms and report of Messrs Narabdeswar Prasad, Madan Mohan Sahay and Babu Bishwanath Misra of the provisions of the draft Hindu code and is unable to adopt the same as the expression of opinion of this association. Resolved further that this association considers the provisions for the inheritance of female heir and the nature of their right to be in consonance with progressive views about the woman's right held by advanced system of jurisprudence all over the world and only a moderate concession to the demand of a resurgent womanhood of a Free India.

Resolved further that the provisions regarding Hindu Marriage and Divorce are sanctioned by progressive standards and their permissive and limited character gives the needed scope for the development of evolutionary ideas in Hindu social order towards more modern social standards.

Resolved further that the draft code be adopted as the law of the land without modifications.

District and Sessions Judge Patna

I am in favour of the provisions of the proposed Hindu Code as they are likely to fit in with the changing conditions of the Hindu Society without in any way affecting or infringing the liberty of those who prefer to adhere to the old ways.

Judicial Commissioner of Chota Nagpur

In my opinion the non-Christian aboriginal communities of Chota Nagpur are affected by the provisions of the Bill, which lay down that such shall be presumed until the contrary is proved. The burden of proving the contrary is laid on the non-Christian aboriginal. This provision is likely to be contested by the non-Christian aboriginal communities. These communities do not observe Hindu Law in toto. Generally they observe some but not all Hindu customs and usages. Those observed are not observed in their pure state but are adapted or corrupted to suit peculiar local conditions. Such partial observance is not regarded as embracing the Hindu religion or Hindu Law in respect of the matters dealt with in this Bill. At the same time due to widespread poverty and illiteracy it would appear to be difficult for members of these communities to produce the high standard of proof to the contrary required

in this Bill. Section 24 (Bigamy) and Section 20 (Murderer disqualified) appear to be directly opposed to the customary law of these communities, and will also prove difficult to enforce. The provision of the Bill under sub-head "Application of Code" may be made more restrictive. The provisions of the Bill will be opposed by many Hindus who resist drastic changes. The distinction between married and unmarried daughters may be left unchanged. Proposed section 24 (Bigamy) is too wide and marriage in the lifetime of the first wife may be allowed for certain specified purposes. Considering the statement of Objects and Reasons, I agree that there should be a provision in the Bill itself making it clear which provisions are only "of a permissive or enabling character and impose no sort of compulsion or obligation whatever on the orthodox section of the community". At the same time such provisions might render the Code a dead letter, or at least leave it in a state where it is not in the true sense a Code. In my opinion, however, it is expedient to codify these branches of the Hindu Law. The Code when enacted may be widely sold to the public in different languages at a very low price like one anna a copy.

The Judicial Commissioner, Ranchi

I called a meeting of the Bar Association today and the members by their resolution have accepted the entire provisions of the "Hindu Code", subject only to the few amendments mentioned below:—

1. Only unmarried daughters will get shares as proposed (i.e. half of their brother), but they will be *vested of their rights on their marriage* (Sec. 5 class I.)
2. Marriage for the second time may be allowed in the lifetime of the first wife if there be no male issue and if she will consent in writing beforehand, which must be registered (Sec. 29).

Bar Association, Ranchi

Opinion on a Bill to amend and codify certain provisions of the Hindu Law

This is a Bill of a most subversive and reactionary character and takes away the right of a Hindu to live in accordance with his religion which was expressly recognised by Queen Victoria's proclamation designated as the Magna Charta of Indians and although the British Government so long as it was in power did not think of deviating an inch from it, it is surprising that Indians themselves are interfering with these rights even when they are on the threshold of Independence. The Statement of Objects and Reasons claims "that most of the provisions in the Bill are "of a permissive or enabling character and impose no sort of compulsion or obligation whatever on the orthodox section of the community" but reading through the Bill we do not find any trace of the same.

The framers of the Bill have lost sight of the fact that Hindu Law of marriage, succession, adoption are all based on the tenets of the Hindu religion prevailing in India from ages past which have no doubt been modified to a considerable extent by exigencies of the times but never superseded by any other religion of foreign growth and this factor is a source of pride to the Hindus who will be prepared to sacrifice their lives to save their religion from outside influences of foreigners and their civilization. Influencing the framers of the Bill in framing such a subversive and reactionary Bill to be introduced in the legislative Assembly.

At the outset the Laws of Succession are not in accordance with the principles of Hindu Law which are based on principles of *Sradh*, a feature in Hindu religion, which is non-existent in any other religion and which is neither understood nor appreciated by the so called intelligentsia of the land cultured in the ways of foreigners and their ways of thinking of life. Apart from these principles and ignoring them altogether we do not find any utility or practicability in the laws of succession as framed in the Bill. It is not possible for us to take up every item of the classes of heirs in the enumerated heirs in clause 5 of the Bill but taking only class 1 heirs in the compact series and the 1st

series of heirs who succeed to the intestate estate immediately we find that sons and grandsons of pre-deceased sons and their father being predeceased are all the male heirs in the compact series which militates against the principle of *Sradh* which recognises sons only as eligible for offering it in preference to the grandson and great grandson their fathers being predeceased. Can there be anything more sound than this and should the family be at once split up by allotting shares to the subordinates to get them by suits. The framers of the Bill have not considered this point at all. Then take the case of females who come as full co-heirs. The widow, the daughter widow of a predeceased son and the widow as a predeceased son of a predeceased son. These female heirs are made absolute owners having full rights of transfer, etc. What if these widows transfer their rights to men of their choice or for valuable consideration and leave the family and marry as they like. The law will not interfere with such transfers nor such marriages but if the Hinduism cultured women do not do so that will be in spite of the encouragement of the law as framed. Can any family stand for any time under such conditions. Then consider also that the daughter who is a simultaneous heir may be also heir as widow of another family possessing property and the widows who are heirs simultaneously may be also heirs as daughter in other estates. The result will be that female heirs in one family may be the female heirs in other families as well thus splitting up all Hindu families and dividing all Hindu estates into fragments. This feature apart from the religion one should have struck the framers of this Bill. Indeed all these considerations weighed with the framers of the Hindu Law of Succession limiting the woman's rights.

Then take the law of marriage as enunciated in the Bill. It is difficult to follow what is meant. If the intention is to ban all other marriages according to Hindu Law the effect will be disastrous. There are millions of Hindu males who have two or more wives and if they marry more than one wife even after passing of this Act, are the marriages to be illegal and the issues made illegitimate, law may do so but Society will always recognise such marriages. The law of divorce should not have been made applicable generally but only in cases where according to custom prevailing amongst any caste or sub-caste divorce is permissible the law of divorce should have been applied to this limited extent for the reason that divorce is not looked with favour in Hindu Law which also looks down upon widow marriage. The framers of the law should have considered that Indians of different castes and sub-castes look down upon widow marriage and divorce even when they are permitted.

The other provisions are innovations no doubt but not so reactionary in character.

If as is stated in the Statement of Objects and Reasons the object is to make the Bill one of a permissive character and not of a character imposing a compulsion or obligation on the orthodox section of the community and if it is claimed therein the only purpose of the Bill is to give a growing body of Hindus, men and women the liberty to lead the life which they wish to lead without in any way affecting or infringing the similar liberty of those who prefer to adhere to the old ways, there ought to be a provision in the Bill to this effect—

As proviso to S. 2, clause (1) may be added as follows:

"Provided that the Code shall not apply to Hindus who have a conscientious objection to the Code and who prefer to adhere to the old ways and the Code shall not invalidate any succession or marriage or adoption done in this old ways of Hindu Law not otherwise invalid".

Council of Shri Bharat Dharma Mahamandal Benares.

1. After an exhaustive examination of the Bill relating to Succession, Marriage, Divorce and Adoption, etc., the Council of the Mahamandal has come to the conclusion that notwithstanding the disinterested object contemplated by the provisions of the Bill to fit in the existing Hindu Law with the new pattern of present days' tendencies, it will sadly fail to bring about the desired reform through the proposed amendments which instead of simplifying

the old, complex and intricate provisions of Hindu Law will make them still more complex and perplexing thereby throwing the society off its old, well-tried and impregnable moorings which have withstood the test of times.

2. The Government and the so-called reformers of the present day should, before attempting at reforms, above all, acquaint themselves with what the Dharma of the Hindus is and what are the fundamental principles of the eternal creed of the pre-historic Hindu nation. According to the eternal religion (Sanatan Dharma), 'Dharma' as proved by the Vaidic philosophy, is that Divine Might of the Almighty God which holds the universe and helps it—both microcosm and macrocosm—and the individuals and nations to make an ordered progress in this as well as the next world and to reach the realm of Heaven. On the other hand, the essential principles of the Sanatan Hindu Dharma creed are sixteen in number. The first and foremost of these principles is the faith in what is called (1) *Sadachar*, which comprises of certain well-defined rules and conducts of the physical body with a view to maintaining perfect purity of body and mind and thereby acquiring Dharma; the next is a faith in (2) *Sadvichar*, which is keeping the faculties of the mind in higher spheres by dint of spiritual thoughts, the external symbol of this being the *Sikha* preserved on the head of every Sanatanist as the temple; the third is the unshakable faith in the all-beneficial utility of (3) *Varna Dharma*, which recognises castes of Brahmin and others by birth; the fourth is the crowning glory of (4) *Satitva Dharma* of Arya womanhood, the essential characteristic of which is the Hindu women's chastity and self-dedication (loyalty to husband) of a culminating degree which ensures preservation of the purity of the Hindu race perfectly intact; (5) *Ashram Dharma* is the well known four stages of life of the male members of Hindu society for regulation and disciplinary training conducive to uninterrupted progress of spiritual perfection in the four successive stages of life—*Brahmacharya*, *Garhasthya*, *Banaprastha* and *Sanyas*; the sixth principle is an unflinching faith in the existence of the (6) *Daivi Jagat*—the mighty but invisible occult Government and Occult High Office-bearers of *Rishis*, *Devas* and *Pitris* etc., who administer and control every minutest and the biggest affairs and destinies of this mortal world; faith in the (7) *Avatarvada* which is the incarnations of the Almighty God Himself and of his Divinity's Occult High Office-bearers who appear and manifest with extraordinary power and wisdom in visible forms at times of dire needs to adjust and dispose of things beyond the control of any lesser agencies; faith in the several graded devotional practices of (8) *Upasana* (worship), including *Bhakti* and *Yoga*; faith in the efficacy of (9) *Moorti Puja* loosely called 'Image Worship' and in the mystic centres of *Tirtha* and *Pitha* which are connecting link with the Occult world; faith in the (10) *Shudda-Ashudda Viveka*—the scientific and philosophical theory and practice of what is termed "touchability and untouchability" for establishing connections with the all-pervading spiritual force as well as with the Occult world; faith in the Shastric ceremony of (11) *Yagna* and *Mahayagna*, i.e., special rituals performed for individual and universal welfare respectively invoking invisible help of the high Occult Govt. and to please its high office-bearers; faith in the (12) *Vedas* and *Dharma Shastras* being the sacred books revealed—the one directly and the other indirectly—from the Occult world through the invisible help of the *Devas* and *Rishis* and as such must not be interfered with by any human agency; faith in the Divine (13) Law of *Karma*—actions and reactions of body speech, mind and intellect as well as in the *Sanakaras*, i.e., the seeds of *Karma* and in several Shastric ceremonies of *Sanakaras*; faith in the principle of (14) *Janamantarvad* which is the theory of re-birth of the soul and the *Awagaman Chakra*—the occult cycle of birth, death and going to various invisible abodes and again re-birth in this mortal world and in the religious laws of marriage in order to help the departed souls of ancestors in the next world including the religious laws of inheritance in the interest of the departed souls in safe and regular order; faith in the (15) *Saguna* (with attributes) and *Nirguna* (attributeless) aspects of the Almighty God and faith in the (16) *Mukti*—the final liberation of the soul.

3. All Sanatani Hindus believe in these 16 basic prin-

ciples of *Dharma* which are enjoined in the Hindu scriptures. The *Vaidic* culture, the Hindu creed and the *Varanashram Dharma* have successfully passed the hardest tests of the ancient and modern histories. A Sanatani Hindu is a Sanatani Hindu if he has firm faith in the Hindu scriptures; if he does not, then he is not entitled to call himself a Sanatani Hindu. According to the creed of the Sanatani Hindu, the *Shastras* philosophically prove that *Shastras* are not man-made, as observed in the 12th principle mentioned above but are revealed from the Occult world to *Rishis* who are superhuman beings and as such these hoary injunctions of the *Shastras* relating to marriage, inheritance and succession, etc., are not liable to be changed or interfered with by human agency. No King nor any Government could so far bring about any such material changes. Even in the Buddhist period when Emperors like the Great Asoka and Mighty Sudhanwa embraced Buddhism, even then, the most scientific sociology of the Hindus based on the unchallenged Vaidic philosophy, remained unaffected. When, however, Buddhism tried to interfere with the authority of this *Varnashram* order of the Hindus it was banished from its motherland. For centuries during the autocratic rule of the Mohammedan conquerors, the Mohammedan Kings failed to cause any palpable harm to this socio-religious organisation.

4. From what has been observed above, the conclusion is irresistible that the Bill is uncalled-for in every consideration and if passed into Act will upset the Hindu Social life in its vitally important aspects such as marriage, succession, adoption, etc., the Bharat Dharma Mahamandal, therefore, strongly protest against the passing of the Bill and concludes that it would be in the best interest of the rulers and the ruled to throw aside the Bill even before its discussion before the Assembly.

Dr. Sachchidananda Sinha, M.L.A., Bihar

In my opinion the draft Hindu Code deserves careful consideration at the hands of the Central Legislature with a view to its careful revision and ultimate enactment. The draft Code is not—as it is—a perfect measure for enactment; but it is to be hoped that the Select Committee on the Bill will recast it in a form fit for its enactment. It is, on the whole, a liberal and progressive measure, and should be duly enacted, with suitable amendments; in the interests of a large section of people in this country.

District Bar Association, Patna

In our opinion many of the provisions of the proposed Hindu Code are extremely inopportune and fraught with such dangers that may sweep off the very Hindu Society and we herewith record our opinion of strong disapproval on some of its provisions.

PART II—INTESTATE SUCCESSION

The provisions of this part can be viewed on the background of two distinct schools of thought each opposed to the other. The one believes that the older laws and the Shastric rules by which the Hindu society is governed and regulated, maintain and ensure its stability, cohesion and strength and is conducive more to its religious and social well-being. This class of thinkers are averse to the revolutionising changes proposed by the Bill.

The other class of people may be those who believes in a sudden and wholesale changes of the laws and rules regulating the Hindu community considering them as necessary measures of reform and emancipation of a certain members of the Hindu community.

From either point of view the matter is connected with the very fundamental according to which the society is formed, grows or is expected to thrive or survive. Beginning with the family as the unit of society with certain safeguards for growth of individualism (by way of separation by partition by mere expression of intention) the joint family system has grown up. The entire Hindu community is a big congregation of such units of families and if the community as a whole is to be stable, compact and enjoy longevity the very units must be made to function in a manner and be regulated by such rules as to ensure and

secure their own stability as well as the stability of the community which they go to form by their congregation.

Essentially with this object is associated the theory of property and the rules of its devolution and the rules regarding interest by birth and the doctrines of survivorship. The rules which deny shares or inheritance to members walking out of the family and going into another family, such as daughters going into another family by marriage or sons given away in adoption to another family are natural and the essential conditions for the soundness of the joint family units and consequently the Hindu community.

The present legislation aims at totally dismantling and removing this very foundation upon which the structures of the Hindu community stands and at least it has kept solidarity by which the Hindu community has been able to withstand to innumerable external influences and has kept itself protected from being disintegrated into a mere collection of individuals.

The present legislation though it may be claimed to be a reformative is nevertheless completely disintegration. The joint family is governed with it the joint family property. The family property with the division of property to each devolution will very soon reach a stage of an individual with very insignificant possession and will be very weak until and the society growing out of a congregation of such units will be an extremely weaker one.

By this legislation making the sweeping and sudden changes the old house would stand demolished and raised on the ground and a new structure will be in a process of rection, what shape it will ultimately take and what comparative advantages and disadvantages will come out are matters of opinion on which there may be serious and incense difference which time alone can decide. The present time with all their tumultuous problems and the constantly changing environments and surroundings on account of innumerable unsettled and unadjusted factors from which no community can disassociate itself or could claim to be immune from their effects is most inopportune for a revolutionary and disintegrative piece of legislation like the one under question. Even if the proposed measures are considered to be proper to make law, we must postpone the matter for a more peaceful time when the old house should be demolished and the plan of a new one considered.

It is well known that no one thinks of demolishing one's existing house (even if very uncomfortable) during the rainy season.

A community is like a human body. Even if the human body suffering from ailments it can't be subjected to a treatment sudden and violent trying to change its functions from one extreme to the other without due regard to the intense strain which it may find itself subjected in the process and with regard to its power to withstand the strain in its ailing condition.

The Hindu community as a whole is passing through a period of adjustment with other and its surroundings both in land and foreign and to introduce a disintegrative piece of legislative causing a sudden and vast internal disruption, though based upon reformation inclination is extremely inadvisable at the present time. Cure the patient of his disease but do not treat him so violently or untimely that he either collapses or becomes a cripple or invalid.

With the advent of this piece of legislation the Hindu community will be faced with many new problems which it may not be able to solve in a sufficiently protective or proper manner at the present time. We are strongly of opinion that the provisions of Part II and Parts III and III-A are inopportune. Our opinion on the fundamental changes introduced by this legislation, has been outlined in the beginning.

PART IV—MARRIAGE AND DIVORCE

In our opinion the introduction of divorce and dissolution even in the case of sacramental marriage is not proper. Legislation should not be forced upon people who have at all times believed marriage to be a sacrament. It is a part of their religion. Philosophy and culture. Whether the sum total of good or evil arising out of purely contractual marriage is greater or less than those arising out of sacramental marriage is an unknown quantity and much can be said on either side. Under such circumstances the vital point is that the opinion in favour of contractual marriage should not be forced by legislation upon the mass of people who hold a contrary opinion. The Bill provides for both kinds of marriages, namely, sacramental as well as civil.

If it is claimed that greater number of people are in favour of divorce, then there is the way to them to take recourse to civil marriage.

Again considering the greater number of illiterate and uneducated women, they will be forsaken and divorced by their husbands on one pretext or other and considering their position it is hardly to be expected that they will be able to successfully avert it by vigilantly piloting through litigation in law courts. Now cases on behalf of women who have not able male folks to look after their affairs in court get bungled is well known.

In our view the women will be the greater sufferer by introduction of divorce in sacramental marriages though it may come as a boon to the very few of the modernised or ultramodernised ladies.

In our opinion sacramental marriage should be left entirely as it is. The enlarged provisions for civil marriage should be allowed for some time to work and if it finds favour with the people the introduction of changes into work sacramental marriages should then be considered.

Monogamy

In this country and amongst the Hindus the son is more a religious necessity. With monogamy in force a barren wife will have a very hard time and most probably will be murdered. In the East it is religion which makes a race and this is (literally) true of the Hindus. Cases of more than one wife where there are children are few and far between. The instances of Rajas or Maharajas or mere profligates are besides the point. The matter must be viewed from the outlook of life and conduct of the vast number of ordinary people who really go to make up the society. Sacramental marriages should be left undisturbed as it is and monogamy should not be introduced at least at present.

Secretary, Maithil Mahasabha Office, Lahariasari

"This Mahasabha is opposed to the Bill being passed into Act, as the Bill interferes with the principles laid down in the Hindu Shashtras and it only weakens the Hindu society."

GOVERNMENT OF INDIA
MINISTRY OF LAW

PAPER No. III

OPINIONS

on

THE HINDU CODE

(Introduced in the Legislative Assembly on the 11th April 1947 and published in the Gazette of India on the 19th April 1947.)

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No. 13—UNITED PROVINCES

Mr. L. S. Misra

LETTER FROM THE SECRETARY TO GOVERNMENT, UNITED PROVINCES, TO THE SECRETARY TO THE GOVERNMENT OF INDIA, LEGISLATIVE DEPARTMENT, NEW DELHI, No. 2457/VII-343-47, DATED THE 10TH SEPTEMBER, 1947.

I am directed to say that this Government does not express any opinion on the provisions of the Bill. Copies of the opinions so far received are enclosed in duplicate.

2. The Bill was published in English in Part VI of the United Provinces Gazette, dated May 31, 1947.

Mr. Ghulam Hasan, Chief Judge

The proposed Bill contains many useful provisions ending to reform the Hindu Law in certain respects but a view of the impending political changes I think the more appropriate moment for considering codification of Hindu Law would be when the Union Legislature starts functioning.

I got the Bill only yesterday, and my impressions about the proposed legislation are based upon a hurried one hour's reading of it.

Hindu Law is to a very large extent based upon religious susceptibilities and spiritual necessities of a Hindu, and I find myself averse to changing it so radically as to convert it into a mere secular Code unless conditions of the society render such a course essential in any special direction. While unification and codification are desirable I apprehend that a complete departure from the traditional Hindu Law should be avoided as far as possible. I am not in favour of the abolition of the present Hindu joint family system and consequent fragmentation of property. The proposals relating to adoption appear to me also to be repugnant to the ordinary Hindu nations.

The introduction of divorce within the well defined limits as envisaged in the Bill would appear necessary. Beyond this I have nothing to add to the opinions of Honourable P. K. K. and Honourable M. H. K., JJ. with which I generally agree.

Honourable Mr. Justice P. K. Kaul

I agree generally with the opinion expressed by Mr. Justice Kidwai and would content myself with drawing attention to two other points:

(1) Under Clause 5 of the Bill a daughter and son succeed together. This change is being introduced apparently for the benefit of the daughter. The proposed change, however, ignores the existing state of affairs in Hindu society. A very large percentage of Hindu fathers leave unmarried daughters whom their brothers, irrespective of whether they inherit any property from the father or not, consider it a social obligation to support and see married. In our country where 75 per cent. of the population consists of agricultural tenants there is not much that the sons inherit from their fathers. But the existence of the social obligation to which reference has been made, makes it incumbent upon them to come to their unmarried sisters' help. If daughters are allowed to share simultaneously with their brothers in the property which may be left by the father in a very small number of cases, this may lead to the brothers' disregarding their obligation about their sisters' support and marriages and the suggested change instead of being to the advantage of the daughters prove detrimental to their interest except in an infinitesimally small percentage of cases.

(2) Under clause 11 of Part VI of the Bill a widow's right to adopt terminates when any Hindu son of her husband dies leaving him surviving a Hindu son, widow or son's widow, and once terminated the widow's right to adopt can never revive. This is generally taken to be the existing Hindu Law as stated in the current text books. The correctness of this view has been doubted and there seems to be no good reason on principle why a Hindu mother may not be able to perpetuate the line by adoption if her son dies leaving a widow who remarries or capriciously refuses to make an adoption. I would, therefore, suggest that Part 2 of this clause be deleted. See *Bapuji Ramji Patel versus Gangaram Madhwarao Deshpande and others*, A.I.R., 1911, Nagpur page 116; and *Mst. Prem Jagat Kuar and others versus Harihar Bakhsh Singh and others*, 1946 Oudh Appeals page 32, at page 46.

Honourable Mr. Justice M. H. Kidwai

It is not possible to give in a short time a considered opinion on all the provisions of the Bill under consideration which covers a very wide field and runs counter to many of the deeply cherished principles of Hindu jurists. Moreover the Hindu Law extends over a vast territory in which, although it is known as Hindu Law throughout, different forms of it have prevailed for a very long period of time and ancient and immemorial customs have been established. It is now proposed to codify and unify the law. Laws develop in accordance with the requirements of the people to whom they are applicable and, although there is in theory an ideal system of law based upon unexceptionable principles, it is difficult to determine without a great deal of research and discussion what that ideal is. It would, therefore, be rash for anyone to venture an opinion within the space of a few days or hours on a legislative measure of such wide reaching effect.

Further at the present moment it is not known whether such pieces of legislation will lie within the legislative powers of the Provincial legislature or whether they will be dealt with by the Union legislature. The Bill contemplates that the Union legislature will deal with succession to all properties other than "agricultural land;" because, under the existing Government of India Act, land is in the list of Provincial subjects. Thus, if this piece of legislation is passed, confusion will become worse confounded because there will be one law of inheritance relating to agricultural land and another relating to all other kinds of property. This is certainly not desirable. Further it may well be that the entire power of legislation with regard to the personal law of the citizen may

be delegated to the Provincial legislature which may then legislate having regard to the peculiar requirements of the province concerned. In the circumstances it is desirable at least to postpone a consideration of this piece of legislation.

I am well aware that there has been a demand for some reform of Hindu law to bring it into line with modern conceptions. At the same time there has been considerable opposition to this on the ground that it is not necessary that every thing which is modern should be either desirable or good and that it is just as possible that the moderns may be more mistaken than their ancestors. This is a controversy to which the fullest latitude should be allowed not only in the legislature but also in the press before any definite step should be taken. Such laws have a far-reaching effect and the attempts that have so far been made to amend the Hindu Law have, in most cases, created serious anomalies. Care should be taken that such anomalies should not be created now. Codes such as the proposed one which deal with marriage, divorce and inheritance should not be altered from day to day and, therefore should be well thought out. This cannot be said of the Bill under consideration. To give only a few instances. In Part I, section 5 (i) the word "related" is defined as including the relationship of an illegitimate child to its mother but what the effect of this is is not apparent. In the definition of the word "son" in Part II, section 2 (c) the word "son" is defined but no mention of an illegitimate son is made. Thus though an illegitimate son is related to his mother and her other offspring, he is not her son for the purposes of inheritance because he does not come within the definition of "son" in Part II. This is a serious defect.

A question of policy which arises in this connection is that among a large number of Sudras an illegitimate son also takes by inheritance to his father. He will no longer be able to do so. It may be that no new law conferring rights on illegitimate children should be framed on the principle that this would be encouraging immorality but, when the right already exists, there is no justice in terminating it, because it is punishing the innocent offspring for the guilt of their parents and is not in accordance with social justice.

The Bill devotes great attention to increasing the rights of women. This is but right and proper since these rights have too long been ignored. Nevertheless men should not now have injustice done to them because women have so long been unfairly treated. Some of the defects of the scheme of inheritance may be pointed out:—

(1) When a uniform rule of law for inheritance is laid why is an exception made in the case of custom of single heir succession?

(2) The widow is given a share equal to that of the son although the widow has only herself to maintain while the son has not only to maintain himself but also his family and to keep up the family traditions.

(3) A helpless mother comes after a daughter's son although the claims of the former and of the father are greater than those of the latter.

(4) Uterine brother and sister are not among the heirs at all until the distant relations are dealt with, i.e., a mother's son or daughter are postponed to a mother's brother's or sister's son and even to a father's father's brother's son's son's widow.

(5) There should be no scope for the succession of such persons as the *acharya* or *pishya*.

(6) When a widow succeeds jointly with a son and gets an equal share there is no reason why a husband should not succeed to his wife's estate jointly with the son and daughter and also get a similar share.

(7) There is no reason why the woman's own heirs, e.g., her illegitimate son should not succeed to a woman's estate in preference to her son's heirs or why her father's heirs, who are mostly her own heirs, should be postponed to the husband's heirs.

(8) There is no occasion for a provision for disinheriting an unchaste wife. This always causes mischief and, if the conditions laid down in section 19, Part II, are fulfilled either the husband will have divorced her or he will have condoned the unchastity.

(9) The provision disinheriting a convert is opposed to the caste disabilities removal Act.

Many other defects of a similar nature may be pointed:

With regard to the chapter dealing with marriage the following matters require consideration:—

(1) Enforcing monogamy is not always conducive to good morality: it has led to widespread concubinage and immorality particularly in European countries.

(2) Provision may be made for sterilisation of idiots and lunatics by a separate law but their marriage should not be forbidden.

(3) The minimum age limit for a country like India is too low and this will operate adversely in the case of poor village people who cannot protect their sons and daughters so effectively from temptation.

Similarly throughout the Act, particularly in matters relating to divorce, there are other objections, but it is difficult to enumerate them all.

Finally another serious defect in the Bill which requires remedying is that the sections of each chapter or Part are numbered separately. This will cause confusion. All the sections should be numbered serially.

Honourable Mr. Justice S. B. Chandiramani

In the very limited time at my disposal it is not possible to make any detailed criticism of the various provisions of the proposed Hindu Code. I must, however, say that a very bold step has been taken to introduce social reforms in Hindu society. The status of women has been raised. Daughters have been given the right to inherit property. Where dowry system prevails, provision has been made that the consideration received for consenting to a marriage shall be deemed to be the property of the bride. Some reform in marriage has also been introduced. Divorce, which was practically unknown in Hindu society, at least among the higher castes, has now been recognised. This is a reform in the right direction. The joint Hindu family system, which has been disintegrating for the last many years, has been given the final death blow and has been abolished.

The law has been amended, simplified and codified in respect of the most important every-day common incidents of life in Hindu society. The law has been laid down concisely and clearly in respect of intestate and testamentary succession, marriage and divorce, maintenance, minority and guardianship and adoption.

From the superficial scrutiny of the Bill it appears to me that a slight amendment to section 4 of Part I of the Code is necessary. A valid custom should be one which is "not unreasonable" or "not opposed to public policy" and, in addition, it should also be not opposed to any express enactment of the legislature. Accordingly I would suggest addition of the following words,

"or to any express enactment of the legislature."

to the first proviso to section 4 in Part I of the Code.

I support the Bill.

Rai Bahadur Pt. Brij Mohan Chandola, M.A., LL.B.,
President Garhwal Bar Association,
Pauri, Garhwal.

It is really daring to hazard one's opinion on a matter like this in a few words. Though there is no doubt that the Rau Committee has done much laborious work in drafting the Bill, yet one cannot ignore the fuller and more comprehensive works on the Hindu Law, by Mayni, Sarkar, Sastri, Mulla, Trevelyan, Dr. Gour, etc., their name is legion indeed. It was Dr. Gour who first gave me the idea of a full Hindu Code and wrote his Hindu code in the Hindu Law. These works are well known and men are all familiar with them and the excellent way

in which they have been written. One would now have naturally expected a still better and more comprehensive Bill written in a still clearer and more familiar style maintaining the characteristics and genius of the Hindu Law and reflecting also the spirit of the present times: The present Bill aims at amending and codifying certain branches of the Hindu Law; this means that now we have to depend on the above works and the present Bill (if passed into a statute). This must result in confusion worse confounded. The law embodied in the above fuller works governs the various country like large portions of the Hindu world of this vast sub-continent of India and represents the various proper schools of the Hindu Law affecting some 25 crores of persons. The Bill proposes first to define custom and usage but it does not bring into prominence the fact that they are in derogation of the general law and gives no enumeration of the customs or usages it saves. It professes to formulate a code of the Hindu Law which should be as complete as possible, it seeks to provide uniformity in all branches of Hindu Law for all Provinces and for all sections and to do away with old different provisions of the Hindu Law on the score of simplifying them (an impossible feat indeed as the actual performance or the present Bill goes to show), it professes not to affect or to affect or infringe the liberty of those who prefer to adhere to the old ways. The Bill, however, as it stands, deals with only certain branches (and refers to other branches of the existing law such as the Indian Succession Act of 1925) and in doing so adds several unpalatable matters; it does away with the practice of the millions of persons and provisions that have gained ground for centuries and established rights thereunder. In seeking the so-called uniformity it at once leaps into the dark sacrificing the well-established certainty of law and introduces sudden innovations (*omnis innovatio plus novitate quam utilitate prodest*) unmindful of customs, traditions and settled laws; it seeks to abolish the mitakohhara law of survivorship and the Mitakohhara right by birth; it seeks to throw into the back ground the law of the special requirement of Chastity in connection with inheritance and maintenance,

we have साध्वी पत्नी & साध्वी भार्या in sanskrit पति

या नाभिचरति मनो वाग देह सयता सा भ्रतृलोकम् आन्यति

सद्भिः साध्वीति चोच्यते ॥ मनुः ५.१६५ ॥

which is rendered by Sir W. Jones. Thus—"While she, who slights not her lord, but keeps her mind, speech and body, devoted to him, attains his heavenly mansion, and is called sadhvi or virtuous by good man" (Manu, V, 165); it seeks to abolish polygamy and make monogamy compulsory and to enter particulars relating to a Sacramental marriage in a register (the Hindu Law permits a man to have more wives than one at the same time, although it recommends monogamy as the best form of conjugal life.....monogamy is the general rule, though there are solitary instances of polygamy. This usage, however, cannot but be held just..... There are various reasons for and against polygamy which is sought to be interdicted by legislation deemed by some as the panacea for all evils in India. The Hindu institutions are founded on the requirements of the diversified human nature and condition, and ought not to be lightly interfered with, at the instance of persons distinguished by egotistic sentimentalism and spirit of intolerances. It is far better that those men of property, that are impelled by inclination should take the responsibility of openly having several wives than that they should secretly contract as many left-handed marriages as they please..... (Sarkar Sastri's Hindu Law of 1940 p. 142); it seeks to provide a certain artificial and protracted procedure for a civil marriage which may ultimately supersede sacramental marriages and reduce them to a mundane plane or a civil contract (the provisions in the Bill as to the civil marriage is certainly a novel tedious innovation for Hindus of religious conservative ways); it seeks to apply certain sections of the I. P. C. to punish certain specified violations; it seeks to introduce the practice and law of divorce on a large or general scale; it seeks to introduce registration in the matter of adoption; etc., etc.

I have been a life-long student of the Hindu Law and have been studying it in works in English and the original Sanskrit; I have seen it in actual practice during these long years of my life as an orthodox Hindu (I am 73 years now). It now seems necessary to make certain amendments and provisions in the present Hindu Law in the light of the views of the Hindus as a whole and in the light of the respective provinces. I would maintain the various schools. If a compilation is to be made, it must be a self-contained and consistent code comprising all branches of the Hindu Law and for this purpose I would suggest a full select committee of several modern aged scholars and several aged Sanskritists like those of old (the Hindu Law being locked up in Sanskrit, the most perfect and difficult of the ancient classical languages).

I am not for blindly or implicitly imitating the foreign or western laws (I do not think that registration is at all necessary in matters of sacramental marriages and adoption). I wish to preserve the distinctive genius of the Hindu Law. Though there are some sensible provisions in the Bill taken from the current law, I am wholly unable to call it the "Hindu Code" as it does not represent the views and practice of the generality of the Hindus and adds obscurities and difficulties to the present law and practice.

I am unable to support the Bill in its present form and so I am strongly of the opinion that it should not be passed into a law.

Mr. Yuvraj Dutt Singh of the British Indian Association, Oudh.

After most carefully considering the Bill, described as "A Bill to amend and codify certain branches of the Hindu Law", the B. I. Association, Oudh, is most emphatically of the opinion that the whole of this Bill, or, in any case, considerable portions of it constitute most revolutionary departure from the fundamental principles and ideals of the Hindu religious system of law. Indeed, the whole proposed legislation would appear to be designed and calculated to mark and effect drastic changes in the structure of the Hindu life. It is apprehended, therefore that the provisions of this Bill are bound to clash violently with the belief and faith of the overwhelming majority of Hindus.

The Association has been watching with utmost anxiety and apprehension the frequent attempts made to change the Hindu Law. There are, it seems, certain small groups of persons, who describe themselves as advanced and progressive sections of Hindus and they have made a fetish of a complete transformation of all existing ideas of life. These people, impelled by their reckless enthusiasm, are frantically seeking freedom from religious obligations, which they find inconvenient, by procuring legislative sanction for leading modernised life. A series of enactments have already been haphazardly pushed through, which have directly encroached upon and disorganised the Hindu ideals of life. This bill is the latest instalment of this kind of legislation.

An analysis of the very statement of objects and reasons of this Bill discloses most dreadful confusion of thought and purpose which appear to have prompted its preparation. The statement sets out, *inter alia*, that for some time past there have been attempts to promote and pass piecemeal legislations on different topics of Hindu Law: that there was a growing public opinion in the country in favour of a consolidated and uniform code dealing with the different topics of Hindu Law for all the Provinces and for all sections of Hindu society, that no thoughtful observer of the present conditions and trends in Hindu Society can fail to be impressed by the great need there is to alter the law so as to make it fit the new pattern to which Hindu Society seems to be rapidly adjusting itself and that the Bill aims at providing uniformity in all branches of Hindu Law. The statement most ingenuously concludes with the remark that the only effect of the provisions of the Bill is to give a growing body of Hindus, men and women, the liberty to lead the lives which they wish to lead without in any way affecting or infringing the similar liberty of those who prefer to adhere to the old ways.

Now, it may at once be observed that this statement of objects and reasons is very self-contradictory and inconsistent. It will be found that there is great divergence between the declaration of objects and reasons and the provisions of the Bill. The statement starts off with the professed object of checking and avoiding piecemeal legislation urges the necessity of consolidating the Hindu Law and achieving uniformity by its codification, yet its own declared purpose only is "to amend and codify certain branches of Hindu Law," which again amounts only to piecemeal legislation. Indeed, it cannot any how be described as codified or consolidated legislation; considering particularly, that it does not deal with the whole of the Hindu Law and it professes, in the statement of object and reasons at least, to proclaim the freedom of the different sections of Hindus to lead the lives which they wish to lead. It demonstrably appears, from a perusal of the Bill altogether, that it fails even to achieve its own purpose. The inference seems irresistible that the sole object, which this proposed legislation may be able to accomplish, would be to disorganise Hindu Society almost irremediably by an experimental measure, and to sow the seeds of frightful dissensions amongst the various sections of Hindus. It may even be thought that people who can on account of their personal prejudices and preferences, find it inconvenient to conform to and follow the regimen and discipline of religious life, wish to break away gradually from its restrictions which appear to them to interfere in any way with their convenience. Thus the various branches of the Hindu Law are assailed from time to time and sought to be altered to serve the immediate purposes of these advanced sections or even individuals who have some following.

It is, however, admitted that piecemeal alteration and amendment of Hindu Law, or any law for the matter of that, is always an undesirable thing. It cannot be denied that when we are dealing with one topic of the law then we have necessarily to remember that other topics are not without their reactions on the branches under consideration. Every branch of a particular system of law is all of a piece and pattern with the basic conception of it which in the case of Hindu law, for example, is the ideal of Nirvana or the spiritual elevation and edification of the soul through the turmoils and vicissitudes of worldly life. Therefore, when the need for any comprehensive and co-ordinated solution of any problems of religious laws is felt, it can only be satisfied by a complete survey of the whole religious system which creates the law. All the various subjects, which are essentially co-related and interdependent, have to be tackled together. The moment this essential principle of maintaining and preserving the motive purpose is accepted, the conclusion follows that there should be no piecemeal alteration and amendment of the branches of a law. Careful removal of the abuses of the whole law, even if delayed, rather than hurried piecemeal legislative changes and alterations, however well intentioned, would always be preferable. Quick remedies, which would themselves be liable to alteration and amendment every few years, are always disastrous.

It may be conceded that consolidation and codification of the whole system of law may be a laudable object; apart of course, from the objection that codification makes the law rigid, stereo-typed and stagnant, and that it also stops the process of liberal absorption. But codification necessarily implies that the law itself is to be consolidated and not that it can be changed and altered against its own purpose. Judging from this point of view piecemeal alteration of the branches of a law would never be justifiable, so far at least as the positive law is concerned.

Considering, however, the whole question of the alteration and amendment of the Hindu Law, and, indeed of any religious law, it is seriously doubted if the legislative authority can ever be invoked for this purpose at all. No legislature can justifiably claim to possess the authority and power to alter and amend religious laws by its own power. To suggest that it can assert or exercise any such authority, would be an absolute futility. To suggest this particularly with respect to Hindu Law, which is indisputably a religious law based upon Divine revelations and which has been consolidated by spiritual precepts and practices, accepted and unquestioningly followed for centuries and centuries, would amount almost to profanation

the fundamental basis and its ground structure can never be subjected even to any extraneous reformation, much less alteration. Indeed, religious laws believed to have sprung from divine wisdom, with its essential attribute of infallibility and universality, are always deemed to be inviolate and immutable. Divine wisdom can not be superseded by the circumscribed human wisdom of even the highest calibre. It need hardly be repeated here that, according to Hindu conception, whatever is in the Vedas is absolutely unchangeable and eternal. An unalterable belief and faith in its efficacy and efficiency; is a necessary token and guarantee of one's adherence to a religious system. If there is the slightest deviation from the religious tenets, or one's faith and belief in them is shaken, then there is an automatic dissociation from the religion itself. It is then a clear case of apostasy. Consequently there can be no justification for securing to such people any support and protection from that religious system, much less any justification for permitting such people to alter and amend the law itself for their own benefit and satisfaction. To permit the mutilation of a religious law in its own name at the instance of those who do not wish to adhere to it would be nothing short of an outrage.

In any view of the matter, however, the Legislature has no right to enact laws against the religious, moral and eugenic ideals of a society, or even against the age-old habits and religious customs of a people. The proper course to follow, if any reformation is required, would be to discover the evils and to eliminate them from the habits and practices of the people by moral and social influences.

This is, however, only so far as alterations and amendments of religious laws in their entirety are concerned. But as regards piecemeal legislation with respect to particular branches, all that need be said again is that it is neither justified nor warranted on any grounds whatsoever. Every part of Hindu Law is necessarily an integral part of the whole scheme of it. Interference with any branch of that law is bound to upset its balance and equilibrium. There can be no conceivable justification for alteration of the various branches of the Hindu Law merely on account of its non-observance or misapplication, and it would result in making the confusion worst confounded. If there are hard and unfortunate cases, as there always are, if there are special circumstances of modern life, or if there are special prejudices and preferences of individuals or particular sections of people, then the proper remedy and redress can be secured for them by separate and independent legislation, with which they can optionally govern themselves; as in the case of Civil marriages already provided for and similar enactments which have been already passed and enforced. It may incidentally be pointed out that, as a rule difficulties are felt and experienced by persons by their own fault and by reason of the non-observance of and violation of laws and religious duties. The remedy then is not to change the law, but to reform and educate people to a proper sense of their ethical and legal responsibilities. Steps should, therefore, be taken in the direction of making the existing laws comprehensible, and to ensure and provide for proper propagation of the law and their due enforcement.

The Association, therefore, deems it necessary to record its most emphatic disapproval of the proposed legislation. It is regretted that these baneful attempts are being made deliberately or unwittingly, of altering and changing the whole Hindu system of life in this manner, whereby the very foundations of the Hindu Law, if not the Hindu religion itself, are bound to be shaken. These observations are not made only in conformity with and support of the orthodox opinion, but on the basis of the established principles of the Ethical jurisprudence recognised all over the world.

Coming, however, to the Bill itself, it may at once be stated that careful consideration of its provisions clearly discloses that this Bill contemplates and marks very serious departure from the basic principles and the spirit of the Hindu Law. Some portions of the Bill, such as those dealing with customs, stridhan, marriages and adoption etc. are of a very revolutionary character, as only a brief analysis of some of these provisions will readily

show. Part 1, dealing with preliminary matters, provides in Cl. 3:—

"Operation of Code in relation to previous customs and usages:—

In regard to any of the matters dealt with in this code, its provisions shall supersede any custom or usage not hereby expressly saved.

Now, it appears that very few, if any, customs and usages are "expressly saved" in this Bill. Inevitably therefore, great deal of difficulties will be experienced on this account and litigation would be frightfully multiplied.

Part IV, relating to Marriages and Divorce, in Chapter 1, Cl. 2 provides:—

"2. Two forms of Hindu marriages:—

There shall be two forms of the Hindu marriages, namely:—

(a) A Sacramental marriage.

(b) A Civil marriage.

This is followed by Cl. 3, *"Requisites of a Sacramental marriage—A Sacramental marriage may be solemnised between any two Hindus upon the following conditions, namely:—*

(a) Neither party must have a spouse living at the time of the marriage,

Then follows Cl. 7 *"Requisites of a Civil marriage—A Civil marriage may be contracted under this chapter by any two Hindus, upon the following conditions, namely:—*

(1) Same as in the case of Sacramental marriage. The other conditions are also more or less similar.

It may first be pointed out that Sacramental marriage is nowhere defined in the Bill. Taking it, however, to mean the ordinary Sacramental marriage under the Hindu Law, it seems rather anomalous that it is subjected more or less to the same conditions as a Civil Marriage under the Bill and Condition No. 1 is identical. Virtually, therefore, upon a comparison of the two forms of marriages provided and the conditions thereof, the conclusion naturally is that in reality only the Civil form of marriage is to be permitted. This is wholly incomprehensible in view of the declared object of not interfering with those who wish to adhere to old ways, and further because Sacramental marriage is expressly saved. In any case, it seems, it will be only a truncated case of Sacramental marriage which may be left in future, if this legislation is passed. It is needless to add that marriage according to Hindu Law is a Sacrament and a Sanskara and interference with the subject is a direct encroachment upon it.

Apart, however, from the anomalies pointed out above, a reference may also be made to Cl. 24; relating to Punishment of Bigamy, which lays down that, "Any marriage between two Hindus celebrated after the commencement of this code is void, if at the date of such marriage either party had "husband or wife living; and the provisions of Sections 494 and 495 of the Indian Penal Code (XLV of 1860) shall apply accordingly". Now, considering that this provision is to apply indiscriminately to all Hindus and "Any marriage", including Sacramental Marriages, the implications may well be realised.

The most pernicious provisions of the Bill are, however, contained in Chapter III; relating to Nullity. Invalidation and Dissolution of marriages. Cl. 9 therefore lays down in effect that *either party to a marriage celebrated before or after the commencement of this code may, at any time, present a petition to the District Court or to the High Court, praying that his or her marriage may be declared null and void. Further, Cl. 30; relating to decree for Dissolution of marriage, lays down that "Either party to a marriage celebrated before or after the commencement of this code may present a petition to the District Court or the High Court, praying that his or her marriage may be dissolved"*

Now, it need hardly be pointed out that the introduction of this idea of Dissolution of marriage or Divorce in any form is a direct violation of the most sacred tenets of the Hindu religion and cuts at the very root of the family structure of the Hindus. It may even be deemed a positive outrage against the entire religious conception regulating the matrimonial relationship. Its repercussions can well be visualised when we consider the fact that

these provisions are to be given retrospective effect against all kinds of marriages. Marriage in Hindu Law is regarded as an indissoluble union of the husband and the wife extending to the next world. Neither party to a marriage, therefore can Divorce the other unless Divorce is allowed by custom, as amongst a certain lower classes. It may be remarked, incidentally, that it was this principle of indissolubility of marriage, and the duty enjoined upon a Hindu wife, which gave the Hindus the most marvelous traditions such as those of Seeta and Savitri.

These provisions relating to Divorce obviously constitute a most drastic innovation, which is most dangerously calculated and likely to create awful confusion and disturbance in the whole domain of the domestic life of the Hindus. Moreover, these provisions are directly against the declared object of the Bill so far, at least, as Sacramentally result in complete disintegration of Hindu Society, recognised by the Bill. It is not necessary to warn that, the moment any idea of dissolution of marriage or divorce is accepted by the Hindus, then the whole fabric of Hindu family life will be shattered to pieces, which will ultimately result in complete disintegration of Hindu Society. The traditional status and position of the Hindu family must be maintained intact, whatever liberties may be given to the people who wish to adopt in future an independent plan for constructing their lives on modern lines. If, however, they desire legislative sanction, then they must do so by procuring separate legislation independently of the Hindu Law.

The Association, however, desires to make it perfectly clear that they would be in fullest sympathy with the purpose of making Hindu Law easily comprehensible and uniformly applicable to the largest body of Hindus. But they urge most earnestly that the religious basis of the Hindu Law must be preserved, as it forms an indispensable tie between all sections of the Hindus. It is always dangerous to introduce new rules simply on supposed grounds of justice and equity. It must be remembered that all the evils which may appear to have crept into the Hindu system are due to lack of proper guidance or the weakness of public opinion to guarantee due adherence to and performance of religious duties. It must not be forgotten that, except in the case of a very small section of urban population of the modern and Europeanised type, the life of every Hindu is still influenced by and permeated with religious ideals and ceremonies. It has further to be remembered that the problems of the Hindu and even the extreme diversities and complexities which have grown amongst them, have economic and sociological background. There can, therefore, be no mechanical merger of the conflicting elements. No harmony can ever be achieved by compulsory blending. If any organic synthesis is ever established it will be only through general agreement and consent. Paradoxical, as it may seem, all the problems of Hindu religion could easily be solved by simple adherence to the simple fundamental principles of the religion. The religious problems generally arise when people complicate their lives by a doubtful allegiance to a religion which they profess but do not follow and practise. This happens also in the case of any kind of laws which are honoured only in breach and violation of them. No one who seeks to find peace and happiness can fail to secure it through the religion he professes, if he sincerely believes in it and follows it truly. What is needed, therefore, is not legislation, but simple interpretation and propaganda of religion through organised social service and proper cultivation of public opinion.

The Association, therefore, recommends that if the Hindu Law is to be codified, then it should be codified all at once after a most careful survey of the whole field. The entire range of the Hindu conceptions of life must be taken into account and re-established upon its fundamental basis within its natural frame work. A representative machinery should be set up, when times are propitious for such an undertaking, which should exhaustively survey the whole position and come to definite agreed conclusions from a purely Vedic and Shastric point of view. Every section of the Hindus and every shade of opinion should be consulted and fullest consensus of opinion sought and established with respect to all points of dispute.

This can be done only if the principle that the solution of all the problems have to be found within the religious scope and on the basis of Shastric sanctions. It is earnestly hoped, therefore, that the present proposals will be dropped in the larger interest of the people who profess to belong to the Hindu religion.

It may be emphasised once again that the Bill under consideration will lead to most disastrous consequences if it is enacted. It is apprehended that in the name of codification and consolidation, it seeks to make revolutionary changes in the Social order of the Hindus in utter disregard of their age-long traditions. If these proposals are not abandoned then they would inevitably lead to disruption of Hindu families, which will ultimately result in the disintegration of all their religious life without any compensatory advantages. In any view of the matter, however, this is a most inopportune time for pushing through this legislation of a most controversial nature. The conditions in the country are most abnormal, consequently, this legislation should not in any way be enacted at this stage.

Mr. A. P. Bhatnagar, Munsif, Amroha.

I am of opinion that the bill requires certain changes and corrections. I make the following suggestions. (1) The words "before the commencement of this code" in sec. (b) of part I unnecessarily restrict the definition of caste. These words should not find place in the definition of caste.

Sec. 5(b) should be as follows:—

'Caste includes the four primary 'varnas' and any cast recognised by the Hindus, but does not refer to any sub caste.'

(2) The definition of 'gotra and parvata' in sec. 5(f) of Part I is unsatisfactory. As the Hindu Law is being codified, the definitions of 'gotra and parvata' should be specific, and not in the form as drafted in the Bill.

(3) The definition of 'Part' in sec. 5(b) of Part I is redundant. It should be omitted.

(4) In part II sec. 7 all references to half share should be omitted. There appears no convincing reason why a principle of Mohammadan Law given $\frac{1}{4}$ share to daughter should be introduced in the Hindu Code.

I suggest that the rule (3) of sec. 7 of part II should be as follows:—

RULE 2—Each surviving son and daughter of the propositus shall take one share, whether such son or daughter was undivided or divided with the propositus or reunited with him.

In Rule 3 (1) the words 'and half a share in other cases' should be struck off.

The rule 3 (2) and rule 4 should be struck off.

(5) In sec. 14 of part II the grand child and the husband should rank along with the daughter and son as stridhan heirs of a deceased woman.

When a male Hindu dies, and his widow is given the right to inherit his property along with his other heirs, there is no reason why the husband of a deceased female Hindu should not have a corresponding right on the death of his wife.

(6) Part III relating to testamentary succession should be amalgamated in sec. 1 of Part II, and the heading of Part II should be "Succession" and not "Intestate succession."

(7) General provisions connected with succession i.e., sections in Divisions 1 and 3 of Part III-A should be incorporated in Part II. To be more specific, Secs. 1, 2 and 10 of Part III-A should be numbered as secs. 26, 27 and 28 of Part II respectively.

(8) Part III of the Code should deal with 'maintenance only'.

(9) Sec. 12 of Part IV is unsatisfactory. Suppose an objection is made under sec. 11 of the said part, the suit

is filed in court under sec. 12, the court decides the suit say in 2 years time, and the appellate court takes another 2 years in deciding the appeal. Should the parties desiring to be married together should remain unmarried for such a long period. This will be a highly unsatisfactory state of affairs.

I suggest when an objection is made to the Registrar under sec. 11, the Registrar should have the power to decide the objection summarily. He may either reject or accept the objection. The party against whom decision has been given by the Registrar may then file a suit in the Civil Court within 30 days of the above decision failing which the decision of the Registrar shall be final. If the matter comes before the Civil Court, it may issue temporary injunction against any party at its discretion. Such a procedure would avoid inconvenience to any party to the marriage. At the same time the provisions of secs. 22 and 24 of Part IV shall operate as check for a person intending to contract an illegal marriage.

(10) Suits under secs. 12, 29 and 30 of Part IV should be filed in the court of the Munsif, and not necessarily in the District Court or the High Court. It may be noted here that suits for dissolution and nullity of marriages under Mohammedan Law are filed in the court of Munsif. There is no special reason to make a departure in case of Hindus.

(11) I also suggest that the sections in each part should be in successive order to the sections of the preceding Part. The sections of each Part should not be numbered separately from the beginning as in the draft of the Bill. Thus the first Section of Part I should not be numbered as 1, but it should be numbered as 8 (because part I has 7 sections only). Secs. 2 and 3 of part II should be numbered as 9 and 10 so on. Now part I has 7 secs., and part II has 25 secs. Both parts have together 32 secs. Therefore the first section of Part III should be numbered as sec. 33. If this done it would be more convenient to refer to sections of the Hindu Code.

Bharat Dharma Mahamandal, Jagatgung, Banaras

I am directed to state that after an exhaustive examination of the Bill relating to Succession, Marriage, Divorce and Adoption, etc., the Council of the Mahamandal has come to the conclusion that notwithstanding the disinterested object contemplated by the provisions of the Bill to fit in the existing Hindu law with the new pattern of present days' tendencies, it will sadly fail to bring about the desired reform through the proposed amendments which instead of simplifying the old, complex and intricate provisions of Hindu law will make them still more complex and perplexing thereby throwing the society off its old, well tried and impregnable moorings which have withstood the test of times.

2. The Government and the so-called reformers of the present day should, before attempting at reforms, above all, acquaint themselves with what the Dharma of the Hindus is and what are the fundamental principles of the eternal creed of the pre-historic Hindu nation. According to the eternal religion (Sanatan Dharma, 'Dharma', as revealed by the Vaidic philosophy, is that Divine Might of the Almighty God which holds the universe, helps it—both microcosm and macrocosm—and the individuals and nations to make an ordered progress in this as well as the next world and to reach the realm of Heaven. On the other hand, the essential principles of the Sanatan Hindu Dharma creed are sixteen in number. The first and foremost of these principles is the faith in what is called (1) *SADACHAR*, which comprises certain well-defined rules and conducts of the physical body with a view to maintaining perfect purity of body and mind and thereby acquiring Dharma; the next is a faith in (2) *ADVICHAR* which is keeping the faculties of the mind in higher spheres by dint of spiritual thoughts; the external symbol of this being the Sikha preserved on the head of every Sanatanist as the temple, the third is the unshakable faith in the all-beneficial utility of (3) *VARNA Dharma* which recognises castes of Brahmin and others by birth; the fourth is the crowning glory of (4) *SATITVA Dharma* of Arya Womanhood, the essential characteristic of which is the Hindu Women's chastity and self-education (loyalty to husband) of a culminating degree

which ensures preservation of the purity of the Hinmas perfectly in tact; (5) *ASHRAM Dharma* is the well known four stages of life of the male members of Hindu society or regulation and disciplinary training conducive to uninterrupted progress of spiritual perfection in the four successive stages of life—Brahmacharya, Garhasthya, Vanaprastha and Sanyas; the sixth principle is an unimpeachable fact in the existence of the (6) *DAIVI JAGAT*—the mighty but invisible Occult Government and Occult High Office-bearers of Rishis, Devas and Pitris, etc., who administer and control the minutest and the biggest affairs and destinies of this mortal world; faith in the (7) *AVATARVADA* which is the incarnation of the Almighty God Himself and of His Divinity Occult High Office-bearers who appear and manifest with extraordinary power and vision in visible forms at times of dire needs to adjust and dispose of things beyond the control of any lesser agencies; faith in the several graded devotional practices or (8) *UPASANA* (worship), including Bhakti and Yoga; faith in the efficacy of (9) *MOORTI PUJA* loosely called 'Image worship' and in the mystic centres of Tirtha and Pitha which are connecting links with the Occult world; faith in the (10) *SHUDDHA-ASHUDDHA VIVEKA*—the scientific and philosophical theory and practice of which is termed "touchability and untouchability" for establishing connections with the all-pervading spiritual force as well as with the Occult world; faith in the Shastri ceremony of (11) *YAGNA AND MAHAYAGNA* i.e. special rituals performed for individual and universal welfare respectively invoking invisible help of the High Occult Government and to please its high officer bearers; faith in the (12) *VEDAS AND DHARMA SHASTRAS* being the sacred books revealed—the one directly and the other indirectly—from the Occult world through the invisible help of the Devas and Rishis and as such must not be interfered with by any human agency; faith in the Divine (13) *LAW OF KARMA*—actions and reactions of body, speech, mind and intellect as well as in the *SANSKAR*, i.e. the seeds of Karma and in several Shastri ceremonies of Sanaskaras: faith in the principle of (14) *JANMANTARVAD* which is the theory of rebirth of the soul and the Awagaman Chakra—the Occult cycle of birth, death and going to various invisible abodes and again re-birth in this mortal world and in the religious laws of marriage in order to help the departed souls of ancestors in the next world including the religious laws of inheritance in the interest of the departed souls in safe and regular order; faith in the (15) *Saguna* (with attributes) and *NIRGUNA* (attributeless) aspects of the Almighty God and faith in the (16) *MUKTI*—the final liberation of the soul.

4. All Sanatan Hindu believe in these 16 basic principles of Dharma which are enjoined in the Hindu scriptures. The Vaidic culture, the Hindu creed and the Varnashram Dharma have successfully passed the hardest tests of the ancient and modern histories. A Sanatan Hindu is a Sanatan Hindu if he has firm faith in the Hindu Scriptures; if he does not, then he is not entitled to call himself a Sanatan Hindu. According to the creed of the Sanatan Hindus, the Shastras philosophically prove that Shastras are not man-made, as observed in the 12th principle mentioned above, but are revealed from the Occult world to Rishis who are superhuman beings and as such these hoary injunctions of the Shastras relating to marriage, inheritance and succession, etc., are not liable to be changed or interfered with by human agency. No King nor any Government could so far bring about any such material changes. Even in the Buddhist period when Emperors like the Great Asoka and Mighty Sudhwa embraced Buddhism, even then, the most scientific sociology of the Hindus based on the unchallenged Vaidic philosophy, remained unaffected. When, however, Buddhism tried to interference with the authority of this Varnashram order of the Hindus it was banished from its motherland. For centuries during the autocratic rule of the Mohammedan conquerors the Mohammedan kings failed to cause any palpable harm to this socio-religious organisation.

5. From what has been observed above, the conclusion is irresistible that the Bill is unequalled for in very consideration and if passed into Act will, upset the Hindu social life in its vitally important aspects such as marriage, succession, adoption etc. The Bharat Dharma Mahamandal,

therefore, strongly protest against the passing of the Bill and concludes that it would be in the best interest of the rulers and the ruled to throw aside the Bill even before its discussion before the Assembly.

The Bill which is sought to be amended and codified in certain branches of the Hindu Law, is drafted on the basis of undivided India but the position now has to be considered on the basis of the division of India for it is to be considered as to whether the present Hindus living in Pakistan will be governed by this all India basis proposed Hindu Code or any other Pakistan Code will be substituted for Pakistan Hindus for their guidance and control for that portion of India. The law which is sought to be introduced is made applicable to all the Hindus including Budhists, Jains or Sikhs.

No. 14—AJMER-MERWARA

LETTER FROM THE CHIEF COMMISSIONER, AJMER-MERWARA, TO THE SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF LAW, NEW DELHI, No. F/17-17(CC), DATED THE 30TH SEPTEMBER 1947.

I have the honour to enclose a copy of the opinion received from Dewan Bahadur M. Har Bilas Sarda of Ajmer on the provisions of the Bill to amend and codify certain branches of the Hindu Law.

Dewan Bahadur M. Harbilas Sarda

The Bill is a most revolutionary measure and is disruptive of the present structure of Hindu Society.

The short title of the Bill is the Hindu Code. A Code of Law to justify the title should be all inclusive and self-contained. The present Bill is neither. In my opinion the proposed enactment is ill-framed. According to the Oxford Dictionary of the English language to codify is to systematize a thing. To amend is to alter a thing, even to transform it by including new additions and omitting existing parts. The Bill, therefore, aims at systematizing the existing Hindu Law, as well as altering or changing it even in its most vital provisions. To attempt to achieve the two quite different things at the same time is to jumble things in a matter which will govern the every day life of billions of people speaking different tongues, and living in different places and different environments, holding different views about domestic and social life. There is nothing in the Bill, or in the manner in which it is printed, to show what the amendments which have to be seriously considered are, and what are the merely systematized provisions of the existing Hindu Law.

The short statement of Objects and Reasons attached to the proposed Hindu Code is unjustifiably meagre, almost trashy, unsatisfactory and confusing. It says: "There is a growing public opinion in the country in favour of a consolidated and uniform code dealing with the different topics of Hindu Law for all the Provinces and for all sections of the Hindu Society. No thoughtful observer of the present conditions and trends in Hindu Society can fail to be impressed by the great need there is to alter the law so as to make it fit the new pattern to which Hindu Society seems to be rapidly adjusting itself."

It is surprising that the Government of India, which professes to consult public opinion and to be guided by it, should circulate for an expression of such opinion a Bill which, if passed, would destroy the bases of the Hindu Law (which it seeks to amend and codify) and disrupt the society for whose benefit the law is made, without fully explaining and giving cogent reasons for enacting the revolutionary provisions of the Bill in the Statement of Objects and Reasons accompanying the Bill or appending to the Bill the report of the framers of the Bill stating the principles which guided them in framing it and explaining the reasons which necessitated their taking such drastic action in changing the Hindu Law, if such a report was submitted.

The first object of the Bill is "to codify the different topics of Hindu Law for all provinces and for all sections of the Hindu Society." It is a pity that the Government and the framers of the Hindu Code have failed to realize

that time is not yet to attempt to do such a thing. It is hardly possible to frame a code of Hindu Law applicable to all provinces and all sections of the Hindu Society when the existing law differs from province to province and from one section of society to another, without mutilating the law or forcibly imposing the law of one province or community on the other provinces and communities. To have one uniform law for the whole country is a consummation devoutly to be wished, but the condition precedent to it is the welding together the various communities into some sort or some degree of homogeneity of social ideals and beliefs.

Absolutely nothing has been said anywhere as to the principles which have guided the framers of the Code in consolidating into one piece the Hindu Law applicable to all provinces and to all sections of the Hindu Society. Different Schools of Hindu Law prevail in different provinces. In Bengal the Dayabagh system is observed, while in the United Provinces, Bombay, Punjab and other provinces the Mitakshra school in its several branches prevails. There are grave differences of opinion between the two schools in many things and particularly in the law of inheritance. Neither the Statement of Objects and Reasons appended to the Code nor the Code itself explains anywhere how a consolidation of the two widely differing schools has been achieved, what provisions of the Mitakshra Law which prevails in the greater part of India have been discarded and rejected in favour of the Dayabagh or other schools and why, in order to enable the public and particularly those who follow the Mitakshra school to consider and judge whether the changes introduced by the framers of the Code are acceptable or are retrogressive and harmful.

To frame and present a Code of law applicable to all sections of the people without first properly settling the differences in the various branches of it about each of which there is conflict and controversy is to confuse, perplex, bewilder people and push them into a position where it becomes very difficult for them to give a considered opinion on the various parts of the enactment.

The second object of the Bill is "to alter the law so as to make it fit the new pattern to which Hindu Society seems to be rapidly adjusting itself." A more vague, indefinite, dubious, suppositious, illusory reason it is difficult to give for so radically altering the law governing the lives of untold millions. What that pattern is, to which, according to the Hindu Law Committee which framed the Code or the Law Member of the Government of India, the Hindu Society seems to be rapidly adjusting, is not described or even hinted. The Statement of Objects and Reasons is discreetly silent about it. In the absence of such description every one is left to imagine that pattern looking at the matter from his own point of view. The framers of the Code themselves are evidently not certain whether Hindu Society is definitely moving towards that imaginary pattern, for they say that it "seems to be adjusting" to it. Nor do they say how long, how many decades, it will take the Hindu Society to adjust itself to that pattern. They do not seem to have given thought to the matter whether it is at all necessary or wise to frame a mandatory Law such as part 11 of the Code contains, to be brought in force long before the time when that law will fit that pattern which their mental vision envisages.

The Statement of Objects and Reasons says that the Government of India by their Resolution of 20th January 1944 appointed the Hindu Law Committee, to formulate a Code of Hindu Law which should be complete as far as possible.

The assurance given in the Statement of Objects and Reasons of the Bill that "Most of the provisions in this Bill are of a permissive or enabling character and impose no sort of obligation or compulsion whatever on the orthodox section of the community is certainly not borne out by the provisions of the Bill. The assurance looks like an attempt to lull the public into the belief that all is well with the proposed Hindu Code, while as a matter

of fact, it quietly and unobtrusively legally abolishes the joint Hindu Family system and all caste distinctions in marriages, the two most important bases of the Hindu Law.

The Bill is divided into six parts. Leaving aside the first part, which is Preliminary and contains definitions, here are five parts dealing with the Hindu Law. Parts II and III deal with the law of succession or inheritance, Part IV with marriage and divorce, Part V with minority and guardianship, and Part VI with adoption. Of these five operative parts, only Part IV is partially permissive or enabling. Parts II and III are definitely mandatory and in no sense of the term permissive. Parts V and VI, as they impose obligations or compulsions, cannot be held to be permissive. Thus it is only the fourth part dealing with marriage and divorce that is partially permissive. For, even section 3 of Part IV which summarizes the law, has two aspects, permissive as well as mandatory. It permits marriages 'between any two Hindus' but impose conditions, the breach of which would make the marriages invalid.

The Code is not fully self contained in as much as some terms, for instance, gotra and Paravara are not defined but are stated in Part I (Preliminary) section 5 to have the same meanings as in the Hindu Law before the commencement of the Code, while others such as *Stridhana*, *District Court*, are defined in the Code, though their meanings are also clearly defined in the Hindu Law before the commencement of the Code.

The devolution of the agricultural land of an intestate or his interest in it is nowhere clearly stated. Part II section 1 excludes agricultural land from the operation of the law of intestate succession as laid down in the Code; and Part III (a), Division I, section 1 also excludes such and when it lays down the law for the devolution of interest in the joint Hindu Family property. This is probably due to the fact that treatment of such land has been made a provincial subject, because land revenue is a provincial subject.

I will now proceed to record my opinion on each of the five operative parts in which the Hindu Code is divided. If the five parts, Parts V and VI (minority and guardianship and adoption) are not of universal application, in other words, do not govern the life of almost every Hindu, man or woman. Moreover, both the law of minority and guardianship (Part V) and the law of Adoption (Part VI) as laid down in the Code are only summarized statements of these laws as they exist at present and no important changes appear to have been made in them. It is in Part II which deals with the law of inheritance, and in Part IV which deals with the Law of Marriage that the Code has introduced revolutionary changes.

The Law of Marriage and Divorce as laid down in Part IV of the Bill differs from the Law of Inheritance as contained in Part II of it in one important respect. Though the provisions of both are revolutionary and contain vital changes made in the existing law, yet the law laid down in Part IV as stated before, has a permissive aspect, while the provisions of Parts II and III are wholly mandatory.

The law as laid down in section three of Part IV revolutionizes the Marriage Law of the Hindus. It introduces three most important changes. One, it makes all marriages between Hindu men and Hindu women valid, no matter to which caste or varna the parties belong. This abolishes castes so far as marriages are concerned. Second, bigamous marriages are declared invalid. Third, all child marriages that is marriages in which the bridegroom is under eighteen and the bride under fourteen years of age, are held as invalid. These provisions while making a great advance, transform the present Hindu Marriage Law. At one stroke, section 3 removes all restrictions imposed on marriages between people belonging to different castes and sub-castes. And by implication it declares all bigamous marriages, and child marriages as laid down in the child marriage Restraint Act of 1929, invalid. The offspring of child marriages performed after the commencement of the Code, are thus declared legitimate and become subject to the disabilities attached

to illegitimate issues. The repercussions of these changes in law, if passed, on Hindu Society, will be far reaching. The principle underlying the provisions of section 3 of Part IV has my full approval and support. In fact it was I who introduced in the Central Legislature in 1925 A.D. a Bill to declare all child marriages invalid.

But the work is half done, because the framers of the Code do not appear to have given any consideration to the results accruing from holding the offspring of child marriages illegitimate. For though illegitimate, they will still be sons of their parents. The Law of Succession as laid down in Parts II and III and III-A of the Code makes all sons entitled to inherit property just as legitimate sons. Unless, therefore, illegitimate sons are excluded from such inheritance, there will be no object in enacting section 3, clauses (3) to (6). And as the Code is to be a self contained one, the following definition of son and daughter and daughter's son and daughter's daughter should be added as clause (K) to section 4 of Part I of the Code:—

"(K) Son and daughter mean the son and daughter born of a marriage valid under this code, and daughter's son and daughter's daughter mean son and daughter born of the daughter's womb."

There is another point. If the section 3 is enacted in its present form and Sacramental Marriages are not made compulsorily registrable, there would be any amount of litigation which it would be difficult to dispose of satisfactorily. An intestate contracts a child marriage and gets two sons by this marriage. The wife dies, and the intestate contracts a second marriage which is not a child marriage and gets two sons by this second marriage. Now under section 3, only the sons of the second or the valid marriage succeed to the intestate's property to the exclusion of his first two sons. The intestate lives for 30 years after his second marriage. On what evidence will the claim of the sons by the second marriage to be upheld. It would not be possible to find reliable evidence as to the ages of the parties to the first marriage, forty or thirty or fifty years after the date of the marriage. The only reliable evidence in such cases is the evidence furnished by marriage Registers. Therefore if the law is not to be a dead letter, Registration of all sacramental Marriages should be made compulsory, and not made optional as provided in Section 18 of Part IV of the Code.

As one of the objects of having an amended Hindu Law is to remove unnecessary restrictions on marriages, and as restrictions of caste have been completely eliminated, clause (5) of section 3 (Part IV) may also be omitted; for, the essential and necessary part of the object which clause (5) has been enacted to serve, has already been provided by the enactment of clause IV, which prohibits marriages within the degrees of prohibited relationship.

If section 30 which violates the indissoluble character of a Sacramental Marriage by introducing Divorce in a Sacramental Marriage is accepted without demur, there can hardly be any reasonable objection to abolishing the restrictions on marriage imposed by clause (5), particularly as the condition imposed by it is waived where a local or family usage to the contrary exists. The abolition of clause (5) will also bring uniformity between the conditions attached to a Sacramental Marriage and a Civil Marriage. If however, the clause (5) is not omitted, then the clause may reasonably be made to provide that the marriage of sapindas of each other may be allowed, if the customs or usages of either party allow the marriage just as section 4, clause 1 requires that the rites and ceremonies of either of the two parties may be observed in a sacramental marriage. The word, "either" may therefore be inserted in place of the word "each" occurring between the words "Governing" and "of".

There is a printing error in Illustration II (printed on p. 15) attached to section 1 (Interpretation) Consanguine should be consanguine.

Two other important changes are made by the code in the marriage law of the Hindus. The Hindu Code, for the first time, embodies the provisions of the Special

Marriage Act, II of 1872 in the Ordinary Hindu Law under the heading "Civil Marriages" and gives civil marriages the same status as Sacramental Marriages, thus removing the disabilities attaching to marriages under the Special Marriage Act regarding inheritance (*vide* section 2, Part IV Hindu Code). The only important difference between the two Sacramental and Civil Marriage's is—

- (1) while all civil marriage are compulsorily registrable, the Sacramental Marriages are not and
- (2) that a Sacramental Marriage between parties who are sapindas of each other is invalid but not a civil marriage.

The second of the other two important changes is the introduction of Divorce in Hindu Law. According to the present Hindu Law, Marriages are indissoluble, being sacramental. The Hindu Code for the first time makes a provision for dissolution of marriages (Part IV, Chapter III).

It will thus be seen that the Bill under discussion, introduces so many and such vital changes that the Hindu Law of Marriage is practically transformed. The only important part of the present Hindu Law kept intact is that sacramental marriages celebrated according to sacred texts, are held as valid marriages.

But by introducing civil marriages and Divorce in the Hindu Law, an axe is laid at the root of the sacramental marriages, and a time will come when Sacramental Marriages which now are as many as 999 in a thousand Hindu Marriages, will if the Hindu Code becomes Law become less numerous than the Civil ones. And the chief difference between the Christian and Muslims marriages which are of the nature of contracts and dissoluble, and the Hindu Marriages according to sacred texts, which are not contractual and are indissoluble, will disappear.

I now come to Part II of the Code which contains the law of Intestate Succession. This law of Intestate Succession is also of a revolutionary character. It will however have far greater repercussions on Hindu Society than the law of marriage! for, while the marriage law has a permissive aspect, the new law of succession is mandatory and compulsory. The most important feature of this new law is that it abolishes the Joint Hindu Family, which, with the caste system, are not only the two most important features of Hindu Society, but distinguish the Hindu social polity from the social structures of all the other countries in the world. The Joint Hindu Family system is the pivot on which revolves the entire law of succession among the Hindus. With the abolition of the joint family, the basis of the Hindu Law of Inheritance is shifted. This most important change in the Hindu Law ought to have been prominently mentioned in the Statement of Objects and Reasons attached to the Bill, as well as in the enunciation of law under Part II of the Code. There is no mention of the abolition of the law of joint family in Parts II and III of the Code (Intestate and Testamentary Succession). It is ensconced in Part III-A under the heading "General Provisions" as if it were a matter of no significance. Sections I and II of Division I of Part III-A abrogates the Right of Survivorship and the Right by Birth in property—the two bases of the Joint Hindu Family Law. Thus the very basis of the Hindu Law of Inheritance has been destroyed.

While India lived in isolation, the Joint Hindu Family functioned usefully. With the establishment of a close contact between India and Europe, and the annihilation of distances by the advent of Railways, aeroplanes, telegraphs, motor cars and steamships which made the whole world a province and India a part of the province, the Joint Hindu Family system began to give way under the weight of the economic and political burdens imposed on India by the West. The Hindu Social structure is slowly breaking up under the stress of the distracting forces released by Western education, Western political and cultural thought, and Western Economy. No amount of buttressing it without modifying it would keep it standing

long. The withdrawal of the legal recognition of the Joint Hindu Family will however give it the *Coup-de-grace*.

The objection to the part which the Hindu Code in bringing about the dissolution of the Joint Hindu Family System is going to take is that it makes no provision to fill the vacuum caused by the disappearance of the institution. The legal position conferred on, and the rights which the Joint Hindu Family Law secured to its members, will disappear with the disappearance of the Joint Hindu Family, and the framers of the Code have not given any consideration as to how to safeguard the position and the rights of the persons forming the family, which are not otherwise secured by the rest of the Hindu Law. The Hindu Code has in a hurry abolished the Joint Hindu Family and let the consequences take care of themselves. This is not right.

New provisions have been inserted in the new Law of Intestate Succession (Part II of the Code) in response to the demand of the advanced section of the Hindu men and women. These provisions confer rights in property on daughters and widows. So far it is all right. But with these provisions, new provisions which are, retrogressive and subversive have also been introduced.

Section 4 of Part II states how an intestate estate will devolve first on the enumerated heirs. Among these enumerated heirs, while a share is given to the widow and the daughter, the daughter's son is preferred to and therefore ousts from inheritance, mother, father, brother and (deceased) brother's son.

The order in which the heirs are enumerated in class, I, is utterly unjust. Those enumerated in entry (1) exclude from inheritance all those who are enumerated in entries (2) to (6) as also those in class II. Take an instance of glaring injustice. A, an intestate dies leaving a deceased son's minor daughter who lives with A and whom A is bringing up, and a daughter's son who lives with his father in another family. All A's property is taken away by A's daughter's son and A's son's minor daughter is to starve, for she cannot even claim maintenance from A's daughter's son. This shows how unjust the proposed law of succession is. Another instance when A, an intestate, dies leaving his mother and a daughter who is married and gone into another family, the daughter will inherit all the property of A, and A's mother will be left unprovided for. A's mother who, as sometimes happens worked hard to bring him (the intestate) up and maintained him by her own labour and in her old age depended absolutely on A for everything, is left to starve, while the daughter, who is maintained by her own husband takes away all A's property. It is true that under section 5, Division II, Part III-A she can claim maintenance. But according to ancient custom having the force of unwritten law, Hindu fathers and mothers are forbidden to take even a glass of water from the married daughter or her family, and they will therefore not accept any maintenance from the daughter, for the daughter becomes the owner of the intestate's property the moment he dies.

Take another instance, A, an intestate, dies leaving an aged father and an aged mother and a married daughter and a son of a pre-deceased son. The daughter who lives with her husband, and the son of pre-deceased son take away all the property and nothing is left for the aged father and mother who brought up the intestate. Yet another instance, A, an intestate dies leaving his mother, a brother's widow and a daughter. The daughter takes away all A's property and the mother and brother's widow, who all their lives lived in the family are left unprovided for, as they would not accept maintenance as shown above. If women are to be given rights in property, as the Code has done in response to the reformers' demand, why is the mother who is a woman too, left out completely from entry (1) of class I.

It is true that recent legislation has given the daughter's son a preferential place to the above mentioned relations, but such preference was only nominal, for it related only to property other than the Joint Hindu Family property, and in 999 cases out of 1,000, the heri-

table property amongst the Hindus is the Joint Hindu Family property. Thus for all practical purposes even after the recent legislation, the daughter's son comes after father, brother and brother's son. In the proposed law, however, all this is reversed as the following illustration shows :—

A, an intestate, dies leaving his mother who brought him up, and a minor brother (who is also maintained by A) and a daughter's son. Under section 6, the daughter's son (who belongs to another family and will inherit his own father's property also) takes away A's property, leaving A's aged mother and A's minor brother deprived of all means of subsistence.

How this inequitable provision will work in practice has been passed over. A very noticeable feature of how the formulation of the altered law has been made is that while twelve illustrations are given under section 7 and three under section 6, to show how the intestate's property will be inherited by enumerated heirs, there is not amongst them a single illustration in which, a daughter's son figures. There is no illustration as to how succession will take place when a intestate leaves a daughter's son and father and a brother, or leaves only heirs enumerated in entries two to six of class 1. Had this been done the injustice of the working of section 6 and of the order of enumeration would have been exposed. If the omission is deliberate, a wrong has been done: If only accidental or was considered unnecessary, it is regrettable.

While the surviving members of a Joint Hindu Family are deprived of all right to the family property, certain duties imposed by the unwritten law of Hindu Society will still devolve upon them. Thus a deceased daughter's son, who is a member of another family, will inherit the intestate's property, while the surviving members of the family of the intestate who shared their joys and sorrows together when alive and now have to perform at their own expense certain duties imposed on them by social customs and usages will get nothing. The following illustrations will show the absurdity and the inequitable nature of the new law.

A dies intestate leaving behind him a brother, mother, father, a deceased brother's son all forming a Joint Hindu Family, and a daughter's son who is a member of another family. Though under section 5 of Part II, Father, Mother, Brother, Brother's son and daughter's son are all enumerated in class I, as the daughter's son comes before father, mother, brother and brother's son in enumeration, owing to the provisions of section 6 (of Part II) the daughter's son will inherit A's property, while A's father, brother, mother and brother's son will get nothing, though under the customs obtaining in the class of society of A, the duty of performing the costly Mosar ceremony of A, sending A's remains to the Ganges, even the funeral of A, performing the *Mahra* ceremonies in the marriages of A's sister's sons and daughters will fall on A's surviving father, mother brother or brother's son. Either the Hindu Law Committee appointed by the Government of India with a Non-Hindu Chairman, were ignorant of the customs and usages of Hindu Society or were indifferent to the injustices that Hindus would have to suffer by the enactment of the new law. This is intolerable.

Rights and duties go together. If right is the obverse side of it, duties are the reverse side. The father, mother, brother and brother's son performed duties towards the Intestate all through his life, attended on him during illnesses, while the daughter's son living in a different family and often in a far away place did no duty, yet he takes the intestate's property and the brother and father and brother get nothing.

The intestate brings up his brother's son, treats him as his own son, as he has none of his own, trains him in his family business; but on the intestate's death, the intestate's daughter's son, a stranger walks away with all property of the intestate and leaves the intestate's brother, or his brother brother's son to carry on the traditions of the family at his own expense. It is strange that a daughter's son has been made one of the enumerated heirs, but no attempt has been made to distribute the intestate's property between the Intestate's mother, father, brother and the daughter's son.

In equity, a daughter's son can derive his right of inheritance through his mother. And when the mother is dead, the source through which he gets his right has ceased to exist. If the mother is alive she gets her right, and her son will inherit it from her. When the Joint Hindu Family and the rights of its members in the family property are abolished, it is fallacious and quite untrue to argue that no change has been made in the existing Hindu Law in allowing a daughter's son to oust from all inheritance mother, father, brother and brother's son. A change has been made and a very far reaching and vicious change which will operate to the detriment of the nearer relations of the intestate, doing them great injustice and in some cases blasting their lives.

There are other similar preferences. For instance, sister is placed in class III and even a daughter's daughter's daughters given precedence over a sister. If the principle underlying section 15 of Part II, "Full blood preferred to half blood" and illustrated in Illustration (1) attached to the section is observed, a sister who is related by full blood to the brother—the brother's and sister's father and mother being the same persons—a sister must take precedence over a daughter's son who is related to the intestate by quarter blood, not even half blood.

I am therefore of opinion that the order in which the enumerated heirs succeed to an intestate estate should be thoroughly revised and the intestate's mother, father, brother and a deceased brother's son all should be included in one entry, entry (1) in class I and their shares fixed along with the shares of those already included in Entry I, so that all of them may share the intestate's property, and the daughter's son should be given a place in class II and not in class I, and the sister should be placed above the daughter's son.

No. 15.—EAST PUNJAB

LETTER FROM THE HOME SECRETARY TO GOVERNMENT, EAST PUNJAB, TO THE SECRETARY TO THE GOVERNMENT OF INDIA, LEGISLATIVE DEPARTMENT, NEW DELHI, No. 211-J-47/2922, DATED THE 3RD OCTOBER, 1947.

I am directed to forward a copy of a letter No. 7692-Genl./XVI-B.38, dated the 29th July 1947 from the Registrar of the High Court of Judicature at Lahore, reporting the views of the Honourable Judges and those of the District and Sessions Judges of Jullundur and Rawalpindi. The Punjab Government also invited the views of Commissioners and Deputy Commissioners, the High Court Bar Association and the Bar Association at the five divisional headquarters as well as of nine selected non-official organisations believed to be representative of Hindu and Sikh opinion. Only one of the latter the Shri Sanatan Dharam Pratinidhi Sabha Punjab, Lahore, has replied. A copy of the communications received from it and also from Mr. Parshu Ram of Lahore, are enclosed, as well as a selection from the opinion expressed by Commissioners, Deputy Commissioners and officers serving under them—vide list appended. Opinions from the Bar Associations, Hissar and Montgomery districts were also received through the respective Deputy Commissioners and they are also enclosed.

The Punjab Government have no decided opinion on the proposed legislation.

The Code with its accompanying Statement of Objects and Reasons was published in the issues of the Punjab Gazette, dated the 30th May, 6th and 18th June, 1947.

THE REGISTRAR, HIGH COURT OF JUDICATURE, AT LAHORE

I am directed to forward, a copy of the opinion recorded by the Honourable Mr. Justice Mehr Chand Mahajan and to say that the Honourable Mr. Justice Ram Lall, the Honourable Mr. Justice Mohd. Sharif and the Honourable

Mr. Justice Cornelius agree with it. The Honourable Mr. Justice Achhru Ram as also the Honourable Mr. Justice Khosla also agree with it subject to their note of dissent regarding divorce.

The Honourable the Chief Justice, the Honourable Mr. Justice Muhammad Munir and the Honourable Mr. Justice E. C. Marten do not wish to offer any opinion.

Copy of the note recorded by the Honourable Mr. Justice Teja Singh is also forwarded herewith in triplicate.

2. The opinions of the District Judges who have been consulted are forwarded in triplicate.

THE HONOURABLE MR. JUSTICE MEHR CHAND MAHAJAN

The Bill named the "Hindu Code" follows the line of the draft which was previously circulated for opinion to this Court. Divergent opinions were then expressed by the Judges of this Court on the proposed legislation. Some of us considered the codification of the Hindu Law as a piece of unnecessary legislation and an unwanted interference with the rules of Hindu religion. Other learned Judges thought differently and considered legislation on the lines of the draft as desirable. In view of the opinions already given by Judges of this Court I am doubtful whether any useful purpose would be served by offering fresh opinion on the bill in its final shape. In view of the note of His Lordship the Chief Justice that I should give an opinion on the bill, as it stands now, I record the following opinion. This is in no way different from the one that I gave to the Hindu Law Committee as President of the Bar Association and which I subsequently reiterated a member of this Court.

Hindu Law, so far as I have been able to understand it, is a part of a social and religious system and cannot be dissociated from it. The present Code makes a secular approach to this law following the line of the Indian Succession Act. This method of approach is in my opinion unsound. All the legal rules of the Hindu were conceived as a part and parcel of a code of moral and religious duties and an absolutely secular approach to these rules is repugnant to the system as it was conceived. The point of view I am expressing may be illustrated by reference to some of the rules of Hindu Law. The Hindu system of inheritance is not based on the consideration that what a man dies possessed of is a sort of windfall which has to be shared by his next of kin or blood relations according to some rule of equity and justice. The system on the other hand did not notice individual deaths at all. The property was considered to belong to the family which had a common worship, common mess and joint abode and the death of an individual did not furnish an occasion to the application of the rules of testate or intestate succession as those terms are ordinarily understood. The head of the family was responsible for an equitable distribution of the income of the property amongst the members of the family. The life inside the family was regulated on socialistic principles. No body could enjoy more than others. They were all equal owners in that enjoyment. Those who were capable of earning more than others threw in the common fund their earnings while those who earned less than others enjoyed equally with them. As I have said, the outlook was a socialistic one and it was founded on the religious system of the Hindus which gave great importance to a male issue and who acquired rights by birth. The Code completely destroys the Hindu joint family system which, so far as I can see, is still the prevailing system amongst at least 90 per cent of those who call themselves Hindus. It is surprising that the advocates of the Code wish to uproot the whole social structure of the Hindus following the Mitakshara Law and wish them to follow the Dayabhaga system which again is based on religious theories. The joint family is not such a great evil as it is considered to be by some educated people. So far that I have been able to study even the most socialistic State, the Soviet Russia, is gradually showing tendency towards a joint family life.

It may be that abuses have crept into the system and just and an equitable head of a joint family has become an exception. From this circumstance it should not be assumed that time has come to scrap off the whole system and for the adoption of purely secular rules of inheritance. The Code does away with the rule of survivorship, coparcenary property and abolishes the rights that accrue by birth to persons born in a family. As a result the law in regard to alienations also completely disappears. Nothing has been said in the Code about the pious obligation of a Hindu son (which was part of a religious duty) to pay off the father's debts. It is obvious that that obligation automatically disappears with the abolition of the joint family system. Short of these fundamental conceptions the Code can hardly be named Hindu Code. It would be more appropriate if the rules conceived and contained in the bill were made a part of the Indian Succession Act. The bill, under the garb of codification is an attempt to change the whole structure of Hindu society (In places where Mitakshara Law prevails). It completely ignores the moral and religious injunctions on which Hindu Law was founded. In places where Mitakshara Law does not prevail and where property of an individual devolves on the next heirs by the rules of succession the basis of the rules was some religious injunction or a religious duty. Succession was allowed to the son in the first instance not merely because he was a son but because as such he had a number of religious and moral duties to perform. In most cases the inheritance fell far short in value to the expenses incurred in performing duties involved in the relation of sonship. Hindu religion attaches a special value to a direct male lineal descendant owing to certain religious conceptions. According to one of the systems of Hindu Law inheritance was allowed to sons or other heirs on the theory of religious efficacy while in some other systems it was allowed on the ground of propinquity. In both of the systems the duties enjoined on the son were more or less the same though the theory underlying them was different. As regards the daughters, they are placed at a high pedestal in the social system, above all duties and obligations attaching to heirship. The injunctions in the system relating to the position of a daughter are such that for generations a Hindu has to go on performing the duties concerning them irrespective of the fact that there is any property in his hands or not. A girl has to be married even by raising debts and in disregard of the fact whether any property has been inherited by the next heir. It is by reason of the religious and moral injunctions that duties in respect of daughters are being performed by a mass of the Hindu population ungrudgingly and in complete disregard of the fact that a daughter is not entitled to share the inheritance with the brother. Not only the daughter, but even her descendants are given a high place of honour and respect in Hindu families. A considerable amount of money is spent in meeting expenses incurred on the ceremonies of the daughter's descendants. Under this system, a daughter in the long run in a very considerable number of cases ordinarily receives from her father's family considerably in excess of what she would receive as a share in the inheritance as an heir. All this is bound to disappear under the Act when she is made a legal heir and is allowed to take her share in the windfall. The social, moral and religious injunctions underlying the existing system will also disappear and it seems to me for a paltry, nothing in most cases.

Taking into consideration this legislation from a practical point of view it seems to me that it will work out in the following manner. The first heir to the property of a deceased Hindu would be the State who will take away a considerable share of the estate in the shape of death duties which the law-givers of the Code have not taken into consideration. Whatever is left will go to the widow, the sons, the widows of predeceased sons in equal shares, the daughter getting one-half of the share of the son. In about 85 to 90 per cent of cases taking into consideration the average number of members of a family and the average value of the property daughter's share would be insignificant. In a few cases, however, she might profit considerably. The point for

determination is whether the daughter by the change in the law in a majority of cases will derive any genuine benefit or in the ultimate by the legislation in contemplation she will really be a loser under the present system

My experience of the actual working of the systems which allow a share to the daughter has not been very happy. In most cases daughters get nothing on the excuse that custom is the rule of decision and that under custom daughters are no heirs. In cases where custom is not the rule of decision, they seldom take a share in the inheritance owing to the love and affection they are supposed to bear to their brothers or because of the fact that they are persuaded by their brothers by appeals to their affections that they should stand apart and take no share in the partition of the property. In other cases the property is so little that it is not worth while dividing it at all. In some other cases the girls are suitably married and do not want to take anything. Various other circumstances also arise in which they do not actually take any share in the inheritance. The cumulative effect of all these circumstances is that it is in rare cases that a daughter gets anything out of the inheritance of her father and it remains with the sons even according to the system which allows a share actual working of systems that allow daughters to inherit to their father along with sons eventually resulted into. In my opinion, it is not worthwhile to give a paltry share to the daughter by legislation when her rights are based on a much higher level of religious, social and moral injunctions and according to which she really benefits more in a very large number of cases than as an heir she would.

In the opinion given on the last occasion my brother Sir Abdur Rahman disagreed with my view by the observation that why should an incident of birth deprive a person of his or her right of heirship. It seems that at that time my brother's attention was not drawn to the fact that even according to the Mohammadan Law a daughter has not been placed on the same footing as a son. In the presence of a son she only takes half the share that a son gets. The incident of birth, therefore, has made a difference even in the case of the most democratic system of law. The widow has been given 1/8th share under Muslim Law while the framers of the Hindu Code have placed her on an equality with the son and have given her absolute estate. The Hindu Law, as it stands, in absence of a son, gives the widow the whole of the property of her husband, though it is for her lifetime, but when she has a son alive her rights are considered amply safe in his hands. In any case, she can always get suitable maintenance from him. Her rights against the son's vagaries were protected by an act of the Legislature later on. Her status, therefore, is much higher under the present system than it would be under the Code. She gets whole of the property of her husband intact, in absence of the son, and gets a share under the later Act in the presence of the son. Now her share is reduced by the Code by the introduction of other heirs and she can never get the whole of the estate. It seems to me that the framers of the Code have drawn up the Code on the basis of a rule of thumb according to their own individual notions without paying the least regard to either the existing law or to the state of society for which they are legislating.

The Hindu social system has always since its very inception, dealt differently with the rights of male and female issues. It took notice of the fact that the two have to perform different duties in society. The cry of equality between the two sexes was completely foreign to the society. It placed by Shastric texts the females of the society on a much higher level than the male members of the society. They were not placed on a materialistic plan for certain reasons and their material interests were fully safeguarded by social, moral and legal injunctions. When those social, moral and legal injunctions failed to function properly, legislation did intervene and safeguarded them to the extent necessary.

As I have already said, the daughter does not materially gain or benefit by this legislation. On the other hand, apart from the considerations already mentioned, it seems to me that her position has considerably deteriorated. In the absence of a son and a widow, a daughter under

the existing law takes the whole estate of her father intact. That rule of Hindu Law has been abrogated by the Code. It comes to this, therefore, that her chance of getting the whole of the property of her father disappears just as it disappears in the case of a widow. A careful study of the consequences and effects of this legislation leads me to the conclusion that the Code has, for most purposes, ignored the existing rules of Hindu Law. The object of codification is not to make a new law or completely change the shape of the existing law. Ordinarily speaking, the object of codification is to state clearly what the existing law is. This Code destroys the existing law in most cases and makes an attempt to create a system of law different from the one that now prevails. This Act can be more appropriately called the Hindu Law Destruction Act.

In my opinion, therefore, time is not ripe for a legislation of this kind so far as the Hindu masses are concerned. Moreover, it is wholly unnecessary to codify Hindu Law for the reason that after 100 years of its administration by Courts its provisions are now quite well known and the process of interpretation has been narrowed down within a very limited range. As soon as this Code is made the law a new chapter of interpretation will start leading to a fresh state of litigation and trouble. Those who claim to have become modernised, need not follow the existing law and for their benefit certain portions of the law can be changed or it can declare that they would follow the Indian Succession Act with some modifications and will be subject to Dayabhaga Law.

Apart from the fundamental objections that I have raised to this bill becoming the law, in my opinion, most of the chapters of the bill are wholly unnecessary as they are covered by the existing statutes. Take for instance the chapter dealing with the law of guardianship. That law has been codified on an all India basis for all communities residing in this country. I do not see any justification for including the provisions of the Guardians and Wards Act in the Hindu Code. Those Provisions are now no longer part of Hindu Law. They are in the Guardians and Wards Act, and they should be allowed to remain in that Act which governs all communities residing in this country. There is nothing special in the Hindu Law apart from the Guardians and Wards Act, as it now stands, on this subject. The Personal Law is quite well-known on the subject.

The chapter dealing with "maintenance" is again a wholly unnecessary chapter in the Code. Hindu Law of maintenance is administered on equitable grounds by the Courts, and it is quite elastic in its application to individual cases. It is based on certain Shastric texts. There is no conflict of opinion at the present stage in the main principles of that law. Why unnecessarily codify and start fresh conflicts which are bound to arise by reason of the process of interpretation on the phraseology employed in the Code? No new rule has been introduced by the Code into this part of the Hindu Law excepting that certain artificial rules for guidance of Courts have been enunciated. The discretion of judges in matters of this kind should not be hampered by set rules and it should be left to discretion of Courts to administer the law on equitable considerations.

Moreover, the Law of Maintenance among the Hindus is based on certain moral and religious doctrines. Why should it be separated from those conceptions I have not been able to follow?

The chapter of adoption which is a religious ceremony amongst Hindus seems again to be an unnecessary addition in the Code. The Hindu Law of adoption is well-known and well-settled and by codification it will again come in a state of confusion by the process of interpretation. The injunctions of the Shastras have given a status to an adopted son and codification will not in any way improve matters.

As regards the Hindu marriage the sacramental marriage has been kept intact by the Code, but it seems to me that the theory of divorce has been grafted on it.

So far as I can see the idea of divorce is totally foreign to a sacramental marriage. The framers of the Code have stated that the sacramental marriage will be complete when the seven steps have been taken. They do not seem to have paid attention to the meaning of the various mantras which are recited when the several steps are taken. Divorce is wholly repugnant and runs contradictory to the meaning of the mantras recited at the marriage ceremony. In my view it was wholly unnecessary to touch the sacramental marriage by legislation. Let it stand on the basis of the original texts itself. Those Hindus who do not wish to be governed by the old system can take advantage of the legislation already existing on the subject. In their case the rules of divorce already exist and can be made more specific. It seems redundant to reincorporate those statutes in this Code. These Acts meet the needs of those who do not want to be bound by the marriage law of the Hindus as laid down in the Shastras.

Another objectionable feature of the Act is the introduction of absolute estates in the case of females. There is no justification for introducing the idea of absolute estates so far as Hindu females are concerned, except in case of *stridhan*, where that estate is already enjoyed by them. It seems that this has been done to satisfy the agitation of certain modern women on the subject. The limited ownership given by the Hindu Law to females was in keeping with the religious and moral injunctions concerning them under the Hindu system and the life they were expected to live and under which they have been living for centuries. The free power of alienation amongst females of any society is not necessarily an improvement in the system of law followed by that society particularly when a large majority of those who have been given this privilege are still in a state of illiteracy and ignorance.

The rules of intestate succession stated in the Code, the elimination of the joint family system and the coparcenary nature of the property and the abrogation of the right of a son that accrued to him by the birth in the family estate would result in the disintegration of the whole Hindu society and it will drift away from its original moorings. The foundation of all these laws lay in the Shashtra texts in the form of religious, moral, social and legal obligations. The change in the system will by process of disintegration lead to economic break up of the society to its detriment. If the rules of Hindu law require a radical change as suggested by the Code then the law should not be placed before the Legislature without a referendum being taken on the subject. The members of the Legislature who are responsible for this law represent a very small fraction of the Hindu Public. Certain highly educated people or persons owning large estates or paying heavy income-tax can vote for election for membership of the Central Assembly and the result is that about 95 per cent of the Hindus do not enjoy the privilege and a Legislature constituted such as the present has no right whatsoever without a referendum on the basis of adult franchise to change the whole system of Hindu Law in the manner that they have done in the Act under consideration. I have no doubt that if this Act was to be voted upon by Hindus alone, other communities taking no part in it, it would find no support even within the Legislature.

I may also point out that the Code does not apply to agricultural land. It only deals with properties which are urban and movable or house properties. The result of this provision is that the Code does not legislate for the whole of the property that a man dies possessed of. Succession to agricultural land will still have to be determined by the existing Hindu Law while inheritance of other property will be determined by the Code. The code, therefore, will not operate very beneficially to the daughters or to the widows and will considerably reduce their share in the inheritance. It will lead to the inconvenience of applying two systems of law in respect of the same succession. This is not a very desirable state of the law so far as I can see.

There are certain small matters in the bill which are objectionable, a few of which may be mentioned. One of these is that the Code does away with custom

altogether. Custom is one of the well-known sources of Hindu Law and that law was elastic by reason of the fact that custom introduced into it change according to the changed circumstances of the society. Now the law has been made quite rigid by the Code and it cannot impossibly change except by another piece of legislation.

It is amusing that though the framers of the Code have abandoned the basic principles of Hindu Law yet they have not altogether been able to get away from some of its notions and have kept alive some archaic provisions of ancient Hindu Law. Reference in this connection may be made to sections 10 and 11 of the Code. The framers of the Code have allowed succession of a preceptor and *Shia*. I do not know of a case in Hindu Law where this practice is actually allowed. It is useless to retain these provisions of law by legislation in a Code which is intended for modern men and women. The part of the bill about *Stridhan* is wholly unnecessary in view of the fact the women have been made absolute owners of the property and placed on the same footing in matter of inheritance as males.

A provision has been made as to escheat in the absence of all heirs to the Crown. It appears to me that the framers of the Code did not realise that Crown may not be there to take it in view of the impending political changes. I am also surprised to see that provision has been made for the benefit of concubines in this Code which is wholly repugnant to all civilised societies. I appear that the framers of the Code could not really get rid of the notions which ought to have been cast away, but there were simply out to destroy the very fundamentals of society by the abolition of the joint family system by the conferment of absolute estate on females by laying down rules of intestate succession quite inconsistent with the prevailing Hindu Law on the subject and by the introduction of the provision for divorce in the law. So far as I can see marriage and succession are the two fundamental branches of the Hindu Law and both of them are linked together. These two systems have been radically changed while the other provisions of the Code have been added to it, it seems to me, to add weight to it, otherwise there is no necessity for making them a part of the Hindu Code.

In my opinion therefore, this Legislation is not only unnecessary but is destructive of the society which it claims to lift and should not be allowed to go through the Legislature. I must confess that in spite of the literature that has been circulated on the subject and the arguments in support of the bill I remain unconvinced and stick to my last opinion. I strongly resist the attempt made by the Code to interfere with the social and legal systems of the Hindus under the garb of codification.

—————
The Honourable Mr. Justice Achhru Ram

I agree generally with the views expressed by my brother Mahajan. I, however, am inclined to take different view in respect of the provisions of the Code dealing with marriage and divorce. No exception can reasonably be taken to the provision against polygamy. The provisions relating to the annulment or dissolution of marriages under certain circumstances appear also to meet a long felt need. The proposed legislation while attempting to satisfy this need provides sufficient safeguards against a frivolous or capricious exercise of the right sought to be created by it and I, accordingly, have no hesitation in supporting it.

—————
The Honourable Mr. Justice, G. D. Khosla

I agree with Achhru Ram J.

—————
The Honourable Mr. Justice Teja Singh

I am entirely in favour of the principle underlying the Bill. The law, at least on certain matters which have to be decided according to Hindu Law, is still uncertain and it is time that Legislature should intervene and set all conflict and uncertainty at least by laying down the

law in clear term I am further of the opinion that in consideration of the progress made by Hindus and other communities who are governed by Hindu Law and also in view of the spread of education amongst women, certain aspects of Hindu Law require to be changed and advantage should be taken of the occasion to modify the provisions of Hindu Law in certain matters, particularly those that affect the right and status of women. I do not see eye to eye with those, who contend that these are matters for the Hindus themselves to deal with and the Legislature has no business to step in. We all know that some of the most abominable practices in Hindu society have been abolished by the Legislature, in spite of the opposition offered by the orthodox section of the community, and I have no doubt that the community is not the worse for it in any way.

I am one of those who believe that necessary though the institution of the joint Hindu family may have been at some time and it may well have done good to the society at a certain stage of Hindu civilization, it is no longer consistent with the march of event. The progress of civilization is from status to contract and when the cost of living is rising from day after day and our wants are increasing, the institution of joint Hindu family is doing more evil than good and time has arrived when it should come to an end. I wholly support the provisions of the Bill laying down that the principle of survivorship should no longer be recognised as well.

I am aware that in average Hindu, Sikh or Jain family, daughters are given more rights than are enjoined by law. I am also aware that an average Hindu, Sikh or Jain would go out of his way and even would go to the extent of running into debt to provide a suitable dowry to his daughter and his daughter's daughters and sister's daughters and in some cases daughters and their progeny are not the losers merely because of the fact that that the daughter has no right to inherit her parents' property in the presence of her brother. It must, however, be remembered that the things are changing fast and middle-class people, who spend as much on the education of their daughters, as they do on their sons, are finding it very hard to provide them with decent dowry. It is also common knowledge that the institution of dowry has well nigh become a course and highly accomplished and educated girls cannot be married, or married as well their parents or they themselves would like, simply because the demands of would-be suitors as regards dowry cannot be met with. My opinion therefore is that dowry system should be abolished and one of the ways of doing it is to allow a daughter to inherit along with her brother and widowed mother. The other important factor that must be taken notice of is that in almost all other systems of law the daughter is one of the recognised heirs to her parents' property in the presence of sons and the treatment accorded to her in this respect by Hindu Law is on one hand resented by Hindu women and on the other hand is used as a lever to deride Hindus and Hindu society by those whose vocation is to run down everything Hindu.

The Bill gives the Hindu woman and the female heir the same right of alienation as is possessed by male owners and male heirs. On principle, I am not opposed to it but in view of the fact that in spite of the spread of education a large section of women are still unlettered and can be easily duped by their relations I opine that at the present the right of alienation possessed by a female heir or owner should not be unrestricted except with regard to the property which is her *stridhan*.

I am also in favour of making the Hindu marriage monogamous and support the provisions of the Bill on this point. I do not believe in easy divorces and am of opinion that the sacred character of Hindu, Sikh or Jain marriages should be preserved to a great extent, but at the same time I think that it should be possible for the spouses to obtain a divorce in extreme cases or for one of the spouses to have the marriage dissolved or cancelled. I lay down that there should be no divorce in any case so as to shut your eyes to what is happening in the world. I have considered the provisions of the Bill on this point with greatest care and I think that no objection can be taken to them.

Section 3 of the Bill aims at the abrogation of custom on all the matters dealt with in the Bill. I am opposed to it, because Hindu Law not only recognises the binding force of a valid custom, provided it is not immoral, but in fact the whole system underlying it is based upon the evolution of custom. The Punjab is particularly the land of custom and I do not see any reason why a custom validly and properly proved should not be binding upon the parties. It may be mentioned in this connection that it is now well settled that if a custom is immoral or is opposed to public policy the Courts have refused to give effect to it.

I agree with my learned brother Mehr Chand Mahajan that the part of the Bill dealing with guardianship is unnecessary.

I have no objection to the chapter dealing with maintenance except that I would omit sub-section (2) of section 5 which includes a concubine among the relatives of the deceased who should be deemed to be his dependents for the purposes of section 4.

District and Sessions Judge, Jullundur.

I have gone through the measure with care. Obviously it is a cautious effort towards reform, not drastic enough to arouse the hostility of orthodox opinion. However, it is an improvement on the present position from all points of view. Since the present Legislature is likely to be dissolved in a short time to come and the New Legislature may like to adopt a Bill of a different character, I do not think it will be fruitful to go into the details of the measure.

District and Sessions Judge, Rawalpindi.

The provisions of the Hindu Code are so far as they go wholesome and the general scheme of it sound. I would have preferred a single rule of succession governing all kinds of property, but perhaps in view of the long established customs of agricultural tribes a concession in respect of agricultural land is at the moment necessary. I have no further criticism to offer.

Mr. R. Mehta, personal assistant to the Deputy Commissioner, Ambala.

Introductory:—Various influences, foreign and native have leavened Hindu social mass and from time to time resulted in demands for reforms of various kinds. An alien government while fully sympathising with such demands was reluctant, for fear of arousing fanatical orthodox opposition, to fulfil them except with the utmost caution and then too piecemeal. Instances are the Sarda Act, Hindu widow Re-marriage Act, Hindu Women's Right to property Act etc etc. Reformers were hardly satisfied with these. Not only this piecemeal tackling of a gigantic social problem seemed to them ineffective but they were also worried and confounded by the innumerable systems of Hindu Law prevailing in the country. Nothing, they were convinced, except a most comprehensive and systematic reform could rid the body-politic of a chronic social ill.

Now when social and political power reposes in the same hands the reformer sees his opportunity. To him, however more important than this even is the fact of an awakened social conscience that has come to exist in the country; and, also the realization that the country is by education and cultural advancement prepared for a great reform.

Objects:—Two clear objectives of this Draft Code quite apart from the fact of codification itself are easily discernible. The first is to bring about and recognize "complete equality of sexes" in the domain of Civil Law and, the second is to discard an old but irrational dogma by which rights on property accrue on the mere accident of birth.

It is gratifying to record that without an exception all whom I consulted were eager to express themselves

unreservedly in favour of these two guiding principles. They were all for the emancipation of women of this country. In addition, they readily appreciated the benefits of codifying Hindu Law.

PROVISIONS OF DRAFT CODE.

PART I

Preliminary.—This part comprises sections 1 to 7. Apart from the usual definitions etc it mentions that the Code would apply to Buddhists, Jains, and Sikhs also among others.

PART II

Intestate successions.—This part comprises section 1 to 25. Some of the most momentous and revolutionary provisions of the Code are to be found in this part. The most important provision is that women shall, if the Draft Code becomes an Act, inherit property in their own right just as male heirs have done hitherto. They would have full and absolute rights over the property they inherit and such rights include the right to alienate by sale, mortgage and gift. This would mean that henceforth wives, daughters, daughters-in-law etc would inherit property in their own right, and exercise absolute dominion over it.

To most whom I consulted this reform seemed timely and unexceptionable. This is taken to be a long step forward towards that cherished goal—the equality of sexes or, its corollary the emancipation of women. This would be a termination of the age long subservience of women to men and would result in giving the former their due place in the Indian social structure.

On the other hand, some elderly and orthodox gentlemen voiced serious objections to these provisions. If, so ran their argument, women were to inherit as man a progressive process of sub-division of the wealth of every Hindu family would set in which would ultimately result in complete disappearance of that wealth. The Hindus as a community, therefore, would cease to be well-to-do and prosperous any more. In any case, women of this country are not yet educated and advanced enough to use judiciously the wealth they would inherit. But those in favour of the Code, particularly young men and women themselves, refuted both these objections. To the first their reply is that irresistible social and economic forces have already brought about the disruption or disintegration of the joint Hindu family. To a large extent this has ceased to be any great economic unit. Thus, according to them, the orthodox have no cause to dread any worse consequences. In any case in view of the present day theory and practice of national taxation (more particularly of Income-tax) which practically leaves no scope for any individual or corporation to become extremely rich there is no question of the joint Hindu family continuing to enjoy unlimited prosperity from generation to generation. They clinched this argument with a pointed reference to the proposed death duties which would deal a fatal blow to family or generation-to-generation aristocrats. Nor can the growing world tendency towards the socialistic ideal of equality of wealth can be ignored in this context.

To the second objection, that women would not be able to take care of the wealth they would inherit, the progressive gentlemen's and ladies' reply is that this pre-judgment is not at all justified; they must be given an opportunity to display their ability and competence in this field before condemning them. In any case they would be found no worse than most semi-witted or extravagant man.

Personally, I too am unable to hold that the objections of the orthodox are valid. Quite apart from the purely theoretical consideration of equality of sexes there are important practical considerations which require that such a reform should be brought about. For long India has been noted for the inferior status its women have been relegated to by its society. Now when this country is on the verge of freedom and international recognition and is playing an important role in international affairs she must get rid of this stigma. Her mothers and daughters must occupy the same place as her fathers and sons do in the social

hierarchy. Nothing would be more conducive to that end than such equality in the sphere of civil law of the land. Further, in view of the spread of education among women it is wrong to say that they would not be able to look after their inherited property well. I would not be surprised in actual practice they did so better considering the natural thriftiness, and feeling of attachment to the family.

It is worth emphasising here that the provisions of the part of the Code do not apply to agricultural land, and further, that even where the property in question happens to be immovable, or some business interest, the Partition Act of 1893 would apply and thus prevent any harmful splitting-up of these.

PART III

Testamentary succession.—This part comprises section 1 to 10. It deals with devolution of interest in joint family property, and lays down that no right by birth family property, would accrue after the commencement of the Code. It goes on to deal with the matter of maintenance.

PART IV

Marriage and Divorce.—This part comprises sections 1 to 84, and deals with such things as celebration of marriage, sacramental marriage, nullity, civil marriage, validation and dissolution of marriage, etc. The most important provision in this part is the one dealing with dissolution of marriage. Uptil now, from times immemorial, the bond of a Hindu marriage has been held irrevocable. Reasons for this were both traditional and religious. Practical consequences, however, of this have been extremely tragic in numerous instances, and unfortunately, what is worse still, suffering and agony were in the main lot of women only. Modern education which has brought in its train an increasing sense of social justice has for long highlighted the evils of this custom. Off and on social and religious reformers also have tried to introduce reforms in this field but without much success. The present draft code realising these evils incorporates certain provisions (section 80, page 21 of the Code) allowing for dissolution of marriage in a limited number of contingencies. These are, mainly, continued desertion, insanity, certain loathsome, incurable, and foul diseases such as leprosy, venereal diseases, and, lastly, cruelty to a degree which renders joint living unsafe for either party. These provisions are welcome to most men and women I consulted, and they were gratified both at their novelty, and their moderation and restraint. But the orthodox were opposed to these provisions also on the ground that these would result in complete disintegration of the Hindu family which for long has been noted for its cohesion, and also destroy the traditional happiness of a Hindu home. Considering, however, the limitless suffering which numerous ill-adjusted marriages bring about to both parties whom the present law allows no opportunity to separate and retrieve matters partially or wholly, these objections appear to be quite untenable. Most men and women were agreed that this "traditional happiness of the Hindu home" was more of a fiction than a fact, and as such the sooner it was blown up the better for all concerned. They appreciated the thoughtfulness of the makers of this Code who avoiding the modern western and the ancient Indian extremes have chosen a middle course of wisdom and restraint. I agree with this view.

PART V

Minority and Guardianship.—The only noteworthy point in the provisions made under this part is that the very wide powers which natural guardians had enjoyed so long over the property of their wards have been limited. They would have to take permission of a court before disposing of or dealing with the ward's assets or property in any way. This is as it should be. The objection that this would compel all natural guardian to go to a court even when the bonafides of some of them may be unimpeachable is without any point considering that the intended Law by curbing the voracious inclinations of many a cunning and unscrupulous natural guardian would be of the greatest benefit to minors.

PART VI

Adoption.—This part comprises sections 1 to 35. Its most important provision is that a husband shall not adopt except with the consent of his wife or of one of his wives. This is quite in a line with the elevated status which the Code seeks to provide for women in general. Further, a system of optional registration of adoptions has been provided for. This could not be possibly objected to by any one.

Conclusion.—This Code is doubtless a great attempt at social reform in a country where such reforms have not kept pace with education and cultural enlightenment. It cannot be denied that this Code when made into a law will bring about revolutionary changes in the social structure of Indians. Equally certain it is that it is a boon to the women of this country, who henceforth will occupy their rightful place in society and thus will be able to make boundless contribution to national progress and advancement. The Code has received enthusiastic welcome from women in general whom it largely benefits; youngmen, who are fired by lofty ideals; intelligent and progressive Hindu and Sikh gentlemen who are glad that social injustice long done to women will be rectified at last; and lastly by internationalists of this country who feel that now they will be able to raise their heads fearlessly in any gathering of nations. At the same time, I must record this too, that it is very likely to arouse great opposition of the orthodox and elderly sections of Hindu society who appear to see in it very dangerous and disruptive tendencies which they fear will sound the death-knell of Hindu society as it has existed for thousands of years. There are, and it is a matter of pride, those too, who feel that the Code has not gone far enough. It could have abolished, they say, in one stroke the wretched caste system also from amongst the Hindus, and along with it polygamy.

Nor need the orthodox forget that the provisions of the Code being mostly permissive or enabling in nature, they just as much as those who think differently from them would be at liberty to lead the lives they desire. This absence of compulsion is the strongest point in favour of the Code.

In conclusion, I record my considered and most strong approval of the Draft Code.

Bar Association, Hissar

1. It is a very contentious Bill, and in view of the political changes which are imminent and in view of the possibility of division of India in Hindustan and Pakistan, this legislation at this stage is not needed and should be avoided.

2. This is not a codification of the Hindu Law as propounded by the Hindu Law-givers or as administered by the British Indian courts. It really aims at drastic changes in the Hindu Law of succession, adoption, marriage, guardianship, maintenance, etc.

3. The proposed changes mostly are anti-Hindu. Regard for Hindu tradition and practice is altogether disregarded. In fact the proposed changes are a negation of Hindu sentiments, acquired by centuries of practice. The framers of the Bill have had only one view point before them, namely, to cut down radically the Hindu notions of property and marriage; with the framers, the idea throughout seems to be to supplement the present Hindu Law as practised in the Hindu society, by notions of Mohammadan Law. They have tried to copy the tenets of Mohammadan Law here, there and everywhere, and have tried their utmost to impose on the Hindu society, the practices of Mohammadan Law, which are most repugnant to Hindu sentiments and traditions. It aims at annihilating the very idea of Joint Hindu Family, on which the entire structure of Hindu society, Hindu polity, and Hindu religion is based. It disregards the fundamental principles and injunctions of Hindu religion.

(i) Fundamental changes are sought to be introduced in the law of adoption.

(a) Adoption is made subject to the consent of the wife or at least one of the wives.

(b) When the idea underlying adoption is to save the persons' soul from perdition how can the power to adopt be taken away from persons under 18 years of age.

(c) Compulsory registration of authority to adopt is unnecessary. It may be impracticable with persons living away from District or Tahsil Headquarters. It ignores the chances of emergency by sudden illness or death.

(d) Under custom, adoption may be valid if made with the consent of the next reversioner. Their permission, even in most important cases, is altogether ignored.

(e) The right of Jain widow is altogether ignored.

(f) Adoption of the son of a woman within prohibited degrees is legalised, even when custom does not recognise it except in cases of daughter's or sister's son. Even wife's relatives are allowed to be adopted—a change which will seriously interfere with the family relationships being good and amicable.

(ii) Similarly in marriage, most anti-Hindu ideas have been imported in defining the prohibited degrees.

(a) The idea of registration of the sacramental marriages is obnoxious and uncalled for. It is only an attempt to copy the Mohammadan idea, which is nothing but a contractual marriage, which in this Code is spoken of as Civil marriage.

(iii) The changes proposed under the head "Guardianship" are mischievous.

(a) Restrictions placed on the alienation of the minor's property or his share which are made applicable even to Joint Family property will make the business of the family impossible, and will expose the family credit to a dangerous extent.

(b) If such restrictions are considered expedient the procedure suggested would be made only optional.

(iv) In the matter of succession:—

(a) By excluding agricultural lands from the operation of this Code, a confusion is being created. There will be two kinds of successions within different heirs. Present uncodified Hindu Law will apply to agricultural lands, and this Code will apply to other property. Lands are the most important kind of property. This division in the law of succession is likely to create serious confusions and unnecessary litigation.

(b) The idea of Joint Family and survivorship is altogether ignored which is against Hindu sentiments and feelings.

(c) The law has put no restrictions on the power of alienations by the Managers of the Joint Hindu Family.

(d) It would create serious complications, if custom, special custom or the special custom of the community is disregarded, specially in case of daughter's succession to ancestral property. Some provision must be made in this connection. Daughter's right to succeed along with sons should be limited only to self-acquired property.

The Bill as it stands is strongly opposed and will be unacceptable to any Hindu.

Deputy Commissioner, Kangra

The Code embodies almost all the essential modifications and additions required in the existing Hindu Law

in the light of the changed conditions of society now. Widows, daughters and sisters have been given their place in the right of succession to property. The definition of Stridhana has been extended to include property acquired by inheritance and thus a woman's right to property has been made absolute instead of being limited to life as at present.

I however do not agree to the exclusion of the provisions of this Code to agricultural lands as laid down in section 1 (j), Part II of the Code. There is no reason why agricultural land should be excluded. There may be a family who own no property at all but agricultural land and who are governed by Hindu Law. This provision would operate unjustly and harshly in the case of some members of that family.

If the reason for excluding the agricultural land from the provisions of the Code is to save agricultural land from sub-division, it will not obviously serve the purpose. Agricultural land is being sub-divided as badly as can be under the existing law and there will be no substantial check to this sub-division by excluding agricultural land from the provisions of this Code which is based on generally accepted principles of justice and fairness. If sub-division is to be checked, the obvious remedy is to lay down a certain limit, say 10 Kanals beyond which agricultural land shall not be partitioned when succession opens, but the successors entitled to the property may claim a proportionate share of the produce. Other suitable measures could also be devised for preventing harmful sub-division of agricultural land. It will be enough to lay down that the Hindu Code shall not apply to any estate or family which is subject to any special custom.

Under section 5, Part III (a) the dependents entitled to maintenance include the widow and the unmarried daughter and widow of a predeceased son so long as they do not marry. This provision will not help to solve the existing problem of the very large number of young unmarried widows in Hindu Society. The Code seems to delete the existing provision of Hindu Law according to which a widow loses her right to property on remarriage. It is not clear why a distinction has been made in the case of maintenance under section 5 of Part III (a). A widow or a daughter, after marriage should be entitled to receive maintenance in special circumstances where she is unable to obtain maintenance from the husband.

The provisions for marriage and divorce are quite suitable. Under section 3 (1), Part IV a sacramental marriage cannot be performed where either party has a spouse living at the time of marriage. This will check the evil of bigamy.

The provisions for dissolution of marriage under section 20, Part IV are a wholesome modification of the existing law.

Deputy Commissioner, Hoshiarpur

The Bill proposes to modify certain provisions of the Hindu Law, which has been more or less uncertain so far and subject to various interpretations. It tries to meet the growing demands of the twentieth century Hindu society and provides for certain adjustments in accordance with modern conditions. The best feature of the Bill is that most of its provisions are of a permissive or enabling character and that they do not impose any compulsion or obligation on the orthodox section of the community. Accordingly there should not be any opposition to its provisions from those, who prefer to adhere to the old ways.

2. For the reasons detailed in the preceding paragraph, the Bill has my hearty support.

Commissioner, Multan Division

In my view codification is eminently desirable in order to remove the uncertainties of a law dependent mainly on customs and rulings. The Bill will no doubt be

amended in details after discussion in the legislature, but I fully support the Bill and its object generally.

Bar Association, Montgomery

That majority of these who are governed by the Hindu Law do not approve of the changes contemplated by the said Bill, inasmuch as it is likely to give a go-bye to the religious susceptibilities and a sacramental touch that forms the very basis of the Hindu Society. As a result whereof it introduces materialistic and dissentionary matters which affect Hindu culture and society most injuriously.

2. The Bill is silent as to the manner of devolution of agricultural land, probably on the ground that agricultural land does not form a Central subject but uniformity of devolution of immoveable property is essential to keep intact the basic ideas of uniform succession under Hindu Law. Some measure to keep up a uniformity of devolution is most essential and desirable.

3. Introducing daughter as an equal sharer of property with sons, etc., in section 5 is highly defective and objectionable for grounds mentioned below:—

(i) It tends to make Hindu materialistic and gives rise to various other complications and operates as a check to various gifts made to daughters on various occasions. It will affect choice of spouses, which will become more business like than a religious one. It will also increase litigation.

(ii) It is not made clear, whether a daughter mentioned in section 5 (1), para. 1, clause 1 of the Bill is a married or an unmarried one and whether her rights are limited or she will be an absolute owner. The trend of provisions shows that both kinds of daughters will succeed as absolute owners, which, if so, is most repugnant to the Hindu culture.

(iii) Again it is not clear as to how the calculation of shares is to take place in case of more than one son or daughter. Elucidation is essential thereof.

(iv) It is desirable that some maximum limit of dowry be fixed and transgression thereof be made an offence.

(v) That the law of monogamy is defective inasmuch as it does not even provide for most extreme and genuine cases in which second marriage may be made permissible, e.g., the husband being childless and his wife being incapable of giving birth to any child on account of some incurable disease or some other similar ground, such as barrenness. It may be noted that under Hindu Law the birth of a son is sacred.

Deputy Commissioner, Lyallpur

The proposed Bill fulfils a long felt need very comprehensively. I have no suggestion to improve or amend any part of it. However, as India is to be divided, it may be suggested to the Central Government that the Bill when it becomes law be adopted for application to Hindus (Sikhs, Budhists, etc.) in the Pakistan areas as well. This may be included in the mutual treaties.

Shri Sanatan Dharma Pratinidhi Sabha, Punjab

Once again this Sabha has been called upon to express its opinion on the "Hindu Code" and takes the opportunity to do so, though it is pained to see that very strong and vehement opposition put in against it by a very large number of well represented and established Hindu organisations and individuals throughout the country has not been heeded by the Government. There does not seem to be any hope of such opinions expressed now to be heeded again. But still there is no harm if an opinion is submitted as asked for by the authorities concerned.

It is stated in the "Statement of Objects and Reasons" of the Code that there has been "a growing public opinion in the country in favour of a consolidated and uniform Code dealing with the different topics of Hindu Law for all the Provinces and for all sections of the Hindu

Society". But on the contrary the Sabha finds that there has been no such demand from the general public, rather such an attempt on the part of a few westernized Hindus—who are a very small fraction of the general public—has been opposed by the common people at large, especially by those who are thoroughly conversant with the original texts of Hindu Law in Sanskrit in which a change is sought to be brought, not for the good of the Hindu Society at large but as is admitted in the "Statement of Objects and Reasons" this innovation is being made "to give a growing body of Hindus, men, and women, the liberty to lead the lives which they wish to lead". In fact the whole effort is being made to help and encourage those, who while on one hand do not like to leave the Hindu Society for the obvious gains they derive by remaining in the Society, but on the other do not like to abide by the rules and principles as laid down by our far-seeing and most selfless Rishis and Munis and want to remain free from all the obligations and responsibilities of the society as enjoined by the Hindu Shastras. This kind of attitude can never be conducive for the good of the society or any individual.

The Sabha is definitely of opinion that to give such a license to each and every one of the society to do as he or she likes to do, is to prepare the society to be thrown in deep degradation and destruction. To put the society on such a wrong foundation is to invite its total extinction. It be taken into consideration that the West, whose following is sought so eagerly by such Hindus has already suffered heavily on this account and Western Civilization has brought ruin to the whole world. If the Hindus are allowed to drift from their higher and nobler objectives in this respect, then surely they will be adding not only to the ruin and misery of themselves and the Hindu Society, but to the whole human society, while they are capable of showing real and true path of peace, progress and prosperity to the humanity at large by following their own higher ideals.

It is also stated in the same "Statement of Objects and Reasons" that "The present conditions and trends in Hindu Society" are such which are forcing "the thoughtful observers" to feel "the great need" to bring in alterations in the Hindu Law "so as to make it fit the new pattern to which the Hindu Society seems to be rapidly adjusting itself". The Sabha feels, as already stated, that it is the small but vocal section of the Hindus, who have been so much influenced by the Western thoughts that they feel prompted to hate their own social code and follow in the foot-steps of the Western people quite unthinkingly and thoughtlessly. What is needed at this juncture is to analyze and see, whether (1) "the conditions and trends" created in the Hindu society by the contact with the West are healthy useful and inspiring, whether (2) those who claim to represent such "conditions and trends" are really "thoughtful observers" and whether (3) "the new pattern" to which the Hindu society is said to be adjusting itself is a pattern worth having or shunning.

The Sabha has no hesitation in saying that the so-called "thoughtful observers" are nothing but slaves of Western thoughts and cannot think beyond the line they have drawn for themselves. In most cases they are devoid of the Hindu Shastras knowledge and those few, who have some knowledge in this behalf, are so much perverted in their thoughts that they cannot see any beauty and greatness in the Hindu Shastras. It is, therefore, injurious and harmful for them and the society to assume the role of a reformer and to muddle in the personal laws of the Hindus. The so-called "new pattern" to which these "thoughtful observers" give so much importance, is, in fact, nothing but to lead to a corrupt and licentious life in the society without giving the society any chance to criticise and check these law breakers in any way, as is clearly said in the very "Statement of Objects and Reasons" of the Code. These

"thoughtful observers" at once forget that the so-called "New Pattern" is nothing but a result of the various destructive influences of Western Civilization, which have made the Hindus a slave nation, whether politically, economically, industrially, educationally, socially, morally and spiritually, while the same "thoughtful observers" are fighting for the independence and freedom of the country. It is really surprising to see that while on one hand they realize that contact with the West has made India a slave country and they try to get rid of the slavery-producing influences of the West, on the other they cherish the idea of following the same "conditions and trends" which have put India in bondage. They are not able to appreciate the simple truth that the factors which have made India slave are not worth following without strengthening our bonds of slavery. They are not clear about it that human life is not governed by parts, but each phase of it affects the other parts equally. If we are slaves politically then surely we are slaves morally and in other respects. If we are to free ourselves from political bondage by removing the causes working behind, then it is bound to free us from moral and spiritual bondage as well in the same proportion. Therefore the so-called "new pattern" is nothing but a sign of our bondage and instead of adjusting ourselves to such a pattern we should shun it totally if we want to rise higher in our lives.

If one truth is taken into consideration that the Hindus have lost in every way by coming in contact with the West—as the West has nothing superior and good to offer—then to look to West for betterment and to copy it for any good is the greatest folly that can be committed by any people. It is this fundamental and basic difference of opinion in two sections of the Hindu Community which creates all kinds of confusion and bitterness. We are to stand on our own social, moral and spiritual code and change ourselves on the same pattern, from the "new pattern" in which we have been thrown by foolishly and blindly following the West. It is wrong to think that by following the same path which has brought ruin to us in more ways than one, we can be better in any way. All these efforts of bringing changes and uniformity in our laws on the Western model are in fact efforts to further enslave us and this is what we should avoid, if we really want to bring in any change for the better in our society. Therefore this Sabha opposes very strongly this measure also.

To claim that by introduction of this measure "The old, complex, intricate and different provisions of Hindu Law, have also been simplified", is another perverted idea and contrary to facts. In fact by introducing new factors, the law has been made further complicated and in reality made to conform with the wishes of those who are to break the law with impunity. This is an innovation uncalled for and unnecessary. Weak minds are not capable of understanding the holy laws and thus effort is being made to make them according to the low capacity of their understanding. What a tragic and woeful position indeed!

Upto now the law has been in force for the last thousands of years and has worked quite satisfactorily for all concerned. In Brahma Puran there is an instance in which it is given that Sudwymna was not given share in the kingdom of his father, as he was first born as a girl, though transformed into a man later on.

I am not quite aware of the system as is in vogue in England in this behalf, but this much it can be said that it is not the one which is proposed in this measure. Then why this innovation at all, if the Hindus are to copy the British at all. It is very unfortunate that the mind is not yet free from slavish mentality in which the so-called "thoughtful observers" have been thrown by force of circumstances created by the British.

As the Sabha has already expressed its views on this very measure quite freely and extensively, it thinks it need not go into it again. It strongly urges upon the Government not to follow this wrong course and give up such unnecessary interference in the religious matters of the Hindu society any more.

Dr. Parashu Ram Sharma

The Hindu Code is described to have been framed for the purpose of amending and codifying certain branches of the Hindu Law, as now in force in British India. This is self contradictory and does not stand the test of reason or Hindu Dharma Shastras as well.

The branches of Hindu Law covered by the Code are (1) Intestate Succession (2) Marriage and Divorce (3) Minority and Guardianship and (4) Adoption.

In these branches the Code brings in changes which are not sanctioned by Dharma Shastras and are therefore unacceptable to the Hindus. I am definitely of opinion that no Government or legislature has any right whatever to introduce any changes in the Hindu Law. This is being done in spite of the vehement opposition of millions of Hindus, and that also merely to encourage those who are influenced by western education and do not hesitate to go against the Dharma Shastras but still want to remain in the Hindu society for their own selfish ends. This is a pure and deliberate injustice being perpetrated by those who have power in their hands to frame laws according to their own wishes and whims.

The changes proposed to be introduced in the Hindu Law are themselves such which will definitely prove harmful and injurious to the Hindu Society. I have no hesitation in saying that this thing was introduced by the Non-Hindu Law Member—Sir Sultan Ahmad—with a view to weaken the Hindu Society and turn it into a half Muslim and half Christian Society. He deliberately committed irregularities in the proceedings of the committees formed to deal the measure, and did unlawful things, as the British element in the administration was a party to it and the Hindus in the administration and in the legislature were mostly of the type of Macaulay's scheme's production.

I see vividly that the changes sought to be brought in Hindu Law by the introduction of this Code will bring in such evil consequences which are bound to lower the moral and spiritual condition of the Hindu society and will throw the society in a very miserable condition. The only relieving feature in the whole affair is that even most of the adies, for whose benefit the measure is claimed to be brought, are against it and this will make it a dead letter as several other similar measures have proved.

I know that the present Government, which claims to be a National one, will not care the vehement opposition with which the measure is meeting and will not curb the feelings (unjust) of the legislatures who want it to be passed through and will pass it, but there is no doubt that it will lose the good will and confidence of a large number of the Hindu Society and will suffer in other ways.

I strongly oppose the measure and will urge the Government not to allow it to proceed further and throw it away.

No. 16.—BOMBAY

Letter from the Secretary to the Government of Bombay, Home Department, to the Secretary to the Government of India, Ministry of Law, New Delhi. No. 2207/5-B, dated the 8th December 1947.

I am directed to forward herewith the opinion of the Bombay Advocates Association, Bombay, on the draft Hindu Code.

Bombay Advocates Association, Bombay.

My Association has carefully gone through the provisions of the Hindu Code. My Association agrees that there should be a uniform and simple code of Hindu Law in place of the old, complex—intricate and divergent provisions of Hindu Law prevailing in different places and communities.

My Association has to place on record its appreciation of the fact the Hindu Law Committee was pleased to consider the recommendations made by my Association on two prior occasions when draft-bills for consolidation and amending Hindu Law were drafted and published.

My Association desires to express its disapproval of the tendencies on the part of various Provincial Legislatures to make piecemeal legislation in respect of some branches of Hindu Law different—from the one incorporate in the aforesaid bill. To allow such Provincial law differing in some respect from the Hindu Code is to recreate in a different form the divergent schools of thought which exist in different parts of India and defeat the very object of the framers of the Hindu Code viz. framing a consolidated and uniform Code dealing with the different topics of Hindu Law for all Provinces and for all sections of the Hindu Society.

My Association, therefore, respectfully urges the Government of the Dominion of India to make suitable provision for checking such fissiparous tendencies on the part of the Provincial Legislatures in respect of the provisions of the Hindu Code and to arrange with the States acceding to the Dominion of India that the Provisions of the Hindu Code may be made applicable as far as possible to Hindus residing within the territories of those States.

My Association is of the view that, in view of the interest in joint family estate having been made heritable property and the son, widow and daughter having been made simultaneous heirs, there seems to be no justification for continuing any longer the pious obligation of the son to discharge the lawful debts of his father either during his life-time or after his death. It would be just, fair and equitable to make all the heirs liable for the debts of the deceased to the extent of their share in the property. It is therefore desirable that a separate section be introduced in the Code whereby the pious obligation of the son may be declared to be abolished.

My Association notes that in the draft bill of Hindu Code the law relating to the existing coparcenary estate has been neither codified nor amended with the result that some anomalous positions are bound to arise with respect to the right to make a will or also with respect to the right of a son begotten or born after the partition (Vide S.310 of Hindu Law by Mulla 9th Ed.). The aforesaid anomalous positions have been noticed here under. In the explanatory note to the draft bill of Hindu Code Part I (Intestate Succession) published in 1942 a promise had been held out to deal with the question of existing joint family estate when the whole Code would be drafted. My Association suggests that the Law relating to the existing joint family estate must be codified and/or amended in the Code in order to remove all doubts.

My Association draws the attention of the Government that there are conflicting decisions of the Bombay and Madras High Courts on the one hand and of the Allahabad and Calcutta High Courts on the other hand in respect of the right of alienation of the interest of a male Hindu in his joint family estate. Since it is intended by Ss. 1 and 2 of the Part III-A Div. I to do away with the right by birth in joint family property and devolution of the interest in joint family property by survivorship and to confer a right to will away the said interest, it will be in fitness of things to recognise and confer, by separate section a right on a coparcener to transfer inter vivos his interest in his joint family estate. (Vid. Ss.258-261 of Hindu Law by Mulla 9th Ed.)

My Association draws the attention of the Government to S.310 of the Hindu Law by Mulla, 9th Ed. in respect

of the right of a son who is begotten as well as born after the partition. If such a father dies intestate, his sons who have already received their shares shall also get a share from the estate left by their father under S. 5 along with the son begotten or born after partition. According to the Law as it is now in force, sons who have received their share at the partition shall not get anything in the estate left by the father and that the son begotten or born after partition shall get it. My Association strongly urges for removal of such an anomalous position by making some provision in the Chapter dealing with intestate succession.

After expressing the aforesaid general views I am directed by my Association to express its views Clause by Clause.

PART—I.

S. 2 sub 3(b).—This Section would exclude persons who profess Hindu religion but who in order to marry under Special Marriage Act of 1872 (before its amendment in 1923) declared themselves as professing no religion. The definition may be so framed as to make the Code applicable to those persons.

This suggestion has been made with a view to obviate the difficulties experienced in Thakur Bai V/S Atlavar I.L.R.(1935) 35 Mad.1004 and Ratan Behari V/S Margaretha (1939) 1, Cd. 201.

PART—II.

Section 10.—There does not appear to be any utility of this Section. The Society which existed in times of Smritis and Srutis has completely changed. The system of education has also changed. This Section may therefore be omitted.

Section 13.—It is difficult to understand why a woman's right to dispose of by transfer *inter vivos* or by Will her stridhana property is restricted to the stridhana acquired after the commencement of this Code.

Is it suggested that Stridhana property acquired prior to the commencement of the Code should be governed by the old law? If that is so, this Code confers no benefit on a woman. Previous conflicting law will still govern the Society for a decade or two. My Association will urge adoption of a progressive and farsighted view by omitting the words "acquired by her after the commencement of the Code."

Section 14.—It is difficult to understand the omission of Daughter and son from the list of heirs. In the draft bill published in 1942, under S.13 (Hindu Code Part I) daughter and son appeared in the list of heirs. Mitakshara, Mayukha, Madras and Dayabhaga schools have enumerated daughters and sons as heirs.

PART III A

Division I

S. 1.—This section does not touch existing joint family properties. The words "dying after the commencement of this code" imply that the interest of a living person in joint family estate remains as it is (This view is confirmed by the explanatory note upon the definition of the word "heritable property" published in 1942). It is not clear whether a man can will away his interest in a joint family estate. Although an inference may be drawn that such a right is implied in this section, my Association is of the view that a right to will away the interest of a male Hindu in his joint family estate should be incorporated in the Code by a separate section so, as to leave no room for doubt. In the alternative my Association suggests the omission of the words "dying after the commencement of this Code."

Division II.

Maintenance

S.4.—It is difficult to understand why the position of those dependants who became entitled to maintenance

prior to the commencement of this Code has not been attempted to be codified and amended.

S.6(g).—It is difficult to understand why income from her earnings is excluded from being considered in fixing the amount of maintenance. The Government must be aware that now-a-days the education of girls has advanced by leaps and bounds. The girls are educated and given College education and hold degrees and diplomas. In some cases the husband also facilitates completion of the education of his wife upto degree or diploma examination. The education in these circumstances, as in case of males, should be considered as an asset. The Government, Provincial and Central, have been removing sex disqualifications in the matter of employment. Preferential treatment given to the widow in this regard in comparison with the rights of other women under Cl. (h) is bound to cause injustice to other women dependants. On a careful consideration of all the pros and cons, there does not appear to be any justification for excluding the widow's income derived from her earnings from the consideration to be made in fixing the amount of maintenance. My Association therefore suggests placing on par all women dependants including the widow in the matter of the income derived from their earnings.

S. 6(3).—Upon a careful reading of this Section, with S. 4, it is quite possible to argue that sec. 4 places a restriction upon Sec. 6 (3) in the matter of those persons who have become dependants prior to the commencement of this Code.

PART IV.—Marriage & Divorce

S. 9(2).—My Association is of the view that a notice of marriage should be given to a Registrar within whose jurisdiction both the parties have resided for a month. This is necessary in order to safeguard the interest of the bride. As otherwise a bridegroom could easily manipulate to reside at a certain far off place and give notice to the Registrar of that place, call the bride on the day of marriage and marry, keeping in dark the relations of the bride (falsely stating the bride's age as 21 years complete). After the marriage has been completed, few parents would like to disturb it even if the bride has not completed the age of 21 by taking any proceedings and thereby destroying the marital happiness of the couple.

S. 23.—My Association would suggest that paternal grand mother and maternal grandmother should be also included in the list of guardians.

S. 23(3).—My Association would strongly recommend incorporation of the grounds of disqualification of a guardian such as lunacy, idiocy, change of religion by father, remarriage by mother, conviction for an offence involving moral turpitude, insolvency, continued residence beyond the jurisdiction of the Court, possessing an interest adverse to that of the minor and so on.

S. 29(2) S. 30.—It is difficult to understand why concurrent jurisdiction should be given to the District Court and the High Court. My Association would suggest that petitions may be presented to the principal Court of civil jurisdiction within whose jurisdiction the petitioner has been residing.

S. 29(3) *Proviso (a)*.—The period of one year is quite insufficient in view of the 73 per cent. of the population residing in villages which are far off from places of communications and their illiteracy.

PART VI. ADOPTION.

S. 15(2).—My Association is of the view that performance of Datta Homam should be made essential for the validity of an adoption. As otherwise the factum of adoption will be disputed and that will be fruitful source of litigation. In order to avoid this litigation, performance of Datta Homam should be made obligatory. The Privy Council has also shown its inclination towards the view that Datta Homam is necessary, [42 A.I. 135 (149—150)].

GOVERNMENT OF INDIA
MINISTRY OF LAW

PAPER No. IV

OPINIONS
ON
THE HINDU CODE

(Introduced in the Legislative Assembly on the 11th April 1947 and published in the Gazette of India, Part V, on the 19th April 1947)

Opinion No. 17

WEST BENGAL

PAGES.

No. 17.—Letter No. 1120-J, dated the 3rd March, 1948, from the Secretary to the Government of West Bengal to the Secretary to the Government of India, Ministry of Law.

No. 17—WEST BENGAL

FROM THE SECRETARY TO THE GOVERNMENT OF WEST BENGAL
TO THE SECRETARY TO THE GOVERNMENT OF INDIA, MINIS-
TRY OF LAW, No. 1120-J, DATED THE 3RD MARCH, 1948.

SUBJECT:—*The Hindu Code.*

I am directed to refer to your letter No. F.229/47-C.&G. (Judl.), dated the 16th April, 1947, on the subject noted above and to say that a notification was published in the Calcutta Gazette inviting opinions from individuals and public bodies and opinions were also expressly invited from certain representative public bodies and selected officers. I am sorry to say that the response received is not adequate to the importance of the subject and I am to enclose herewith copies of the opinions noted below including copy of the opinion of the High Court, Calcutta. It is unfortunate that no response has been received from any women's association nor from any public body holding reformist views in social matters. The Provincial Government are of opinion that a measure of far-reaching importance like the present one involving revolutionary changes affecting the social structure of the Hindus should only be considered by the Indian Parliament under the new Constitution when that comes into being and it should not be proceeded with at present.

1. Bengal Varnashram Swarajya Sangha.
2. Bangiya Brahman Sabha, Calcutta.
3. The High Court, Calcutta.
4. Burdwan Bar Association.
5. District Judge Shri P. P. I. Vaidyanatham.
6. District Judge Shri T. C. Banerji.
7. District Judge Shri N. N. Mukherji.
8. District Judge Shri C. C. Ganguly.

2. I am to add that the Bill and the Statement of Object and Reasons were published in English in the Calcutta Gazette on the 15th May, 1947 but they were not

translated into any language. Copies of the Bill were placed in the library of the West Bengal Legislature but no response was received from any member.

3. I am to add that the delay in replying to your letter is due to unavoidable reasons.

The Bangiya Brahman Sabha, Calcutta

As a body representing the orthodox Hindu Community we have at the very outset to confess to a feeling of utter futility in this matter of expressing opinion on proposals for such Legislation. This is because from the tactics employed all along, it is apparent that the invitation for opinion is only a make believe affair, opinions expressed are ignored and the game of baiting orthodox Hindu & the War of exhaustion against them go on as merrily as ever for example, beginning with the work of the Hindu Law committee four draft schemes of Hindu law reform have been circulated for opinion but in spite of production of arguments and texts of shastras even as required by the protagonists of reform, though vanquished, they are not only arguing still but raising their iconoclastic demands. In this last essay they not only keep intact proposals more than once refuted but also try to give the quietus to Hindu society and religion. We shall, therefore, only point out the general unfairness of such legislation and refer to a few salient points in the provisions of the Bill which will have coercive action destroying the very basis of Hindu society and religion, and that to the knowledge of the framers of it, whatever their professions to the contrary.

2. Such legislation is unfair and even from considerations of honesty should be altogether stopped or at any rate, postponed for the present for the following reasons:—

(i) The Central Assembly at Delhi in which the question of introducing the Bill was broached and its circulation was decided on was an assemblage of members professing different faiths and it could not, therefore, be a justifiable

or competent body to legislate on Hindu Law which concerns members of one of these faiths and is admittedly based on ancient texts to be elucidated according to complicated rules of interpretation requiring expert and intimate knowledge.

(iii) Even as it is, the said Assembly was not representative of orthodox Hindus. This is because of the fact, which has been explained more than once and last in course of our opinion submitted on the Inter-caste Marriage Regulating and Validating Bill *viz.*, owing to historical causes, having been lulled into a sense of security about their religion and its practices by professions of neutrality towards them from the British rulers and political parties, like Congress, trying to wrest political power from the British, Orthodox Hindus, with religion as their main concern in life, forebore from the field of politics so that Hindu seats in Assemblies and Councils came to be filled up by so-called Hindus, ignorant of Hindu heritage, and iconoclastic reformers bent on destroying Hindu Culture and religion by anti-Hindu legislation—a fact referred to even in the Statement of Objects and Reasons. This Bill should not, therefore, be proceeded with.

(iv) Even apart from the above considerations, applicable to all Assemblies and Councils upto date, the last election for Assemblies, Central and Provincial, was heralded by a Congress manifesto which declared that the only question before the country was that of complete Independence and on that understanding Congress candidates were practically allowed a walk over. It is therefore a fraud on the electorate now for congress to permit controversial legislation like that under reference before the Assembly elected on the last congress mandate.

(v) Then there is the general consideration that such legislation is *ultra vires* of the Assembly elected under the Government of India Act 1935, from the time of the East India Company, as in sec. 85 of the Charter of 1833, the Governor-General in Council was enjoined to protect by "Laws and regulations" the natives from insult and outrage in their persons, religions and opinions. Then there was the provision in the constitution Act of 1861 requiring the previous sanction of the Governor General to the introduction in legislature of legislation affecting religion and religious rites. The provision of the previous sanction continued upto the Act of 1935 and served as a protection. The Assembly under this Act being a subordinate legislature, could only legislate in respect of subjects mentioned in the Legislative Lists in Sched. VII of the Act. But religion and religious rites, subjects familiar from 1861, are not in the lists of the Act of 1935. Among subjects connected with this Bill the subjects of Marriage and Inheritance, indeed, are there. But the obvious interpretation is that the competence of the Legislature to deal with these subjects extends so far as it does not prejudicially affect religion and religious rites. For example it may be competent to deal with Civil Marriage and Inheritance regulated by the Indian Succession Act, but not with the Hindu Law of Marriage and inheritance which are connected with religion and religious rites as being sacramental and based on the doctrine of spiritual benefit to ancestors. The fact that sec. 301 of the 1935 Act takes away the guarantee of respect for shastras is immaterial, the position being that before 1935 the legislature might be allowed to legislate on religion and religious matters but the guarantee for protection was retained by the Paramount Power in its reservation of previous sanction. Now, however, as the Legislature is no longer so allowed the guarantee is taken away as superfluous. The present Bill as being connected with religion and religious matters therefore is *ultra vires* of the Assembly under the 1935 Act.

(vi) Now, as that Central Assembly is being abrogated by the Constituent Assembly, the case against proceeding with the present Bill is even stronger. The Constituent Assembly itself is at least a make shift arrangement until a new Assembly comes into being under the new constitution and legislation like the Hindu Code Bill of such far reaching consequences, should not be rushed through an Assembly improvised to deal with emergency situations connected with the creation of new Dominions in India.

(vii) In the latest political set-up with two separate Dominions in the country and the Hindus distributed over both of them, the proposed legislation, if proceeded with in the Constituent Assembly of India, will lack the character of *uniformity* for all sections and provinces of the country on which so much stress is laid in the Statement of Objects and Reasons.

(viii) Lastly we have to point out the inherent impropriety of any Assembly of a secular character to deal with subjects like those of this Bill which are connected with religion. Not to speak of a community like the Hindus, whose whole life, social and personal, is permeated with the precepts of religion and whose law was therefore immune from interference by the king, in Hindu India even Britishers who are the mentors of our reformist legislators, have recognised the impropriety of secular legislatures dealing with religious matters. Dr. Hermann Finer in the *Theory of Modern Government* 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 matter" (Vol. III p. 753). The view is more directly endorsed by Sir Arnold Wilson who in an article on "The Church and state" in the *English Review* (Jan, 1935) refers to the views of Lord Hugh Cecil and says that he would exclude the laity from the discussion of the mysteries of sacraments which belongs to Bishops and subordinated to the clergy. He would permit no intrusion by the laity on the stewardship of the mysteries of the Gospel. There is, besides, the fact that a separate body of experts was formed under the Church of Assembly Act even as late as 1919 to deal with matters of religion which were left outside the ordinary scope of Parliament. But in this country the incidents of circulation even are so arranged that the people who are most vitally concerned with such legislation and intimately acquainted with their basic texts in the shastras are not allowed proper opportunity to express their opinion.

5. Having thus dealt with the initial unfairness of the legislation as proposed, we have next to stress the fact that even as it is the Objects and Reasons as alleged in the Statement of the sponsor of the Bill do not justify the measure. The reasons given are all at best, special pleadings. The past attempts at such reforming legislation instead of being relied on as the inspiration, should be condemned as the mischievous vagaries of a handful of interested zealots as such attempts prove neither necessity nor any support for them from public opinion. Nor do they prove that the new pattern of society after which the handful of reformers hanker is so desirable in itself as would justify its being forced on the vast population of orthodox Hindus. While the Reasons are thus unreal the objects set forth also are incapable of realisation. Apart from arguments as to its desirability, the uniformity alleged to be consequence of adoption of the Code is incapable of realisation, as we have already pointed out above, in the present political set-up of the country. The other consequence, simplification of the law, is not to be accepted as an overriding factor of justification in such vital matters of the complex religious life of an ancient people. Lastly, as will be pointed out in the next para, it is not correct to say, as is done in the statement, that the measure imposes no sort of compulsion or obstruction whatever on the orthodox section of the community and does not infringe the liberty of those who prefer to adhere to the old ways. In fact the overwhelming injustice which the Bill will entail on orthodox Hindus is wholly uncalled for the sake of liberty for the handful of breakers of the old law in as much as other ways, like civil marriage, are open to them.

4. Coming to the provisions of the Bill we refer to some salient features which will have coercive and destructive effect on orthodox Hindu society and religion:

(i) In relation to sacramental marriage.

(a) The prohibition of a living spouse at the time of marriage as a condition of validity militates against the liberty to take a second wife when this is necessary to get a son from one's own loins for the continuation (sic) of pindas.

(b) The insistence on a particular age for the parties at the time of marriage as condition for validity also involves coercion against shastric injunctions.

(c) Nullity and Divorce provisions also militate against the Hindu law of marriage for orthodox Hindus with whom marriage performed according to shastras cannot be dissolved.

(ii) In relation to Adoption the omission of clause (ii) of the previous draft which had insisted on the same caste for the adoptor and the adopted shows the rapid strides of the anti-Hindu motive of the reformist framers of the Bill in this attempt to do away with the basic requirement of caste system in Hindu society and the same is true in respect of the omission of restrictions of caste among the conditions of validity of Sacramental Marriage.

REGISTRAR CALCUTTA
HIGH COURT

I am to say that, as the Bill involves questions of policy, the Court would not be justified in expressing any opinion on its provisions. The Court would only point out that the Bill involves far-reaching and revolutionary changes in the law of intestate succession, as for instance where it proposes to admit a married daughter to a share with the sons in the inheritance, and also in the law of marriage. It is also a matter for the Legislature to consider whether any piecemeal legislation, which threatens to affect the whole structure of the Hindu Community should be undertaken.

P. P. I. Vaidyanathan, Esq., I.C.S., District Judge, Burdwan.

Generally speaking, I am of opinion that it would be a highly beneficial measure, not only because it would reform the Hindu Law to be in line with educated public opinion but also because it would simplify the law to a great extent and thereby reduce chances of unnecessary litigation. In my opinion, the Code requires some alterations in the following respects and the following are my suggestions.

1. The sections should be serially numbered. As drafted at present, it would be difficult to refer to the section which has to be referred to, as for example, Part IV, section 9. A serial numbering of the sections would simplify reference.

2. Part II section 7, Intestate Succession.

(a) Under this section a widow is entitled to the same share as the son. But rule 1 provides that if the intestate leaves more than one widow all the widows together will take one share. This is the existing rule of law but it seems to be illogical and against the principle on which the Code proceeds. I am of opinion that if there are more than one widow, each one should be entitled to the share of one son.

(b) By rule 2 all the sons whether divided or undivided will be entitled to a share in the estate of the intestate. This rule may work inequitably in some cases. For instance, if a father has separated from his only son before the Code becomes law and subsequently a second son is born the rule would work to the disadvantage of the second son. Under this rule the elder son, who is divided, will get his own share as well as half the share in the estate left by the father while the younger son would have to be content with the remaining half share. I suggest that this defect be removed by giving preference to a son born after partition over the other sons.

(c) By rule 4, section 7, a daughter will be entitled to half a share. In my opinion this is an illogical compromise between giving the daughter the same status as a son and her present legal position. Possibly this compromise has been struck to pacify the more orthodox opinion, and it is also influenced by the rule in Muslim Law. But at the same time it remains illogical, because if the legislature aims at the equality of sons and daughters in inheritance, it should say so boldly and logically without striking to compromise. All the reasons which are advanced against giving one share to the daughter can also be advanced against giving the

daughter half a share, and if the legislature decides to brush aside the objections it need not stop half way. I suggest that the rule be modified to one giving a daughter the same share as the son.

3. Part II, section 14, sub-rule (3).—This rule gives the same share to the widow of a pre-deceased son.

3. Part II, section 14, sub-rule (3).—This rule gives the daughter one share in the Stridhan and give the son half a share and is apparently intended to counterbalance the weightage given to the son in the father's property. For the reasons which I gave above I am of opinion that the son and the daughter should be entitled equally to the Stridhan.

4. Part IV, section 5.—By this section a sacramental marriage should not be declared invalid except in the case of force or fraud and it is specifically provided that the absence of the consent of the bride's guardian would not invalidate the marriage. In most cases there would be elements of force or fraud when a girl is given in marriage without the consent of her lawful guardian. But it is possible to contemplate some cases in which a girl is given in marriage without her guardian's consent without there being elements of force or fraud. The present rule which is embodied in this section is not a complete one. I suggest that some provisions be made for invalidating a marriage of a minor without the consent of her guardian, provided the suit is instituted by the guardian within six months of the celebration of the marriage.

5. Part IV, section 8.—Under this section Registrars may be appointed and the section prescribes that they should be Hindus. I do not think this is a necessary qualification. A person who contracts a civil marriage is certainly not likely to insist that the Registrar should be a Hindu. I suggest that the words "being Hindus" be deleted from the clause.

6. Part IV, section 30.—(a) Under this section a party to a marriage is given a right to institute a suit for dissolution of the marriage if he or she has been deserted for 4 period of not less than 5 years preceding the petition. I think the period is too long. A deserting wife or husband who has kept away for more than 2 years clearly is not going to return to his spouse. I suggest that the period of 5 years be reduced to 2.

(b) In sub-clause (f) a right of dissolution of marriage is given where the spouse has been suffering from venereal diseases in an incurable form for not less than five years. I am of opinion that the period should be reduced to two years.

(c) The Act does not give any right of dissolution of the marriage on ground of adultery. If monogamy is to be the only form of marriage recognised, adultery should have the same consequences as prevail in other monogamic marriages. I think a right of divorce should be given in cases where one party is guilty of habitual adultery, which may be defined as three instances of adultery within a period extending over not more than two years or a lesser period.

7. Part V, section 4.—In sub-clause (a) the father is to be the natural guardian of a boy or unmarried girl provided that the custody of minor who has not completed the age of three years shall ordinarily be with the mother. Cases of conflict may arise if divorce and dissolution of marriage become frequent in Hindu society. The rule in Muslim Law is that the mother is entitled to the custody of a minor child until it reaches the age of 7 years. The general principle involved in this rule is that a mother on account of her natural affection is more suited to look after a child who requires constant attention, whereas the father is more suited to bring up a child and to give it suitable education. The line, therefore, should be drawn at an age where infancy ceases and education is likely to commence. I think this line should be drawn at 5 years instead of 3.

8. Part VI, section 5, sub-clause (2).—This clause gives the widow power to adopt in all cases unless she has been expressly or impliedly prohibited from adopting by her husband. In my opinion the words "or impliedly" should be deleted. The widow should have powers to

adopt in all cases unless she has been expressly prohibited from adopting. Adopting is usually made, out of spiritual considerations or in order to find an object for natural affection. Whichever theory is adopted, it is quite clear that both the husband and the wife are equally interested in the adoption. So theoretically speaking, the widow should have the same powers of adoption as her husband but as a special concession to the existing rules, the husband might be allowed to prohibit her from adopting. But this should be done by an express deed registered under the Registration Act. If there is no such deed the widow should have the power to adopt. I am of opinion that the Code by retaining the possibility of implied prohibition would give ample scope for future litigation. Section 7 should also be modified accordingly. I also suggest that the words 'by implication' in section 6, clause (3) should be altered to 'expressly' so as to give full effect to my above suggestions.

The Secretary, Burdwan Bar Association, Burdwan

This Association is of opinion that in view of the impending political and constitutional change in the country the question of codifying the Hindu Law be dropped for the present.

N. N. Mukherjee, Esq., District and Sessions Judge, Rajshahi-Malda (Rajshahi).

The proposed Bill really aims at providing uniformity in all branches of Hindu Law for all Provinces and for all sections of the Hindu Society. It fits in with the new pattern to which Hindu Society seems to be rapidly adjusting itself. The only provision that does not appear to me to be proper is the inclusion of the widow of a predeceased son and widow of a predeceased son of a predeceased son among the enumerated heirs in Entry (1) of Class I. This is in my opinion likely to have the effect of disintegrating the family property and bringing in undesirable strangers as co-sharers of the family property. The bill may therefore, be passed after deleting the widow of a predeceased son and the widow of a predeceased son of a predeceased son from Entry (1) of Class I of section 5 of Part II.

T. C. Banarji, Esq., District Judge.

I have carefully perused the provisions of the proposed Hindu Code and have also ascertained the view of some of the Hindu Judicial Officers in this district.

It is true that instead of remaining static, Hindu Law should be amended from time to time to meet the requirements of the changing society. I would, therefore, commend the provisions of the Code about monogamy which has now been almost accepted in practice. Women are now better able to take care of their properties and to manage them, and it is in the fitness of thing that they should be given absolute rights in the properties inherited by them. Restrictions in the matter of unlimited testamentary powers depriving women of their due shares are also welcome innovations in the Code. Adoptions should be made compulsorily registrable as they are often a fruitful source of subsequent litigation. If a concubine is to be entitled to maintenance she should have lived continuously in the exclusive keeping of the deceased for not less than ten years till his death.

While these changes would be beneficial, some of the other changes in the proposed Code are of such a drastic and far-reaching character that they would bring a rude shock to the orthodox elements in the society and would also create disagreements and dissensions in many families. The provisions regarding succession of daughters will strike at the very root of the Hindu doctrines of succession and the suddenness of the change will render adjustments difficult in a very large number of cases. The succession of daughters under the Mahomedan Law results in fragmentation of property and also in constant litigations amongst the heirs.

Natural affection will always induce wealthy parents to endow their daughters richly at the time of their marriage and the daughters will also enjoy the properties of their husbands. The change is therefore uncalled for as it has, besides, many undesirable features which we find in Mahomedan families. Some legal and binding provisions for substantial maintenance may be, however, made for the benefit of daughters who are not or cannot be married or widowed daughters who are compelled by circumstances to seek their residence in the families of their parents or brothers. The new provisions as to adoption or dissolution of marriages proposed in the Code are repugnant to the conception of Hindu religion. It is not enough that the adoptive parents should be mere loco parentis to the adopted child, but the child must be also such as could be born of a lawful wed-lock with the adoptive father. A daughter's son or a sister's son does not come within that category and to permit adoption of such children will be doing violence to the Pinda theory which is a really vital and valued conception of the Hindu religion. Similarly the provision of dissolution of marriages will nullify or at least detract from the sacramental character of Hindu marriages. It is true that we find many unhappy marriages in Hindu society but they are mostly due to economic reasons, want of education or culture or unwholesome social environments. Individual idiosyncrasies and incompatibility of temperaments which are unavoidable under any circumstances also play some part in these unhappy marriages. The law, as laid down by Parashara, permits remarriage of married women under certain circumstances and this may be made enforceable in the Code with the aid of Hindu assessors instead of extending the scope of the Law by borrowing alien features of doubtful utility from other societies which are so disastrous to the high ideals of Hindu marriage. Once the religious basis of adoption, marriage and succession is taken away, there will be much room for many undesirable repercussions in the Hindu society which will be found too difficult to remove in future. The social aspects of the Hindu Law have successfully stood the onslaught of time and other clashing circumstances and to my mind no such revolutionary changes as are envisaged in some of the provisions of the Code referred to above are called for in the present conditions of the Hindu society.

G. C. Ganguli, Esq., District Judge of 24 Parganas

This is one of the most momentous bills ever introduced in the Central Legislative Assembly affecting the entire Hindu community of India. There is one view current among the ultra-orthodox section of Hindu community that Hindu Law, being of divine origin, is not amenable to any Legislative changes. This proposition current amongst the orthodox section cannot stand because from the time of the Vedas and the time of the Smritis Hindu law has always undergone changes called for by the challenge of the times. Moreover, as society changes, legislation must adapt itself to the changing condition of society if it is not to make itself a dead letter. There is another class of people who are of opinion that the only criterion for introducing changes is the law prevailing in modern Europe. We, however, share the view that changes must be made in Hindu law as changes have all along been made from the time of the Vedas, but the changes must not go against the innate spirit of Hindu law and Hindu society. In the name of amputation of a diseased limb the entire body and soul must not be amputated. The Hindu Code, as it has been drafted, has in most cases kept in view the challenge of the times and the spirit of Hindu law and Hindu society. Its greatest gift is prescribing one law for the entire Hindu community of India. Its second gift is in the recognition of the claims of Hindu women. The following are some of my comments on the Hindu Code:—

(1) In part I, Section 2 the definition of Hindus, I think, should be a bit more wide. Hindus should include all persons professing the Hindu religion in any of its forms including Brahmes, Arya Samajists and Protestant Hindus, viz., Buddhists, Jains and Sikhs. Moreover, history teaches us that aborigines and hill

tribesmen and others have gradually been absorbed in Hindu society. Provision should be made in the Code including in the definition of Hindus those hill tribesmen and aborigines who have not yet become Hindus in the fullest sense of the term, but who have adopted some of the important characteristics of Hindu religion.

(2) I do not find any reason why in Part II agricultural land is not to be included. Most of the Hindus living in the villages have a dwelling house and some agricultural land. If agricultural land be excluded from Part II, in that case most of the daughters of our Hindu villagers will inherit nothing from their fathers. My opinion is that as Hindus have an innate aversion to allowing strangers to family to their dwelling houses, so dwelling houses should not pass to daughters. In order to avoid fragmentation of holdings it may be laid down in the Hindu Code that if the area of agricultural land of a Hindu does not exceed 50 bighas in area, in that case daughters should not have any share in the agricultural land by inheritance from their fathers.

(3) I may add that I do not find any reason why the daughter is to have half the shares of a son following the provisions enjoined in the Mahomedan law. If a daughter has to be given anything, she must get full share as a son gets. But in the Code at best it may be laid down that the expenses of marriage of the daughter are to be deducted from the share she is to inherit from her father, allowing her a full share as a son.

(4) In the enumeration of heirs I should like to add that a son's daughter and a daughter's daughter should certainly go before a brother or a brother's son. They may even be preferred to the mother and the father.

(5) As regards the *stridhan* property, I do not find any reason why the son is to get half of what the daughter gets.

(6) As regards testate, I would like to add that if an intestate has left no heir, his property should go to a trust created for the benefit of Hindu society.

(7) The chapter on maintenance removes a long-left grievance in the Hindu society.

(8) *Marriage and Divorce*—Some of the proposals regarding marriage and divorce seem to be an attempt to lay violent hands on the structure of Hindu law and society and are most likely to cause serious disturbances in Hindu society and family leading to the weakening of the economic, political and family life of the Hindu community. According to the Hindus, marriage is not a contract but a sacrament, and divorce was not recognised in Hindu law. Narada and Parasara no doubt enjoined "that another husband, is ordained for women in five calamities, viz., if the husband be unheard of or be dead or adopt a religious order or be impotent or become outcast". But the Hindu society never followed the injunctions of Narada and Parasara on this matter regarding dissolution of marriage. Hindu law in its generality never provided for divorce and this was for preserving peace and harmony of society and it was certainly for greater benefit to women than men in particular.

It is difficult to find a husband for a Hindu maiden. It will be extremely difficult therefore to find a husband for a divorced Hindu woman, and she will have no right to maintenance or right to property of her ex-husband.

In the case of *Fender vs. St. John Midway* (1938 A.C., 34-35) Lord Russe in his 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 despoises is steadily assuming the characteristics of a contract for a tenancy at will." The law of divorce has been responsible for many evils in the western world, and it will be doing a great dis-service to Hindu society if the law of divorce, which is unknown to Hindu society, be introduced in the Hindu Code. Their Lordships R. C. Mitter, B. K. Mukherjee, C. C. Biswas and A. N. Sen, JJ., have stated, "We are only opposed to introducing divorce into Hindu law. We do not think that the right of divorce has conducted to greater social well being or harmony in the system 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".

"Kanya-Dan" is one of the essential ceremonies in Hindu marriage, and this is for the good of the society so that the father and the mother may have a hand in the marriage. The Code does not recognise this "kanya-dan" as a ceremony in sacramental marriage. In my opinion, besides Saptapadi, "Kanya-dan" ceremony should be insisted on.

Bengal Varnashram Swaraja Sangha

After having given our opinion on two anti-Hindu Bills, viz. Inter-caste Marriage Bill and Child Marriage Restraint Amendment Bill in quick succession in the midst of troubles and turmoils of the present times we are now called upon to give our opinion in hot haste on another such Bill, viz., the All-embracing Hindu Code Bill which touches upon all the important items regulating Hindu life, and society, viz., Inheritance, Marriage, Maintenance, Adoption, &c. In all these spheres sensational changes have been proposed and are going to be passed in the near future, but alas! How many among the 80 crores of Hindus know anything about them. The public have been asked to give their opinion on the Bill presumably through the columns of the Govt. Gazette which seldom reaches their hands. The Bills which are practically unprocurable are generally distributed among such persons as are mostly bent upon destroying the Hindu religion, and those who are anxious to defend themselves (and their number is not negligible) have been generally refused. The Bengal Varnashram Swaraja Sangha, for example, which is the only religio-political body in the province, has not been provided with a copy in spite of request. Any sensible man can see through this cruel farce.

We have managed to go through the bulky Bill for a few hours through the courtesy of some other body and have noted down some of the important changes that have been surreptitiously introduced into the present draft. Four such drafts have been successively circulated for opinion each succeeding draft being adorned with some improvements on the preceding one from the Reformers' point of view. The motive behind this is evidently two fold viz. (i) to tire our patience and (ii) to give a final blow to the Hindu religion so that it may not raise its head any longer. Within the short time at our disposal we find that all the points which have been repeatedly refuted by us in writing as well as in our oral evidence by citing copious authoritative texts from Veda, Smriti, &c.—have been kept intact in this final draft. We have been able also to discover some snakes in the grass which threaten to give a moral bite to our society and religion. We will confine our opinion to those points only. For the rest, we would like to repeat our opinion given on the last occasion a copy of which is annexed hereto to be distinctly treated as part of our opinion on the present Bill.

1. *Enumerated Heirs*:—Some daughters have been added to the previous lists given in clauses IV, V and VI. All the lists, it may be added, are whimsical and against the Shastras.

2. *Stridhana*:—By omitting sub-clause (a) the distinction between the property inherited from the husband and the rest has been abolished evidently according to Mahomedan model. This will do a greater injustice to sons.

3. *Requisites of a Sacramental Marriage*:—The following has been added newly—

(3) The bridegroom must have completed the age of eighteen years and the bride the age of fourteen years.

The effect of the new addition is that a violation of the above clause which so long entailed a fine and will entail—(simple) imprisonment for some months if and when the child Marriage Restraint Amendment Bill is passed, will, under this Code, ipso facto nullify the marriage even without a petition as required in cases of other grounds, e.g. impotency (added newly), &c. By the proposed Inter-caste Marriage Bill the so-called (Pratiloma) marriage with a Brahmin girl with a Sudra husband, is valid but by the sweet will of the Reformers the marriage of a girl of 13 (when marriage is overdue

according to the expert thinkers of the East as well as of the West) is invalid. The foolish injustice is clear and palpable.

Nullity on ground No. (1) viz. having a spouse living and even on No. (2) viz. idiocy and lunacy cannot be accepted by the Hindus for various reasons. A marriage permitted by the Shastras, once performed can never be annulled.

Adoption

Clause (ii) of the previous draft which required that the boy to be adopted must belong to the same caste as that of the adoptive father has been omitted in the present Bill. This is a revolutionary change which (like the provisions of the Inter-caste Marriage Bill) amounts to abolition of the caste-system. Such revolutionary changes as in this as well as in the preceding item would naturally invite violence and bloodshed.

Needless to add that the adoption of a son belonging to a different caste is invalid in as much as in that case, he is not entitled to offer Pinda to his adoptive father which is always a condition precedent for inheritance. "Gotra—rikthanugah pindah" (Pinda always goes with Gotra and property)—Manu IX. 142. Other authorities (viz. Manu IX. 136, Yajnavalkya II 135 and Gautama Ch. 29) will be found quoted on page 1 of our previous opinion. It should be borne in mind that a Dattaka son is the substitute for the primary son, and a substitute competent to perform spiritual acts cannot come from a different caste.

In the statement of Objects and Reasons we find the following:—

"Most of the provisions in the Bill are of a permissive or enabling character and impose no sort of compulsion or obligation whatever on the orthodox section of the community. Their only effect is to give a growing body

of Hindus, men and women, the liberty to lead the lives which they wish to lead without in any way affecting or infringing the similar liberty of those who prefer to adhere to the old ways". In the face of the revelations made above, the above observations are to be regarded as nothing but a cruel joke which cuts the orthodox Hindus to the quick. The language quoted, however is of the "majority members" of the Rau Committee and not the sponsor's own. We could only hope that the Hon'ble Law Member (the sponsor of the Bill) would appreciate the orthodox point of view and act accordingly.

In conclusion it may be stated that the pretensions of unification of Hindu Law no longer hold water in view of the fact that some of the provinces are going to be divided into two separate Dominions which will be governed by two different Legislatures. Hon'ble Members should also judge for themselves if they would be justified in introducing these uncalled for and unjustifiable innovations in the face of the clear statement of an eminent lawyer like Dr. Dwarkanath Mitter, M.A., D.L. (Retired Judge of the Calcutta High Court) who was a member of the Rau Committee, that there has been no demand for such law. The statement of the other three members that they are supported by the younger generation (whose opinion is hardly dependable as everybody knows) only betrays a partisan bias and should be dismissed as nonsense.

It may be added that the Bill is *ultra Vires* of the Legislature according to the old constitution as well as according to the Fundamental Rights proposed and passed by the Interim Government.

From all considerations the Bill should be thrown out.

NOT FOR PUBLICATION.
(For use of Members only)

GOVERNMENT OF INDIA.

MINISTRY OF LAW.

P A P E R No. V.

OPINIONS

ON

THE HINDU CODE

(Introduced in the Legislative Assembly on the 11th April 1947 and published in the Gazette of India on the 19th April 1947.)

OPINION No. 18.

WEST BENGAL.

No.18. - Letter from the Government of West Bengal, No.1640-J, dated the 2nd April 1948.

No.18 - WEST BENGAL.

FROM THE ASSISTANT SECRETARY TO THE GOVERNMENT OF WEST BENGAL TO THE SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF LAW, NEW DELHI, No.1640-J, DATED THE 2ND APRIL 1948.

SUBJECT:- The Hindu Code.

In continuation of this office letter No.1120-J, dated the 3rd March, 1948, I am directed to forward herewith for your consideration the views of the All India Women's Conference and the Bengal Presidency Council of Women on the subject received here after the despatch of our aforesaid letter dated the 3rd March, 1948.

The All-India Women's Conference.

1. In Part II clause 7 rule 4 the daughter should be given an equal share with the son in her father's property and similarly in clause 14 rule 3 the son should have an equal share with the daughter in the mother's property. Consequential changes should be made in the other provisions of the Code.
2. In Part IV clause 3 (3) and clause 7 (3) the minimum age of the bride should be raised to 16.
3. In clause 6 registration of sacramental marriages should be made compulsory.

4. In clause 29 it should be made clear that marriage celebrated during a "lucid interval" is voidable as if the party was a lunatic.
5. In clause 30(a) the period of desertion should be reduced from 5 years to 3 years.
6. In part VI the basis for adoption as stated in the Code should be extended to include adoption for the purposes on inheritance and other needs in addition to those religious. We, therefore, urge that in respect to this right as well there should be complete equality between the sexes. Both man and woman may be permitted to adopt a son and / or a daughter.

The Bengal Presidency Council of Women.

My Council is in favour of the Bill as introduced in the Central Legislature on 11th April 1947.

NOT FOR PUBLICATION

(For use of Members only)

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GOVERNMENT OF INDIA

MINISTRY OF LAW

APPENDIX TO OPINIONS ON THE HINDU CODE

(Introduced in the Legislative Assembly on the 11th April 1947 and published in the Gazette of India on the 19th April 1947)

Opinions Nos. 1-2

NORTH-WEST FRONTIER PROVINCE

No. 1.—Letter from the Secretary to the Government of the North-West Frontier Province, No. 30787-H. Judl., dated the 22nd July, 1947.

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SIND

No. 2.—Letter from the Deputy Secretary to the Government of Sind, No. S-22 (59)-H/47, dated the 8th August 1947.

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No. 1—NORTH-WEST FRONTIER PROVINCE

FROM THE SECRETARY TO THE GOVERNMENT, N. W. F. P.
HOME DEPARTMENT

TO THE SECRETARY TO THE GOVERNMENT OF INDIA, LEGISLATIVE DEPARTMENT, NEW DELHI, No. 80787/H. Judl. DATED THE 22ND JULY 1947.

SUBJECT:—The Hindu Code

With reference to your letter No. F. 229/47-C and G(Judl.) dated the 16th April 1947, I am directed to state that the Code consolidates Hindu Law and is a great advance on the present customary law which needs a radical change. The bill meets the present needs of the public and deserves support at the hands of Government. I am further to state that the right of widows to adopt a son will mean a great improvement in their lot and safeguard in their rights to a great extent. The bill was published in the Provincial Gazette, part V, on 13th June 1947, on pages 73-112.

No. 2—SIND

FROM THE DEPUTY SECRETARY TO THE GOVERNMENT OF SIND
HOME DEPARTMENT (D).

TO THE SECRETARY TO THE GOVERNMENT OF INDIA, LEGISLATIVE DEPARTMENT, NEW DELHI, No. S-22(59)-H/47 DATED THE 8TH AUGUST 1947.

SUBJECT:—The Hindu Code

With reference to your letter No. F. 229/47-C & G(Judl.), dated the 16th April 1947, on the subject noted above, I am directed to state that the Government of Sind have no remarks to offer. Copies of the opinions of the persons noted below are enclosed:—

1. Endorsement No. H/13366, dated the 19th June 1947, by the District Magistrate, Hyderabad, and its accompaniment.

2. Letter No. D/835, dated the 30th June 1947, from the District Magistrate, Larkana, and its accompaniments.

3. Letter No. J/12210, dated the 8th July 1947 from the District Magistrate, Dadu.

4. Letter No. A/2089, dated the 12th July 1947 from the Registrar, Chief Court of Sind and its accompaniment.

5. Note, dated the 2nd July 1947 from the Remembrancer of Legal Affairs.

2. The Bill was published in English in the Sind Government Gazette, Part IV, dated the 5th June 1947 and in Sindhi in the Sind Government Gazette, Part V, dated the 26th June 1947. It was clearly stated in the Notifications that any person or public body desiring to submit an opinion on the Bill should do so through the Provincial Government and that any opinion thereon submitted direct to the Central Legislative Department or to any other Department of the Government of India will not be accepted. A copy of comments received from the President, Panchayat, Nawabshah, is enclosed.

3. Opportunity was afforded to the Members of the Sind Legislative Assembly to express their opinion on the Bill and that for this purpose five copies of the Bill were kept in the Assembly Library but no opinion was received from any of the Assembly members.

The City Magistrate, Hyderabad, Sind.

The framework of the Bill is rather confusing. In its present form the Bill is divided into parts and divisions and in each part the sections are numbered separately. It will be better if the Bill is divided into chapters and all the sections bear continuous number in all the chapters. This will facilitate citation as well as reference.

PART I—SECTION 1(2)

In view of the latest political developments, it is doubtful whether this code could be made applicable to whole of British India.

Section 2 Sub-section 3(a).—Presumption is drawn against a person who is not a muslim, Christian, Parsi or Jew by religion. In my opinion instead of words 'who is', the words 'who professes to be' may be substituted.

Section 2 Sub-section 3(b).—Similarly for the words 'not being' appearing in the first line of this section, the words 'not professing to be' may be substituted.

PART II.—INTESTATE SUCCESSION

Section 5(1) clause 1 enumerates compact series. (No. 1) of it comprises of son, widow, daughter, son and widow of a predeceased son and son and widow of a predeceased son. According to section 6 they are primary heirs and section 7 lays down manner of distribution. They are open to following objections.

(a) Right of inheritance irrespective of the fact whether the heirs were divided or undivided from the intested, aims at disruption of joint Hindu Family system.

(b) Multiplicity of heirs in the first degree is likely to increase family disputes over rights of succession.

(c) Daughter's absolute right to inherit as co-sharer with son irrespective of the fact whether she is married or not, is open to serious objection.

(d) So also widow's right of inheritance, although much desirable should be so regulated as to revert to the male heirs of the family on the death of the widow. Under section 5(j) of part I, entire property of a woman howsoever acquired constitutes her "stridhan" and as such its devolution is regulated by section 14. It is anomalous that wife should be competent to inherit her husband as primary heir, whereas the husband finds third place in the order of inheritance in his wife's property. The old law of excluding husband from inheriting his wife's property is based on the fact that a Hindu woman was not competent to inherit property, and her "stridhan" property covered only a few items bestowed upon her by her husband and other relations as tokens of love. The right to inherit these articles was given to her children. Now that a woman can inherit property as much as a man, and the scope of "stridhan" is sought to be widened, it is essential that husband be placed in the first degree of heirs. If this is not done it will lead to disputes and complications.

Imagine a husband and wife living together, both owning property. Its care naturally falls on the husband who takes all possible trouble to safeguard and increase it. Both enjoy as a single entity. It will be undesirable if with the death of wife husband has also to part with the property which only a few moments earlier was virtually his own.

General Provisions.—Section 21 disqualifies only the children born after conversion of a Hindu heir who has renounced his religion. In fact the convert himself should be disqualified from inheriting any property of his Hindu relations.

4. PART III-A.—DIVISION 1.—SEC. 1

There is another provision which aims at disruption of joint Hindu family system by creating multiple shares by testamentary or intestate succession. It introduces apples of discord resulting in civil litigation and consequent wastage of property. In Muslim community such shares exist, but their saving grace is that their marriages are mostly confined in nearest circles in the same family or cousins which helps to keep down the disputes. In Hindu community such marriages are prohibited. They take place in stranger families as is evident from part IV of the present proposed legislation. If such stranger families acquire interest in the joint family property through the medium of their widowed daughters, the consequences will be nothing but pernicious. The law of inheritance should in my opinion aim at the preservation of the entity of the estate instead of fragmentation.

Division 11.—Maintenance.—Maintenance law as defined in this bill is another rifle shot at the existing structure of Hindu Society. Greater the number of claimants, greater will be the feuds. Maintenance right under the

Hindu law originates from point of view of non-inheritance. Duty of maintaining certain dependents can not co-exist with right of inheritance. The persons should either be dependents of the estate for maintenance, or they should be heirs by right of inheritance. In this bill both rights are given to certain persons to pick and choose by maximum benefit and thereby reduce the entire estate into a mess.

5. PART IV.—MARRIAGE AND DIVORCE

It is happy sign of the present times that bigamy intended to be prohibited by this legislation.

Section 3(6). Age of the girl in this case, may be raised to 21 years much in the same way as is provided for in section 7(5). At sixteen years the discretion of girls is not sound enough to judge their best interest so as to dispense with the consent of guardian for marriage. They are likely to be misled by glamour of sex and similar other causes and get into pitfalls. Safeguard in sacramental marriage in this respect should be the same as in case of a Civil marriage. Even penal provision should be made for infringement of this condition.

Chapter 11.—Section 26(2) (f).—A Hindu wife is allowed to claim separate maintenance for any other cause justifying her living separately. In this general provision it should be made clear that renouncement of Hindu Religion by Hindu wife is not justifiable cause to live separately and claim separate maintenance.

Chapter 111.—Section 29.—Right of petition under sub-section 1(i) should also be given to the former spouse, and under sub-section 1(ii) it should be given to any member of the Hindu public. The spouse who is deserted for bigamous marriage should possess such legal remedy and remedy should also be available to the society to take action against marriages with the prohibited degree which are now-a-days becoming common.

Section 30.—A Hindu husband should have absolute right to remarry when his Hindu wife ceases to be a Hindu by conversion to another religion. He should not be put to the necessity of seeking dissolution decree. Such suits are likely to breed communal trouble. It will provide an easy method for a wife to tyrannize her husband when she happens to fall a prey to mischief mongers, who will in the first instance convert her and separate her from her husband and by reason of such conversion compel the husband to apply for dissolution as otherwise he himself can not marry. By such methods the woman will find a permanent separation even from marriage ties once she falls into the hands of mischief mongers.

6. PART V.—MINORITY AND GUARDIANSHIP

The age of a minor may be raised to 21 years. It is necessary in the present times for reasons more than many.

Section 4(a).—Custody of a minor who has not completed the age of 3 years is given to the mother. This should be subject to the condition that the mother does not change her religion. In fact general provision should be made making a converted dead as a Hindu for all purposes of succession, maintenance and guardianship.

The District Magistrate, Larkana

The Words "unless there was force or fraud" used in para 5 of Chapter 1 under part IV appear redundant and may be omitted in view of the fact that there is already a safeguard provided in sub para 2 of para 4 of the same chapter to the effect that the marriage is not complete unless the ceremony of taking seven steps by the bridegroom and bride jointly before the sacred fire is completed.

2. The provision for the registration of sacramental marriages, vide para 8 chapter I under para IV, though discretionary, does not appear necessary.

3. The proviso to sub para 2 of para 26 of chapter II under part IV appears rather hard on the wife, for the simple reason that a young wife, owing to maltreatment of her husband, may prefer to remain with her parents out of several considerations in her favour.

4. I do not quite agree with the remarks offered by the President Chankla Amil Panchayat Larkana on section 4(3) part II. I feel that the daughter should have preferential claim over Stridhana of the deceased mother and therefore the son should get one half of the share of the laugher.

Amil-Sudhar Panchayat Larkana

In section 5 (F) 'Gotra and Pravra' requires to be explained and definite meaning given to them. In our humble opinion reference to the meaning in the old Hindu law is neither definite nor fully explanatory. Several interpretations arise over these words. We agree with the meaning of 'Stridhana' as contained in Clause (J), a definition of 'Dattaka and Kritaina' or 'Godha' or 'Illata' contained in part 2 section 2 (iii) should be explained and difference of opinion contained in some Shastras should be reconciled. In section 5 clause i(1), the parents father and mother dependant on the intestate should be included. Father and mother having lived with the intestate and supported by him should morally be provided for along with the other heirs in the compact series.

In section 10 the devolution on preceptor, 'Acharya' a fellow student should be deleted. Those hoary days when strong institution of such 'acharyas' existed are gone and no such complication should be introduced into the code. Besides property in the hands of such people is not always well used in the interests of public.

In section 14, the 'Sitrhana' derived by woman from her husband should on her death devolve first on the husband and not as in the 3rd item of Section 14. That will be only proper and logical. The very vexed question of property devolving on woman should be absolute or limited. Should be very thoroughly considered. It is not uncommon that when property comes in the hands of woman other than those who are intelligent and are considered now on a higher plain than the women of the masses, they either squander the money or make no good use of it. People of religious institutes take advantage of their weakness and squeeze out money from them on pretext of after life happenings.

It is also not wrong that some cases do arise where on account of their limited interests difficulties arise in disposing of the properties for necessities and there are consequent litigations but such cases are not many what is really required is to give directions to courts to dispose of such cases speedily.

Section 19 requires clarification. Mere condonation of the unchastity by not contesting such a conduct during the husband's time should not on that ground alone be considered condonation. In the proviso also the restrictions provided, that her husband should have been a party to the proceedings requires to be still more clarified for if any other heir who would have been the owner of the property after the death of the husband takes exception to the property devolving upon such a woman on account of unchastity should be given an opportunity to prove the point in court. It may be observed that even when a daughter is unchaste should forfeit the inheritance from her father according to Bombay School. Part 3-a Div: 1(1) virtually dissolves the joint family system, is being discarded when individuality play part in India. In this section a proviso should be adopted that if the members of the joint family wish to continue to remain joint they should be allowed to do so.

Div 2 Section 9 3-a

The restriction that the charge on the estate of the deceased will be made only in certain cases described in the section should be removed. There should be charge on the property in every case in which maintenance be allowed. We approve of rule 10 in Div. 3 as to the presumption of survivorship. Many cases arise when owing to earth quake or other mishaps it is not possible to prove who died first and who next.

PART 4—MARRIAGES AND DIVORCE

We approve of provision 6 providing restriction on marriages between brother and sister, uncle and niece aunt and nephew or the children of two brothers

or sisters. It is deplorable that some marriages against Hindu laws between cousins have taken place and this provision it is hoped will have a salutary effect. We are against the form of civil marriage as provided in section 2 and as to the divorce and dissolution of marriages and entirely against the application of Indian Divorce Act (4) of 1869. We are however not against section 34 which allows customary or statutory recognised divorce and its rights. This is the most objectionable feature tending to stir the very fabric of Hindu society and Hindu culture and society. With this limit of prohibition parties inclined to marry 1st cousins will adopt the civil form in preference to the sacramental one and the latter will fall into disuse and be rendered nugatory. This may be with an idea of bringing down prohibition much closer than those prescribed under the special marriage Act and to bring them in line with other systems of law in complete disregard of Hindu ideas and sentiments in respect of marriages. The wave to have a form of civil marriage introduced into Hindu Code is Western one, absolutely unsuitable to India which is on the threshold of severing connections with the west specially in social and religious matters. We are in matter of one sort of Register for entering of particulars relating to sacramental marriages but not in the form or manner as has been provided in section 6. Preferably in all cases of sacramental marriages. There have been some instances where performance of Hindu marriages have been denied and litigation ensued. To section 3 (i) and section 24. Following proviso be added that polygamy should be allowed under the following exceptional cases as provided by the early Hindu law (i). If wife is barren that it does not give birth upto the age of 35 years; (ii) if the wife is incurably diseased; (iii) if the wife happens to be vicious and depraved character and most incorrigible which fact should be proved in court of law; (iv) or becomes a lunatic. The husband in no case should marry a second wife after the age of 45. If he does he should marry a widow or virgin of fairly advanced age. This opinion is in consonance with the principles of ancient Hindu law rules of equity and good conscience.

Section 7, para 1, 1st schedule, are unsuitable to Hindu customs and manners and they should be deleted.

In section 15 sub-clauses be added that adoption should always be made in writing registered under the Registration Act.

The idea is to provide satisfactory, grave and serious proof as merely giving and taking though necessary is in many cases a fabricated one. In clause 2 of section 15 Datta Homan should be made essential where it is required by a recognised custom.

Clause 3 section 15 be added to make customary recognised ceremonies and requirements be made essential.

Clause 6 be added to section 19 to say that in cases a widow legally competent to adopt, adopts a son to her husband who or whom son died more than 3 years back and if in the interval the property has vested in another person it cannot be divested in sec. 3 line 2 of chapter 2, Registration of adoption the word 'may' should be substituted by the word 'shall' and the letters 'if he or she so desires' be deleted.

Mr. B.D. Gurudinoma Retired Resident Magistrate and President Chankla Amil Panchayat, Larkana

PART II

Section 5 clause 1 (1)—Daughter has been included amongst enumerated heirs item (1), but upto now, the practice amongst Hindus in Sind has been for a daughter to inherit paternal property only when her parents have no male issue. If there is a male issue, the daughter has nothing to do with paternal property but in lieu thereof she is given dowry, cash, ornaments, clothes and presents from the time of betrothal upto marriage and thereafter till she is alive and even after her death, her children, if any, continue to receive cash, sweets, some clothes and other things on Hindu holidays and other occasions—Thus the daughter receives usually more than the share allotted to her in the Code. If hereafter, she

receives her share in the property, then, after the death of her parents, her brothers may refuse to give her the usual *Doti* and in that case the relations between a brother and sister may not be as cordial as they are at present. The proposed provision is calculated to cause friction and ill-will amongst very near relations which can never be the object of the framers of the code.

Apart from this, I cannot understand why a daughter should inherit her paternal property, since the code lays down that even if a son dies in the life-time of his father, then, that son's widow and her children will receive from the father-in-law's property the same share which would have been allotted to the son, if he had been alive. Even if the widow is childless, she is still to receive her share from the father-in-law's property and can also claim if necessary maintenance allowance from the other coproponents in the property. Thus, since the girl, after marriage, will receive her due share from her father-in-law's property, there is no reason why she would also receive a share from her paternal property. The husband is bound to maintain his wife living with him but even if the wife separates from him, he is bound to pay her maintenance allowance according to the present law and also according to the new code—Therefore since ample provision has been made for a married woman—from her husband's or father-in-law's property, there is no need for her to get a share from her paternal property. After the death of husband, the widow according to the code will receive same share from her husband's property as her son. So from all points of view, ample provision exists for the girl, even if she receives nothing from her parents property.

Besides, since the law applies only to moveable property and immovable property, other than agricultural land, the question is, supposing the parents of a girl have no other immovable property except the family dwelling house, then how is the girl to get a share of it? Should she leave her father-in-law's house and go and reside in her parental house with her husband and children, if any? Or should the house be sold and then the girl given a share of the proceeds? Or should the house be partitioned even though it is a small one and is incapable of being partitioned? I do not think the framers of the Code could have desired this—Further suppose, the moveable property consists of only the ordinary household things? Should these things be divided between sisters and brothers? Will not this cause bitterness and ill-will?

Thus, looked at from any point of view, the provision regarding daughter being an enumerated heir, is most undesirable

Section 7—Rule 8, and illustration vii—It is clear from these provisions, that if a son dies in the life-time of his father, and leaves behind him only a childless widow, there she will get only half a share from her father-in-law's property and not full one share as her deceased husband would have got if he had been alive—This is manifestly unfair. If the son had been alive, he would have got full one share and if after inheriting that share, he would have died childless his widow would have got all the property of her deceased husband (illustration ii) lent because her husband died before his father, therefore the widow's share should be halved! That is no logic—

Section 7—Rule 2—It is laid down that even if a son has separated from his father, yet, on the death of the father, that son will inherit his full share, as if he had not separated. This is not proper—If a son, for any reason, separates from his father, after taking share of the ancestral property, then he should have no further claim on his deceased father's property. The other sons who live with their father, are members of joint family and therefore whatever they earn, will also be used jointly by all—But the son who separates from his father will not pay any portion of his income to his father or the joint family but will keep it all to himself—Therefore common sense dictates that such a son should not be a co-sharer and his father's property after his death—

Section 14(3)—This lays down that a son will get half the share of a daughter from the *Stridhan* of the deceased

mother—I cannot understand the reason for this—on the death of father, a daughter is to get one-half of the share of a son, but on the death of the mother, the order is reversed and the son is to get one-half of the share of a daughter? True! the deceased's property may also consist of something which she inherited from her parents, but that is no reason for the distinction—The deceased's parents bore the same relationship to the son and the daughter, then why this difference?

PART (III) A.

Section 5 (IX and X)—A minor illegitimate son and an unmarried illegitimate daughter are declared to be entitled to maintenance allowed from the property of the deceased. Not only that but even a concubine (see clause 2Z) kept by the deceased is to be considered as a dependent for purposes of maintenance! This is nothing but legal encouragement to immoral character—During his life-time, the deceased must have been contributing towards the maintenance of these persons—That is all right, because the sons of the deceased could not have prevented their father from doing so, but when the man dies, why should the deceased's legitimate heirs be compelled to maintain illegitimate offspring and concubines of their father? Their connection was only with the deceased and not with his heirs—Therefore this provision must be taken away!

PART IV

Sacramental marriage. Section 3(1) lays down that no husband can take a second wife if his first wife is alive and that no wife can remarry if her first husband is alive—Ordinarily this rule is sound but suppose a man gets no issue from his wife for 10 or 15 years she being barren, should he not be allowed to marry again in order that he may get at least some issue? It is the legitimate desire of every husband and wife to have an issue but if that desire cannot be fulfilled, why should the male be deprived of trying to get issue from another wife? If there is no issue and the man has rich property, the whole property will ultimately go to others who would have had absolutely no right to the property if there had been an issue—Human nature being what it is, no man will like this—Therefore an exception should be made for such rare cases—It can be argued that in such a case, the man can adopt a son and thus enable him to inherit the property. But that is only the last alternative, when one is unable to get any issue of his own even from his second wife—An adopted son can hardly give the man as much pleasure as his own son or daughter.

The District Magistrate, Dadu.

Amongst the Hindus, custom is supposed to be based on the *Smritis* and it is wellknown that custom overrides law amongst the Hindus! There is apparent necessity for consolidating, codifying these varied and scattered rules of law as in many respects the actual provisions of ancient Hindu law have been out-grown by modern customs and usages. It is therefore necessary to give formal shape to this code. The attempt to frame Hindu law afresh is a welcome move on the part of Government. I suggest the following alterations in the Bill—

(i) Under section 21 part II of the bill, children of a Hindu convert to another religion are disqualified from inheriting the property of any of their Hindu relatives. This provision is not based on socialism and is unprogressive and reactionary. Religion and caste should be no disqualification to inherit property. By the change of religion the thick bonds of blood are not severed. Such children can easily be declared ineligible to inherit the property by their Hindu relatives by will or other means if they so desire.

(ii) Part IV Sec. 3 seeks to establish monogamy after the manner of English law. Hindu law as it is, places no restriction on the number of wives, a Hindu might have, though Hindu custom disapproves the plurality of wives. The rule should not be so rigid. Permission to marry more than one wife should be given in some special cases.

(iii) Part IV Section 30—This section abandons the doctrine of sacramental marriage and follows the line of the dissolution of Muslim Marriages Act, 1939. Provisions for dissolution are quite necessary in modern life.

The Chief Court of Sind

The Honourable the Chief Judge and the other Honourable Judges of this Court have no remarks to offer.

The District Judge, Larkana.

(1) In Section 5(f) the words "Gotra" and "Pravara" must be properly explained and definite meaning assigned to them. The Act must be complete in itself.

(2) In my opinion, Stridhan should first devolve on the husband, then in his absence on the son and in the last resort on the daughter. It is common, at least in this part of the country, that large portion of Stridhana is given by the husband, and it is not proper that he should come after the daughter and son.

(3) The most vexed question whether a woman should have an absolute or limited interest should be thoroughly studied. Large sections of women in this province are illiterate and can be easily influenced by Bawas and Brahmins. If absolute estate is given to them, large portions of property will leave their hands and pass into the hands of unscrupulous Bawas and Brahmins.

(4) Polygamy should be allowed under exceptional circumstances, e.g. when the wife is barren, when she is suffering from an incurable disease, when she becomes a lunatic, or when she is unchaste. In the last case unchastity should be proved in a Court of law before the man can marry a second wife.

(5) The rest of the Code may be adopted.

Remembrancer of Legal Affairs

I am entirely in favour of the Bill. The present position is chaotic in some respects and unsatisfactory in others. There are various schools of Hindu law, and the law applicable varies from one Province to another. In some cases, the law applicable is illogical and unfair particularly to women. The Bill codifies the law and formulates a set of rules which are uniform, easy of application and in keeping with modern conditions. The chapters dealing with succession, marriage and divorce are particularly valuable.

The President, Panchayat, Nawabshah

1. Among the enumerated heirs under section 5 Clause I(1) i.e. entry No. I of part II the widow should get the share which should be a limited share in a 'Widow's estate'. And the provision to section 3 should be applicable to the property left by a widow upon her death.

The proviso should not be made applicable only to the cases in which woman, at the commencement of this code, had the limited estate.

2. To the section 29(2) of part IV a proviso should be added as under:—

Provided that the wife may present application praying that the husband has been permanently incapacitated sexually from performing marital obligations.

Explanation:—Such incapacity may have occurred after the marriage.

2. Further provision be added as under:—

A widow on marriage forfeits her right to the husband's estate.

GOVERNMENT OF INDIA
MINISTRY OF LAW

PRECIS OF OPINIONS ON THE HINDU CODE INTRODUCED ON THE
11TH APRIL, 1947 IN THE LATE LEGISLATIVE ASSEMBLY AND
REFERRED TO SELECT COMMITTEE ON THE 9 TH APRIL, 1948.

PAPERS No. I-V

GOVERNMENT OF INDIA, MINISTRY OF LAW.

Precis of opinions on the Hindu Code introduced on the 11th April, 1947 in the late Legislative Assembly and referred to Select Committee on the 9th April, 1948.

[Papers Nos. I—V]

GENERAL

Province	For	Against	No comments	Remarks	Reference	
					Paper No.	Page No.
Bombay	Government of Bombay ; Government Pleader, Bombay High Court ; Seva Sadan, Gamdevi, Bombay.	Sanatan Vedio Dharma Sabha, Ahmedabad.	Bombay Prarthana Samaj.			1
	Association of the All-India Women's Conference, Poona.	.....	.....	Suggests (1) legal equality between son and daughter in respect of intestate succession and adoption and (2) recognition of the divorced wife for alimony.		2
		.....	Registrar, Bombay High Court ; District Judge, Satara.		I	3
	District Judges, Dharwar, Thana, Ahmedabad.	.....	.....		I	3, 4
	District Judge, Belgaum.	.....	.....	Is against the Bill being passed just now.	I	3
	Remembrance, of Legal Affairs.	.....	.....	Is against absolute interest of widow's property and daughter's share in intestate succession.	I	4
	Arya Mahila Samaj, Bombay ; Gujarati Hindoo Stree-Mandal, Bombay ; Bombay Presidency Women's Council Town Hall, Bombay.	.....	.....		I	5
	Commissioner, Central Division, Poona. Collector, Satara.	District Magistrate, East Khandesh. District Government Pleader, Jalgaon.	.....		I	6
			District Magistrate, Poona.		I	7
	Commissioner, Southern Division. Assistant Public Prosecutor, Bijapur.	.....	.....	Suggests the postponement of the Bill till the new Constitution comes into force.	I	8
		Pleader, Satara City. All India Varna-Sharma Swarajya Sangha, Bombay. Sanatan Vaidio Dharma Sabha, Surat.	.....		I	10
			.....		I	11
			.....		I	13
			.....	Babiben, Moolji, Dayal, Shantaram, Narayan Lane, Walkeshwar, Bombay, considers the Bill as precipitate.	I	14
			.....		I	15
		Representative Committee of Hindu Ladies regarding Codification of Hindu Law.	.....	Bhatia Stree Mandal asks Government to give more publicity to the Bill.	I	16
			Collector of Kolaba.		I	16
	Bombay Presidency Women's Council, Bombay. The Bombay Presidency Social Reform Association.	.....	.....		II	13
	Bombay Advocates Association.	.....	.....		III	40
Assam	Goalpara District Association ; Government Pleader, Dhubri ; Sub-Divisional Officer, Goalpara ; Civil Surgeon, Lushai Hills ; District Judge, Sylhet.	.....	.....		I	16
		District Bar Association, Sylhet.	Secretary, Bar Association, Dhubri, suggests postponement till the new Constitution comes into force	I	16
				

GENERAL—contd.

Province	For	Against	No comments	Remarks	Reference	
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Assam—contd.	Government Pleader, Silchar; Bar Association, Silchar; Sub-Divisional Officer, Golaghat.	I	17
	Additional District Magistrate, Kamrup.	....	....	Judge, Assam Valley Districts Gauhati suggests the Bill to be postponed till the country-wide problems settle down.	I	17
	Lawyer's Association, Gauhati.	....	....	....	I	18
Orissa	The Orissa Government.	....	....	....	I	19
Ajmer-Merwara	Judicial Commissioner, Ajmer-Merwara.	....	....	....	I	20
	District Judge, Ajmer-Merwara.	....	....	Considers that time is not ripe for such sweeping legislation.	I	20
	Sub-judge, Ajmer considers that this is not the right time for such far-reaching legislation.	....	....	....	I	20
	Additional Sub-Judge, Ajmer.	....	....	....	I	21
	Sub-Judge, Beawar.	....	....	....	I	22
	Dewan Bahadur M. Harbilas Sarda.	....	....	....	III	36
Coorg	Chief Commissioner, Coorg.	....	....	Urges not to apply the Code to the Coorg community in respect of the intestate succession.	I	22
	President, Coorg Temple Funds Committee.	....	....	....	I	22
	District & Sessions Judge, Coorg.	....	....	....	I	22
	Judicial Commissioner, Coorg.	....	....	Assistant Commissioner, Coorg, suggests to allow the Coorg Community to follow their customary laws in respect of intestate succession.	I	23
	All Coorg Kodava Sabha, Mercara.	....	....	....	I	24
Delhi	Chief Commissioner, Delhi.	....	....	....	I	25
	Shri Sanatan Dharma Pratiridhi Sabha.	....	....	....	I	25
	Arye Samaj (Diwan Hall), Delhi; International Aryan League, Delhi.	....	....	....	I	26
	South India Club; Bhartiya Hindu Shuddhi Sabha.	....	....	....	I	27
	Deputy Commissioner, Delhi; Crown Pleader, Delhi.	....	....	....	II	1
	District and Sessions Judge, Delhi.	....	....	....	II	2
	Sub-Judge, 1st Class, Delhi.	....	....	Sub-Judge, 1st Class, Delhi is against daughter's share.	II	2
	All-India Shradhanand Dalitodhar Sabha, Delhi.	....	....	....	II	2
Madras	Madras Govt. Servants of India Society, Madras.	....	....	....	II	2
	Dist. & Sessions Judge, Nellore.	....	....	....	II	2A
	Dist. Judge, Chingleput.	....	....	....	II	4
	Shri Shankaracharya of Kanohi-Conjura-ran; Mr. V. Vishwantha Iyer, Chingleput.	II	4
	Govt. Pleader, Chingleput.	Collector of Chingleput Dist.	II	4
		II	4

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					Paper No.	Page No.
Madras—contd.	Dist. Magistrate, Bellary.	II	6
		Sri V. G. Ramachandra Aiyar, Advocate, Tirukoilur.	II	6
	Collector, Madura	Shri O. Vishwanatha Rao, Advocate, Nellore.	....	....	II	6
	Dist. Judge, Nellore	....	....	....	II	6
	Dist. Judge, South Arcot.	....	....	....	II	7
	Collector, Kurnool & Dist. Magistrate.	....	....	....	II	8
				Registrar, Madras High Court, suggests not to affect Marumakkattayam & Nambudiri Law.	II	9
	Advocate-General, Madras	....	....	....	II	10
	Collector, Salem	....	....	Suggests complete abolition of adoption.	II	10
C.P. & Berar	Deputy Commissioner	Bar Association, Amraoti; Pensioner's Association, Amraoti; President, Dharma Sangh, Jubbulpore; Nagar Hindu Sabha.	Government of C. P. & Berar	....	II	11
	Mandla; Sub-Divisional Officer, Dindori Niwas; Sub-Divisional Officer, Mandala; Deputy Commissioner, Bhandara; Sub-Divisional Officer, Gondia; Mr. S. L. Verma, E.A.C.; Mr. J. N. Datta, Additional District Judge, Bhandara; District Magistrate Wardha; Mr. B. V. Dogwekar, Jubbulpore; President, Municipal Committee, Chanda; Sub-Divisional Officer, Chanda; Sir M. B. Niyogi.					
				Jain Research Institute, Yectmal, states that the present Hindu code must not be made applicable to the Jains.	II	11
	Public Prosecutor, Akola; Deputy Commissioner, Raipur; Mr. Dixit, E. A. C., Raipur; Dist. & Sessions Judge, Hoshangabad; Deputy Commissioner, Hoshangabad; Dist. & Sessions Judge, Wardha; Dist. Magistrate, Bilaspur; Arya Samaj, Bilaspur.	Mr. G. B. Deshmukh, M.L.A.; J. Sen; Bar Association, Jubbulpore; Dist. and Sessions Judge, Niwar; Bar Association, Khandwa; Deputy Commissioner, Betul; Mr. B. K. Mehta, E. A. C. Betul; Mr. T. Y. Dehankar, Advocate, Nagpur; Secretary, Dist. Congress Committee, Raipur; Nutan Dharma Granth Sangrahalay, Amraoti; Rigvedi Brahmin Sangh, Amraoti.	J. Hemeson; Hon'ble the Chief Justice.	....	II	12
	Public Prosecutor Chhindwara; Mr. G. S. Pandya, Pleader Seoni; Bar Association Bhandara; Dist. and Sessions Judge, West Berar; Sub-Divisional Officer, Burhanpur; Public Prosecutor, Khandwa; Mr. N. R. Dhanagare, Pleader, Basim.	Gujrathi Brahmin Association, Amraoti; Marwari Brahmin Association, Amraoti; Sarafa Association, Amraoti; Shree Datta Sansthan Ved Shastri Sanskrit Vidyalaya Samiti, Amraoti; Yajurvedi Brahmin Sangh, Amraoti; Varnashram Swarasya Sangh, Amraoti; Phul Thakur Shah, M.L.A.; Mr. D. N. Tiwari, Pleader, Drug; Mr. P. R. Dongaonkar, M.L.A.		Sub-Divisional Officer Seoni states that such an important legislation should be left to the new legislature for consideration.	II	13
				Bar Association, Akola is of opinion that due to constitutional changes it should be held up.		

GENERAL

Province	For	Against	No Comments	Remarks	Reference	
					Paper No.	Page No.
Andaman and Nicobar Islands.	Chief Commissioner, Andaman & Nicobar Islands.	.....	.....	.....	II	19
Bihar	Hon'ble Mr. Justice B. P. Sinha, Judge, Patna High Court.	.....	Bihar Govt. Other Judges except Justice Sinha.	.....	II	19
				Advocates Association, Patna High Court, is of opinion that consideration of the Bill should be postponed till the framing of the new constitution.	II	19
		Dist. Judge, Santal Pergana, Dumka; Bar Association, Dumka.	.....	.....	II	19
				Dist. Judge, Patna considers that wide publicity be given to the code and it should be taken up after the constitution picture clarifies.	II	19
		[Dist. Judge, Monghyr; Monghyr Bar Association.	.....	.....	II	20
	Dist. Judge Manbhumi-Singh.	Bar Association, Purulia.	.....	.....	II	20
		Dist. Judge, Shahabad.	.....	.....	II	20
		Arrah Bar Association.	.....	.....	II	21
	Dist. Judge, Champaran	Bar Association, Motihari.	.....	.....	II	21
	Dist. Judge, Bhagalpur.	Bar Library, Bhagalpur.	.....	.....	II	21
	Dist. Judge, Muzaffarpur	.....	.....	Dist. Judge considers that the Bill should not be passed at the present moment.	II	21
		Dist. Judge, Gaya; Addl. Dist. Judge Gaya;	.....	.....	II	22
		Bar Association, Gaya; Dist. Judge, Darbhanga.	.....	.....	II	24
	Dist. Judge, Saran, Chapra Bar Association, Dist. & Sessions Judge, Patna.	.....	.....	.....	II	24
	Judicial Commissioner, Chota Nagpur.	.....	.....	.....	II	25
	Judicial Commissioner, Ranchi.	Bar Association, Ranchi.	.....	.....	II	25
		Council of Shri Bharat Dharma Mahamandal, Benares.	.....	.....	II	26
	Dr. Sachchidananda Sinha, M.L.A., Bihar.	Dist. Bar Association, Patna.	.....	.....	II	26
		Maithil Mahasabha Office, Laharia-Sarai.	.....	.....	II	27
U. P.			Govt. of U.P.	.....	III	29
				Mr. Ghulam Hasan, Chief Judge, suggests that the Bill may be appropriately considered when the Union Legislature starts functioning.	III	29
		Mr. L. S. Misra	.....	.....	III	29
				JJ. P. K. Kaul and M. H. Kidwai suggests that the consideration of the Bill should be postponed till the new constitution takes a definite shape.	III	30

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GENERAL

Province	For	Against	No comments	Remarks	Reference	
					Paper No.	Page No.
	Hon'ble Mr. Justice S. B. Chandiramani.	President, Barhwal Bar Association.			III	31
		British Indian Association, Oudh.			III	32
				Mr. A. P. Bhatnagar, Munsif, Amroha is of opinion that the Bill requires certain changes and corrections.	III	34
U. P.		Bharat Dharma Mahamandal, Jagat-gunj.			III	35
East Punjab			The East Punjab Government.		III	39
			Hon'ble the Chief Justice, Hon'ble Mr. Justice Mohd. Munir, Hon'ble Mr. Justice E. C. Marten.		III	40
		The Hon'ble Mr. Justice Mehr Chand Mahajan; Hon'ble Mr. Justice Ram Lal; Hon'ble Mr. Justice Mohd. Sharif; Hon'ble Mr. Justice Cornelius.			III	40
	Hon'ble Mr. Justice Achru Ram; Hon'ble Mr. Justice G. D. Khosla; Hon'ble Mr. Justice Teja Singh.				III	42
	Dist. and Sessions Judge, Jullundur; Dist. and Sessions Judge, Rawalpindi. Personal Assistant to the Deputy Commissioner, Ambala.				III	43
		Bar Association, Hissar.			III	45
	Deputy Commissioner, Kangra.				III	45
	Deputy Commissioner, Hoshiarpur.				III	46
	Commissioner, Multan Division.				III	46
		Bar Association, Montgomery.			III	46
	Deputy Commissioner, Lyalpur.	Shri Sanatan Dharma Pratidinhi Sabha, Punjab. Dr. Parashu Ram Sharma.			III	48
West Bengal				West Bengal Govt. states that the Bill should be postponed for the present and should only be considered by the Indian Parliament under the new Constitution.	IV	57
		The Bangiya Brahman Sabha.			IV	57
				Calcutta High Court is of opinion that the legislature should consider whether such a piecemeal legislation involving revolutionary changes in the structure of Hindu Community should be undertaken	IV	59
	Dist. Judge, Burdwan			Burdwan Bar Association is of opinion that in view of the impending constitutional changes, consideration of the Bill may be dropped for the present.	IV	60

GENERAL

Province	For	Against	No comments	Remarks.	Reference	
					Paper No.	Page No.
West Bengal	Dist. and Sessions Judge, Rajshahi-Malda.				IV	60
				T. C. Banerjee, Esq., Dist. Judge, is of opinion that though the code contains some salutary provisions, the revolutionary changes envisaged in some other provisions are uncalled for in the present conditions of the Hindu Society.	IV	60
	Dist. Judge, 24-Parganas	Bengal Varnamam Swarajya Sangha.			IV	60
	Bengal Presidency Council of Women.				IV	61
					V	2

Provinces	From Whom	Comments	Reference	
			Paper No.	Page No.
Bombay	Dist. Judge, Belgaum	'Illustrations' should be styled 'Explanations'.	I	2
West Bengal	Dist. Judge, 24-Parganas	Definition of a Hindu should be a little more wide.	IV	60
<i>Part I—Clause 6.</i>				
Bombay	Assistant Public Prosecutor, Bijapur	Suggests amending the definition of 'Stridhana' in item (j)	I	2
Ajmer-Marwara	Dewan Bahadur M. Harbilas Sardé	The following definition of son & daughter and daughter's son and daughter's daughter should be added as item (k) — “(k) Son and daughter mean the son and daughter born of a marriage valid under this code, and daughter's son and daughter's daughter mean son and daughter born of the daughter's womb”.	III	26
Madras	Collector, Salem	Definition of 'Stridhan' under sub-clause (j) may be restricted to a limited estate of the inherited property.	II	10
	Dist. Judge, South Kanara, Mangalore	Suggests for the imposition of limitation with regard to degrees in sub-clauses (a) and (c).	II	3
U. P.	Mr. A. P. Bhatnagar, Munsif, Amroha	Clause 6 (b) should read as follows :— “Caste includes the four primary 'varnas' and any caste recognised by the Hindus, but does not refer to any sub-caste”. The definition of 'Gotra and Pravara' in clause 6 (f) should be specific.	III	34
<i>Part II.—Clause 1.</i>				
Bombay	Assistant Public Prosecutor, Bijapur.	Suggests for deleting item (4)	I	2
East Punjab	Deputy Commissioner, Kangra	Agricultural land should not be excluded from the provisions of this code.	III	45
West Bengal	Dist. Judge, 24 Parganas	Agricultural land also should be included in the code for the purpose of intestate succession.	IV	60
Madras	Dist. Judge, South Kanara	The provision of intestate succession should be applied to agricultural land also.	II	3
	Dist. Judge, Nellore	The provision of intestate succession should be applied to agricultural land also.	II	5
Bihar	Bar Association, Muzaffarpur	Suggests addition of the following further item :— “(iv) the joint immovable property of a Mitakshara joint Hindu family.”	II	22
<i>Part II—Clause 2.</i>				
Bombay	Collector, Satara	Suggests the inclusion of “Dasi Putra” as son under sub-clause 1 (c).	I	7
<i>Part II—Clause 3.</i>				
Bombay	Dist. Judge, Ahmedabad	Suggests for the deletion of the proviso	I	4
<i>Part II—Clause 4.</i>				
Bihar	Bar Association, Muzaffarpur	The word “separate” should be put between the words, “The” and “heritable.”	II	22

Province	From whom	Comments	Reference	
			Paper No.	Page No.
Part II—Clause 5				
Bombay	Dist. Judge, Surat	In class II heirs Nos. 6 and 8 should be preferred to heirs Nos. 3 and 7 respectively.	I	2
Bihar	Bar Association, Muzaffarpur	In class III, a new heir "Brother's daughter's son" should be included and placed after the "Brother's daughter".	II	22
Ajmer-Merwara	Dewan Bahadur M. Harbilas Sardh	The order in which the heirs are enumerated in Class I is utterly unjust. The order should be thoroughly revised and the intestate's mother, father, brother and a deceased brother's son, all should be included in entry (1) of Class I. The daughter's son should be given a place in Class II and the sister should be placed above the daughter's son.	III	36
West Bengal	Dist. and Sessions Judge, Rajshahi-Malda	The widow of a predeceased son and the widow of a predeceased son of a predeceased son should be excluded from entry (1) in Class I.	IV	60
	Dist. Judge, 24-Parganas	In the enumeration of heirs, a son's daughter and a daughter's daughter, should go before a brother or a brother's son.	IV	60
Madras	Dist. Judge, South Kanara, Mangalore	Heirship should be simultaneous between (1) father and mother, (2) father's mother and father's father, (3) father's father's mother and father's father's father, and (4) mother's mother and mother's father.	II	3
	Bar Council, Madras	Suggests that (1) both the parents, (2) both the paternal grand parents, (3) both the great grand parents and (4) both the maternal grand parents should have simultaneous and equal shares.	II	8
	Advocate General, Madras	Ditto	II	9
Part II—Clause 7				
Bombay	Dist. Judge, Ahmedabad	Under rule 4 daughters should get equal shares with sons.	I	4
	Collector, Satara	Daughter, if at all, should get $\frac{1}{2}$ share and not more.	I	7
Bihar	Bar Association, Muzaffarpur	Rule 1 should be recast to read as follows :— "The intestate's widow or if there is more than one widow, each of the widows shall take one share."	II	2
		Rule 2 should be recast as follows :— "Each surviving son of the intestate whether undivided or reunited shall take one share. If there is neither an undivided son nor a reunited son then each surviving son divided from the intestate shall get a share."		
		In rule 3 clause 2, the word "together" after the words "or widows" appearing within brackets should be deleted.		
West Bengal	Dist. Judge, Burdwan	If there are more than one widow, each one should be entitled to the share of one son. Preference over other sons should be given to a son born after partition.	IV	59
		Daughter should be given the same share as the son.		
	Dist. Judge, 24-Parganas	Daughter should get equal share with the son.	IV	60
	All-India Women's Conference	Daughter should be given an equal share with the son in the father's property.	V	1

Province	From whom	Comments	Reference	
			Paper No.	Page No.
U. P.	Mr. A. P. Bhatnagar, Mansif, Amroha.	All references to half share should be omitted. Rule 2 should read as follows :— "Rule 2.—Each surviving son and daughter of the propositus shall take one share, whether such son or daughter was undivided or divided with the propositus or reunited with him". Rules 3 (2) and 4 should be struck off.	III	34
<i>Part II—Clause 10</i>				
Madras	Dist. Judge, South Kanara, Mangalore	Innovation of 'such heirs' is unsuited to modern times and suggests that in the non-availability of the remotest enumerated heir property should lapse to state.	II	3
Bombay	Bombay Advocates Association	This clause should be omitted.	III	48
<i>Part II—Clause 13</i>				
Bombay	District Judge, Belgaum	A woman's rights to stridhan should be governed by the code, irrespective of the date of its acquisition.	I	2
	Bombay Advocates Association	The words "acquired by her after the commencement of this code", should be omitted.	III	48
Bihar	Bar Association, Muzaffarpur	A widow should have limited power over the stridhan acquired from her father, husband or son and in other cases absolute right.	II	22
<i>Part II—Clause 14</i>				
Bombay	District Judge, Belgaum; District Judge, Ahmedabad.	Under sub-clause (3), sons and daughters should take equal shares in the mother's property.	I	2 & 4
	Assistant Public Prosecutor, Bijapur	Father, mother, grandchildren and husband should all be included in category (1) under sub-clause (1).	I	8
Bihar	Bar Association, Muzaffarpur	In sub-clause (3) (ii) the distribution of stridhan among grand children should be <i>per capita</i> .	II	22
U. P.	Mr. A. P. Bhatnagar, Mansif, Amroha	The grand child and the husband should rank along with the daughter and son as stridhan heirs of a deceased woman.	III	34
West Bengal	District Judge, Burdwan	The son and the daughter should be entitled equally to the stridhan.	IV	59
	District Judge 24-Parganas	Son and daughter should be equally entitled to stridhan.	IV	60
	All-India women's Conference	Son should have an equal share with the daughter in the mother's property.	V	1
Madras	District Magistrate, Bellary	Items (6) and (7) in sub-clause (1) should be interchanged.	II	5
	Bar Council, Madras	Under sub-clause (1) the husband must succeed to his wife along with daughter and son/both the parents should take simultaneous and equal shares.	II	8
	Advocate General, Madras	Under sub-clause (1) mother's heirs and father's heirs should be placed above husband's heirs.	II	9
	Collector, Salem	Under sub-clause (3) sons and daughters should have equal shares.	II	10
<i>Part II—Clause 19</i>				
Bombay	Assistant Public Prosecutor, Bijapur.	The proviso should be dropped	I	8
Madras	Collector, Salem	Does not agree to the proviso	II	10
<i>Part II—Clause 21</i>				
Delhi	Arya Samaj (Diwan Hall) Delhi; International Aryan League Delhi.	A convert also should be disqualified to inherit a Hindu father's property unless he has been reclaimed to Hinduism.	I	26
	All India Shradhanand Dalitodhar Sabha, Delhi.	Ditto.	II	2
	Bharatiya Hindu Shuddhi Sabha	Both the renegade and his descendants should be disinherited unless they are reconverted to Hinduism.	I	27
Bombay	Bombay Presidency Social Reform Association.	A convert also should be disqualified from inheriting his unconverted relative.	II	13

Province	From whom	Comments	Reference	
			Paper No.	Page No.
Madras	District Magistrate, Bellary	Disqualifying a convert and his descendants is quite drastic.	II	5
	Advocate General, Madras	The convert himself a non-Hindu, should be debarred from succession.	II	9
<i>Part II—Clause 23</i>				
Bombay	Commissioner, Southern Division; Assistant Public Prosecutor, Bijapur.	Congenital idiocy or lunacy should be made a ground of disqualification to inheritance.	I	8
Bihar	Bar Association, Muzaffarpur	After the word, "deformity", the following should be added :— "except on the ground of religious incapacity, deformity and unfitness for social intercourse arising from the virulent and disgusting nature of the disease, or on the ground of the disqualifications given for sacramental marriages".	II	22
Madras	District Judge, South Kanara, Mangalore.	A proviso should be added disqualifying a lunatic in respect of the administration of trust properties.	II	8
<i>Part III-A—Clause 1</i>				
Madras	District Judge, South Kanara, Mangalore.	Recognition of joint family in the face of the removal of the principle of survivorship should be clearly stated for the continued management of the family and the powers of the manager.	II	3
Bombay	Bombay Advocates Association	The words, "dying after the commencement of this code", should be omitted.	III	48
<i>Part VII-A—Clause 2</i>				
Bihar	Bar Association, Muzaffarpur	This clause is most unwholesome, pernicious and unwarranted. It is better to drop it altogether.	II	22
<i>Part III-A—Clause 4</i>				
Bombay	Assistant Public Prosecutor, Bijapur	A proviso should be added stating the maximum amount of maintenance.	I	8
Madras	District Judge, South Kanara, Mangalore.	Provisions under this clause will lead to endless litigation between the statutory heirs and statutory maintenance holders.	II	3
<i>Part III-A—Clause 5</i>				
Bombay	Gujarati Hindu Stree-Mandal, Bombay	Is against the maintenance of concubines under sub-clause (2).	I	5
	Assistant Public Prosecutor, Bijapur.	Is against the maintenance of concubines and suggests that illegitimate daughter should not be given maintenance beyond a certain age.	I	8
	Bombay Presidency Social Reform Association.	Prefers deletion of sub-clause (2)	II	13
Madras	Collector of Kurnool and District Magistrate.	"Widowed sister" should be included just after "widowed daughter" in item (vii) of sub-clause (1) but she should be subjected to the same conditions as widowed daughter.	II	7
Bihar	District Judge (Sic)	There should be provision for the maintenance of husband by wives in proper and suitable cases.	II	21
East Punjab	Hon'ble Mr. Justice Teja Singh	Sub-clause (2) should be omitted	III	42
<i>Part III-A—Clause 6</i>				
Bombay	District Judge, Ahmedabad	Item (f) in sub-clause (1) should be deleted.	I	4
	Bombay Advocates Association	All women dependents including the widow should be placed on par in the matter of the income derived from their earnings.	III	48

Province	From whom	Comments	Reference	
			Paper No.	Page No.
Madras	District Judge, South Kanara, Mangalore. Collector, Salem	Item (f) in sub-clause (1) should be deleted. The following also may be included under sub-clause (1) :— “(1) other dependents who would be equally entitled to maintenance when one dependent files a suit and others do not. (2) Circumstances of the family, present and prospective of the person who is sought to be made liable for payment of maintenance. (3) The man's capacity to pay and not the dependent's need.”	II	3
			II	10
		<i>Part IV—Clause 1</i>		
Bihar	District Judge (Sic.)	The definition of “the degrees of prohibited relationship” should be widened.	II	21
		<i>Part IV—Clause 3</i>		
Bombay	District Judge, Ahmedabad, Gujarati Hindu Street Mandal.	Under item (3) the age-limit for girls should be raised to 18.	I	4 & 5
Ajmer-Merwara	Dewan Bahadur M. Harbilas Sarda	Sub-head (5) should be omitted	III	36
Madras	Collector of Kurnool and District Magistrate.	The provision, “suffering from a loathsome and contagious disease”, may be included in item (2).	II	7
	Advocate General, Madras	An exception may be made under item (1) in cases when an issueless or ailing wife agrees in writing to her husband marrying a second wife.	II	9
Bihar	Bar Association, Muzaffarpur	The following proviso should be added at the end of the explanation: “Provided that it shall not effect those cases regarding which there would have been judicial pronouncement before the date the new law comes into force.”	II	22
West Bengal	All-India Women's Conference	Under sub-head (3) the minimum age of the bride should be raised to 16.	V	1
		<i>Part IV—Clause 5</i>		
West Bengal	District Judge, Burdwan	Provisions should be made for invalidating the marriage of a minor without the consent of her guardian, provided the suit is instituted by the guardian within six months of the celebration of the marriage.	IV	59
		<i>Part IV—Clause 6</i>		
Bombay	Bombay Presidency Social Reform Association.	Prefers to make registration of sacramental marriage compulsory.	II	13
Bihar	Bar Association, Muzaffarpur	Prefers to make registration of sacramental marriage compulsory.	II	22
Ajmer-Merwara	Dewan Bahadur M. Harila Sarda	Ditto	III	36
West Bengal	All-India Women's Conference	Ditto	V	1
		<i>Part IV—Clause 7</i>		
Bombay	District Judge, Ahmedabad	Girl's age limit should be raised to 18 under item (3) and lowered from 21 to 18 under item (5).	I	4
Madras	District Magistrate, Bellary	Under item (5) the guardian's consent should be necessary in the case of a widow.	II	5
	District Judge, Nellore	The age limit should be lowered to 18 under item II (5).	II	5
West Bengal	All-India Women's Conference	Under sub-head (3) the minimum age of the bride should be raised to 16.	V	1
		<i>Part IV—Clause 8</i>		
West Bengal	District Judge, Burdwan	The words, “being Hindus”, may be deleted.	IV	59

Province	From whom	Comments	Reference;	
			Paper No.	Page No.
Part IV—Clause 9				
Bombay	Bombay Presidency Social Reform Association.	By an additional column, in the form the parties should be required to state their birth dates.	II	13
	Bombay Advocates Association	A notice of marriage should be given to a Registrar within whose jurisdiction both the parties have resided for a month.	III.	48
Part IV—Clause 11				
Madras	Bar Council, Madras	The period of thirty days mentioned in sub-clause (1) should be increased to ninety days.	II	8
	Advocate General, Madras	The period of one month mentioned in sub-clause (2) is too short.	II	9
Part IV—Clause 18				
Bombay	Bombay Presidency Social Reform Association.	Application of this clause should be restricted to marriages solemnised before the commencement of this code.	II	13
Part IV—Clause 23				
Bombay	Assistant Public Prosecutor, Bijapur	Maternal grandfather and uncle should be preferred to the paternal uncle in sub-clause 1 (b).	I	8
	Bombay Advocates Association	The paternal grandmother and maternal grandmother should also be included in the list of guardians.	III	49
Part IV—Clause 24				
Madras	Bar Council, Madras	So far as sacramental marriages are concerned, bigamy in cases where a man re-marries with the consent of a soulless or invalid wife should not be made an offence.	II	8
Part IV—Clause 26				
Bombay	Dist. Judge, Ahmedabad	Wife should also be entitled to separate residence and maintenance if the husband marries another.	I	2
Madras	Dist. Judge, South Kanara, Mangalore	Under sub-clause (2) a Hindu wife should be disentitled to maintenance in case of unchastity and under sub-clause (2) (b) a husband should be allowed to retake his wife, on giving up the habit of keeping concubine.	II	
	Dist. Judge, Nellore	The provision under sub-clause (2) (b) may be abused by the wife.	II	5
Part IV—Clause 27*				
Bombay	Assistant Public Prosecutor, Bijapur	This clause should be amended so as to include inheritance to all Hindus, who contract a special marriage under Act III A of 1872.	I	8
Part IV—Clause 28				
Bombay	Assistant Public Prosecutor, Bijapur	Parties of their guardians should decide whether trust property should belong jointly to both shares or in specific portions to them.	I	8
Part IV—Clause 29				
Madras	Collector, Salem	Provision under sub-clause (3) should not be applied to marriages contracted before the commencement of this code.	II	10
Bombay	Bombay Presidency Social Reform Association.	Under sub-clause (3) the petition should lie either to the Dist. Court or to the High Court.	II	13
	Bombay Advocates Association	Petitions should be presented to the Principal court of civil jurisdiction within whose jurisdiction the petitioner has been residing.	III	48

Province	From whom	Comments	Reference	Paper No. Page No.
Part IV—Clause 29				
Bihar	Bar Association, Muzaffarpur	The period of one year under sub-clause (3) proviso (a) is quite insufficient in view of the majority of the population, being in villages. In sub-clause (1) the words, "before or" occurring after the word, "celebrated" should be deleted. The following shall be added at the end of item (vii) of sub-clause (2):—"and the marriage was celebrated by fraud or under duress, coercion and undue influence, and the party seeking the dissolution has not derived any benefit thereunder since after the marriage."	II	22
West Bengal	All-India Women's Conference	It should be made clear that marriages celebrated during a "lucid interval" is voidable as if the party was a lunatic.	V	1
Part IV—Clause 30				
Bombay	Dist. Judge, Ahmedabad	(1) The period of desertion should be reduced from 5 to 3 yrs.; (2) Adultery should also be included as a ground for divorce.	I	4
	Bombay Presidency Social Reform Association.	Suggests two more grounds for divorce: (1) Adultery by husband or wife; (2) a second wife married before the commencement of the code and living at the time of the suit.	II	13
Delhi	Arya Samaj (Diwan Hall), Delhi; International Aryan League, Delhi.	The period mentioned in sub-clauses (a), (d) and (f) should be increased to 7 years.	I	26
	All-India Shradhanand Dalitodhar Sabha, Delhi.	Ditto	II	2
	Bhartiya Hindu Shuddhi Sabha.	The period mentioned in sub-clauses (a) and (d) may be increased to 7 years.	I	27
Madras	Dist. Judge, South Kanara, Mangalore	Provisions under sub-clause (c) is inconsistent with Hindu sentiments.	II	3
	Bar Council, Madras	(1) A second marriage may be made one of the grounds of divorce. (2) The minimum period of desertion should be reduced to 3 years.	II	5
Madras	Advocate General, Madras	The minimum period of desertion should be reduced to 3 years.	II	9
West Bengal	Dist. Judge, Burdwan	The minimum period of desertion should be reduced to 2 years.	IV	59
	All-India Women's Conference	The minimum period of desertion should be reduced to 3 years.	V	1
Part V—Clause 4				
West Bengal	Dist. Judge, Burdwan	The age upto which mother should be entitled to the custody of a minor should be increased to 5 years.	IV	59
Part V—Clause 6				
Madras	Dist. Judge, Nellore	The process of obtaining the previous permission of the court for dealing with the minor's property might adversely affect the minor's interests and so the word "previous" should be deleted.	II	5
Part V—Clause 10				
Madras	Collector, Salem	This clause in its present form will have very serious consequences on the minor.	II	10
Part VI—Clause 5				
Bombay	Assistant Public Prosecutor, Bijapur	Husband's desire to adopt should not be restricted by the consent of the wife.	I	8
Madras	Dist. Magistrate, Bellary	The Provision under sub-clause (1) is very difficult to work in practice.	II	5
West Bengal	Dist. Judge, Burdwan	The words, "or impliedly" in sub-clause 2(a) should be deleted.	IV	59
Part IV—Clause 6				
West Bengal	Dist. Judge, Burdwan	The words, "by implication" in sub-clause (3) should be altered to "expressly".	IV	59
Part VI—Clause 12				
Bombay	Collector, Satara	Provision should also be made for the adoption of orphans.	I	7

Province	From whom	Comments	Reference	
			Paper No.	Page No.
Part VI—Clause 13				
Bombay	Commissioner, Southern Division	Unnecessary restrictions should be removed.	I	8
	Assistant Public Prosecutor, Bijnor	Item (i) should be altered and items (ii), (iii) and (iv) should be deleted.	I	8
Madras	Dist. Magistrate, Bellary	The age limit of 15 under item (iv) is arbitrary.	II	5
Part VI—Clause 15				
Madras	Bar Council, Madras	Instead of insisting on the actual giving and taking, adoption should be done by means of a registered instrument.	II	8
	Advocate General, Madras	Adoption should be done by a registered document and the physical act of giving may be delegated in writing.	II	9
Bombay	Bombay Advocates Association	Performance of Datta Hormam should be made obligatory for the validity of an adoption.	III	48
Part VI—Clause 16				
Madras	Dist. Judge, South Kanara, Mangalore	Some provision should be made <i>inter se</i> of an adopted son and an afterborn natural son.	II	3
Part VI—Clause 19				
Madras	Bar Council, Madras	As difficulties might arise under sub-clauses (1) and (2), provision under sub-clause (3) might be applied in all cases.	II	8
	Advocate General, Madras	Though the provisions as to divesting are simpler, still questions as to the validity of intermediate alienations and rights of <i>bona fide</i> transferees are sure to crop up.	II	9
Part VI—Clause 27				
Madras	Dist. Judge, South Kanara, Mangalore	Either rights of Dwiyamshayana and Ilatom adoptions referred to in clause 2, Part II, should be saved or such adoptions should be expressly prohibited.	II	3