

## ORAL EVIDENCE TENDERED TO THE HINDU LAW COMMITTEE.

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## ORAL EVIDENCE TENDERED TO THE HINDU LAW COMMITTEE.

## I. BOMBAY PRESIDENCY.

Monday, 29th January 1945.

"The Hindu Law Committee assembled in the Committee Room of the Bombay Government Secretariat at 2-30 p.m. on Monday, the 29th January 1945, under the Chairmanship of Sir B. N. RAU, C.I.E., to take oral evidence. Besides the Chairman and Members of the Committee, the Rt. Hon'ble Dr. M. R. JAYAKAR, Sir SITARAM PATKAR and Mrs. TARABAI MANEKALAL PREMCHAND attended as co-opted members.

1. The first witness to be examined was Mrs. SAROJINI MEHTA on behalf of the BHAGINI SAMAJ, Bombay.

CHAIRMAN: Can you give us some idea of the membership of your Samaj?

Mrs. MEHTA: 1,200.

CHAIRMAN: Have you any branches or are you a single body?

Mrs. MEHTA: There is one branch with about 100 members besides the Bombay Samaj.

CHAIRMAN: I see \*your first recommendation is that the repeal of the provisions of the Special Marriage Act is not desirable. Can you explain what you mean? What we have done is to incorporate in this Code most of the provisions of the Special Marriage Act so far as they apply to Hindus.

Mrs. MEHTA: What we want is that the civil marriage provisions instead of going into the Code should remain as they are now under the Special Marriage Act.

Dr. JAYAKAR: If you want to make the Code a self-contained one, you cannot avoid having some reference to civil marriages in the Code.

Mrs. MEHTA: We have no objection to retaining civil marriages. Civil marriages should remain; but if by any chance the provisions on the subject are left out of the Code, the Special Marriage Act should remain. Supposing the civil marriage provisions, as recommended by you are not passed, then the 1872 Act must remain. We should in this event like a provision to be added to this Act to declare a second marriage void.

CHAIRMAN: If by any chance the provisions which we have inserted in the Code go out, then, you would like the same provisions to apply, that is to say, section 16 of the Special Marriage Act will have to be amended so as to make the second marriage void.

Mrs. MEHTA: Yes.

CHAIRMAN: Your second point, I see, is that sons and daughters should get an equal share in their father's as well as their mother's property. An argument which is not merely against this suggestion, but is also against the provisions of the Code is that it leads to splitting up of property. Can you meet it?

Mrs. MEHTA: We do not see any objection to such splitting up.

Mr. VENKATARAMA SASTRI: Don't you spend a lot of money on the marriage of daughters?

Mrs. MEHTA: Among Gujaratis, except in two or three communities, they spend more on the son's marriage than on the daughter's.

Dr. JAYAKAR: So far as mother's property (*stridhan*) is concerned, would you give a preferential share to a daughter over that of a son?

Mrs. MEHTA: We are not for any special preference.

CHAIRMAN: You say that no distinction should be made between property inherited by a woman from her husband and other *stridhan*. Do you mean that both should descend in the same way?

Mrs. MEHTA: Yes.

Dr. JAYAKAR: I suppose the principle on which you have proceeded is that there should be a levelling of all distinctions and that an absolute right should be vested in women?

Mrs. MEHTA: Yes, that is so.

CHAIRMAN: Do you suggest any restriction on alienation by a woman of her property, whether inherited from her husband or not?

Mrs. MEHTA: We have always stood for absolute rights.

Dr. JAYAKAR: Do you think that the comparative illiteracy of women will be taken advantage of by men to exert an undue influence over women?

Mrs. MEHTA: No, we do not think so. The percentage of literate men is 10 and that of women 3, so that the difference is only 7 per cent which is not considerable.

CHAIRMAN: You say innumerable heirs make things very complicated and that the Succession Act is better in that it lays down a broad principle. Do you mean that succession should stop at a certain point?

Mrs. MEHTA: The Indian Succession Act lays down a certain limit. We do not want to go below that. When that limit is reached, the property should go to the State.

CHAIRMAN: As regards the marriage law, you say that the definition of *sapinda* should be limited to three and five degrees and should not be five and seven as in the draft. You have probably noticed that although one of the requisites of a sacramental marriage is that the parties must not be *sapindas* of each other, there is a qualification, "unless the custom or usage governing each of them permits of a sacramental marriage between the two." The result is that if in any particular locality by custom, the degrees of *sapinda* relationship have been reduced even to three and three on each side, that marriage is permissible under the Code.

Mrs. MEHTA: In Gujarat it does not exist even as to three and three. Marriages have taken place outside this rule and they have not been declared void. Even if there is no custom, you should permit by law three and five degrees.

CHAIRMAN: You say that the children of those who are married under the Special Marriage Act should be governed by the Indian Succession Act. Do you mean that even if two Hindus marry under the Civil Marriage Act, they should be governed by the Indian Succession Act and not by the Hindu Law?

Mrs. MEHTA: Yes.

Dr. JAYAKAR: If both parties claim to be Hindus and marry as Hindus, what is the justification for telling them that they will not be governed by Hindu Law?

Mrs. MEHTA: My personal opinion is that option should be left to the parties. We consider that the provisions of the Indian Succession Act are more liberal to the daughter.

Dr. JAYAKAR: What is the general feeling about marriages between the children of sisters?

Mrs. MEHTA: There are instances where even children of brothers have married. We are however against it and the general opinion is against it. We do not want to allow it in either case, for we consider that the relationship between sisters and between brothers is the same.

Dr. JAYAKAR: Is there any biological harm in such marriages?

Mrs. MEHTA: It violates the idea of family relationship.

CHAIRMAN: You say cruelty should be a valid cause for dissolution of marriage. Cruelty is a very elastic term. Would you qualify it in any way?

Mrs. MEHTA: We should leave it to the courts to decide. On the question of adoption, Mr. Sastri pointed out that one of the justifications for adopting male heirs is that the line should be continued. Mrs. Mehta answered that in cases where there was no desire to continue the line, adoption of a female heir should be permitted.

Dr. MITTER: You want to go beyond what the Code has suggested and want equality of rights in every respect?

Mrs. MEHTA: Yes.

2. The next witness was Mr. RAMJI SHASTRI PANDE of the BOMBAY SANSKRIT CHHATRA SANGH. He appeared in association with two Pandits and explained that the Sangh had been started for the purpose of opposing the Code, and to put forward their views in an orderly manner. The Pandit stated that their Sangh was opposed to the Code, root and branch, as they thought that the Code was opposed to the ancient scriptures. On being asked which part of the Code he was opposed to, he said he had not read it. The Chairman requested the representatives of the Sangh to put their views in writing.

3. The next witness was Mr. S. Y. ABHYANKAR, Advocate, Bombay High Court.

CHAIRMAN: I take it that so far as the daughter's share is concerned, you would like it to be confined to the unmarried daughter and you would like her to have half the share of a son. (See Written Memoranda, Volume I, page 53). As you know, under the existing law, we have as

simultaneous heirs the widow, the son, the widowed daughter-in-law, the widowed grand-daughter-in-law, and you would like to add to them the unmarried daughter?

Mr. ABHYANKAR: My suggestion is this: keep the widow and widowed daughter-in-law as a matter of exception. The strict rule is that if there is a son, he should be the only heir. But if simultaneous heirship is to be adopted, you may add the unmarried daughter and she may take half the share of a son.

CHAIRMAN: Suppose a man dies leaving a widowed daughter-in-law and a widowed daughter, then, under your suggestion, the widowed daughter will get nothing.

Mr. ABHYANKAR: Yes, she will get only maintenance.

CHAIRMAN: She may have no legal right to maintenance as the law now stands. You would like her to get only maintenance, while the widowed daughter-in-law would get the whole property?

Mr. ABHYANKAR: Yes.

Mr. SASTRI: You apparently take the view that the one-fourth share provided in the *Smritis* for the daughter is for marriage expenses. Suppose the whole of it is not so spent. Is the law to be that what is left should go back to the estate, or that she should take it with her?

Mr. ABHYANKAR: The unmarried daughter may be permitted to retain whatever is left after the marriage; but do not straightway give her the one-fourth share.

CHAIRMAN: In your memorandum, you have not dealt with any of the other topics, for example, adoption.

Mr. ABHYANKAR: I would cut out all the provisions relating to adoption. It leads to unnecessary litigation and family relationship becomes bitter. If, however, you must have adoption, I would suggest that the boy be adopted at the earliest stage, so that he becomes part of the family and identifies himself with the family. My first choice is to do away with the doctrine of adoption altogether. If, however, it is retained restrict the age of the adoptee to between 5 and 7 years.

Sir S. PATKAR: Your view of adoption is that it should be more secular than religious?

Mr. ABHYANKAR: No; the religious motive should come first and then the secular. If you cannot have a child by nature, have a child by nurture, so that he will be completely affiliated with the family. I should restrict adoption to children before they have reached the age of memory.

To a question put by Dr. Jayakar on the question of adopting near relations, Mr. Abhyankar said that he would support the adoption of the daughter's son, sister's son, and mother's sister's son as proposed in the Code.

CHAIRMAN: Coming to marriage, we have suggested that monogamy should be made the rule. Do you agree with this suggestion?

Mr. ABHYANKAR: Personally I would like the rule to be applied to all Hindus as a matter of principle. Exceptions may however be permitted in certain cases, say, the weaver class, where a second marriage may be allowed for economic reasons.

Sir S. PATKAR: Would you like a woman to be allowed to marry two husbands for economic reasons?

Mr. ABHYANKAR: Polyandry is out of the question. No departure should be permitted in the case of women.

CHAIRMAN: In the draft Code, there is a provision for divorce in certain circumstances. Are you against those provisions?

Mr. ABHYANKAR: I have suggested in my memorandum the establishment of matrimonial courts for that purpose.

CHAIRMAN: We take it that you are in favour of all the provisions on this subject, excepting the reference to the ordinary courts.

Mr. ABHYANKAR: Yes, I am in agreement with the divorce provisions, except that there should be special matrimonial courts to hear these cases. A section relating to the King's Proctor should be included in the sections that have been made applicable under clause 31.

CHAIRMAN: You suggest that in certain exceptional cases a departure from monogamy should be permitted. Would you give, in such a case, an option to the first wife to sue the husband for dissolution of her marriage?

Mr. ABHYANKAR: Yes, I would. In such a case the first wife should have the option of asking for dissolution and should also be entitled to the one-third share of the superseded wife.

If inter-caste marriages are to be permitted, only *anuloma* marriages should be allowed, but not *prathoma*.

4. The next witness was Mr. TANUBHAI D. DESAI, Solicitor, Bombay.

CHAIRMAN: On the whole, you are in favour of the principles of the Code?

Mr. DESAI: Yes, except that I want to radicalize in certain respects.

CHAIRMAN: You want to go further than what the Code has suggested?

Mr. DESAI: Yes, in certain respects.

CHAIRMAN: As a solicitor, when a party wishes to buy property from a Hindu widow, what sort of advice do you give him, in the case of a limited estate?

Mr. DESAI: In a limited estate, we advise, "don't buy, don't take a mortgage." The whole difficulty will be, what is the legal necessity?

Dr. JAYAKAR: That can be removed by interrogatories?

Mr. DESAI: But at the same time you have to see that there is a reasonable legal necessity.

As regards clause 4 of the Part relating to Minority and Guardianship, witness pointed out that in Bombay there is a decision now that a guardian can be appointed, under the inherent jurisdiction of the High Court, for a minor's undivided property. (A.I.R. 1937 Bom 299)

As regards the provisions relating to divorce, witness said he would like to see an express provision for alimony and also for dissolution of marriage on the ground that one of the parties has renounced the world.

5. The next witnesses were The Hon'ble Sir HARSHADHAI DIVATIA, Judge, High Court, Bombay, and Messrs. B. N. GOKHALE, P. S. BAKHALE and D. G. DALVI, on behalf of the BOMBAY PRESIDENCY SOCIAL REFORM ASSOCIATION.

The Hon'ble Sir H. DIVATIA also represented the HINDU LAW REFORM AND RESEARCH ASSOCIATION, in conjunction with Mr. A. G. Mulgaokar.

Sir H. DIVATIA: We represent the Bombay Presidency Social Reform Association and the Hindu Law Reform and Research Association. Generally we are in favour of the Code and especially in favour of having a uniform law for all Hindus. But we have certain suggestions to make on particular points. Thus, the right enjoyed by the widows of *gotraja sapindas* in Bombay should not be taken away.

On a question put by the Chairman, Sir H. Divatia expressed himself in favour of rule 8 as set forth in the second memorandum on the original Intestate Succession Bill. The rule runs as follows:—

"A woman who is a widow when succession opens (except a 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 [as an enumerated heir.]\*\*"

Dealing with heirs in the compact series, Sir H. Divatia stated that their Association was of opinion that descendants should come before ascendants or collaterals. He thought that such an order would be more natural. For example, the son's daughter should have preference over the brother's son.

CHAIRMAN: You will then really have to put the whole of Class II before the mother, because they are all descendants.

Sir H. DIVATIA: Yes.

Dr. JAYAKAR: Would you bring the sister after the brother and before the brother's son?

Sir H. DIVATIA: Yes.

We also want the widowed daughter-in-law to take the place of her husband. If the son is dead, the son's widow must take his place.

Even permanent concubines should not get any maintenance at all.

On the question of *sapinda* relationship for purposes of marriage, Sir H. Divatia said that he would prefer to make the rule uniform—five degrees on each side—as there is a lot of confusion in the matter at present.

The following further points were made by Sir H. Divatia:—

Section 2 of the Hindu Widow's Remarriage Act, 1856, should be repealed.

\* Portion in brackets recommended for insertion by Sir H. Divatia.

In clause 7 (4) of Part IV, instead of "21st" substitute "18th."

Notice under clause 9 of the same Part should be given by both parties and not by one party only.

In clause 26 (d) of the same Part, the period of desertion should be specified: he would suggest at least one year.

In clause 29 of the same Part, a period of limitation should be fixed.

Witness was then questioned about adoption.

Dr. JAYAKAR: Would you cut out adoption altogether?

Sir H. DIVATIA: So far as Hindu sentiment at present is concerned, I would not.

Sir S. PATKAR: Are you in favour of the adoption of a daughter's son?

Sir H. DIVATIA: Yes, certainly. That is the natural thing to do.

6. The next witness was Mahamahopadyaya P. V. KANE, on behalf of the DHARMA NIRNAYA MANDAL, LONAVALA. Mr. Kane said that the Mandal was registered under the Act of 1860 and that its present President was Swami Kevalanand.

The following points were made by Mr. Kane:—

Even as regards property inherited from the husband, the Mandal will be prepared to concede an absolute estate to the widow if there are no heirs of the compact series alive. This compromise was accepted after a long discussion at which the Swami presided; the general sentiment of the meeting was against the clause in the Code as it stood.

Dr. JAYAKAR: As regards succession to *stridhan*, would you give preference to the female issue?

Mr. KANE: In the draft Code, you are treating the daughters and sons as simultaneous heirs.

CHAIRMAN: According to your Memorandum, the sons to exclude the married daughter from the father's property; but as regards the mother's property, you would like the son and the married daughter to take equally?

Mr. KANE: Yes. We are keen about the ancestral property. There is no keen sentiment as regards *stridhan* one way or the other.

Mr. Kane supported the opinion of Sir H. Divatia in the matter of *sapinda* relationship for purposes of marriage.

He suggested the omission of the provision relating to the *naishitika brahmachari* in clause 11 of Part II of the Code.

The Committee adjourned at 8 p.m. until 12-30 p.m. of the following day. Mr. Kane said that he would continue his evidence on the following day at 5 p.m.

Tuesday, 30th January 1945.

The Committee reassembled in the Committee Room of the Bombay Government Secretariat at 12-30 p.m. The Chairman, the three members, and the three co-opted members were present.

1. The first witness for the day was Mrs. BABI BEN MULJI DAYAL:

I give my personal views now. I shall give my views as a representative of the Bhatia Stri Mandal later.

The provisions regarding civil marriage should not be in the Hindu Code; but I have no objection to their remaining outside the Code in the Special Marriage Act. I would have two kinds of sacramental marriages, (1) in which both the parties are Hindus of the same caste or both are Sikhs, Buddhists or Jains, and (2) in which the two parties are Hindus, Sikhs, Buddhists or Jains without being of the same caste or denomination. There must be ceremonies for each of these two kinds of sacramental marriages, though the ceremonies will be different in the two cases. Every marriage must be registered, whether of the first or of the second kind.

*Sapinda* relationship should extend, as provided in the Code, to seven generations on the father's side and five generations on the mother's side.

Monogamy must be the rule, but some exceptions should be permitted, for example, where the first wife has no children and consents to her husband marrying again. In such a case, the husband should give one-third of his property to the superseded wife. Where the husband marries a second wife, except as permitted by the Code, he should be punished for bigamy.

Dr. MITTER: Are you in favour of divorce?

WITNESS: Divorce is not permitted by the Hindu shastras and should not be allowed.

(On further examination) the Dharma Sastras permit divorce in certain cases, for example, when the husband has not been heard of for a number of years. In such cases, I have no objection to divorce being permitted by the Code.

On principle, I think daughters, married or unmarried, should get shares in the father's property; but there may be economic difficulties and I therefore hesitate to express any definite view.

The widow should have an absolute estate in movable property. In immovable property she should have an absolute estate if there are no children; but if there are children, she should not be free to dispose of her property.

The Mitakshara joint family should not be interfered with. The Bengal joint family will not be acceptable to us.

2. The next witness was Mr. MANUBHAI C. PANDIA:

I am the Secretary of the Varnashram Swarajya Sangha, Bombay. The Sangha has been in existence for 18 years and has 250 to 300 branches with a total membership of about 100,000. We are a very orthodox association and our views are more orthodox than those of the Hindu Mahasabha. We hold that Hindu Law is of divine origin and, although of course subject to interpretation from time to time, it cannot be made or altered by legislation. As regards marriage, we think that the provisions for civil marriage should be omitted from the Hindu Code. (After some argument): I have no objection to civil marriages being permitted by the Code, provided they are kept distinct from sacramental marriages. We consider that sagotra marriages should be prohibited, but the prohibition need not go so far as to nullify such marriages where they have already taken place. Our view on this point is, once a marriage always a marriage. As regards sacramental marriages, I approve of the alternative clauses.

I agree that monogamy should be the ideal, but it should not be enforced by law. Why should men be deprived of a vested right which they have enjoyed for 3,000 years? Where a man marries a second wife, I agree that he should give one-third of his property to the superseded wife.

We disapprove of divorce. It is against the text of Manu (IX, 46). As regards the texts of Narada and Parasara which allow a woman to take a second husband in five specified cases, we consider that the expression *pati* occurring therein does not mean a husband; it merely means a betrothed person. I am not against Hindu widows being permitted to re-marry, although such a course is derogatory to Hindu ideals. (Asked what remedy he would suggest where a husband is an incurable lunatic or a leper): I can only suggest that the wife, instead of being allowed to have the marriage dissolved and to take another husband should be educated in higher ideals. (Asked whether he would suggest the same remedy where the wife was an incurable lunatic or leper): In such cases the man should be permitted to take a second wife.

I have no objection to the provisions in the Code regarding minority and guardianship, except as to clause 10 which relates to the *de facto* guardian. I think that near relations up to, say, the uncle or the grandfather should be allowed to act as guardians in the absence of a natural guardian.

I approve of the provisions in the Code regarding adoption except that in clauses 5 (1) and (2) I would substitute "14th year" for "15th year."

We have no objection to greater rights being given to Hindu women where the texts sanction them. We do not agree to their being given an absolute estate, because it is against Manu's text about the perpetual tutelage of women. (Asked whether he would do away with the absolute estate enjoyed by the daughter in property inherited from her father in Bombay.) The Bombay rule, although against the texts, should remain. (See Written Memoranda, Vol. I, page 99, for statement supplementing oral evidence.)

3 Next, Mrs. KAMALA DONGERKERRY and Mrs. SULOCHANA MODY, representing the BOMBAY PRESIDENTY WOMEN'S COUNCIL and Lady CHUNILAL V. MEHTA and others representing the GUJARATI HINDU STRI MANDAL were examined together:

Both Associations welcomed the Code generally.

Both considered that the Indian Succession Act gave the daughter better rights and that therefore the provision in the Special Marriage Act which made the Indian Succession Act applicable to certain Hindus should not be completely repealed, but should remain as an optional provision.

As regards sapinda relationship, the Bombay Presidency Women's Council considered that it should be limited to five generations on the father's side and three on the mother's side, while the Gujarati Hindu Stri Mandal considered that it should extend to five degrees on each side.

The Bombay Presidency Women's Council was in favour of removing the *gotra* and *pravara* restrictions on marriage. The Gujarati Hindu Stri Mandal was at first in favour of having these restrictions, but after some argument in the course of which it transpired that in Gujarat few people knew their *gotras* or *pravaras*, the Mandal agreed that these restrictions might be removed. They appeared to have confused *sagotra* marriages with *sapinda* marriages, to the latter of which they objected.

Both bodies were divided in opinion as to whether the Mitakshara joint family should or should not be replaced by the Dayabhaga. The majority of the Bombay Presidency Women's Council were in favour of the Mitakshara being brought into line with the Dayabhaga, while the majority of the Gujarati Hindu Stri Mandal were in favour of retaining the Mitakshara in this respect.

Regarding maintenance, the Bombay Presidency Women's Council was against a concubine being given maintenance, while the Gujarati Stri Mandal was in favour. Neither had any objection to children of a concubine being given maintenance.

On other points, the memoranda submitted by the two bodies may be referred to. (Written Memoranda, Vol. I, pages 33 and 35.)

4. The next witness was Mahamahopadhyaya P. V. KANE, continuing from yesterday, on behalf of the DHARMA NERNAYA MANDAL:

The Mandal is in full agreement with the general tenor of the Code, although differing on certain details.

Women may be given an absolute estate in all property except property inherited from the husband and even here they should have a limited estate only if there are heirs of the husband within the 'compact series.' This was the view which the Mandal adopted after a long discussion at which the Swami presided.

The Mandal accepts monogamy as the rule, but would suggest that occasional exceptions should be permitted, for example, on economic grounds.

As regards *sapinda* relationship for purposes of marriage, the Mandal agrees with the definition in the Code, but I would personally prefer that the relationship should be limited to five generations on the father's side and three on the mother's.

As regards guardianship in marriage, we would change sixteenth year to eighteenth year in clause 23 (a) of the Code.

In clause 26 of the Code relating to the duties of husband and wife, we would omit the words "not contracted from her" in proviso (a). We would also recommend that some minimum period should be prescribed for desertion in this clause, say three years.

Clause 28, intended to check the dowry evil, should either be omitted or be made more effective: either permit dowries or else prohibit them completely.

As regards clause 30 relating to dissolution of marriage, we would suggest that the period of seven years should be reduced to five years. We would also suggest that disappearance without any news for seven years, becoming an ascetic and unbearable cruelty should be added as grounds for dissolution of marriage. We would further suggest that at least as regards some of the grounds, no dissolution should be permitted after, say, fifteen or twenty years from the date of the marriage.

We see no harm in retaining the *dwyamushyayana* form of adoption as it still prevails in certain parts of the country. In clauses 5 (1) and (2) relating to adoption, we would suggest the substitution of 'eighteenth year' for 'fifteenth year.' In clause 11 (1) (b) relating to the termination of women's right to adopt, we would suggest that the right should terminate when an only son or the last surviving son of her husband dies leaving a son or a widow.

On other points, the memorandum of the Mandal may be referred to.

The Committee rose for the day at 7-45 p.m.

Wednesday, 31st January 1945.

The Committee reassembled in the Committee Room of the Bombay Government Secretariat on January 31, 1945 at 12-30 p.m. The Chairman, the three members and the three co-opted members were present.

1. Mr. D. P. SETHNA, Mr. MANGALDAS V. MEHTA and Mr. TANUBHAI D. DESAI representing THE BOMBAY INCORPORATED LAW SOCIETY gave evidence first.

On the whole, we approve the draft Code and would only suggest a few minor changes. Our society wholeheartedly favours the blending of the most progressive elements in the various schools. The Code will greatly simplify the law and reduce litigation.

Coming to details, we would suggest the insertion of a provision facilitating proof of change of domicile.

As regards the provisions relating to minority and guardianship in the Code, we would suggest that clause 4 should not affect the inherent powers of the High Court to appoint a guardian even as regards an undivided interest in joint family property. In practice, the Bombay High Court appoints an officer of the court as the guardian even when there is a *karta*.

Section 39 of the Transfer of Property Act should be restored to the form which it had before the amendments of 1929.

The Partition Act, 1893, should be made to apply to all property, movable or immovable (e.g., a business) inherited by a daughter whenever a division thereof cannot be conveniently made.

Registration of adoption, e.g., before the Special Registrar of Assurances, should be made compulsory.

2. Mr. BHANDARKAR then gave evidence on behalf of the BOMBAY PRARTHANA SAMAJ:

I am a nephew of Sir R. G. Bhandarkar, the famous Sanskrit scholar. The views of our Samaj have been set out in detail in our memorandum. The Association heartily hopes that a Hindu Code will at last be enacted by the legislature, so that Hindus may know their law with certainty and definiteness. We are generally in support of the provisions in the draft Code.

The one point that I should like to emphasize is that instead of granting maintenance to a large number of dependants, shares of the estate should be granted to them. Otherwise, the transfer of property becomes difficult. No other system of jurisprudence grants maintenance in this way.

I should also like to emphasize that no maintenance should be allowed to a concubine, because this would be inconsistent with the spirit of monogamy.

3. Mrs. DHARAMSI THAKKAR, President, Mrs. BABI BEN MULJI DAYAL, Secretary, Mrs. KARA and Mrs. MENABAI JAMNADAS, Joint Secretaries, of the BHATIA HINDU STRI MANDAL gave evidence next:

Our Mandal has a head office and two branches in Bombay city and one branch outside, and has a total membership of about 500. The Mandal was started about 14 years ago. We are partly in favour of the provisions in the draft Code and partly against.

We should like to repeat certain general objections to the Code. It should not be passed with the aid of non-Hindu votes. It should be in accordance with the Sastras. Thus, civil marriages should not be in the Code. They may remain in a special Act outside the Code. Pandits should be consulted in the framing of the Code. Moreover, we think that this is not the proper time for legislation of this kind. These are our general objections.

Coming to details, as regards the definition of a 'Hindu' the words 'brought up as a Hindu' are vague. We think that the religion of the father should be the criterion. (Asked what was to be done where the father was not known.) On reconsideration we think that the religion of the mother should be the criterion in all cases until the child comes of age. If the mother was a Hindu, the child should be deemed to be a Hindu, unless, after attaining majority, he or she embraces another religion.

We think that maintenance should always be made a charge on the property whether of a male or a female. This change in the present law should be made at once.

In clause 26 (f) relating to the grounds on which a wife can claim separate maintenance, we consider that the words 'any other justifiable cause' are much too vague. All grounds should be specified and this clause should be altogether omitted.



Clause 10, Part-V (Minority and Guardianship) debar *de facto* guardians from dealing with the property of a Hindu minor. We think that *de facto* guardians should be permitted within certain reasonable limits, e.g., paternal uncles.

As regards dissolution of marriage, we accept the grounds proposed in the Code, as they are in accordance with the Smritis. As regards procedure, however, we think that the relevant provisions of the Indian Divorce Act should as far as possible be incorporated in the Code itself so as to make it self-contained.

Adoption should be permitted without limit of age in Bombay. Even married men with children should be capable of being adopted.

3-A. The same ladies, appearing on behalf of THE REPRESENTATIVE COMMITTEE OF HINDU LADIES, went on to say :

In the case of a Hindu being converted to another religion and then reconverted to Hinduism, we think that he should remain a Hindu for at least five years after reconversion before he can be eligible for succession to property.

The obligation to maintain aged parents, minor sons and unmarried daughters should be placed on women as well as men; but we do not press this suggestion, if it is found to be unworkable.

We desire that the superseded wife should be added as a dependant for purposes of maintenance and should be given one-third of the husband's property.

Where a sacramental marriage of a minor girl has been completed without the consent of her guardian, the guardian should have power to have the marriage annulled at any time unless the parties have remarried after attaining majority. This should be so even where there was no force or fraud.

We are in favour of monogamy, and clause 29 (4) in the Chapter on Nullity and Dissolution should be omitted, as it would defeat the principle of monogamy.

As regards adoption, we consider that both parents must consent to the giving as well as to the taking.

Our views on other points will be found in the memorandum submitted by us to the Committee. (Written Memoranda, Vol. I, page 30.)

4. Rao Bahadur P. C. DIVANJI was the next witness :

I am technically the Vice-President of the Varnashram Swarajya Sangh, although since the submission of my memorandum to the Committee, I have been asked to resign the office. I have been in touch with the administration of Hindu law for the last 36 years during 25 of which I was in the Bombay Provincial Judicial Service. The memorandum (Vol. I, page 18) embodies my personal views.

I agree generally with the adoption provisions in the draft Code, particularly as regards the removal of restrictions on the adoption of the daughter's son, the sister's son and the mother's sister's son. I would however suggest a few minor changes in this chapter : In clause 5, I would substitute 'sixteenth year' for 'fifteenth year.' In clause 19, I would substitute 'one year' or at the most 'eighteen months' for 'three years.'

As regards the Chapter on Minority and Guardianship, I would confine clause 10 (which imposes a ban on *de facto* guardians) to sales, mortgages and long leases of immovable property and also to the disposal of the corpus of movable property.

I would permit divorce even in the case of sacramental marriages in order to meet the practical difficulties of the present day. In this respect, I differ from the Sangh. Clause 30 (a) relating to dissolution of marriage should be in the form "is or has been of unsound mind continuously for a period of not less than seven years", etc. I would also have no objection to the words "celebrated before or after the commencement of the Code" being substituted for the existing words in the body of clause 30, so that the provision may be available even to those who are already married. I would suggest in connexion with sub-clause (d) of the same clause that the Native Converts' Marriage Dissolution Act, 1866, should be repealed. An examination of its provisions would show that it applies only in the case of conversion from Hinduism. The phraseology as well as the provisions of the Act are most objectionable.

I am against the abolition of the principle of survivorship and the right by birth in ancestral property. I would extend the Mitakshara rule to Bengal rather than

the reverse. If partition of estates below a certain value, say, Rs. 10,000, is treated as inconvenient and a provision inserted in the Code that a daughter claiming a share of such an estate can only get a share of the money value thereof, I should have no objection to the daughter getting half the share of the son from the father's property, whether she is married or unmarried.

I would suggest that all debts should be paid out of the estate before it is distributed and a specific clause to this effect should be inserted in the Code.

The Hindu law of debts has become so complicated that I think it should be codified; and, indeed, I think all the topics of Hindu law should be codified.

As already stated, because my views on codification differ from that of the Sangh, I have been asked by the President, Mr. Loyalka, to resign.

[Mr. DIVANJI's evidence was recorded first on 31st January 1945 and concluded on 2nd February 1945.]

5. Sir CHIMANLAL SETALVAD next gave evidence :

I have only three points to make. As regards other points, I am generally in favour of the provisions in the draft Code.

(1) The widows of *gotraja sapindas* have had certain rights of inheritance in Bombay for the last seventy years. There is no reason why those rights should be taken away. If uniformity is considered desirable in this respect, the same rights should be given to them in other parts of India.

(2) I think that the Mitakshara joint family system should continue as it is. The joint family system offers a certain measure of security to all the members of the family and there is no reason why it should be abolished. There are other systems of law in which testamentary power is limited. There is therefore nothing singular in a member of a Mitakshara joint family being incompetent to will away his interest in ancestral property. I have no objection to the widow and the daughter being admitted as coparceners in the joint family property. (Asked whether the daughter's son should have a right by birth); This may create complications, but it should not be impossible to work out a reasonable compromise. (Asked whether it would not be illogical to give absolute estates to the widow and the daughter and a coparcener's interest to the son); Let them all be coparceners and subject to the same limitations.

(3) I see no reason why a person previously adopted should be incapable of being given in adoption once again. For example, if a man takes a boy in adoption and a son is afterwards born to him, why should he be prevented from giving the adopted son to somebody else in adoption? (On its being pointed out that this might defeat the intentions of the boy's natural father and might lead to the adopted son being passed on to a family of which the natural father would not have approved): It should not be impossible to prescribe adequate safeguards.

The Committee rose for the day at 5-45 p.m.

Friday, 2nd February 1945.

The Committee reassembled in the Committee Room of the Bombay Government Secretariat at 12-30 p.m. The Chairman, the three members and the three coopted members were present.

1. Miss ENGINEER, M.A., LL.B., J.P., Honorary Secretary of the SEVA SADAN SOCIETY, BOMBAY, gave evidence first :

I have been Honorary Secretary of the Seva Sadan Society since 1913 and an Honorary Presidency Magistrate since 1927. I have had opportunities of contact with Hindu girls all my life and am therefore qualified to speak about them. I have gone through the draft Hindu Code and I support its broad principles on all matters : removal of the sex disqualification, abolition of the limited estate, etc. I do not share the apprehension that owing to illiteracy and lack of business experience, women would waste property. Test them and see. Vested interests will naturally object to the disappearance of the Mitakshara joint family, but it has already disappeared to a large extent. I think we must face the opposition.

As regards monogamy, I would not allow any exceptions, even for barrenness, etc., and even with the consent of the first wife. The Parsi law does not recognize any exceptions at present. I am in favour of divorce for both parties in certain circumstances. I am at this moment dealing with a case of desertion, without any cause, of a

woman with two children. The desertion has now lasted for more than seven years. In my experience such cases are more common amongst Hindus than amongst other communities. The man marries again and deserts the first wife. On an average, I have to deal with two or three cases every year of desertion and cruelty, desertion being more frequent than cruelty. I am in favour of a uniform law for all Hindus; because, after all, they are all Hindus.

Our Association (the Seva Sadan Society, Gamdevi) considers that civil marriages as well as sacramental marriages should be provided for within the Code.

2. Mrs. LEELABAI PHADKE and Mrs. B. N. GOKHALE gave evidence next on behalf of the ARYA MAHILA SAMAJ, BOMBAY:

Our Association has a membership of 300 and has no branches. We are practically a reformer group. We approve of the main lines of the draft Code. We think that there ought to be a uniform Code for all Hindus. We have always advocated the removal of sex disqualifications and are in favour of conferring absolute rights on women. (Asked whether, owing to the comparative illiteracy of women, men would not exercise some coercion over women in the management and disposal of property, etc.) It may be so at present; but what about the future when women become more and more educated? There may be some danger of the kind mentioned as things are now, particularly where women are confined to their houses; but that does not mean that all reform should stop. In fact, this is why we have advocated general advancement in every direction. The husbands can train their wives in the management of estates.

Monogamy should be the strict rule without exception.

Dr. JAYAKAR: What about the case of a wife having no children? Will you permit an exception in such cases?

Mrs. PHADKE: But then there is adoption for such cases.

Dr. JAYAKAR: Take a case where a woman who has no children asks her husband to marry again? Would you allow an exception in such a case?

Mrs. PHADKE: No. We shall not admit any exceptions. The husband and wife should be content with adopting a child even in the case put.

Dr. JAYAKAR: You do not think it will work any hardship?

Mrs. PHADKE: Every law works some hardship.

Dr. JAYAKAR: What about the Ruler of a State where the right of succession is limited?

Mrs. PHADKE: No; not even in such a case. Is not adoption expected to meet these cases?

Sir S. PATKAR: It has been suggested by some witnesses that on economic grounds, say, in the case of weavers or agricultural classes, a husband should have the right to marry more than one wife.

Mrs. PHADKE: It comes to this then: a marriage is performed only to get weaving hands and farm hands.

Dr. JAYAKAR: Do you think that the present-day conditions, say, for example, the vast illiteracy of the people and their consequent inability to understand important measures of reform of this type, may stand in the way of introducing this Code in the Legislature now? Shall we not be accused of going too fast?

Mrs. PHADKE: No, we do not think so. If these considerations are made to stand in the way, the question will be, when we can make a beginning. On the other hand, such reforms may help to educate people on the right lines.

Dr. MITTER: In your statement you have stated that among the simultaneous heirs shall be included the deceased son's widow. She is an heir under the Deshmukh Act of 1937. You say that she should retain her position in addition to the daughter?

Mrs. PHADKE: Yes, in addition.

Dr. MITTER: Will not the introduction of the daughter lead to further fragmentation of property?

Mrs. PHADKE: Supposing instead of there being 8 daughters and two sons, there are eight sons and two daughters, will not the property be fragmented then? If you can allow fragmentation for the sons' sake, why object to the daughters?

Dr. JAYAKAR: Would you make a woman a *sapinda* in both families, that is to say, her husband's family and her father's family?

Mrs. PHADKE: She will inherit from her father as daughter and from her husband's property as wife (where the husband would have succeeded had he been alive).

Principal GHARPURE: What is your opinion about the age-limit for marriages?

Mrs. PHADKE: We want the Sarda Act provisions to be retained. We would keep it at 14 for the girl and 18 for the boy.

Principal GHARPURE: Supposing the rule is infringed, would you suggest that such a marriage should be made invalid?

Mrs. PHADKE: We want the Sarda Act provisions to be strictly carried out. If, however, a marriage is performed by mistake outside these provisions, such a marriage should not be invalidated on this ground alone. It may however be invalidated if the parties consent to invalidation.

Dr. JAYAKAR: What about marriages between *sapindas*? Would you declare a *sapinda* marriage null and void?

Mrs. PHADKE: It should not be declared null and void merely because it is a *sapinda* marriage.

Dr. JAYAKAR: To how many degrees would you extend *sapinda* relationship for purposes of marriage?

Mrs. PHADKE: Three on the mother's side and five on the father's side.

Dr. JAYAKAR: If a marriage is performed infringing this rule, would you declare such a marriage null and void?

Mrs. PHADKE: No. If the parties concerned are happy and they do not want to separate, then, to declare such a marriage void merely because it is within the prohibited degrees of *sapinda* relationship sounds absurd.

Dr. JAYAKAR: In other words, a suit for the dissolution of a marriage or any action for the nullity of a marriage should be confined only to the husband and wife?

Mrs. PHADKE: Yes, no outsider should be permitted to interfere in such matters.

Dr. JAYAKAR: Would you allow near relations who are interested in the parties' welfare to start a proceeding for nullity or dissolution on any of the grounds mentioned?

Mrs. PHADKE: It should be limited to immediate relations, such as brothers, sisters, father and mother.

Sir S. PATKAR: What are your views in regard to *sagotra* and *sapravara* marriages?

Mrs. PHADKE: We are not in favour of *sagotra* marriages. If, however, *sagotras* marry, such marriages also should not be considered null and void merely because the rule has been infringed.

Dr. JAYAKAR: What do you mean by completed marriages?

Mrs. PHADKE: As soon as the *saptapadi* is performed, the marriage is complete.

Dr. JAYAKAR: Supposing immediately after the *saptapadi*, it is discovered that the parties to the marriage are of the same *gotra*. Would you treat the marriage as null and void?

Mrs. PHADKE: No. The marriage becomes indissoluble as soon as it is completed, that is to say, as soon as the *saptapadi* is performed.

Referring to clauses 3 to 5 of Part IV, witness stated that they would like to retain the first alternative in the Code.

Dr. JAYAKAR: Are you in favour of intercaste marriages?

Mrs. PHADKE: Yes. We are. Even in the case of sacramental marriages, we are in favour of intercaste marriages. [We are in favour of clause 3 of Part IV, first alternative.]

Dr. JAYAKAR: You say that there is a strong feeling in favour of making conversion a ground for dissolution?

Mrs. PHADKE: We would like to make it a ground. We think that there is a strong feeling in favour of this opinion.

Dr. JAYAKAR: You are strongly in favour of the wife being consulted in the matter of adoption?

Mrs. PHADKE: Yes, because she takes the place of the natural mother of the adopted son. If there are two wives, the senior wife should be consulted. If the father wants to give a son in adoption, the consent of the mother of the boy should be taken.

Dr. JAYAKAR: Suppose the mother does not agree, won't you leave it to the father and say that the adopted son will have a right only to his father's property?

Mrs. PHADKE: We are strongly of the opinion that without the wife's consent there should be no adoption. We would not make an exception even in the case of orphans.

Dr. JAYAKAR: Would you do away with adoption altogether?

Mrs. PHADKE: We would rather do away with it if we are in a position to do so. As at present, however, we would not cut it out, because we recognize the necessity for it.

Dr. MITTER: Even if the wife is living apart from the husband, would you consider the consent of the wife necessary?

Mrs. PHADKE: In this case, no, because she does not become the mother.

3. Mr. M. C. SETALWAD gave evidence next.

CHAIRMAN: You have been Advocate-General and are leader of the Bar?

Mr. SETALWAD: Yes.

I represent the Bombay Bar Association and am also in certain matters expressing my own personal views. I am entirely in favour of the provisions in the draft Code, except that in one or two matters it does not go far enough.

So many inroads have already taken place in the doctrine of survivorship and the right by birth that it is time they are done away with. The Mitakshara jurisdictions should fall in line in this respect with the Dayabhaga. These doctrines lead at present to a great deal of litigation and immoral litigation at that. This is my personal view and also the view of the majority of the Bar Association. I think the Hindu community governed by the Mitakshara is suffering in comparison with other communities because of the restrictions implied in survivorship and the right by birth.

Widows should inherit in the family of the husband as at present in Bombay. Intercaste marriages should be permitted, whether sacramental or civil. I consider that it would be a forward step to have civil marriage as an integral part of Hindu law.

I consider that the abolition of the limited estate is necessary. The illiteracy argument applies to men as well as to women. If *purdanashin* women have to be protected against coercion, undue influence, etc., they can be protected by other safeguards than by cutting down their estate.

I support the abolition of all forms of adoption except the *dattaka*. I also support the three-year limit prescribed for adoptions, if they are intended to divest persons other than the adoptive mother.

The proposals for divorce in the draft Code are much too cautious.

I am in favour of the optional registration of sacramental marriages. Compulsory registration of all adoptions, within a short time-limit, would be a great advantage. I approve of the abolition of the ban on the adoption of the daughter's son, the sister's son and the mother's sister's son. I am against the adoption of married men.

The Committee rose for the day at 6 p.m.

Saturday, 3rd February 1945.

The Hindu Law Committee assembled in the Library Hall of the Law College, Poona, on the 3rd February 1945 at 4 p.m. Besides Sir B. N. RAU, C.I.E., the Chairman, Principal J. R. GHARPURE, Mr. T. R. VENKATARAMA SASTRI, C.I.E., and Mrs. TARABAI MANEKLAL PREMCHAND were present.

1. The first witness was Dr. IRAWATI KARVE, Ph.D. (Berlin):

I am Reader in Sociology, Deccan College Post-Graduate Research Institute. I do not represent any organization. I am not a social worker, but am interested in the subject of Hindu Law as a student of Sociology. I spend three months every year in "field work" in sociology and anthropology.

I have studied the draft Code and am in general agreement with its provisions.

In the enumeration of heirs, I think son's daughter and daughter's daughter should come after the daughter's son. Grandchildren should all come together, as a man sees them all in his own life. The son's daughter and the son's son should take their deceased father's share. *Dasiputra* should come after Class VI and before other heirs. A man should be made responsible for all his descendants, whether legitimate or illegitimate.

Referring to clause 5 (4) of Part III-A of the Code, the witness stated that a woman who has been abandoned by her own husband and has found shelter

with another person should not be excluded because of adulterous intercourse. A recent Full Bench decision in Bombay (*Akku Prahlad Kulkarni v. Ganesh Prahlad Kulkarni*, 47 Bom. L.R. 5) has allowed maintenance in such a case.

In clause 9 of the Part III-A, I would prefer an automatic charge created by statute.

Witness was next questioned about marriage and divorce:

In the country south of the *Narmada*, cross-cousins marry. It is an age-long custom and biologically there is nothing against it. From the data I have collected from 20 or 22 castes, I am in a position to state that such marriages are quite common south of the *Narmada*. In the Gangetic Plain, they do not take place and are definitely tabooed.

Even as regards marriages between uncle and niece, they have been taking place amongst certain Telugus for 1,000 years.

Some time should be given for the knowledge of the new rule relating to the prohibition of marriages within the restricted degrees of relationship to spread.

In the marriage provisions, clause 3 (b) should be omitted. If the taking of a second wife is allowed as a ground for divorce to the first, a polygamous household can go on only with the consent of the first wife. I am aware of cases where the first wife has of her own free will agreed to have a co-wife. Why drive the first wife in such a case to divorce? If a woman wishes to secure a monogamous union, she can marry under the Special Marriage Act.

I do not like the alternative clauses. Gotra and caste restrictions should go out altogether.

In the provisions relating to divorce, the period of seven years mentioned in clause 30 of Part IV is much too rigid. It will be very hard on a woman to expect her to live with such a husband for seven years. Do not circumscribe such cases with these conditions. I suggest that there should be special matrimonial courts which can go into quarrels between a husband and wife and either settle them or grant divorce. I am against specifying the grounds of divorce. I would also exclude professional lawyers, whose interest may lie in intensifying the trouble.

In regard to adoption, I want the adoption of girls to be permitted. There are now a considerable number of single women who want to adopt a girl to be a companion.

I think that the age of the person competent to adopt (fifteenth year) as proposed in the Code is too low. He is not permitted to become a husband at this age; how, then, can he become a father? [See Written Memoranda, Vol. I, page 102, for statement supplementing oral evidence.]

2. The next witnesses were Messrs. B. H. JOSHI and P. V. DAVRE, Advocates of Poona:

We do not represent any organization.

We are against giving any share to the daughter.

Mr. JOSHI: I find nothing objectionable in the adoption provisions of the Code, except in clause 6 (3). I do not like the present law of adoption regarding divesting and would like it to be changed by legislation. I approve of the change proposed in the Code in this matter.

I also approve of the minority and guardianship provisions in the Code.

I think the mother and the father should be simultaneous heirs, along with the widow, the son, etc., rather than that they should be given maintenance. If the daughter is made a simultaneous heir, the daughter of a predeceased son should also be allowed to take a share. I approve of the other provisions regarding maintenance.

I do not think that the civil marriage provisions should be in the Code; but they may continue in the Special Marriage Act. I do not object to sections 22 to 26 of the Special Marriage Act being repealed.

I prefer the alternative clauses relating to marriage; but *sagotra* and intercaste (even *anuloma*) marriages must be nullified at any time at anybody's instance and the children pronounced illegitimate, although provision should be made for their maintenance. Even *anuloma* marriages should be prohibited, although the old laws permitted them and Bombay recognizes them.

I have no objection to the optional registration of sacramental marriages.

A man should be allowed to have at least two wives. Even where *Yajnavalkya* prohibits a second wife, the legal right should remain. But for women a different rule should obtain. This is my personal view.

No divorce should be permitted for sacramental marriages, although there may be texts in favour of them. But there should be such provision in cases of impotence.

The Committee rose for the day at 7-15 p.m.

Sunday, 4th February 1945.

The Committee reassembled in the Library Hall of the Law College, Poona, on Sunday, the 4th February 1945 at 12-30 p.m. Sir B. N. RAU, C.I.E., Principal J. R. GHARPURE, Mr T. R. VENKATARAMA SASTRI, C.I.E., and Mrs. TARABAL MANEKALAL PREMCHAND were present.

1. The first witness for the day was Mr. GAJENDRAGADKAR of Satara :

I approve of the broad principles of the Code.

Coming to details, I have said in my memorandum that the daughter should get one-fourth share; but I have now come to the conclusion that the widowed daughter-in-law should get a son's share and the daughter nothing. If, however, the daughter-in-law is excluded, the daughter should get one-fourth share, whether married or unmarried. I object to the daughter's share, because it would lead to fragmentation. That is the only objection I have. I approve of the removal of the disqualification on the ground of sex. I recognize that something must be done for the daughter.

Some restriction must be put on the testamentary power of Hindus. [After some argument]: I agree that the maintenance provisions are a sufficient restriction.

With regard to the provisions in the Code relating to marriage, witness stated that he preferred the new clauses to the alternative clauses.

Referring to clauses 1 and 2, Part III-A in the Code (relating to abolition of survivorship) witness stated: I very strongly support these provisions. The present position is a great hindrance to enterprise and transfer of property. I prefer the Bengal position.

On the question of monogamy, witness stated: I would allow exceptions, e.g., where the wife is barren. In other cases, monogamy should be enforced by law. [After some argument]: Considering the difficulties in allowing exceptions, I am now inclined to give them up.

I agree that the penal provisions of the Civil Marriage Act may be deleted; but in any case, the civil marriage provisions should not be in the Code.

Apostasy should be a disqualification for succession. The wife should be made a joint owner of the husband's property with the husband. [On being asked to explain further this particular point]: I do not mean it in the strict sense; the wife must have some control over the husband's expenditure.

CHAIRMAN: On the husband's death, would she succeed to the property by survivorship?

Mr. GAJENDRAGADKAR: No. The language should not be stretched to that length. I only meant that so long as the husband was alive the wife should have a voice in the control of the property.

[Asked about absolute estate]: The wife must, as in the Code, have an absolute estate in all her property, even property inherited from her husband.

CHAIRMAN: You do not fear that she may misuse the property?

Mr. GAJENDRAGADKAR: Squandering and misuse are not confined to women; men also do it.

The grounds for divorce should be enlarged. I see no objection to the right being extended to those married before the commencement of the Code. In regard to the period of desertion, I think seven years is not too long.

I am generally in favour of the provisions in the Code relating to adoption. When son's son dies, the widow should have the right to adopt. Clause 11 (1) (b).

2. The next witness was Rao Bahadur G. V. PATWARDHAN:

I am a retired Small Cause Court Judge, having been in the Bombay Judicial Service for 25 years. I am a retired High Court Judge of Sangli, where I was Judge for 15 years.

I am generally in agreement with most of the provisions of the draft Code.

Apostasy should be a disqualification for succession.

The widows of *gotraja sapindas* should take as agnates.

As regards the divorce provisions, I would like habitual unchastity to be made a ground for divorce. This rule should apply both to men and women.

I have no objection to the abolition of the right by birth, but some safeguards should be devised against wasteful expenditure by the father. The same restriction should apply to ancestral property inherited by the widow.

I have no objection to women being granted an absolute estate.

[Witness was next questioned about monogamy]: Under certain exceptional circumstances, bigamy should be allowed, e.g., where the father is without a son and the first wife consents to a second marriage. [After argument] Monogamy, subject to the divorce provisions, should suffice. But I would suggest as additional grounds for divorce "incompatibility of temperament of the husband and wife" and "barrenness" both for the husband and the wife.

Unchastity even after the husband's death should be made a ground for the woman to forfeit her rights in her husband's property.

3. Rani LAXMIBAI RAJWADE gave evidence next:

I am giving evidence here in my personal capacity. I have not sent any memorandum to the Committee in my personal capacity.

I am generally satisfied with the Code; it is a great step forward.

Coming to details, I think it would be much better if agricultural property could be brought into line with other property.

With regard to the enumerated heirs, I should like the whole thing to be simplified and the series limited to just classes I and II. In any case classes I, II and III should be sufficient. The widowed daughter-in-law should be made a simultaneous heir with the widow and the son.

The daughter should get a one-fourth share, after providing for her marriage and education expenses and also after paying all the debts.

I agree that the woman should be given an absolute estate, whether the property was inherited from her husband or otherwise.

With regard to the provisions relating to the property of hermits [clause 11 (2) (a), (b) and (c)], I should like the property to devolve in favour of the State to be given over for specified purposes—education, public health, and charity generally.

[Asked about *stridhan*]: The son and the daughter should have equal shares in the mother's property.

The disqualification in clause 21 of Part II should go as it interferes with freedom of conscience.

I prefer the *Mitakshara* system to the *Dayabhaga* so far as the provisions in Part III-A are concerned.

In the provisions relating to maintenance, I want that provision should be made for education, clothing, etc., under clause 3 (1) and (2).

I agree with a great many of the provisions in the Code relating to marriage. I approve of the provisions relating to sacramental marriages. Regarding *sapinda* relationship for marriages, I think there should be no marriages within five degrees on either side. I would not allow *sapindas* within these restricted degrees of relationship to marry, whatever may be the custom, but I would not nullify marriages which have already been completed.

I do not like the term "registration" for marriages; I would simply enter the names of the contracting parties in a register.

Ceremonies required for sacramental marriages should be solemnised only by registered or licensed priests.

I generally agree with the provisions relating to divorce in the Code, but would suggest a simpler procedure for getting a divorce. No undue publicity should be given to such proceedings and I should like these cases to be dealt with in, say, a special matrimonial court.

I agree that monogamy should be the strict rule. No exceptions at all should be permitted.

I should do away with adoption altogether. But if the provisions remain, the consent of the mother (if alive) should be made essential, both for giving in adoption and taking in adoption.

4. The next witnesses were Mr. N. V. BHONDE, and Mr. V. J. KINIKAR appearing on behalf of the POONA BAR ASSOCIATION:

We welcome the idea of codification in order to meet the growing needs of the community.

We prefer the *Mitakshara* in spite of the handicaps which a right by birth implies. The powers of the father may be enlarged; e.g., he may be allowed to borrow money for purposes of business.

We would not object to the retention of clause 1 of Part III-A.

We advocate a limited estate only in the case of property inherited from the husband or the husband's family. But we do not put it on any ground of incompetency. We want to keep the husband's property within the husband's family—except in case of legal necessity. In the case of movable property inherited from the husband, an absolute estate may be granted to the woman. In the case of immovable property, only a limited estate should be granted. But even this may be made absolute, if there are no descendants, male or female, of the husband.

We would give the unmarried daughter a share equal to that of the son.

Monogamy, with suitable exceptions, should be the rule. In all cases of exception, the permission of a suitable court should be obtained and the King's Proctor should be a party to such proceedings.

The seven years period mentioned in the divorce provisions is too long. Three years should suffice and we would like this to be substituted in the relevant clauses. Divorce proceedings should be taken before matrimonial courts or conciliation boards. Every attempt should be made to bring about a reconciliation between the parties.

The adoption of orphans by custom should not be held invalid.

The mother's consent should be essential both for giving and for taking in adoption.

5. Mr. PUSALKAR of Kolhapur was next examined :

I am appearing in my individual capacity and also as a representative of the Brahman Sabha of Kolhapur.

I know that this Code will not affect Kolhapur, but as a member of the Hindu community, I want to place certain objections before the Committee.

I accept the adoption provisions in the Code as being salutary. For the same reason, I also accept the provisions relating to minority and guardianship.

I am not in favour of one law for all India. India is a continent. In the United States, though there is a Federal Constitution, each State has its own personal law.

There should be no hard and fast rule about monogamy. Monogamy is already the rule for economic reasons; but for the same reasons it may be necessary to have more than one wife, e.g., among weavers. I should like a man to have the legal right to marry as many wives as he likes, without restriction, except that the first wife should have the right of divorce in such cases. I agree that the first wife should then have one-third of the husband's property. The Muslim Law permits more than one wife; I know that there is a certain section in India which may go out of the Hindu fold if you make monogamy the strict rule.

In clause 3 (e) of Part IV, I want the consent of the guardian to be obtained up to the age of 18 and not of 16 as is suggested in the Code. I want the present law to be changed in this respect.

I prefer the first set of clauses in the Code relating to sacramental marriages to the alternative.

I would permit inter-caste marriages, whether *anuloma* or *pratiloma*, so far as *dwijas* are concerned. I would prohibit inter-marriages between *dwijas* and *sudras*.

I would prefer the compulsory registration of marriages to optional registration.

[Witness first said that the civil marriage provisions should be left to remain in the Special Marriage Act. But on argument]: I think these provisions may remain in the Code.

Witness made the following further points in regard to Part IV :—

Clause 24 should be omitted.

In clause 30, sub-clause (c), the period of seven years for desertion is too long. Two years is quite enough.

In clause 31, provision for alimony should be incorporated in the Code.

In regard to the provisions relating to maintenance, testamentary power should be expressly limited in some way. Otherwise, I have no objection to the provisions contained in the Code.

ORAL—2

Referring to Part III-A of the Code, witness stated that he preferred the *Mitakshara* system, in spite of its handicaps, to the *Dayabhaga*.

Witness was next questioned about intestate succession :

I object to the Crown taking escheated property. It should go to institutions like the Benares Hindu University.

I would give the unmarried daughter a one-fourth share in the father's property: she may keep it after her marriage. I would give the married daughter the same share.

The daughter should be granted an absolute estate. The widow should have a limited estate as regards immovable property, but an absolute estate as regards movable property. Even here, her estate should be made a limited one, if reversioners within seven degrees are alive. This is of course subject to legal necessity.

I object to clause 8 (4) which makes a married woman an agnate of her father.

Finally, I wish to emphasise that I object to this legislation being introduced at present. I do not think that codification of Hindu Law is desirable.

The Committee rose for the day at 6:35 p.m.

Monday, 5th February 1945.

The Committee reassembled in the Library Hall of the Law College, Poona on Monday, the 5th February 1945, at 1:15 p.m. The following members were present: Principal J. R. GHARPURE, Mr. T. R. VENKATARAMA SASTRI, C.I.E.; The Rt. Hon'ble Dr. M. R. JAYAKAR, and Mrs. TARABAI MANEKBAI PREMCHAND.

The Rt. Hon'ble Dr. JAYAKAR was in the Chair.

1. The first witness for the day was the MAHARASHTRA MAHILA MANDAL OF POONA represented by Miss RANADE and Miss TARABAI. They were assisted by their Secretary and Lawyer. They gave evidence as follows :—

We are in general agreement with the scheme of the draft Hindu Code. But, we feel that the present Legislature which is unrepresentative is not competent to legislate on the Hindu Law. We should wait until the next general elections take place.

Uniformity has not been secured by the draft Code. For instance, agricultural lands have not been included within its scope.

If uniformity is to be achieved, the different customs prevailing in different parts of the country should be abolished. [Both Dr. Jayakar and Mr. Sastri pointed out that the Draft Code specifically abolished customs except in so far as they were expressly saved by it.]

Uniformity does not seem to be possible, in view of the existence of different customs in the different parts of India, which, generally speaking, we are in favour of retaining. Still, uniformity should be the aim and the Code goes as far as is possible under present circumstances.

WITNESSES: We think it preferable on the whole to preserve the right by birth in ancestral property.

Dr. JAYAKAR: How can you have this right and at the same time give an absolute estate to the widow?

Mrs. PREMCHAND: Take another case. If there is a son and a daughter, the daughter will get an absolute right in her share. If the son has, say, two sons (grandsons of the intestate) and these grandsons are to have a right by birth, the son will have his right seriously curtailed and he will be very much worse off than the daughter. Is it possible to frame the law in that way? Will it not be very anomalous?

WITNESSES: Limitations may be placed on the daughter's right also by giving her children, if any, a right of birth.

Dr. JAYAKAR: That sort of limitation will not be liked by women who are all daughters first.

WITNESSES: A daughter's share should be cut down to one-fourth as a daughter also gets a share in her husband's family. In addition to this one-fourth share, an unmarried daughter should get her marriage and education expenses.

Provision should also be made for the maintenance of all minor daughters and sons.

We are in favour of the position assigned to the daughter-in-law and grand-daughter-in-law by Deshmukh's Act being retained.

The present law in Bombay with regard to women's rights in regard to the succession of the widows of *gotra-sapindas* should be preserved.

We do not want any distinction between the devolution of the property of a male and the devolution of the property of a female. In *stridhana*, the daughter and the son should get equal shares.

We do not accept the view that women are not capable of managing properties or that they will be the victims of all kinds of fraud and cheating, if an absolute estate is conferred on them.

The rights of women should be protected by monogamy. We are in favour of making monogamy an absolute rule of law.

Dr. JAYAKAR: It has been suggested that instead of providing for monogamy, it would be sufficient to give to the first wife a right to ask for divorce if her husband takes a second wife without her consent. What is your opinion on this suggestion?

WITNESSES: It is rather difficult to answer the question. It requires further consideration. We cannot make up our mind at this moment.

In adoption, the mother's consent must be obtained both for giving and for taking. Perhaps the consent of the mother is not so necessary for taking in adoption.

Anuloma and pratiloma marriages may both be made valid.

We are clear that converts should not inherit.

2. Mrs. YAMUTAI KIRLOSAR representing the ALL-INDIA MAHARASTRA MAHILA MANDAL next gave evidence. She said:

Our Mandal is an all-India body and our activities are not confined to Poona.

The daughter-in-law should get more than a daughter. The daughter-in-law, grand-daughter-in-law and great-grand-daughter-in-law may all retain their shares as in the existing law.

I do not agree with the previous opinion that a daughter's right should be cut down to one-fourth. I would retain the half-share for the daughter.

I do not want a larger share to be given to the daughter in the mother's property. Sons and daughters may share their mother's *stridhana* property in equal shares. Where there are no children, the *stridhan* may be divided equally between the father and the husband.

*Sapinda relationship*.—Prohibition of a marriage within five degrees of the father's or the mother's side will be quite sufficient. I feel that near relations should not marry. In the interests of the progeny, strangers should be brought into the family.

There should be strict monogamy. I won't recognize any exception to this rule. I am totally opposed to the exceptions suggested by Dr. Irawati Karve in her evidence.

The grounds of divorce should be amplified by adding cruelty, incompatibility of temperament, and adultery.

Mr. SASTRI: Incompatibility is a vague term?

WITNESS: I would allow ten years for the couple to compose their differences. If they continue to quarrel even after such a long period, a right to obtain a divorce on the ground of incompatibility should be conceded.

Dr. JAYAKAR: If a man wants to get rid of his wife, he can easily trump up a quarrel with her and divorce her on this ground. What do you say to that?

Witness did not answer.

Dr. JAYAKAR: Do you prefer the *Mitakshara* or the *Dayabhaga*?

WITNESS: I prefer the *Dayabhaga* which is in greater accordance with present day trends.

3. VYAKARANA 'SINHA KASHINATH RAMACHANDRA UMBARKAR SASTRI of Pandharpur then gave evidence in Marathi:

The witness complained at the outset that no Marathi translation of the draft Hindu Code had been supplied to the public. (It was pointed out to the witness that the Government of Bombay had published a translation of the Code in the Marathi language and that copies could have been obtained from their booksellers.)

WITNESS: Even the King has no right to interfere with our religion. Still less is the Central Legislative Assembly competent to do so.

Dr. JAYAKAR: How can an alteration of the *secular* law applicable to the Hindus be regarded as an interference

with the Hindu religion? Surely, changes have been made in the Hindu law from time to time. For instance were not some kinds of sons excluded from the inheritance, who had originally been included as heirs?

WITNESS: I do not call that a change. I consider it an arrangement made by the experts in the shastras, viz., the Pandits. Such an alteration is in accordance with the Hindu Law, and was, therefore, enforced by the King and his representatives.

Dr. JAYAKAR: Women who are present here, as you see, in large numbers, have urged that some alterations must be made in the existing Hindu Law. Do you say that their request should be summarily rejected?

WITNESS: The demand made by these women is due to their ignorance. They too will agree with me, if they consider the question dispassionately, from the point of view of the Hindu Law as propounded by pandits and shastris.

Dr. JAYAKAR: These ladies strenuously urge that there should be no polygamy. Just as polyandry for women is unthinkable, so too, polygamy for men should, they say, be equally unthinkable. They want that polygamy should be prohibited by law. Can we say that they are wrong in claiming that the law should be changed in regard to this matter?

WITNESS: Their claim for a change in the law is due to their ignorance.

Dr. JAYAKAR: Surely not; they are all well-educated, and many of them are graduates.

WITNESS: That may be so, but they have not received any education in the Hindu Law.

Dr. JAYAKAR: So you consider that they should be educated in the Hindu Law? But the Vedas are, according to you, the primary source of that law. Do you agree that the right of reciting the Vedas and learning their meaning should also be extended to women?

WITNESS: No, no; even the imparting of ordinary secular education has led to enormous difficulties. It is, therefore, necessary to impose stringent restrictions on the imparting of education in the Vedas.

Dr. JAYAKAR: Some women find themselves driven to embrace a foreign religion in order to escape from the restraints imposed on them by the Hindu Law. Is it not desirable to prevent such a state of affairs? Should not conversions to alien faiths be discouraged?

WITNESS: I do see that. Not only women, but men too, should not go out of the Hindu fold into the folds of other religions. I am a *National Sanatani*.

Dr. JAYAKAR: I am very glad to hear that, but surely some practical steps, some remedial measures, are necessary to secure the object which you and I have in view. Hindu women who have contracted unfortunate marriages and who are cruelly treated or completely abandoned by their husbands, find no way of escape now, except conversion to an alien religion. The women find it impossible to lead ascetic lives, or they find that their only means of earning a livelihood, while continuing to be Hindus, is prostitution. What advice would you give to such women?

WITNESS: I do not concede that Hindu women get so disgusted with their husbands as to seek escape from their marriage tie, but assuming that to be the case for argument's sake, certain reliefs are afforded by the Hindu Law.

Mrs. PREMCHAND: Will women get a right to their husband's property in such cases?

WITNESS: Please do not worry over that subject. Everything can be set right by the Shastras.

Witness went on to say that there was politics behind the appointment of the Committee.

Dr. JAYAKAR: Politics. No, No. This is a social question. At present, Hindu women are not entitled to obtain divorce, however hard the circumstances. If they are to be so entitled, an alteration in the law is clearly necessary.

WITNESS: To get *Swarajya* first is the only remedy for all these ills; codification of the Hindu Law is no cure.

Dr. JAYAKAR: I do not see that at all. Will not the difficulty continue to exist even after *Swaraj* has been obtained? You do not suggest any solution to the question. Things will still be as bad as ever.

4. Messrs. L. M. DESHPANDE, N. V. BUDHKAR and N. A. DESHPANDE of Karad gave evidence next:

The views held by us are mostly the same.

There were difficulties in obtaining copies of the Code and in holding meetings to consider it by reason of the Defence of India Rules.

Dr. JAYAKAR: Your second objection is a serious one. With whom did you communicate?

Mr. DESHPANDE: With the Secretary of the Indian Legislative Assembly. Permission to hold a meeting was given a month later by the District Magistrate. The ban still continues. But this is not our grievance now. We could have applied for and got permission.

We agree that the food situation, etc., are not relevant objections.

We are against uniform laws for all India. The Provincial Legislatures have in any case to legislate for agricultural lands. Each Province should be free to legislate on all the subjects dealt with in the Code. Then, each Province will have its own Code which will be consistent with the rules and customs prevailing therein.

Dr. JAYAKAR: Is it not preferable to have Central Legislation in the first instance, and supplement it, if and where necessary, by Provincial Legislation so as to bring the law into accordance with provincial conditions?

The witnesses went on to say that litigation would not be prevented by legislation.

Mr. SASTRI: But on that ground, should we refrain from legislation altogether?

The witnesses agreed that it was an advantage to have clear provisions set out in the form of a Code which is capable of being easily understood by the ordinary man or woman; but they did not believe that uniformity in the law will conduce to the consolidation of the Hindu nation. They suggested that the Code should be an issue at the next elections so that the opinion of the people affected by it can be obtained.

Dr. JAYAKAR: Will it not involve dividing the electorate into men and women, to get a decisive opinion as to their respective rights?

Mr. DESHPANDE: Women's votes need not be recorded separately. But there is no objection to doing so, if it is considered necessary.

We support monogamy but there must be certain exceptions, for example, where the wife is barren. A second marriage may also be permitted where the consent of the first wife is taken.

A provision for divorce is not necessarily consequential on monogamy, and we are opposed to divorce.

Dr. JAYAKAR: If a man takes a second wife and the first wife is not willing to remain in the family, what is she to do? Is it not better to give her an opportunity of getting a divorce?

Mr. DESHPANDE: No, I would not give her a right to obtain divorce. Such cases are exceptional.

Dr. JAYAKAR: To prove barrenness on the part of the wife is rather difficult, is it not?

Mr. DESHPANDE: The first wife's consent may be obtained for a second marriage in such a case also. I would make both barrenness and consent, conditions precedent to the second marriage.

We are not in favour of the civil marriage provisions forming part of the Code. We want the provisions to remain in a separate enactment, if you cannot repeal them.

We would allow *anuloma* marriages, but not *pratiloma*.

Dr. JAYAKAR: Then, for *pratiloma* marriages, one will have to seek the help of Act III of 1872 with its attendant disadvantages?

Mr. DESHPANDE: No, I want *pratiloma* marriages to be declared invalid.

Dr. JAYAKAR: In cases where a Hindu woman is bent upon contracting a *pratiloma* marriage, which course would you prefer? Would you drive such women to a declaration that they are not Hindus or would you prefer to insert suitable provisions in the draft Code itself and retain them in the Hindu fold?

Mr. DESHPANDE: If these are the alternatives, I would have a provision in the Code itself.

Dr. JAYAKAR: As regards the joint family system, so many inroads have been made into it, for example, the recognition of the validity of alienation by a coparcener, adoption by a widow, etc. Can we say that the joint

family system is really in effective operation at the present day.

Mr. DESHPANDE: The joint family system should be preserved to prevent the dissipation of the family property.

We are against the grant of absolute estates to women.

We do not like the Deshmukh Act and should like it to be repealed.

We like the Bombay rule which gives an absolute estate to the daughter.

The witnesses went on to say that by religious books, they meant the ancient *smriti* writers like Viswarupa.

Dr. JAYAKAR: Why should the process not continue to-day?

Mr. DESHPANDE: I admit the need for changes in the law as laid down in the texts and that the law should be shaped in conformity with the wishes and needs of the people from time to time. If the general feeling in the country favours the draft Hindu Code drawn up by the Committee, we would agree to it.

Dr. JAYAKAR: You have been good enough to admit many points in the course of discussion and have altered your views from those set out in your written statement. Thank you.

[See Written Memoranda, Vol. I, page 105, for statement explaining the oral evidence.]

5. Mrs. SARLA BAI NAIK, M.A., representing the Indian Women's Council, then gave evidence:

I am generally in favour of the Code, but I have one or two suggestions to make and one or two doubts to clear.

A wife should have a voice in the management and disposal of her husband's property. Now that the joint family system has gone or is going, there is no check on the father's squandering the properties away, leaving his wife and children destitute.

Dr. JAYAKAR: The abolition of the joint family system must involve that result. The best check, of course, will be to give children a right by birth, but then we shall have the joint family back.

WITNESS: I might perhaps suggest giving the wife an equal right in the property during the husband's lifetime.

Witness said that she was not able to follow the distribution of the property, as laid down in clause 7 of Part II. Mr. Venkatarama Sastri then explained the position. "Supposing there is a widow, one son and three daughters, you should divide the property into seven shares, giving the widow and the son two shares each, and each of the three daughters one share."

The witness then referred to clause 13 of Part II which laid down different rules of succession, one for property inherited from the husband and another for other kinds of *stridhana*, and asked how the two kinds of property were to be distinguished in actual practice. Mr. Venkatarama Sastri explained that if disputes arose, the Courts would investigate the matter and the person claiming to succeed on the ground that it was the husband's property will have to establish the fact to the satisfaction of the Court.

The witness proceeded to say that the provision for the maintenance of concubines might encourage concubinage.

Dr. JAYAKAR: The provision only relates to a concubine who has been in the exclusive keeping of the deceased until his death. The concubine's position until the man died would be very precarious, as he could discard her at any time and if he did so, she would not get any maintenance. No woman would therefore agree to become a concubine by reason of the provision made in the draft Code for the maintenance of concubines. It would be no inducement at all. That is the effect of the provision. It cannot be said to be unreasonable.

The witness then referred to clause 29 (4) of Part IV which makes children born of a bigamous union, ignorantly contracted, legitimate, and wanted elucidation of the provision.

Dr. JAYAKAR: Suppose a man marries a woman, both parties believing that the woman's first husband is dead. If the first husband subsequently turns up, the woman's second marriage will no doubt stand annulled, but the children born before such annulment will remain legitimate. I presume you have no objection to this.

Clause 30 (e) of Part IV.—If the venereal disease is incurable, the period of seven years would be too long and three years will be sufficient.

*Adoption.*—The consent of the wife should be obtained before the husband gave the son away in adoption.

Dr. JAYAKAR: Would you apply the same principle to the taking of a boy also?

WITNESS: Perhaps not. The reason does not apply in the same measure.

The witness proceeded to say that the effect left on her mind by the provisions relating to adoption was that after they come into force the religious significance of adoption would go entirely.

Dr. JAYAKAR and Mr. VENKATARAMA SASTRI pointed out that in an adoption the actual giving and taking alone can be regarded as fundamental, that *datta homam* was performed only in a few cases, that even where it was a requisite according to custom, the Courts have held that an adoption would not become invalid for want of the *datta homa* ceremony. The draft Code only prefers this view. In actual practice, the ceremony will continue to be performed, and the only effect of the clause will therefore be to set at rest disputes as to the validity of the adoption, where the *datta homam* is not performed.

6. Mr. CHAPEKAR representing the Dharma Nirnaya Mandal was the next witness:

In the definition of "Hindu" I would substitute the words "Hindu religious practices" for the words "Hindu religion."

Dr. JAYAKAR: Is a Vedantin who does not follow any religious practices a Hindu?

WITNESS: Of course, he is. A precise definition of the expression "Hindu" is very difficult to draft.

Next point. I would have one more illustration laying down in clear and unambiguous terms that an *untouchable* was a Hindu.

Dr. JAYAKAR: Yes, that is a good suggestion.

WITNESS: It should be made clear that a mere change of conviction on the part of a Hindu, (for example, a belief in the truth or superior efficacy of Christianity or Islam will not make a Hindu a non-Hindu.

Dr. JAYAKAR: The existing position is that a Hindu remains one until he crosses the border by undergoing a formal ceremony of conversion and that position is maintained in the draft Code. Mere intellectual appreciation or even advocacy of other religions or religious practices will not constitute conversion and an overt act is essential. There is therefore no real foundation for your apprehensions.

*Caste* is not the same thing as *varna* and the distinction between the two should be kept in mind.

After agnates, the widows of agnates should succeed. In other words, the Bombay rule should be adopted in the Code.

The witness at first said that the daughter should not be a simultaneous heir with the son, but after some discussion with the members, conceded that an unmarried daughter might perhaps be given half a share as provided in the draft Code.

The daughter-in-law, the grand-daughter-in-law and the great grand-daughter-in-law should all be included in the list of heirs.

The sister should be brought in after the brother and before the brother's son. Later, after discussion, the witness changed his view and said that the existing position should stand.

Part II—Clause 8 (4).—This clause should be changed. A woman should be an agnate in her husband's family and not in her father's family.

Part II—Clauses 10 and 11 which provide for the devolution of property to *acharyas*, etc., might be omitted except in regard to *maths*.

Part II—Clause 14.—I have no strong views on the rules laid down for the devolution of *stridhana* but would point out that after a woman's death it will be very difficult to decide whether a particular property was acquired by her from her husband or her father or by her own exertions.

A convert should have no right of inheritance.

Part II—Clause 25.—Property going to the Crown by escheat should be given back to Hindu institutions and not be merged in general revenues.

Part III—A—Clause 3 (*Definition of maintenance*).—Expenses of education should be specifically included.

Part IV—Clause 1.—The illustration given under the definition of "sapinda" does not refer to cases which are likely to arise in actual practice.

Mr. VENKATARAMA SASTRI pointed out that the definition as well as the illustration were taken from the *Mitakshara*.

Part IV—Clause 3 (d).—Customary exceptions to the prohibited degrees of relationship should be deleted.

Dr. JAYAKAR: Such marriages have been taking place for a number of years apparently without evil consequences. There seems to be no strong reason for invalidating such customs.

Part IV—Clause 6.—A register of sacramental marriages may be maintained just as a register is maintained for births and deaths. Registration of marriages must be made compulsory.

Part IV—Clauses 7, etc.—I do not like the civil marriage provisions.

Dr. JAYAKAR: If a Hindu marries under Act III of 1872, the Indian Succession Act applies, and not the Hindu Law, and the parties virtually cease to be Hindus. Is that a desirable position?

WITNESS: I agree that the provisions regarding civil marriages might remain in the Code, as that will have the effect of preventing Hindus from leaving the Hindu fold.

Part IV—Clauses 3 (e) and 5.—To cover cases where the bridegroom, though over 18, is still under guardianship (for example, when a guardian has been appointed by the Court), it is desirable to alter clauses 3 (e) and 5 by making reference therein not only to the bride's guardian in marriage, but also to the *bridegroom's* guardian in marriage.

Part IV—Clause 4.—Some minimum form of ceremony must be made compulsory in all cases. I am indifferent as to whether it is *panigrahana* or *saptapathi* or something else.

Part IV—Clause 9 (2).—The period of notice of a civil marriage may be increased from 14 to 30 days.

Part IV—Clause 23 (1) (a).—A Hindu girl may remain under guardianship for purposes of marriage also, until she is 18. The age-limit in this clause may be raised from 16 to 18.

Part IV—Clause 28 (*Dowry to be trust property*).—There is no objection to the principle of this clause, but it is likely to give rise to litigation and I am inclined on the whole to omit it.

Part IV—Clause 30 (*Divorce*).—I agree with Mahamahopadhyaya Kane's suggestions regarding this clause. The period of 7 years may be reduced to 3. Cruelty may also be a ground for divorce.

I suggest that there should be a proviso that after 15 years have elapsed from the date of celebration of the marriage, no petition for divorce will be entertained.

Dr. JAYAKAR: If the cause of complaint arises after fifteen years, what is the woman to do?

Part VI—Clause 12 (2) (*Wife's capacity to give in adoption*).—The witness at first suggested that for the words "if the father has become incapable of consent," the words "if the father has not exercised his right of adoption" might be substituted, but after some discussion, agreed that the clause might stand as drafted.

7. Mrs. JANAKIBAI JOSHI then gave evidence on behalf of the ALL-INDIA HINDU WOMEN'S CONFERENCE in Marathi (Mr. S. Y. Abhyankar was also present with her):

A daughter should not be a simultaneous heir along with the son. A wife is an agnate of her husband and not of her father. A daughter should not take a share in the property of her father, as his agnate.

An unmarried daughter may take a share in her father's property but she should be divested of it on her marriage.

Mr. VENKATARAMA SASTRI: But the shastras are against such a course. According to the shastras, once a share is given to the unmarried daughter, it cannot be taken from her. Surely, you don't want to go against the shastras?

The daughter should get only a limited estate.

There should be provision for the compulsory registration of all marriages, including those in the sacramental form.

The daughter-in-law, grand-daughter-in-law, etc., should be maintained as heirs as in the *Deshmukh Act*. Widows should have the right to inherit to their husbands' collaterals.

Converts should be excluded from the inheritance.

The civil marriage provisions are not required.



8. Mr. L. K. BHAVE, representing THE MAHARASHTRA BRAHMAN SABHA then gave evidence:

We have submitted a memorandum which contains our views.

We prefer the Mitakshara to the Dayabagha. The right by birth and the right of survivorship should be preserved.

The daughter should not be a simultaneous heir.

We do not desire any change in the law governing the rights of inheritance of women and the Deshmukh Act may stand as it is.

We are not also in favour of any change in the marriage laws.

We are in favour of monogamy, but twelve years of childlessness due to any defect or incapacity of the wife should enable the husband to contract a second marriage. Where the wife is seriously ill and is incapable of discharging her conjugal duties, you must give the husband a right to marry again.

Judicial separation may be allowed, but not divorce. The witness accepted that the "Nashte Mrite" text permitted of the remarriage of women in the circumstances set out there.

9. Mr. L. K. SAFAI representing SRI SHUKLA MAHARASHTRA BRAHMAN SABHA, POONA:

We have submitted a memorandum. There are some additional points.

There is no popular demand for a Code of this kind. A large number of Hindu institutions, say at least one-half, should make a demand first for legislation.

Dr. JAYAKAR: Is your suggestion feasible in practice?

WITNESS: Yes, in many ways.

I am satisfied with the existing Hindu Law and it requires no change. (After some discussion.) I do recognize that there are certain branches of the Hindu Law which may require some modification, but I oppose wholesale codification.

No change is necessary in women's rights of inheritance.

The Hindu Women's rights to Property Act should be maintained as it is and women should have only a limited estate.

I do not want the inclusion of the daughter as a simultaneous heir.

Some changes may be necessary in the marriage laws.

A man should be allowed to marry a second wife if the first wife does not bear a child for twelve years after marriage or if she is incapacitated for sexual life by reason of illness. In all other cases, monogamy should be the rule.

When a concubine is brought into the house, and the wife suffers injustice at her hands and is otherwise treated cruelly, even then, the wife should remain in the house and should not have the right to obtain divorce; in such cases, she can live apart from the husband.

Dr. JAYAKAR: Is that not a little unfair? How can you formulate such a principle?

WITNESS: I do feel that it is fair and justified according to our ancient shastras and texts.

As regards Manu's text, "Visila Kamavrato Anyopate Vidiyate" witness agreed that the text referred to a second husband. So also, the Nashte mrite text of Narada referred to remarriages. But witness went on to say that no such remarriages had taken place for a very long time and that the present custom, viz., that a woman should marry only once in her life, should be preserved.

Witness continued: There are texts both ways, and I shall cite those which support my point of view. *Sati Dharma* should be maintained and no change is necessary in the existing law.

Divorce is allowed among some non-Dvija castes by custom, and they may continue to enjoy their right.

10. Mr. D. V. JOSHI next gave evidence in Marathi:

No change is necessary in the Hindu Law. Codification is not desirable. Simultaneous heirship as proposed, divorce, civil marriages, inter-caste marriages, these are all innovations, the introduction of which I oppose. I have no objection to *sagotra* and *samanapravara* marriages being validated. The civil marriage provisions may continue to be provided for in a separate enactment.

I would extend the sapinda relationship to 14 degrees and cover *samanodakas* also.

I am for monogamy with qualifications. A woman should not be allowed to remarry under any circumstances. Maintenance on a liberal scale must be allowed to widows.

I am in favour of the chapter on adoption. The wife's consent may be made a requisite to giving a son in adoption.

Provision should be made for a son born after adoption. (It was pointed out to the witness that under Part II he will take with the adopted son.)

If the Committee want uniformity, I would prefer the application of the Mitakshara throughout India to that of the Dayabagha as proposed.

I do not approve of the absolute estate for any woman except a daughter. Even in cases where the Mitakshara gives such an estate, I am not willing to give an absolute estate. I am against extending the principle of absolute estates to fresh cases as I fear that the property will go out of the family.

11. Mr. RABADE, representative of HIS HOLINESS THE SRI SANKARACHARYA OF KARVIR AND SANKESHVAR:

Another representative who was to have come with me has not arrived. I cannot myself convey His Holiness's views properly. I have merely been asked to hand over some pamphlets. [The witness handed over the pamphlets and withdrew.]

[With the examination of this witness which terminated at 7-30 p.m., the Committee concluded their session at Poona.]

Tuesday, 6th February 1945.

The Hindu Law Committee reassembled in Bombay in the Committee Room of the Provincial Government Secretariat at 11 a.m. on Tuesday the 6th February 1945. The Chairman, the members of the Committee, and the three co-opted members were present.

Mr. SUNDARLAL M. JOSHI of Nadiad was the first witness. His examination had just commenced when Lady Vidya-gauri Neelkanth arrived and at her request, Mr. Sundarlal Joshi agreed to have his examination postponed till the afternoon.

1. LADY VIDYAGAURI NEELKANTH was then examined and she said:

I am President of the Gujarat Social Reform Association and of the Bombay Provincial Women's Council (Ahmedabad Branch). I am ex-President of the All-India Women's Conference.

Speaking generally, I am in favour of the provisions of the draft Code.

Much as I should like sons and daughters to have equal shares, I accept the provisions of the Code as a compromise.

I support the absolute estate for women. I do not feel that women are incapable of safeguarding their interest in property any more than men are. Women alone are not exposed to the danger of squandering; men squander property quite as often.

I am against the son's right by birth in ancestral property and agree to its abolition as proposed in the Code.

Monogamy should be the strict rule, without any exception whatever. Even in a case of barrenness no exception should be permitted. Monogamy may not perhaps make men more moral, but it will raise the status of women.

I approve of the divorce provisions. Retrospective effect should be given to them, that is, the provisions should apply even in regard to marriages contracted before the passing of the Code. I also suggest that the women whose husbands have already married a second wife should have a right to obtain a divorce if they so desire. The period of desertion should be reduced from 7 to 3 years.

The civil marriage provisions should remain in the Code.

Marriages performed in breach of the Sarda Act should be made voidable at the instance of the minor wife; but marriages which have been consummated should not be voidable.

The prohibited degrees of *sapinda* relationship for purposes of marriage should be limited to three degrees on the father's side as well as on the mother's side.

On other details, my memorandum may be referred to.

2. Mr. PATWARI, Advocate, Ahmedabad, next gave evidence:

(He read a resolution passed at a meeting held at Ahmedabad supporting the provisions of the Code generally.)

We are in favour of the Code being passed into law and shall submit a detailed memorandum.

I am connected with many social institutions and during the last 12 years have conducted about 1,500 cases in which Hindu women were concerned.

I am in favour of the daughter getting a share as provided in the Code. (Asked whether it will not lead to fragmentation of property): This fragmentation bogey applies equally in the case of sons also and therefore it should not be a bar to the daughters getting a share. I would like a limit to be imposed on the fragmentation of property, whether for sons or for daughters.

The widowed daughter-in-law should be given a share. Deshmukh's Act may be retained. The widows of *gotraja sapindas* should retain their present places for purposes of inheritance.

There should be compulsory registration of sacramental marriages at least in municipal areas, just as births and deaths are registered. This simple step will do. No elaborate procedure is required.

As regards monogamy, I may draw attention to the fact that a Bill for making it compulsory was given notice of in the Bombay Legislative Assembly in 1938 by Mrs. Lalavati Munshi (Bill No. 31 of 1938).

There should not be considerable disparity between the age of the bride and that of the bridegroom. Legislation preventing unequal marriages in this respect is being promoted in some places.

There are loopholes in the Sarda Act for the prevention of child marriages. The provision of fines as a penalty is of no use. In fact, the parties in some cases provide for the payment of the fine beforehand! The only effective remedy is to make marriages in contravention of the Act voidable at the instance of the wife. I would make such marriages voidable even if they have been consummated. Such girls may be got married again. There are institutions which will help to bring about such marriages.

There should also be provision for preventing by an injunction marriages taking place in contravention of the Act.

Offences against the Act should also be made cognizable.

The period of seven years in the divorce clause is too long and may be reduced to three years.

Cruelty endangering life should also be a ground for divorce. Bombay Bill No. 41 of 1938, which was promoted by Mr. Bhogilal D. Lala, provides for divorce in cases of cruelty.

As regards Part V of the Code (Minority and Guardianship), I would suggest that where a stranger (for example, a public worker) intervenes in the interests of the minor, he should be protected by some provision in the Code. At any rate, a friend of the minor should have the power to intervene, especially as the list of guardians is somewhat restricted.

I suggest that even where a minor is to be married in the sacramental form, some notice, say 15 days, should be given so that it may be possible to intervene, if necessary, in the interests of the minor.

Similarly, provision is necessary to safeguard minors whose marriages are performed at a place in which they are neither domiciled nor ordinarily resident.

Divorce proceedings should not be unduly protracted. There should be provision for the summary disposal of such cases.

Where both the parties consent to a divorce, provision may be made therefor.

The wife should be given maintenance even after divorce, and provision should be made for the prosecution of a husband who, being in a position to maintain his wife, does not do so.

3. Mrs. PUSHPAVATI MEHTA, Secretary, Vikas Griha, Ahmedabad, was the next witness:

I think that even sacramental marriages should be registered. Fifteen days' notice should be given before the marriage, that is to say, the same procedure as in the case of civil marriages should be adopted.

Divorce cases should be decided by summary courts. The proceedings should not be too long and protracted. During the pendency of the proceedings for divorce, the wife must be given maintenance. (On its being pointed out that under the present law the wife has to get maintenance so long as the marriage is not dissolved): I am personally aware of cases where no maintenance was given.

I think the period of lunacy for purposes of obtaining a divorce should be three years and not seven years as proposed in the draft Code.

Cruelty should also be a ground for divorce. In such cases, a woman should not be compelled to wait for three years before getting a divorce.

4. Mr. K. M. MUNSHI next gave evidence:

It is not desirable to embark upon the codification of the Hindu Law at a time like this when the Legislature is in a state of flux. The present Central Legislature cannot be regarded as representative. I fear that comprehensive legislation on the lines proposed may result in disintegrating the Hindu community instead of consolidating it.

I would keep the Mitakshara or the Dayabagha or both and make only alterations, here and there, which may be immediately necessary. I respect the sentiment which opposes codification on the ground that Smriti law will go and that man-made law will take its place.

The abolition of the right by birth and of the principle of survivorship constitutes a fundamental change, which, I think, it is difficult to justify.

The character of the Hindu marriage is altered by placing sacramental marriages practically on a par with contractual marriages. A sacramental marriage loses all its religious significance under the Code which seems to me to convert the Brahma form of marriage into the Asura form.

I do not see the necessity for the provisions regarding civil marriages, as divorce will be admissible even in the case of sacramental marriages. If unification of the two kinds of marriages cannot be effected, then I shall have no objection to both of them being retained.

I would make registration of marriages optional for the present. After the lapse of some time, say ten years, it may be made compulsory.

The joint family has been a good institution and it is very useful in business, etc. I do not share the view of some solicitors that the restraint on alienation is a clog on business enterprise. On the other hand, to my knowledge, no business has suffered on account of the joint family system.

I am in favour of giving a share to the daughter. I would not give the daughter-in-law a share. Nor would I give the daughter a share in the sense of giving her a right to claim partition. The daughter may get the money value of her share; that is, her share in the property may be bought out by her brothers. This should apply both to movable and to immovable property. In both cases, the brothers should be given an option to purchase or not to purchase their sister's share.

In *stridhana* property, I would make the husband a simultaneous heir. In other words, I would promote the husband from No. 3 to No. 1 in the list of heirs as laid down in clause 14 (b) of Part II.

The party who seeks and obtains a divorce must pay the other party some maintenance, if the latter has no means of maintaining himself or herself; for example, in cases of lunacy or illness, or when the condition of the party is one of absolute helplessness. If the party remarries, the maintenance should, of course, cease.

At present, proceedings under the Indian Divorce Act are very costly. I would, therefore, suggest a domestic tribunal with a judicial officer as president and persons belonging to the community as members having an effective voice in regard to the matter. Cruelty endangering life and adultery should also be grounds for divorce.

I would permit the adoption of orphans. An orphan will make a much better adopted son.

The *kritrima* form of adoption is necessary and should be maintained.

5. MR. SUNDERLAL JOSHI'S examination was then continued. He said:

I am the President of the Hindu Code Deliberation Committee, Nadiad. The Committee was formed this year and is composed of people from Nadiad. I am Principal of a Medical College and am not a lawyer.

I am not against the whole Code. I am only opposed to certain provisions in it.

As regards adoption, I wish to urge that a person who has not married in the sacramental form should have no right to adopt. A woman marrying under Act III of

1872 or contracting a *pratiloma* marriage or remarrying after becoming a widow should not be permitted to adopt. Nor is a widow who has remarried entitled to give in adoption. A widow remarriage cannot satisfy the fundamental conditions of a sacramental marriage. Only a *kanya* (virgin) can be married with true sacramental rites. Hence the reference to marriage as *kanyadan*. The marriage of a *kanya* is indissoluble.

Dr. JAYAKAR: Would you restrict the right to give in adoption by a widow who has already legally married and who has sons.

WITNESS: She may give in adoption, but the adoption should be on a lower footing. My suggestion is that the adoption made by women married according to the Brahma form in the strict Vedic sense has got a higher sanctity than adoption by a remarried widow.

The son of a woman married according to the *pratiloma* form has got no right over the father's property, because *pratiloma* marriages are not allowed. A woman of this category cannot have the right to give in adoption, because it will lead to incongruity with Smriti texts.

If you wish to give a right of succession to a son adopted in the *dattaka* form in such cases, this right should be a distinct right and should be provided for in a separate clause.

The *pratiloma lagna* is no *lagna* at all according to the orthodox view of a sacramental marriage. *Pratiloma* marriages are not accepted by modern science also. Such marriages create *heterozygosis* which will lead to a chaos in the most scientific realm of Aryan Eugenics.

The word "sacramental" is a misnomer. I would change it to "Brahma", because only Brahma marriages can be sacramental. In the sastras, the word used is "*vidha*" (meaning "*vidhipurvaka*"), i.e., according to the injunctions of the sastras.

Marriage ties are always indissoluble unless the contrary is stated in the Smritis.

Wherever the Code goes against the Smritis and the well-known texts of Manu, Yajnavalkya and Parasara, I am opposed to its provisions.

I would not disturb in any circumstances the Hindu joint family. Right by birth, and survivorship should remain.

I would not give the woman an absolute estate. (Asked whether witness would agree to the enlargement of the widow's present limited estate into an absolute estate) I would not agree to it.

My objection to the codification as proposed to be done at present is fundamental. I feel that we laymen are not entitled to make such an attempt. It should be left to Dharmacharyas and Sastra Pandits. The Committee should be fully representative of orthodox opinion.

(Questioned about the gradual change in the law as a result of usages and Privy Council decisions): I would stick to the ancient texts in spite of usages and Privy Council decisions. I am in favour of *anuloma* marriages under the conditions in which they are permitted by the Smritis.

Generally speaking, I would like some changes in the existing law, but they should not be against the sastras. If there is a Smriti text which is in favour of a right being conceded, I would give effect to it.

6. Dr. Mrs. MALINI BAI B. SUKTHANKAR, Mrs. NALINI PARANJPE and Mrs. LILAVATI BANKER, representatives of the NATIONAL COUNCIL OF WOMEN IN INDIA, were the last witnesses in Bombay. They said:

We have ten Provincial councils. We have also four councils with an All-India constitution, each for a different purpose.

We welcome the draft Code in its broad principles and have only a few minor suggestions to make.

Liberty to marry under the Special Marriage Act, in order to get the benefit of the application of the provisions of the Indian Succession Act, should not be interfered with. That Act gives equal rights to sons and daughters.

A son and a daughter should take equal shares whether in the father's property or in the mother's property.

Inter-caste marriages are unobjectionable and should be provided for.

A provision for alimony for the divorced wife should be included in the Code.

The mother's consent should be obtained both for giving and for taking in adoption.

For other details, reference may be made to our memorandum.

[With the examination of this witness which terminated at 3-50 p.m., the committee concluded their session in the Bombay Presidency.]

## II. DELHI.

Thursday, 8th February 1945.

The Hindu Law Committee assembled in Room No. 39 of Council House, New Delhi, at 11 a.m. on the 8th February 1945, with Sir B. N. RAU, C.I.E., in the Chair. Dr. DWARKANATH MITTAR, Principal J. R. GHARPURE and Mr. T. R. VENKATARAMA SASTRI, C.I.E., were present.

1. Mr. GANPAT RAI, Advocate, Delhi, and Agent, Federal Court, gave evidence first:

I represent the Delhi Provincial Hindu Sabha, which is a branch of the All-India Hindu Mahasabha. I am a member of the Working Committee of the Delhi Branch of the All-India Hindu Mahasabha. I have practised law for 20 years.

The Punjab is governed by customary law even in the case of Muslims—and the customary law is mainly the Hindu Law there. Even apostasy is not a disqualification in the Punjab. (Books of Mohan Lal Bhatnagar, Rattigan and H. N. Bolton, I.C.S., cited.)

I object to the granting of an absolute estate to women. My objections are—

(1) that in order to keep the property in the family, they will begin to marry *sapindas*;

(2) that women are weak physically;

(3) that their character will suffer, if they are given an absolute estate.

A woman may however be given an absolute estate, if there are no reversioners. She may also be given an absolute estate so far as *movable property* is concerned.

I am against the abolition of survivorship and right by birth. I am against even the *Deshmukh* Act.

I am against monogamy in present day conditions. A Hindu should have the right to marry as many wives as he likes *without any restriction*. In practice, I do not think that even one per cent of the Hindus are polygamous. I have, however, no objection to the restrictions, if any, mentioned in the well-known texts on Hindu Law, being revived.

No woman should be allowed to have more than one husband. I have no objection to the dissolution of marriages where the ancient texts permit such dissolution. [On its being pointed out that in five cases Narada permits women to take another husband]: I withdraw my opposition to the divorce clauses.

I would prefer the Smritis to modern judicial decisions. If the Smritis allowed an absolute estate to a woman, I would not object to it in the same measure.

2. Messrs. GYAN PRAKASH MITHAL and PRABHU DAYAL SARMA gave evidence next:

We represent the Sanatana Dharma Rakshini Sabha, Meerut. We have studied the draft Code.

We have no objection to the adoption provisions of the Code; nor do we have any objection to the minority and guardianship provisions.

We object to the divorce provisions. According to the Hindu religion, marriage is a sacrament and not dissoluble like a contract. The texts of Narada and Parasara on the subject were never acted upon, *except in Vena's time*.

We object to the monogamy provision: a man should be able to take a second wife, unless he has male issue by his first wife. If he has male issue, monogamy should be enforced. We do not want a medical examination to establish barrenness or impotence: the man should be allowed to take a second wife, but not the wife a second husband.

We would not allow a woman to get a divorce and marry again even if her first husband became a lunatic or a convert.

A man who has male issue must not marry again, whether the first wife is dead or lost to him in any other way. [Mr. Sarma, however, is of the opinion that a man may marry again in case of death, or of conversion, or of disease, or indeed in any case; a man should have the right to marry as many wives as he likes without any restriction.]

We object to the daughter, whether married or unmarried, being given a share. [On its being pointed out that the Smritis give a one-fourth share to the daughter, Mr. Sarma said that he had not read the Yajnavalkya Smriti.]

The divided son should not get a share along with the undivided son.

Women should not be given an absolute estate. They are more ready to part with their property than men. That is my (Mr. Mithal's) opinion. [On its being pointed out that the Mitakshara allowed an absolute estate to women.] Neither of us has read the Yajnavalkya Smriti or the Mitakshara.

3. ACHARYA CHANDRA SEKHARA SASTRI was the next witness :

I do not represent any organization. I am a Hindi and Sanskrit author. I edit the VAISYA SAMACHAR, a Hindi weekly.

I belong to Bijnor, in the United Provinces.

I have read the draft Code. I am in favour of the joint Hindu family. It is my view that the Muslims have suffered by fragmentation of property. If a share is given to the daughter, it will lead to fragmentation. The Hindu daughters should get a share only subject to certain conditions : The unmarried daughter should get a share for marriage expenses. The married daughter should get a share only if she gets no support from the father-in-law's house. To an indigent married daughter, not more than half the share of a son may be given. Whatever the daughter gets should be treated as her absolute property.

Widowed daughters-in-law should get their husbands' share and they should be given an absolute estate in this share. This is also the Jain law.

I support monogamy without exceptions. Divorce must be restricted to impotence; incompatibility of temperament; incurable lunacy, etc. I accept Narada's text in this regard. The adultery of the husband or the wife should not be a ground in itself for dissolution of the marriage. Desertion for three years should be made a ground for dissolution.

I am in favour of inter-caste marriages. The time has come for revising our sastras. The Arya Marriage Validation Act should be allowed to operate. I would not object to *sagotra* or *sapinda* marriages; but I would not allow the children of brothers, brother and sister, or sisters, to marry.

I should like the principle of *survivorship* to continue on political grounds.

No man should be permitted to will away more than one-half of his property except to charity.

4. The next witness was Mr. JYOTI PRASAD GUPTA :

I am an Agarwal Vaisya and I belong to Delhi. I do not represent any organization. I have submitted no memorandum.

The period, in the divorce clause, should be reduced from seven years to three, wherever the former now applies. These provisions should be made to apply to marriages whether performed before or after the commencement of the Code.

I support monogamy, without any exceptions. I am aware of some fifty cases where the husband has deserted his first wife and married a second wife without making any provision for the former. The husband demands money from the wife's parents and if the demand is not met he deserts her and marries another woman. I can give, if required, a full list of such cases.

I agree with the rest of the provisions of the Code.

The Committee rose for the day at 5-35 p.m.

Friday, 9th February 1945.

The Committee reassembled in Room No. 39 of Council House on the 9th February 1945, at 12 noon with Sir B. N. RAU, C.I.E., in the chair.

1. Mr. CHAND KARAN SARDA was first examined :

I am the nephew of the promoter of the Sarda Act. I am President of the Rajputana Provincial Hindu Sabha, a branch of the All-India Hindu Mahasabha. I belong to the Arya Samaj.

I am in favour of a uniform law for all Hindus, because it will conduce to the solidarity of the Hindu race.

I am in favour of retaining the existing difference between the sexes in the matter of inheritance. But if the

daughter is to get a share, she must get an equal share with the son; for, otherwise what will happen to girls who cannot marry? I should like the unmarried daughter to have the same share as a son, but a married daughter should have no share in the father's property.

Women should be given an absolute estate in movable property and a limited estate in immovable property, so that the property may remain in the family.

I am in favour of monogamy; but with the permission of the caste concerned a man should be allowed to take a second wife. In our community (nearly 20 lakhs), there are only three or four cases of a man having a second wife. [Asked to which caste witness belonged, he stated that he belonged to the Maheswari caste.] In my community, a man who marries a second time without the permission of the community, is excommunicated. I am, on the whole, of the opinion that monogamy should be enforced without any exceptions.

I would not permit divorce in any case, because it will lead to immorality. Where however there is a custom of divorce, it may remain. There is such a custom among the lowest castes, e.g., sweepers, chamars, etc. I would permit a divorce to any woman in the five conditions referred to in Narada's text, but not otherwise. This is my considered view. In similar cases, a man also may be allowed to seek a divorce.

Adoption of married men should not be prohibited. The *Dwiyamushyayana* form of adoption also should not be prohibited. In my community, the rule is to adopt a member of the same *gotra*; a daughter's son is sometimes adopted even after marriage, but not a sister's son or mother's sister's son. I am in favour of allowing any custom in the matter of adoption.

I am against the abolition of the joint family system. The right by birth and the rule of survivorship should remain. The law in this respect should remain as it is.

The Committee rose for the day at 3-55 p.m.

Saturday 10th February 1945.

The Committee reassembled in Room No. 39 of the Council Chamber at 11 a.m. on the 10th February 1945, with Sir B. N. RAU, C.I.E., in the chair.

1. Mrs. RAMESHWARI NEHRU, Mrs. CHANDRAKALA SAHAI and Mrs. RENUKA RAY representing the ALL-INDIA WOMEN'S CONFERENCE, gave evidence :

We are giving evidence on behalf of the All-India Women's Conference. The Conference has 37 branches with a total membership of between 12,000 and 15,000. Our influence is much greater than is indicated by our membership.

Mrs. NEHRU : -I held a meeting recently at Amritsar which was attended by about 400 women—mostly elderly—and this meeting supported our memorandum on the draft Code.

Mrs. RAY : I can say the same thing of Bengal: there were meetings presided over by Mrs. Vijayalakshmi Pandit and Mrs. Kamaladevi Chatopadhyaya, the former of which was attended only by women, and we have had almost complete support for our views at these meetings.

We have been holding meetings during the last four or five years. Our memorandum represents the views of the large majority of organized women who have been doing social work for the last few years. There have been some recent groups formed for the purpose of opposing the Code: these, in Bengal, belong to the aristocracy and have no support from the poorer classes.

We support the broad principles of the draft Code.

We support the principle of equality of men and women reflected in the Code.

Mrs. NEHRU : I do not believe that women are incapable of managing property. In fact, they do so better than many men. Widows manage their life estates with credit. They would be equally capable of managing absolute estates.

[Asked whether the comparative illiteracy of women will stand in their way of management of property:] So far as education is to be measured by literacy, men are not much better off than women. There is much less fear of women falling into the hands of *pandas* than of young men falling into the hands of bad women.

Fragmentation of property is a problem which will have to be dealt with separately: it will have to be faced

even if succession is confined to sons: Primogeniture might be a solution.

We support monogamy, without exceptions. Since adoption is permitted, barrenness should not be a ground for allowing an exception. [Asked whether an exception should be permitted where the first wife consented to a second marriage:] Even then, consent is likely to be obtained by duress or undue influence. No loophole should be left. All women—whether high or low—feel very strongly on this point.

As regards divorce, we support it.

Dr MITTAR: Mrs. NEHRU, if there is no complete unanimity on the question of divorce, would a law of divorce be justified in introducing it?

Mrs. NEHRU: Of course, on this or any other subject, it is impossible to expect unanimity; but the majority of vocal opinion among women is now in favour of it. Divorce prevails by custom even now among Vaisyas and certain other castes. No disturbance will arise if divorce is permitted: it will be a permissive law, of which those who do not want it need not avail themselves. If Hindu law refuses to permit divorce, women will be forced out of the Hindu fold.

Mrs. RAY: I am aware of several very hard cases, where the women have turned Muslims in order to get the marriage dissolved. So many wives are now deserted. Often the girl is married to a man, who is afterwards discovered to be a lunatic or semi-lunatic. We therefore ask for a permissive law of divorce. Baroda has a divorce law: few have taken advantage of it, very few, and only in extreme cases. By all means, have high ideals, but make provision for those who cannot live up to them.

In clause 30 of the divorce provisions, the period of seven years should be reduced to three years in every sub-clause. These remedies should be made available in the case of marriages performed before the coming into effect of the Code.

2. Rai Bahadur HARISCHANDRA gave evidence next:

I am appearing on behalf of the Provincial Branch of the All-India Hindu Mahasabha (Delhi Branch). I am senior advocate of Delhi.

We object to the general supersession of customs. (On being further questioned): I would not object to the custom of uncle-niece marriages being prohibited.

We object to the daughter being a simultaneous heir, whether the daughter is married or unmarried. [On its being pointed out that the Smritis give a one-fourth share to the daughter.] Even if the Smritis provide for a one-fourth share, I would not allow it. No father spends so much on the marriage of his daughters in these parts. Among the upper classes here, a demand for dowry is unusual; a rich man may have to pay, if he wants to marry his daughter. The dowry system does not exist as such here.

Women should only have a limited estate, even if Vijnaneswara decreed otherwise. They are incapable of managing property. I do not know anything about the daughter's estate in Bombay. The property should not go out of the family—i.e., out of the male line. The daughter and the daughter's son, the sister, the sister's son—these are exceptions to the rule.

Witness was next questioned about survivorship.

If A and B belong to the Mitakshara school, and A dies leaving a daughter and B dies leaving a grandson, I myself would prefer A's property (ancestral) to go to his daughter rather than to B's grandson. But these hard cases should be provided for otherwise than by abolishing survivorship.

On monogamy, the law should remain as it is, for political reasons as well as others. There should be no restriction of any kind on polygamy for reasons of population, whatever the ancient texts may say. We would not approve of even the one-third share to the superseded wife.

Divorce may be allowed in cases of conversion. A wife can seek divorce in such a case. We would approve of divorce in the five cases mentioned in Narada's text. We would allow it in cases of incurable lunacy also.

We have no objection to the provisions in the Code relating to adoption, minority and guardianship.

[The Committee rose for the day at 1-55 p.m.]

Monday, 12th February 1945.

The Committee reassembled in Room No. 39 of Council House at 11 a.m. on the 12th February 1945. Sir B. N. RAU, C.I.E. (Chairman) and Mr. T. R. VENKATARAMA SASTRI, C.I.E., were present.

1. Mr. K. SANTANAM was the first witness to be examined: I was an M.L.A. until 1942. I have gone through the draft Hindu Code. I warmly support and approve of its general principles. It is very desirable that the Hindu Law should be codified. I think the codification should be undertaken by the present Legislature, because the movement in favour of Provincial autonomy is growing and the chance may not recur. Under the new constitution, the necessary powers may cease to vest in the Central Legislature. If the present Legislature is representative for other purposes, it is equally, if not more, representative for the purpose of codifying the Hindu Law. The Hindu members of the present Legislature are quite competent to codify the Hindu Law, especially as there is no political significance attached to the codification.

I am in favour of abolishing all sex disqualifications in Hindu Law and would, if given a free hand, give daughters and sons equal shares; but as a compromise, I shall be content with the provision of the Code which gives half the share of a son to the daughter.

I am in favour of giving an absolute estate to women. I do not think that women will mismanage, any more than men, if given an absolute estate; in any case, I am prepared to accept the risk.

Stridhana inherited from the husband should devolve like any other stridhana; property gets mixed up and the distinction will create legal complications.

I would omit clause 14 (b) (6) of Part II which refers to the husband's heirs because the wife's heirs do not take the husband's property and I do not see why the husband's heirs should take the property of a widow who dies without issue. Also, in the case of a widow remarrying, the question will arise as to which husband's heirs are meant.

The definition of *half blood* should include "uterine blood", to cover the case of remarried widows. Otherwise, the son by one husband will not be the "cognate" of a son by another husband.

Extent of application of Code outside British India.—The position regarding the devolution of property situated in British India of Hindus who are domiciled in Indian States should be made clear. I do not understand which law of inheritance will apply to the case—the British Indian law as laid down in the draft Code or the law of the Indian State?

Mr. VENKATARAMA SASTRI: The Code will apply ordinarily only to Hindus in British India. International law lays down which law and to what extent should be followed in cases of conflicting laws like those referred to by you, unless by the *lex loci*, that is, by the law of British India or of the Indian State, as the case may be, international law is specifically superseded.

WITNESS: I want this Code to be quite clear on the point. Let it be specifically confined to Hindus domiciled in British India. Later on, in each State, we can agitate separately for the enactment of an identical law for the Hindu domiciled in the State.

The draft Code should be the personal law of all Hindus domiciled in British India. The exception regarding agricultural land must be limited to British India so that in other places where this Code will apply as a personal law, it may govern even the devolution of agricultural land situated in those places.

Mr. VENKATARAMA SASTRI: The exception regarding agricultural land is limited to British India. There is no objection of course to the point being made clear.

Marriage.—Witness: I would remove the *sapinda* restriction and would extend the prohibited degrees of relationship to cover the children of sisters also.

Monogamy.—No exceptions should be allowed. In this country, the proportion of men and women is roughly 50 : 50. I can give the actual statistics, if necessary.

In the interests of the Hindus themselves, I would advocate the compulsory registration of all marriages. A provision may also be added for the declaration of the dowry, to be entered in the marriage register. That would help in putting down the evil.

The attainment by a girl of the age of 14 years should be made an essential condition of the validity of her marriage. Where the girl has not attained that age at the time of marriage, it should be voidable at the instance of the girl (or of a guardian on her behalf) within a period of one year after her attaining majority, provided the marriage has not been consummated. I would give the girl or her guardian, as the case may be, a right to sue for a decree of nullity in such cases.

*Part VI, clause 19.*—I doubt whether sub-clauses (1) and (2) of this clause are workable. I consider that clause 19 (3) will do in every case, that is, no estate should be divested, except that of the adoptive mother, in any case.

Mr. SANTANAM also made a few suggestions for consideration, in the drafting point of view.

*Part I, clauses 3 and 4.*—The proviso to clause 4 seems to be unnecessary. Where a custom has obtained the force of law, there is an end of the matter.

CHAIRMAN: Suppose, in that case, the Court wants to over-ride the custom as being immoral? But for the proviso, there would be no power in the Court to over-ride an immoral custom. We have saved some customs specifically, and except such customs as have been so saved, all other customs would no longer be law. In respect of any custom which is specifically saved by the Code, if it is not reasonable, or is opposed to public policy, etc., the Court must have the power to over-ride it. The proviso seems, therefore, to be necessary.

WITNESS: *Part I, clause 5 (a).*—For the words "relative or stranger", I would say "any person, whether a relative or not". The expression "stranger" has been used in the clause as meaning a person who is not a relative. It is not strictly proper to describe an intimate friend who is not a relative as a "stranger."

*Part III-A, clause 4.*—It should be made clear that when a person gets a share by intestate succession, he should have no claim to maintenance.

Mr. VENKATARAMA SASTRI: What you want seems to be already in the clause. Anyhow, we shall examine the point.

WITNESS: *Part IV, clause 26.*—In the Explanation, for the words "to marriages celebrated before the commencement of this Code", the words "to persons who married before the commencement of this Code" may be substituted.

*Clause 28.*—Even consideration received by the husband should be held by him in trust for his wife. This object will be achieved by deleting the words "to any relative of the other party" in the main paragraph.

*Clause 29 (4).*—For the words "with the full belief of the parties", I would substitute "with the full belief of one of the parties" or better still "and that one of the parties fully believed". In such a case, I see no reason for making the child illegitimate.

*Clause 30 (f).*—I would extend this to the case where either the husband or the wife is guilty of general immorality.

*Part VI, clause 16 (iii).*—The words "simultaneously" must appear before the words "adopted by two or more fathers." A boy who has already been adopted is incapable of being taken again in adoption—see clause 13.

2. Mr. WAZIR SINGH (Singh Marriage Bureau) was the next witness to be examined: I am the organizer, "Singh Marriage Bureau", a bureau which I have set up and named after myself. I arrange marriages at the request of parties by advertisement. I have been doing this business during the last six or seven years. Before that I was a clerk in the East Indian Railway.

The minimum age of marriage should be 25 for men and 16 for girls. I am supported in this by the *shastras*.

Bachelors should not be allowed to marry any but virgins, nor widowers any but widows.

I advocate *monogamy*, without exceptions. Polygamy is a most disgusting system.

I am an Arya Samajist.

Husband and wife should in certain circumstances be allowed to separate legally and then marry again. The previous marriage should be *dissolved*. I do not like the word "divorce".

Every marriage must be compulsorily registered.

The Committee then rose for the day at 12-30 p.m.

Tuesday, 13th February 1945.

The Committee reassembled in Room No. 39 of Council House at 11 a.m., on the 13th February 1945. Sir B. N. RAU, C.I.E. (Chairman) and Mr. T. R. VENKATARAMA SASTRI, C.I.E., were present.

1. PANDIT NILAKANTHA DAS was the first witness to be examined: I am an M.L.A. I have been in politics for nearly 25 years, with a break of 5 years from 1930-35. I was a teacher before that and am now editing an Oriya paper, the "Nava Bharat" in Orissa. I was the Headmaster of a High school from 1911-1920 and was in the Post-graduate department of the Calcutta University during 1920-21. I have been editor of my paper since 1934; it has been a daily for the last three years.

I have recorded a note of dissent on the Intestate Succession Bill and have also spoken on the subject.

I have not looked into the draft Code, but have seen the two Bills which preceded it. I won't be able to say whether I object to any of the provisions of the Chapter on Adoption or Maintenance.

I have no objection to a common territorial law for Hindus, Muslims, etc., if that were possible. But I do not think that a common law for Hindus is advisable, even if it were possible. This is not the time to unify the Hindus by codification. I cannot visualise conditions under which such an attempt at unification of Hindus would be desirable. Customs among Hindus are so various that their inclusion in one Code is impossible.

I should like the Scheduled Classes not to drift away socially from the Hindus. I should like them to be Hindus and to be absorbed into the Hindu fold and would therefore allow them to be governed by their own customs.

For political reasons, I would not touch even the custom of a man marrying his sister's daughter. Until Hindus have an effective voice in the government of the country, codification of Hindu law is not desirable.

If women get an absolute estate, Muhammadans in East Bengal will take away both the women and the estate. I have no objection to the absolute estate among the cultured classes, but not in inherited property—for the sake of the integrity of the family property. I admit that women can manage property, even if they get an absolute estate.

In a Mitakshara joint family consisting of, say, two brothers, if one of them dies leaving a daughter, my personal view is that she should get a limited interest in her father's share, rather than the brother.

I have no objection to the repeal of the sections imposing disabilities on Hindus marrying under the Special Marriage Act. Succession in such a case should be governed by the husband's personal law.

I am against monogamy being insisted on by a law. But if suitable exceptions are made, I may reconsider the matter.

In the presence of a son, I would not give a share to the daughter but if there is only a widowed daughter-in-law and a daughter, I would not object to the property being divided between them.

I am in favour of some provision for married daughters, but am not in favour of a specific share being given to them. I would not object even to half a son's share being given to her but she should only get the value of her share in money. She should not get immovable property.

I have not studied the provision for divorce in the Code. I have no objection to some provision being made for the purpose, but when it prevails by custom, the law should be adjusted to the custom. The provision should be permissive; it should be available even to the higher castes. Also there should be no washing of dirty linen in public. Divorce should be made easier than in countries where the parties have to go to Court. In Orissa, divorce prevails except among the highest castes: where the man seeks divorce, he must make provision for the wife's maintenance for six months; if she seeks divorce herself, no such provision is made. Where the husband marries again, the first wife can ask for divorce; monogamy is unnecessary. Maintenance for the superseded wife in such cases should be one-third subject to a maximum limit, say, one lakh.

2. Mr. MAKHANLAL SASTRI next gave evidence in Hindi as a representative of the Digambar Jain Maha Sabha. An interpreter was present.

I am a member of the Managing Committee of the All-India Digambar Jain Maha Sabha. This body has been in existence for some 50 years. It has 101 members on the Managing Committee and a total membership of about 5,000.

I have read the draft Code. Jains should not be included in the term "Hindu".

We do not recognize divorce, nor widow remarriage. If a widow remarries, she is boycotted, but she remains a Jain. There are no known instances of Jain widows remarrying, except among those who have already gone out of the Jain fold. Even though the law permits widow remarriage, Jain society does not.

I am against monogamy: if a man is healthy and wealthy, he should be allowed to marry again. There should be no legal impediments; society will enforce its own standards.

According to Jain Law, after the owner's death, the widow gets the estate. She has an absolute right, even when there is a son; this is also the practice now. I am a Digambar Jain.

Jains are quite different from Hindus and should be left out of the Code.

Regarding adoption, Jains do not recognize any age limit; even married people can be adopted; so can an orphan.

[The Committee rose at 4-15 p.m., concluding their session at Delhi.]

### III. ALLAHABAD.

Saturday, 17th February 1945.

The Hindu Law Committee assembled at Allahabad at 12 noon on Saturday, the 17th February 1945, in the Committee Room of the Allahabad University Buildings. Principal J. R. GHARPURE and Mr. T. R. VENKATARAMA SASTRI, C.I.E., were present. Dr. DWARKA NATH MITTER joined the Committee in the afternoon.

1. The first witness examined was Mr. K. R. R. SASTRI, M.A., M.L., of the Allahabad University. He deposed as follows: I am a Reader in Law in the University of Allahabad. I have been Reader since 1936. Before that, from 1928, I was practising as an advocate in Madras. I am a Master of Arts and a Master of Laws.

I am in favour of the draft Code, but I should like a few changes made in it.

I agree to the daughter being a simultaneous heir with the son. Personally, I would prefer her being given the same share as a son, but agree to the half-share provided in the Code, as a compromise.

No distinction should be made between the married and unmarried daughters, i.e., both should get the same share. The unmarried daughter should, however, get her marriage expenses in addition to her half-share. In other words, the marriage expenses of the unmarried girls should first be set apart from the funds of the estate before a division takes place.

The expenses for the necessary samskaras of the sons also (e.g., upanayana and marriage) should be set apart in the same way.

I am not much impressed with the argument that giving the daughter a share will lead to fragmentation of property. Fragmentation is inevitable, unless you adopt the rule of primogeniture. If the daughters had been sons, would there not be fragmentation?

I am entirely in favour of making the women's estate an absolute one. Absolute estate for women is by no means an innovation. It is only going back to the Mitakshara which is clear on the point and should, in my opinion, be followed. It involves no sort of violence to any principle or rule of Hindu Law. I do not consider that a daughter will manage properties less competently than a son.

I should like the sister to be given a higher place; perhaps, she may come immediately after the brother's son.

I support the changes made by the Committee in regard to marriage and divorce. These can, in no way, touch or affect the life of the orthodox Hindu. The Code lays no sort of restraint or prohibition on them. The legislation is purely permissive and only gives liberty to reformers to give practical effect to their long-cherished convictions without ceasing to be Hindus.

ORAL—3A

I have suggested an amendment to clause 19 of Part II in my memorandum. I would omit the provision for the condonation of unchastity contained in the proviso to that clause.

As regards the other matters dealt with in the Code, my attitude is one of warm approval. It is perfectly clear to me that the unification of the Law proposed by the Committee will bring about a consolidation of Hindu society.

I request the members of the Committee to peruse the full report of the debate on the draft Code arranged for by the All-India Radio in which I and Mr. Pathak of this University took part and a full report of which appears in this morning's "Amrita Bazaar Patrika" (Allahabad Edition). I should like it to go in as part of my evidence before the Committee to-day.

2. Mr. BAJRANGLAL CHAND GOTKIYA then appeared before the Committee and said that he was the General Manager of the Gita Press, Gorakhpur, that Mr. H. P. Poddar, the proprietor of the Press, who had been invited by the Committee was unable to be present on account of illness and that both of them entertained the same views on the subjects dealt with in the Draft Code. Mr. Poddar had deputed him to depose before the Committee, and he requested permission to do so. Permission being granted, Mr. BAJRANGLAL continued:

I am against the codification of the Hindu Law being undertaken at the present juncture, as I consider that the time is not propitious. Further, the present Indian Legislature has become an unrepresentative body. I have no objection to codification as such, but the task must be essayed by orthodox pandits well-versed in the Dharma Sastras, heads of Mutts, and the like, and it should be voted on only by the Hindu members of the Legislature.

Mr. VENKATARAMA SASTRI: Do you suggest that all the customs in the country should be maintained?

WITNESS: I do not. All customs need not necessarily be maintained, and in fact, it may be inexpedient to do so. But what customs should be maintained and what should be discarded, should be decided not by mere lawyers, but by learned Pandits and holy men. That is my view.

The Mitakshara and the Dayabagha should be left to their operation in the different parts of India as at present. I am against either becoming sole law. I see no virtue in unifying the law, and I do not think that such unification will consolidate Hindu society.

I object to the whole of the Part which deals with marriage and divorce. I am against the validation of *sagotra* and *sapinda* marriages. Where, however, custom has introduced laxities, the custom should be maintained; that is to say, the marriage should be deemed valid, although it may be one contracted between *sagotras* or *sapindas*.

In the matter of *sapinda* relationship, I do not want any relaxation in the seven and five degrees rule.

Mr. VENKATARAMA SASTRI: Within each of the four main *varnas*, marriage between sub-sects is valid, both according to ancient law and according to British Indian Law as administered now, but such marriages take place very seldom. Such marriages cannot be said to be authorized by custom? Do you want to prohibit such marriages?

WITNESS: No, Sir. Whatever may be found in the Shastras, I do not think that marriages between members of the same caste or varna should be disallowed.

Wherever custom has altered the textual law, I would follow the custom and not the textual law.

Mr. VENKATARAMA SASTRI: According to the Mitakshara, all property of a woman including inherited property is *stridhana*. Do you want this to be law or no?

WITNESS: No, the present custom may be allowed to continue, notwithstanding the Mitakshara.

I object to the simultaneous heirship of the daughter and would not give any share to the married, or even to the unmarried, daughter. I would prefer to repeal the Act of 1937, which, for the first time, introduced the principle of simultaneous succession.

I object to monogamy. I also object to divorce.

As regards adoption, the witness said that the statement in Mr. Poddar's memorandum that adoption should be only within the *gotra* was due to his belief that only such adoptions were permitted by the existing law. If under the existing law, adoptions outside the *gotra* are valid, the witness would allow the existing law to continue.

Concluding his evidence, the witness again emphasized that no change should be made in the law except through parishads of pandits.

3. Mr. S. K. DUTT was the next witness: My objection is not to codification as such, but only to some of the provisions found in the Draft Code.

I have no objection to marriages which have resulted in children, being made *monogamous*. Where the wife is barren, I would permit the husband to take a second wife. Where, however, the absence of children is due to the incapacity of the husband, I would not give him a right to marry again. I want the parties to a civil marriage to remain Hindus for all purposes.

There may be provision for civil marriages also, and I do not object to the repeal of sections 22 to 26 of the Special Marriages Act, as proposed.

I would confine divorce to civil marriages. When the marriage has been or is in the sacramental form, I would not permit any divorce. Divorce is against religious law. I would follow custom, even though it may be against the Narada Smriti.

The witness at first contended that the provisions for divorce and the giving of authority to a widow to adopt were inconsistent. But later, after discussion, he gave up his contention.

The witness also handed in a statement which he said represented the views of the Jai Guru Society.

4. At the conclusion of the day's proceedings, Dr. MITTER put the following question to Mr. K. R. R. SASTRI who was present: If there is no complete unanimity of opinion with regard to divorce, would a law reformer be justified in disturbing the existing order of things?

Prof. SASTRI answered that divorce was permissible and sacramental marriage had no meaning if different rules of conduct were to govern man and woman. With regard to the idea "once a marriage, always a marriage", Mr. SASTRI pointed out that it was an old idea bolstered up now for the purpose of supporting an essentially immoral position.

The Committee then rose for the day.

*Sunday, 18th February 1945.*

The Committee resumed their sittings in the Committee Room of the Allahabad University Buildings on Sunday, the 18th February at 12 noon under the chairmanship of Dr. DWARKA NATH MITTER, Principal J. R. GHARPURE and Mr. T. R. VENKATARAMA SASTRI, C.I.E., were present.

1. The ALL-INDIA DHARAM SANGH, GANGA TARANG, Nagwa, Benares, tendered evidence first. The Sangh was represented by (1) Pandit GANGA SHANKAR MISRA, M.A., Head Librarian, Benares Hindu University, and Editor of "Siddhanta" a Hindi weekly, (2) Pandit RAMAYESH TRIPATHI, Principal, Dharam Sangh Mahavidyalaya, (3) Pandit RAMACHANDRA SASTRI, Vice-Principal, Goenka Sanskrit College, (4) Pandit DURGA DATT TRIPATHI, Professor of Samveda, Dharam Sangh Mahavidyalaya and (5) Mr. DEVI NARAYAN, Advocate, Benares, a Vidya-sagar of Kashi Pandit Sabha and Sastracharya of Calcutta.

They gave evidence as follows:

The Draft Code is against the basic principles of the Hindu Law. It abrogates that law, and cannot be said to "codify" it.

One uniform law for the whole of India is neither possible nor desirable. We should maintain the different schools and the different *acharas*.

Pandit MISRA: I do not accept as correct the decisions of the High Courts or of the Privy Council. They were, for the most part, rendered by Judges who were ignorant of Sanskrit and had to rely on translations. Their decisions have not expressed the Hindu Law correctly. I am no lawyer and cannot glibly quote judicial decisions, but I am clear that the present state of the Hindu Law is highly unsatisfactory and that it should be changed. We must go back to the original texts dealing with the Hindu Law, and for their proper interpretation, we must have recourse to learned pandits. I feel strongly that life which is not led according to the sacred Smritis is on a low plane and unsatisfactory. A change is, therefore, required.

Mr. VENKATARAMA SASTRI: Who is to effect the change?

The witnesses, who took time to answer the question, finally said that the Dharma *Acharas* should be formulated by the pandits in the first instance and then placed before the Legislature.

The ideal thing would be to have a Hindu State in which the law is administered by Rishis or wise men.

Dr. MITTER: At present, we are far off from a Hindu State?

Pandit MISRA: Let the laws be framed in the first instance according to the Sastras by a Conference of Pandits. The Legislature may then enact them as law. The Legislature should only be the instrument for effecting changes, and any change which is of a fundamental character must first be approved by a Conference of learned pandits.

There should be no change in the laws relating to marriage. The present position, so far as sacramental marriages are concerned, is satisfactory. We do not want to give authority to the Government to interfere with our marriage customs.

When a Hindu contracts a civil marriage, it must automatically result in his being put out of the Hindu fold. If a Hindu makes a declaration that he has ceased to be one, then, he may be given liberty to do anything he likes.

Divorce is quite opposed to the Smriti texts as well as to Hindu traditions and notions. There was no support in the Smritis for divorce. On this point, a long discussion then ensued in Sanskrit between the witnesses and the members of the Committee. (Reference was made in the course of discussion to the case of Damayanthi who arranged for a second *swayamvara*.) The witnesses finally admitted that divorce was recognized by the Smritis, but contended that it was all before the Kaliyuga set in and that divorce was not permissible in the present Kaliyuga. In any case, the texts had no application to the higher castes. The witnesses also contended that the texts were *nishiddha achara* at the present day.

Pandit MISRA: I do admit that divorce prevails among the lower classes of Hindus even now.

I recognize that monogamy is preferable, but there are cases where a second wife may be necessary, for example, where the first wife is barren or begets only female children. Consequently, the law should not step in and make the contracting of a second marriage a punishable offence. Where, however, there is a male child of a marriage, a second marriage should be prohibited.

Mr. VENKATARAMA SASTRI: Would it be *ashastraic* to provide that a text, which is interpreted differently in the different provinces, should be interpreted in one uniform way in all the provinces?

Pandit MISRA: We can allow things to remain as they are. Let the different interpretations continue to be in force.

Mr. VENKATARAMA SASTRI: In other words, you say that Vasishtha who could have intended only one idea should be overruled by commentators. One text cannot have four meanings.

Pandit MISRA: We are for the continuance of the present position. It does not matter if the same texts have different interpretations in different provinces. Our answer applies not only to Vasishtha's text, but to all smriti texts which are the subject of conflicting interpretation.

The Sangh is opposed to codification and considers that, if any changes are necessary, they should be effected not by mere lawyers or by the Government or by the Legislature, but by pandits who were the natural leaders of the people in religious matters.

The Committee then rose for lunch.

2. On resumption after lunch at 3 p.m. The Swamiji of the Jai Guru Society was examined. He said:

I have not given any statement. I have about seven thousand disciples who are members of the Society. They are spread all over India except the South. The objects of the Society are given in our pamphlet. (Hands in a pamphlet.) Briefly, our aim is to uphold and popularize Hindu culture. I have come here to plead for the maintenance of the *Sanyasa sampradaya*.

I have not read the Code, but I understand that it provides for divorce, and I object strongly to this. After *panigrahana*, divorce is impossible.

I have no strong views on other matters and would accept whatever is provided in the Code.

I am in favour of monogamy. Neither the husband nor the wife should have another spouse. My society does not, however, agree with me. On this point, I am in disagreement with the views of the majority.



Mr. VENKATARAMA SASTRI: Are you in favour of a uniform law for all Hindus?

WITNESS: Yes, I would have one law for the whole world. Nothing is impossible in the world.

Mr. VENKATARAMA SASTRI: We cannot suggest common laws for the whole world. It is outside the scope of the Committee's functions.

WITNESS: I am in favour of having one law for all Hindus, but Hindu culture must be maintained by the uniform Code which we make, and the Code must not offend against the spirit of Hindu culture and institutions.

3 THE ALL-INDIA SANATHANA DHARMA MAHASABHA, represented by the following persons then appeared before the Committee:—

(1) Mahamahopadhyaya Pandit Chinnaswami Sastri, Principal, Oriental College, Benares Hindu University, (2) Mr. T. V. Ramachandra Dikshit, Professor of Vedanta, Oriental College, Benares, (3) Pandit Mahadeva Sastri, and (4) Pandit Viswanadha Sastri, of the All-India Sanathana Dharma Mahasabha, Benares.

Pandit CHINNASWAMI SASTRI: There are about 50 or 60 members in our Mahasabha. Our headquarters are at Nagwa in the Benares Hindu University. I am a member of the Mahasabha.

I have read the draft Code, and am against it. Our *shastras* are not mere secular laws; they are partly religious in character. The Government have no right to change laws which have a religious sanction behind them.

Divorce is not permitted either in the *Srutis*, the *Smritis* or the *shastras*. After a marriage has taken place, it is not possible for the wife to obtain a dissolution of the marriage tie. *Smriti* texts, like the *Nashte Mrite* text, refer not to a married woman, but to a girl who has merely been betrothed (*pagdhana*).

If the husband goes away, the wife has to wait for him for eight years and must then go in search of him.

The *shastras* permit a man to have more than one wife, and monogamy should not be insisted on by legislation.

Daughters who do not perform shraddhas should not be given any share in the inheritance. Giving them a share would lead to further poverty, and foment quarrels between brothers and sisters.

As regards adoption, we want that it should be permitted only when the husband has expressly accorded his consent. We have no objection to this being declared to be the law throughout India, if uniformity is desired.

4. THE ALL-INDIA VARNASHRAMA SWARAJYA SANGH, Benares, represented by Mr. V. V. DESHPANDE of Benares, was the last witness for the day. Mr. DESHPANDE said:

Our Sangh has 369 branches throughout India including Indian States. Rao Bahadur Parande, Retired District Judge, Nagpur, is the President of the Sangh and he has asked me to give evidence before the Committee.

The Sangh is against the codification of the Hindu Law. The nature of that law is such as to be insusceptible of codification. The time chosen for the codification is also inopportune. The Sangh is opposed to changes being made in the existing law, as proposed in the draft Code.

We are against the procedure adopted for the eliciting of public opinion, which we consider to be erroneous. The Committee should in the first instance have approached Mahants and Dharmacharyas who are well-versed in the ancient scriptures and laws and who are the proper persons to suggest changes.

Dr. MITTER: The procedure for our inquiry has been laid down for us by the Law Member of the Government of India. If you wish it to be changed, you should address the Government of India on the matter.

WITNESS: As regards codification, our objections are—

Firstly, to the competence of the present Legislature to undertake the task—A mixed Legislature, consisting of Hindus and non-Hindus, has no moral authority to legislate on topics of the Hindu Law like marriage, inheritance and so on.

Secondly, to the laying down of an authoritative Code of Hindu Law, not in the Sanskrit, but in the English, language—The English language is not a suitable vehicle for the formulation of rules of the Hindu Law. No translation in English could possibly convey the meaning of many a Sanskrit expression occurring in the *Smriti* texts.

Thirdly, to confining the operation of the Code to British India, leaving out the States—No real uniformity

in the law is possible, so long as the Indian States are left out.

Turning next to the definition of the expression 'Hindu' Mr. Deshpande said that the illustration to clause 1 of Part I of the Code stated that a convert to Hinduism is a Hindu who would be governed by the Code. The *Shastras* do not provide for or recognize, any conversion of foreigners to the Hindu faith. A *patita* can come back into the Hindu fold by expiation, that is, by doing *prayaschitta*.

Mr. VENKATARAMA SASTRI: No non-Hindu could ever become a Hindu. Is that your proposition?

Mr. DESHPANDE: Yes. A non-Hindu could never become a Hindu according to the true Hindu Law. Any one who believed in the *Nibandak Granthas* as they were founded on the Vedas was a Hindu.

The Committee rose for the day at 6 p.m.

Monday, 19th February 1945.

The Committee resumed their sittings in the Committee room of the Allahabad University buildings at 11-25 a.m., on Monday, the 19th February. Dr. DWARAKA NATH MITTER was in the Chair and Principal J. R. GHARPURE and Mr. T. R. VENKATARAMA SASTRI, C.I.E., were present.

1. Mr. V. V. DESHPANDE of the ALL-INDIA VARNASHRAMA SWARAJYA SANGH continued his evidence:

Where there is a conflict between custom and public policy, public policy should decide the issue. For example, dancing girls should not be permitted to adopt girls even though a custom may provide for such adoption.

The *Mitakshara* definition of "stridhana" should not be accepted, as *Vijnaneswara* has extended the meaning of the term much beyond its legitimate scope. In verse 117, he has stated that sons should take the property of the mother and the father even in the presence of the daughter. The scheme of enumerated heirs as laid down by the Committee is against the *shastras*. The allocation of equal shares to the divided as well as the undivided sons is not right.

Mr. VENKATARAMA SASTRI: You will not agree to the unification of the *Mitakshara* and the *Dayabhaga* systems of law?

WITNESS: No, I will not. According to *Manu*, a female is always dependant on a man and therefore she could at no time deal with the corpus of any property, without the consent of her guardian or protector for the time being.

The witness wanted that the present law should be changed or reformed on the basis of the old *shastras*. That is the view of the *Varnashrama Sangh*, but not his personal view. Personally, he would leave codification alone for the present.

If you want to have uniformity, why exclude the *Marumakkattayam* law from the scope of the Code?

2. The representatives of the SARASWATHI WAGVILAS MANDAL, Benares, were the next witnesses. They said:

The Mandal is open to all castes and there are 1,000 members on its rolls.

Our first point is that the *Mimamsa* rules of interpretation should be accepted. The Vedas cannot be changed, just as the laws of cause and effect cannot be changed.

The Code does not achieve uniformity as the persons governed by the *Marumakkattayam* and certain other systems of law have been excluded from its scope.

The Registrar of Hindu marriages should be a Hindu.

If the same text has been interpreted in different ways in different Provinces, it does not matter. There is no objection to diversities in interpretation.

The right by birth should be preserved.

3. Srimathi VIDYAVATHI DEVI, Secretary, ARYA MAHILA HITAKARINI MAHAPARISHAD was the next witness. She deposed as follows:—

Ours is an organization of Sanatana ladies all over India, and the number of our members runs into thousands. I have read the Code and my objection to it is that it runs counter to the genius of the Hindu Law. The institution of marriage and the rules of inheritance are based on religion. The observance or non-observance of the *shastraic* rules in regard to these matters will affect the prospects of our souls in this world as well as in the next. According to the ancient Hindu culture, the greatest stress was laid on the attainment of spiritual salvation but the Code does not pay adequate regard to this aspect of the matter.

The man who offers the pindas should take the heritage. Otherwise, there will be no inducement for the proper performance of the shraddha and the salvation of the deceased may be jeopardised.

We strongly object to divorce. Marriage is an *adhyatmic sambānda*. Even after death fidelity is promised in the marriage mantras. The shastraic principle therefore is "once a marriage, always a marriage." After marriage, husband and wife become one, and shed their separate personalities. The ordinary Hindu wife now occupies a most important place in the household and is prepared to sacrifice everything in her devotion to her husband, and will not forget him even after his death. Marriage, for the wife, is an indissoluble religious link, and the Legislature has no right to make a law affecting this religious aspect of marriage. Not even one per cent of women will support the proposals for divorce embodied in the Code. We have no right to legislate; our only duty is to administer the Smritis.

The Mahaparishad is opposed to inter-caste marriages because hybrids have short lives.

The daughter should not be a simultaneous heir with the son, as she goes into another gotra and performs no ceremonies for her father or his ancestors. An unmarried daughter should not get any share. It is the duty of her brothers to maintain her and perform her marriage. The present usages as regards adoption should be maintained.

The State has no right to legislate on these matters.

4. Srimathi SUNDARI BAI, M.A., B.T., Headmistress of the ARYA MAHILA VIDYALAYA and Editor of the "Arya Mahila," a monthly magazine, was the next witness:

I agree with the views expressed by the previous witness, Srimathi Vidyavathi Devi, and wish to add one or two points:

Our religion is *sanathana dharma*. It is not made by man and has neither beginning nor end. It is an eternal religion, and man cannot interfere with it. Neither the principles nor the items of conduct laid down in that dharma can ever be changed. The Rishis who know the past, the present and the future made these laws and how could the principles enshrined in such laws ever be changed?

Mr. VENKATARAMA SASTRI read a text from the Smriti Chandrika to show that Dharma should be shaped anew from time to time in accordance with the changing conditions.

WITNESS: The basic principles ever remain the same, but they are susceptible of explanation in different ways in the different yugas. The fundamentals of the law can never change, but their detailed application may vary from one age to another. In the four seasons of the year, although we change our dress, there is no fundamental change in the manner of our dressing.

We shall never agree to a foreign King changing our religion or our laws which are based upon our religion. Even a Hindu King had no such right.

As regards marriage and divorce, the witness said that daughter once given in marriage cannot be taken back. If she becomes a widow, nobody can give her again in marriage. Nor is it possible to have any divorce.

After marriage, the daughter goes into another family and has no right to perform her father's shraddh and consequently she cannot be given any rights of inheritance. Giving the daughter a share might affect her chastity.

Dr. MITTER: How?

WITNESS: If the wife has a poor husband and she gets a good share of a rich father's property, she might begin to think that she had only a poor husband and her chastity might fall mentally, even though her body may remain unaffected. Again suppose a rich girl loses her husband and she is not properly protected the chances of her going astray are greater.

The Shastras permit a man to marry a second wife, if he has no male issue. Marriage is not for carnal pleasure, but for spiritual benefit.

Dr. MITTER: You are against divorce?

WITNESS: Yes, extremely so.

5. Pandit SUBODH CHANDRA LAHIRI of Benares was the next witness:

I am giving evidence on behalf of the Kashi Pandit Samaj. The draft Hindu Code assumes that Hindus will never attain freedom or ever be in a position to mould their own destiny. We have an ideal State in view and

we all aspire to attain it. This Code will hinder the attainment of our ideal state.

Dr. MITTER: Until that millennium is attained, what are we to do?

WITNESS: My point is that the Code will hinder the attainment of the millennium. It is a device to smash Hindu culture and idealism. It should not be passed into law.

Dr. MITTER: Nothing of the kind is being done deliberately.

WITNESS: I believe it is being deliberately done.

Dr. MITTER: We can assure you that there is not the least foundation for your belief.

Witness went on to say that when framing a Code they should keep in view the maintenance of varna and asrama.

Dr. MITTER: You are therefore against inter-caste and *sagotra* marriages.

WITNESS: Yes. The whole Hindu structure will crumble into pieces if such marriages became legal.

Dr. MITTER: What about the unification of the law throughout India? Does that ideal appeal to you?

WITNESS: No, I want both the Mitakshara and the Dayabhaga to remain in operation in the areas in which they are now in force. I do not see any necessity for unification, nor is it possible to achieve it. The same law has been interpreted differently by the different High Courts. How can there be any unification?

Mr. VENKATARAMA SASTRI: By enacting the Code, we are trying to remove those divergences which have crept in as a result of the different decisions.

WITNESS: It is not possible to do so, whether in this or in any other country.

Dr. MITTER: Suppose all people in all the Provinces agree to codification.

WITNESS: Our Hindu Law is already there. The interpretation of the Hindu Law has no doubt to change in accordance with the needs and exigencies of the changing times.

Dr. MITTER: You are opposed to the daughter being made a simultaneous heir.

WITNESS: I am. In the first place, there is no need to make the daughter a heir. There will be a great disruption in the family property if the daughter is given a share. There will be a strong inducement to loafers to entice our women who have no sufficient protection.

Mr. VENKATARAMA SASTRI: Would you like us to provide in the law that women should have no property? That is the logical result of your argument.

WITNESS: No, I do not propose to make any change in the *status quo*. I agree that so far as the parents are concerned, there is no difference between a son and a daughter and that both are equally entitled to receive their affection, but that does not mean that the daughter should be given a share in the property. For instance, the rule of primogeniture prevails in many countries but the younger sons are not the less beloved on that account.

Mr. VENKATARAMA SASTRI: Is it right to place the daughter-in-law above the daughter in the list of heirs?

WITNESS: Yes, because the daughter-in-law can always adopt a son who will become a grandson of the deceased.

Dr. MITTER: What about absolute estates for women?

WITNESS: The woman's limited estate has been of very great service to the community and it should, therefore, remain.

Dr. MITTER: Should it be maintained, although the Mitakshara says that women should have absolute rights?

WITNESS: The interpretation of the Mitakshara in that way seems to me to be erroneous.

The witness was against inter-caste marriages, and considered monogamy to be useless and unnecessary. Cases of polygamy were few. For the protection of society, polygamy should be allowed. Enforcement of monogamy might facilitate conversion to Islam.

Dr. MITTER: Are you in favour of widow remarriages?

WITNESS: No.

Dr. MITTER: You are opposed to divorce?

WITNESS: Yes, very strongly. It is against the basic principles of Hindu law.

5-A. BIBHUTI BHUSHAN NYAYA CHARYA and BANKIM CHANDRA BHATTACHARYA then gave evidence in Hindi on behalf of the KASHI PANDIT SAMAJ. They said:

We also belong to the Kashi Pandit Samaj on whose behalf Pandit Subodh Chandra Lahiri has just given evidence. We think that Buddhists, Sikhs and Jains should not be included in the definition of "Hindu". Converts should be disqualified from the inheritance.

There is no point in having two forms of marriage when you seek uniformity. Sacramental marriages alone should be provided for. In any case, there is no room for a civil marriage in a Hindu Code.

6. Pandit KESHAV MISRA, Secretary of the DUKH DARDH NIBARAN SANGH and editor of "Sri Vijaya" a Hindi bi-weekly, was the next witness:

My Sangh is 7 to 8 years old and there are 7 or 8 members. I am a Commissioner of the Allahabad Municipality and the Chairman of the Municipal Water-works Committee.

I object to the Code because it destroys the Hindu Samaj. I would like the existing system to continue. The Mitakshara may continue to be in force and woman need not be given an absolute estate. On the death of a widow, the estate should go to the reversioner.

Daughters should not have a right of inheritance along with sons. The Mitakshara should remain and there should be no provision for divorce. A rich girl who is divorced might embrace another religion and the property might be diverted from the Hindu community.

As regards adoption, the existing law may remain as it is. Widow marriages may continue to be valid.

7. Pandit Sri SADAYATAN PANDYA, Aharura, gave evidence next: I am a landlord. I am the president of the U. P. Dharma Sangh. I am also the Vice-President of the All-India Varnashrama Swarajya Sangh. I have been a member of the U.P. Legislature from 1926 to 1936. -I agree *in toto* with Mr. V. V. DESHPANDE in his views set out in his book on Dharma Shastra.

As regards the daughter's share, we object to the daughter being given a share as it will lead to fragmentation, quarrels between brothers and sisters and deterioration in the economic position of Hindus, particularly in Zamindaris. By virtue of the Caste Disabilities Act, if a daughter became a convert to Islam for purposes of marriage, her share will be entirely lost to the family. It will not be right to make the daughter who has no duties to discharge in regard to her father (sraddha, etc.) a simultaneous heir with the son who has such duties to discharge. Even where the daughter's share comes back into the family on her death (for example, where she dies unmarried as a *kanya*), the family will financially be very much the losers, if death duties are levied, as now contemplated by the Government of India.

In giving the daughter a share, the basic principle of sagotra succession is destroyed. I do not want any change to be made in the present law. [The witness explained that no harmful consequences had manifested themselves in the Muslim community as there paternal first cousins could marry and often did so.]

Monogamy should not be enforced. At any rate, polygamy should not be made penal. How would the Hindu community suffer if a man chose to have two wives?

Questioned by Mr. SASTRI, witness said that he had no objection to giving a superseded wife one-third of the property.

Mr. VENKATARAMA SASTRI: If in regard to any matter, the custom or usage is different from the Shastras, which would you follow?

WITNESS: I would not allow the custom or usage to prevail against the Shastras. There may, however, be certain exceptions.

Mr. VENKATARAMA SASTRI: Divorce is allowed in the texts of Narada and Parasara.

WITNESS: In other Smritis divorce is prohibited.

8. Sri GURULING SIVACHARYA was the next witness: I speak on behalf of the Jangamadi Mutt, Benares.

I have read the Code and I am against it, as it militates against the prosperity of Hindu society. The Matadhipatis and Dharmacharyas should be consulted before we make any changes in the Hindu law. The customs in the different parts of the country should be maintained. Customs, however, which are in conflict with the Smriti texts should be discarded. The Vedas and the Manu Smritis are acceptable. It is my personal view that the Tantrika will prevail over the Vedas. I object to unification of the law, because to

achieve uniformity you have to interfere with the established customs in different places. I would, therefore, maintain the *status quo*.

We object to inter-caste marriages.

As regards adoption, the limit of the age of the adopted boy should be removed. A male of any age should be capable of adoption. The only limitation which it is necessary to impose is that the adopted son should be younger than the adopter.

I do not want the Code. The people have not asked for it.

9. THE ALL-INDIA AGARWAL HINDU MAHASABHA, U.P., represented by BISHAMBARNATH SABHA, U.P., was the next witness.

Our community which consists both of Agarwal Jains and Agarwal Vaishnavas is five lakhs strong. We consider that there is no necessity for the Code and we do not approve of it. The present state of things must be maintained and the different schools of law should also remain as they are.

We do not want the law relating to succession and inheritance as laid down in the draft Code.

We are against the daughter being made an heir simultaneously with the son.

The right by birth and survivorship should be maintained. The Mitakshara joint family should not be further tampered with. The decisions have gone far enough in recognizing individual rights. We do not want the Deshmukh Act, but we cannot help it.

Our Sabha is against any system of divorce. Marriage is a sacrament and should not be interfered with.

There should be no sagotra marriages.

We have no objection to the provisions regarding adoption.

10. A representative of His Holiness the JAGADGURU SRI SANKARACHARYA then submitted a memorandum to the Committee on behalf of His Holiness. All the four Sankaracharyas were against the provisions of the draft Code. It is highly controversial and should not be passed into law.

[With the examination of this witness the Committee concluded their session at Allahabad.]

#### IV. PATNA.

Thursday, 22nd February 1945.

The Hindu Law Committee assembled at Patna in the Radhika Sinha Hall on Thursday, the 22nd February 1945, at 11-10 a.m. The following members were present:—

Dr. DWARKA NATH MITTER (In the Chair).

Principal J. R. GHARPURE.

Mr. T. R. VENKATARAMA SASTRI, C.I.E.

1. SRI SITARAMIYA BROJENDRA PRASAD, M.A., B.L., Retired Subordinate Judge, was the first witness:—

I was a Subordinate Judge in the Bihar Service and have now retired. I am an M.A. and a B.L. I am now the Director of the Sharada Institute at Bhatahar Chandi.

I do not like the Code. I feel that it is opposed to the basic principles of Hindu Law, and that it does not pay adequate regard to the spiritual considerations on which that law is founded.

I take exception to the definition of 'Hindu' as found in the Code. Buddhists, Jains, etc., should not be included within the scope of the definition.

Dr. MITTER: The definition is taken from decisions including some of the Privy Council. All persons whom you have named are now governed by the Hindu Law just like other Hindus.

WITNESS: You may then say that the Code applies to Buddhists, but the expression 'Hindu' need not be defined as including Buddhists, etc.

Principal GHARPURE: The expression 'Hindu' has to be defined as it occurs in a number of places in the draft Code, and we only recognize the existing state of things. It is, after all, only a matter of convenience in nomenclature, and no question of principle seems to be really involved.

Mr. VENKATARAMA SASTRI: The definition is for legal, and not for religious, purposes.

WITNESS: I would define 'Hindu' as meaning a person believing unconditionally in the Srutis, Smritis,

Murthi Pujas and Shradh, and you may, if you like, add the words 'who are now governed by the Hindu Law', to bring in Buddhists, etc.

MR. VENKATARAMA SASTRI: The definition in the Code covers the same ground as mentioned by you, and there really does not seem to be much of a difference.

WITNESS: I am not in favour of giving a share to a daughter, whether married or unmarried, simultaneously with the son. The expenses of marriage of the unmarried daughter should be borne by her father or other guardian.

MR. VENKATARAMA SASTRI: What about the texts of Manu and Yajnavalkya which provide for giving an one-fourth share to the daughter?

WITNESS: I prefer the unmarried daughter's marriage expenses being borne by the father, and am against giving her a share. It should be remembered in this connection that an one-fourth share may, in fact, be much less and that it will involve a proportionate liability to meet the family expenses and debts. I would, therefore, prefer to leave the law as it is. The father should not be absolved from the responsibility of celebrating his daughter's marriage.

As regards the absolute estate which the Code proposes to give to women, I find it difficult to make up my mind. Litigation based on the limited estate may come to an end, but other types of litigation may spring up in its stead.

MR. VENKATARAMA SASTRI: If the Privy Council's decision is in conflict with the Mitakshara, what would be your preference?

WITNESS: Undoubtedly, the Mitakshara should be followed. It must, of course, be truly interpreted. I am prepared to abide by the Mitakshara and will not press my objection to the absolute estate but I should like some safeguard to be added, to prevent the abuse of the absolute estate.

I am in entire agreement with making monogamy compulsory by legislation. One exception may however be made. When there is a genuine desire for a son for the sake of the spiritual benefit he would confer, a second marriage may be allowed. But even in such a case, I would allow the man only to marry one more wife. It may be provided that no man above 35 may marry a second wife. Again, if there is a daughter and a grandson by her, the man should not marry a second time. If the failure to produce a child is due to the man's fault, he should not be allowed to remarry. To be sure about this, I would provide for medical examination before the remarriage takes place.

MR. VENKATARAMA SASTRI: Instead of all this elaborate procedure, would it not be simpler, more acceptable and useful, to provide for monogamy absolutely?

WITNESS: Yes, I am inclined to agree. There is also the possibility of adoption.

I object to the provision for divorce. Even if there is unhappiness let the couple continue married; there is always the possibility of an agreement being reached between them later.

MR. VENKATARAMA SASTRI: Think of a woman whose husband has left her for a long time or who does not want her. Should not some provision be made to meet such a case?

WITNESS: A Hindu marriage is indissoluble.

If a woman is guilty of adultery, the husband may be allowed to marry a second wife. But the Court should be satisfied that the wife is really guilty, and that, therefore, the husband should be permitted to have a second wife.

I think inter-caste marriages should be prohibited by law. But where an inter-caste marriage is in accordance with custom, it may be recognized as valid.

Principal GHARPURE: Anuloma marriages are allowed by the texts. Would you alter the law as laid down in the texts? Supposing an anuloma marriage has already taken place, would you say it is invalid?

WITNESS: I object to anuloma marriages also, unless a prevailing custom validates such marriages.

As regards adoption, the *dattaka* may be the main form, but where custom allows other forms in other parts of the country (as in Mithila), those forms may be maintained in those parts.

I prefer the Bombay rule, viz., that a widow should be allowed to adopt in the absence of prohibition by the husband. I agree with the provision made in the Code

in this respect. It is right to make the Bombay rule applicable throughout the country.

Although I intensely dislike the reference to "concubine" in the Code, yet I feel that the system is due to the weakness of man. The innocent children resulting from the concubinage should not be penalized. They should have maintenance, and the concubine also, if she has been in the exclusive keeping of a person until his death, so long as she is faithful to his memory.

The Dayabagha is preferable to the Mitakshara. I would abolish the joint family system, the right by birth and the right of survivorship. I find that in Bihar, boys of rich families are indolent because they have a right by birth, whereas, in Bengal, the Dayabagha boys are active and enterprising as they acquire no right to the family property merely by birth.

As regards *stridhana*, I am emphatically of the view that the parents should not take the property of the daughter. After *kanyadana*, they have no right to their daughter's property. [But later, after some discussion, the witness modified his view and said that to the extent that the Smṛiti texts allowed a right of inheritance to the father or mother, they may be allowed to retain their existing rights.]

2. MR. AWATH BIHARI JHA was the next witness. He deposed as follows:—

I am an advocate of Patna and also a student of Sanskrit. I am very much opposed to the draft Code which introduces new law, and does not merely codify the existing law. It replaces the *Smṛiti* texts. The Code which you make should be entirely based on the ancient texts or Smṛitis and the decisions of the Courts. It should be an act of jurists, and solely of jurists; and the reformer should not have any hand in the matter. The Code should look back to the older sources, when clarification of the law becomes necessary in regard to any point. The present Code repeals all the older sources and is, therefore, objectionable. The Code takes extreme views on many matters and is against Sanatana Dharma. I do not think it possible to reconcile the Sanatana Dharma with the provisions in the Code. The vast majority of the people do not want the Code. They consider it to be an unwanted encroachment on their religion. The customs and manners of the vast masses of the population have been ignored and effect has been given to the wishes of a small number of advanced members of the community. If advanced people want a law for themselves, they might well have it; but to make their new fangled law applicable to the majority also, is in my judgment an intolerable encroachment.

MR. VENKATARAMA SASTRI: Therefore, you are against uniformity of law, for the sake of unifying the Hindus?

WITNESS: Uniformity is neither possible nor desirable. Our law is not a human law, but is derived from divine sources. It is eternal. This is a belief held by a very large majority of Hindus.

The Code seeks to abolish the *krītrima* and *Lartaputra* forms of adoption in Bihar. This is an instance of unwanted encroachment on existing institutions, for which there is no demand whatever.

The State should not interfere with personal laws. The mere fact that it has done so in the past, will not warrant a fresh interference or encroachment. A change brought about by natural social evolution in course of time is different from hastening the pace and altering the law by a deliberate act of legislation.

Again, the Code will be in the English language which is incapable of conveying all the connotations of Sanskrit expressions.

So much for general objections. I proceed to mention some specific objections to the Code.

*Marriage*: I would prefer the provisions of the Special Marriage Act to continue as they are. I am indifferent as to what changes are proposed in the law applicable to persons who want to contract civil marriages. I agree that the Hindu fold must include them and I will not drive them out of it. As regards the details of the law applicable to them, I am indifferent. I have no objection to the changes suggested by the Committee.

In Mithila, marriages taking place within prohibited degrees, owing to mistake or ignorance as to the relationship, are treated as valid if they are consummated. I do

not know whether the same rule is applied in Mithila to Sagotra marriages.

I do not, however, consider that the doctrine of *factum valet* could possibly be extended to inter-varna inter-caste marriages.

Speaking for myself, I am all for monogamy. But in deference to Hindu sentiment, I would allow a second marriage where a man is sonless for a specific period. If the man has not attained a particular age, say 35, if the woman has attained a particular age, say 30, if no child has been born of the marriage, and if this failure is not due to the fault of the man, remarriage may be allowed. I am clear that if there is a daughter of the marriage, there should be no liberty to marry again.

Remarriage of women has not been allowed by any text. Divorce is unknown to the Hindu Law in the sense in which that expression is now understood. Both Narada's text and Manu's refer to the case of women whose marriages have not been consummated. Nandana's interpretation of Manu's text to the contrary cannot be accepted. He goes beyond Medatithi. Besides, even Niyoga is condemned by Manu. The second husband referred to by Narada refers to the Niyoga connection. The true meaning of the texts is that once a maiden has been deflowered, she is incapable of marriage.

There is no text authorising divorce in the case of approved marriages. Divorce is provided only for unapproved marriages.

Apart from the Shastras, a provision for divorce will not in my opinion be desirable. It may be allowed to be evolved by custom and may perhaps be enacted for particular classes. In any case, I do not want divorce in the case of sacramental marriages.

As regards the grounds for divorce provided for in the Code, I object to grounds (a) (insanity), (b) (leprosy) and (c) (venereal disease).

I object to the principle of the daughter's simultaneous heirship with the son. The Smritis, no doubt, provide for a one-fourth share to an unmarried daughter, but this provision was intended only to meet her marriage expenses. It would, therefore, be sufficient to provide for the marriage expenses of the unmarried daughter and no share need be given to her.

I am opposed to the principle of absolute estate for women.

I am for the right by birth and the principle of survivorship, and wish the Mitakshara to continue.

3. Mr. PANCH RATAN LAL, President, Hindu Committee, Sheghati, Gaya District, then gave evidence in Hindi :

We have more than one thousand members on our rolls. We have only one branch. We do not like the Code and do not approve of it.

Our views briefly stated are as follows :—

- (1) A daughter should not get a share along with the son.
- (2) Inter-caste marriages should not be validated.
- (3) There should be no provision for divorce.
- (4) An adoption should not be allowed without the husband's express authority.
- (5) If a man has a male child, monogamy may be insisted upon. Where there is no child or only a female child, the man should have liberty to marry again.
- (6) The Mitakshara and the principle of survivorship and the right by birth should be maintained.
- (7) The limited estate of a widow should also be maintained, and women should not be given an absolute estate.

4. NAVAL KISHORE PRASAD (No. II), Advocate, Patna High Court, was the next witness :

I am a senior Advocate of the Patna High Court, of 27 years' standing, having been enrolled in 1918. The Code is not entirely acceptable. Some provisions are too revolutionary.

I do not like either the provision for divorce or that for the simultaneous heirship of the daughter with the son. The introduction into the family of a son-in-law, who is a stranger, will cause disputes. Primogeniture, if it could only be adopted, would be very desirable as it will prevent disruption of the family property, but I fear that it is an ideal which can never be realized in practice.

I agree to an absolute estate being conferred on women, as much litigation will be prevented thereby.

I am for strict monogamy, but I am not in favour of divorce. I do not see much need for a second wife for begetting a son; a son can always be adopted. If, contrary to my view, a husband is permitted to take a second wife, he should allow the superseded wife one-third of the family property in accordance with the ancient texts.

I do admit that hard cases will arise if the right of divorce is denied altogether, but still I do not like the idea of making divorce a part of Hindu Law.

I prefer the Mitakshara law to the Dayabagha. The latter will lead to alienations of the family property.

I approve of the Bombay rule of adoption. The widow should have absolute freedom in the matter unless the husband has expressly prevented her from adopting. The Committee then rose for the day.

Friday, 23rd February 1945.

The Committee resumed their sittings on Friday, the 23rd February 1945, at the Radhika Sinha Hall at 11-20 a.m. The following Members were present :

Dr. DWARKA NATH MITTER (In the Chair).

Principal J. R. GHARPURE.

Mr. T. R. VENKATARAMA SASTRI, C.I.E.

1. The first witness for the day was Sri AWAD BEHARI SARAN, Government Pleader, Shahabad. He said :

I am the Government Pleader of Shahabad. I have been practising for nearly 30 years. I was enrolled as a High Court Pleader in 1922.

I do not approve of the Draft Hindu Code. I do not object to any codification which is merely declaratory of the existing law, and have, therefore, no objection to many of the provisions contained in the draft Code prepared by the Committee as they are merely confirmatory or declaratory of the existing law. But I want the different schools of law which are in force in different parts of the country to remain and to be faithfully reflected in the Code.

Principal GHARPURE: Are you satisfied with the present Hindu Law in every respect? Are there not cases or instances in the existing law which do not meet with your approval?

WITNESS: So far as judicial decisions are concerned, if they are unsatisfactory in the sense of being against the spirit or genius of the Hindu Law, I concede that the law as declared by the decisions should be changed by legislation. Where, however, the decisions have stood for a very long time without evoking much of protest, they should be treated as "*sadachara*" (custom and usage) and given effect to as such. In other words, I am for giving effect to the principle of *stare decisis* as far as possible.

I am against making the daughter a simultaneous heir with the son. I would not give a share even to an unmarried daughter. The property should go to a person who is capable of conferring spiritual benefit on the deceased.

Principal GHARPURE: Yajnavalkya's text expressly gives the unmarried daughter a one-fourth share. What do you say to that?

WITNESS: The share referred to by Yajnavalkya is merely in lieu of maintenance and marriage expenses.

After some discussion, the witness agreed that a one-fourth share may be given to the unmarried daughter for a limited period.

Mr. VENKATARAMA SASTRI: If she expends only a small portion out of her share for marriage, should the balance belong to her or should it come back to the family? Can she not save from her share and retain what is saved for herself?

WITNESS: Ordinarily, what is saved ought to come back to the family.

Mr. VENKATARAMA SASTRI: If the daughter is given jewels and the like, she can take it into another family, but when she gets properties or moneys comprised in her share, she cannot do so. Does that not strike you as being anomalous?

WITNESS: I do not want the Bombay rule by which the daughter gets her share absolutely.

Mr. VENKATARAMA SASTRI: The texts say that a share should be 'given' but you put a gloss on it, viz., that it must come back to the family if it has not been spent. Can that possibly be the intention of the Smriti writer?

The witness was opposed to the daughter and the son inheriting simultaneously, as it would lead to fragmentation of property.

Principal GHARPURE: What about the 1937 Act?

WITNESS: I would retain that Act, since it is already on the Statute Book.

Dr. MITTER: According to the Mitakshara, all property acquired by a woman is her 'stridhan' in the technical sense. What do you say to that? Do you agree?

WITNESS: No; I would give only a limited estate to women inheriting properties.

I am not in favour of monogamy, nor am I in favour of unrestricted polygamy. I think the right to marry a second wife should be exercised only in proper cases. For instance, a man may marry a second wife if the first wife is barren or suffers from some chronic illness incapacitating her for conjugal duties. I am thus for monogamy, but with some necessary exceptions.

Mr. VENKATARAMA SASTRI: How are we to know whether the childlessness is due to a defect in the man or in the woman?

WITNESS: That is a difficult matter. I, however, feel that this is not a proper subject for legislative compulsion. You cannot enact a restriction like this as a law.

I am not in favour of divorce or dissolution of marriage in any case. Whether you provide for monogamy or not, there should be no divorce.

Dr. MITTER: What would you suggest in cases where the husband behaves with great cruelty towards the wife?

WITNESS: In such cases, I would provide for a judicial separation between the parties, the husband being made responsible for making adequate provision for his wife's separate residence and maintenance. In the case also where the husband is suffering from a disease like leprosy, etc., I would follow the same rule.

There is no question of a Hindu wife ever obtaining a release from the marriage tie; for the union is not only for this world, but also for the next.

If any change is to be made in the law, it should be as a result of natural evolutionary processes. There should be a steady growth in public sentiment and changes should not be effected by a sudden legislative process, which can fairly be described as revolutionary in character. I object most strongly to any enactment being placed on the Statute Book, giving a right of divorce to the wife.

As regards adoption, I am not in favour of the Bombay rule. I do not want the present law to be changed in any way.

Mr. VENKATARAMA SASTRI: What do you think of the Madras rule which permits widows to adopt where the nearest sapindas give their consent?

WITNESS: I agree with it. It does not seem to me to be open to any objection. Yes, I would prefer the Madras rule. What I am opposed to is to leave the matter entirely to the discretion of the widow, as the Bombay rule does.

I am against a widow inheriting to her husband's collaterals, as in Bombay.

2. Mr. G. P. DAS, Government Pleader and Public Prosecutor, Orissa, in the Patna High Court was the next witness: I have been practising for 27 years and am now the Government Pleader and Public Prosecutor for Orissa.

I have not given any statement of my views in writing. I have read the Code carefully. I am generally against the codification of the Hindu Law. The present time is, in my opinion, not suitable for the purpose. Again, the present Legislature has become unrepresentative. No person who is not a Hindu should vote on a measure of this kind.

There is no great need for the Code. The *smritis*, the *samhitās* and the decisions of the Courts are sufficient for the settlement of any dispute which may arise. Even where a decision is clearly in conflict with the *smritis* the existing judicial system requires that the decision should prevail. I will not make any change in this. I will give effect to the principle of *stare decisis* as far as possible. There is no necessity for the introduction of fundamental changes in the existing law. Disputes and litigation mostly relate to land and agricultural land is

to be excluded from the purview of the legislation. It seems to me, therefore, that no advantage will be gained by codifying the law.

I am against the simultaneous heirship of the daughter and son. Even where the daughter is unmarried, I would not give her a share. So far as the Deshmukh Act is concerned, I would leave it alone, as it is a *fait accompli*.

I am not in favour of giving an absolute estate to women. If women get property, they are likely to be more extravagant and the property is likely to be lost to the family. A woman is only too apt to be duped by her father, brothers or other designing male relatives.

I am opposed to the abolition of the right by birth and survivorship. The existing Mitakshara law should continue to be in force.

As regards monogamy, it may be the rule if there is issue of the marriage. Where, however, there is no child and this is not due to any defect in the man, I would allow the man to marry again, for the purpose of procreating a son. Even if there is a daughter, the man should not marry again, but I would not enforce this restriction by a law.

I am opposed to inter-caste marriages. I am also opposed to *sagotra* and *saprarava* marriages. The limits of *sapinda* relationship may be fixed at seven and five degrees, as proposed in the draft Code.

I am opposed to divorce generally. In case of long and continued abandonment by, or absence of, the husband, the woman may be permitted to remarry. For a deserted woman, maintenance alone will be insufficient. She should have the right to apply for divorce. The period of seven years proposed in the Code seems to be suitable.

I agree that the same principle should be applied where the woman has deserted her husband.

As regards adoption, I am in favour of the Bombay rule, viz., that absence of prohibition by the husband should be construed as implying his consent to the widow taking a boy in adoption, if she so desires.

I am clear in my mind that the Hindu majority in a properly constituted and representative Assembly (which the present House is not) should decide the issue, viz., whether the Code should become law or not. If a majority of the Hindus in such an Assembly want the Code, their will must undoubtedly prevail, and we should willy nilly reconcile ourselves to the enactment of this legislation.

Dr. MITTER: So, according to you, if there is no majority for the Code, it should be dropped?

WITNESS: Yes. The point is that the present Assembly is an out-worn body which has no pretence whatever to a representative character and the issues raised by the Code should not be left to their arbitrament.

3. The next witness was Mr. NITAI CHANDRA GHOSH, Advocate, Patna, who deposed as follows: I am an advocate of the Patna High Court of 27 years' standing. Generally speaking, the existing law is quite sufficient for the needs of Hindu society. All the laws that are required for the regulation of society are found in the present Hindu Law. Besides, in my opinion, a uniform law for all provinces is not possible of achievement. I have also some specific points to raise—

(i) I am against divorce. A Hindu marriage is a sacrament and the union is indissoluble. A woman can be married only once, and consequently there is no room for her obtaining a divorce. I admit that divorce obtains by way of custom among some of the lower classes. I do not want that such customs should be interfered with in any way. If women are anxious to have the right of divorcing their husbands, they may marry in the civil form. They would then have their remedy.

(ii) Inter-caste marriages should not be permitted. If the doctrine of *factum valet* is to be applied in the case of such marriages also, no restriction whatsoever would be placed on them, and such marriages would become quite common. This would be unfortunate. I think that such marriages should be declared invalid.

(iii) As regards absolute estate for women, I think that the daughter, if she is the sole heir, may take the property absolutely. Where, however, she is likely to beget a son, she should have only a life estate. A widowed daughter who inherits in the absence of a son may take the property absolutely.

(iv) I am against the simultaneous heirship of the son and the daughter. The unmarried daughter should be provided with her marriage expenses and should not get anything more. Even if she does not propose to marry, she should get no share of the family property.

(v) I am against *sagotra* marriages.

(vi) I want monogamy to be enforced without any exception.

4. Mr. RAI TRIBHAVAN NATH SAHAI, Advocate, representing the Central Bihar Association, was the next witness.

The Central Bihar Association was started in 1937. It has 70 or 80 members. There are 14 or 15 branches in Bihar. The object of the Association is to protect the rights of Biharis in Bihar, to secure them a fair share of Government appointments, and to prevent their exploitation by outsiders from other provinces.

I am an advocate of 31 years' standing.

There is no need to codify the Hindu Law. Besides, the proposed Code is defective in many respects and it is not acceptable to the general public of this Province. I am against unification of the law because it is not possible. The different interpretations adopted in the different Provinces may remain as they are. All the schools cannot be made into one. The same text might have received different interpretations in the different provinces, but I see no need for disturbing those differences which have stood for a very long time.

I should have no objection to the Hindu Law being codified by a truly representative legislature. An election should be held on this issue.

I am for the right by birth and for the preservation of the right of survivorship.

The daughter should not inherit simultaneously with the son. Not even the unmarried daughter should have a right of inheritance along with the son.

Our most serious objection is to the provision for divorce.

The population of this Province, according to the last census, is 37.9 millions, out of this, 4.5 millions are Muslims and Christians constitute a million. Out of the remaining population, viz., 32.2 millions, 4 millions or one-eighth belong to higher or twice-born castes. Among the remaining 28.2 millions, the marriage tie sits very loosely. Among the lower classes in Bihar, there is a valid custom under which marriages can be dissolved. A woman belonging to the lower strata may marry as frequently as she wishes during the lifetime of her first husband. I have known a case where a woman married successively five times. There is no need for legislation so far as these classes of people are concerned.

Among the twice-born castes, I would allow divorce in extreme cases. I accept clauses (c), (d) and (e) of the divorce clause (clause 30 of Part IV), but not clauses (a) and (b). Divorce may also be provided for in cases of cruelty involving risk to life. My Association will agree to this.

I am against enforcing monogamy by statute, and I reflect the views of the Association in this regard.

I am against *sagotra*, *saprarava* and *sapinda* marriages.

I am opposed to granting an absolute estate to women and I think that the existing law should stand. So far as my experience goes, no woman has kept her property intact throughout her life. She is so liable to be duped.

5. Mr. KAPILDEO NARAIN LAL, Advocate, was the next witness.

I am an advocate of over 18 years' standing, and am now 44 years of age. I am the Vice-President of the Hindu Sabha.

I am opposed to codification on principle and also to certain of the provisions found in the draft Code as framed by the Committee.

The Hindu Law is of divine origin. It does not proceed from the sovereign power, though it binds the sovereign, it is in the sacred Sanskrit language. I oppose codification on the ground of sentiment. Our ancient law which has survived the attacks of many foreign civilizations will vanish *in toto* if it is reduced to the form of an ordinary legislative statute, for it will then be liable to be repealed, altered or varied with each passing gust of popular feeling. There is no necessity for a Code like this. The judicial decisions have sufficiently interpreted the law, and, for the most part, correctly. If the decision of the Privy

Council, in a particular case, is against Hindu sentiment, I agree that a legislative enactment altering the law as so interpreted will be justified. In other words, I would be satisfied with piecemeal legislation on specific points as and when the need arises.

The present Legislature does not represent the masses and the Code should not be introduced in it.

The Hindu Law is inseparably connected with religion and should not be tampered with lightly. I would refer to Queen Victoria's Proclamation in this connexion.

It is not desirable to have a uniform law for all provinces, even if it be possible.

As regards monogamy, I agree to the provisions of the Code, subject to certain exceptions. If the man has attained 40 years of age and there is no issue of the marriage and the want of issue is due to a defect in the woman, he should have a right to marry a second wife. If, however, the defect is in the man, he should have no right to remarry. I would insist on medical examination to make sure about this matter. I would also provide for the consent of the wife being taken for the second marriage.

I am against making the daughter, whether married or unmarried, a simultaneous heir with the son. This is repugnant to Hindu sentiment, will lead to fragmentation of property, and will ultimately result in the disruption of many families.

For much the same reasons, I am also against giving an absolute estate to women.

The right by birth and the right of survivorship should both be retained. No encouragement should be given to spendthrift fathers by repealing these rights.

I am entirely against divorce. It is most repugnant to Hindu sentiment. The saving of customs will satisfy the lower classes.

6. Mr. MANMATHA NATH PAL, Advocate, then gave evidence.

I am now an advocate of the Patna High Court, having practised first at Calcutta for some years from 1912. I have studied the Hindu Law in its original sources with Pandits. Codification of the Hindu Law is opposed to the present constitution. Laws governing succession and marriage, etc., are personal laws, and an assurance was given by Parliament in 1772 and renewed from time to time, that 'Gentooes,' as the Hindus were described in the ancient statutes, would continue to be governed by their personal laws. I would also refer to Queen's Proclamation of 1858 in this connexion. I doubt whether the Constitution Act of 1935 permits of the codification of the Hindu Law. I do not know whether a personal law like the Hindu Law can be codified at all.

It will be difficult to alter the law in a manner which is against the true genius of Hindu Law. Before Jimutavahana's time, Halayudha, the Prime Minister of Ballala Sen, tried to give women an absolute estate, but the attempt did not succeed.

I am not against codification on principle, but I would codify without seeking uniformity, allowing the different schools of law to remain and operate as at present. The Code should, however, be in the Sanskrit language and not in English. That will keep alive our culture. The Sanskrit Code should be translated into the various Indian languages.

I am against making monogamy a rule of law.

I am strongly opposed to divorce in any form. The 'Nashte Mrite' text applies only to the three unapproved forms of marriage and not to the five approved forms. The texts usually cited as sanctioning divorce should be regarded as containing a reference only to the practice of *niyoga*. [Reference was made in the course of discussion with the members to the following: Asahaya's commentary on Narada, Joshi's Edition, Dharma Kosha, Vivaha portion, Fort 1100; Narada, Chapter XII, Verses 96, 35 and 97; Kamalakara's Kalpataru, Vivada Ratnakara (Mandlik's Text, page 447); Jagannatha's Digest (Colebrooke's translation), Volume II, page 165, Book IV, Chapter IV, Section II; Medatithi, Dr. Jolly's Narada (Sacred Books of the East, 97-101); Samskara Prakash of Mitra Misra, recently published in Chowkhamba series, Raghunandana, and Gautama's text.]

I am opposed to *asavarna* or inter-caste marriages, and also to *sagotra*, *saprarava* and *sapinda* marriages. The *sapinda* relationship may extend to seven degrees on the father's side and five degrees on the mother's.

I would retain the Mitakshara principles of right by birth and survivorship.

The provisions in the draft Code as regards adoption are excellent and I have no objection to them.

As regards absolute estate for women, Golap Chandra Sarkar considers the Privy Council view to be incorrect. The Smriti Chandrika, however, differs from the Mitakshara on this point and I prefer the Smriti Chandrika view.

7. SATISH CHANDRA MISRA, Advocate, the next witness, said: I was a professor of history for ten years in a college and have been practising at the bar as an advocate for the last two and a half years.

I feel that codification of the Hindu Law is unnecessary, not that the achievement of unification is impossible, but that, in my opinion, it is unnecessary.

I am opposed to legislation for monogamy. It is a matter which should be left to Hindu society to take care of.

On sociological grounds and as a modernist, I am opposed to divorce. It will do more harm than good. Statistics from America and other European countries, so far as I have studied them, seem to me to show this. Genuine hardship will result in very few cases. What takes people to the divorce court in the West is the sex attraction for a different man or woman. This is a demoralizing and disruptive influence. For God's sake, do not introduce it into our society. I feel that the domestic life of many Europeans is not a happy one, and we should not seek to reproduce the same conditions in this country. It will only lead to much misery.

I am for maintaining the *sagotra* and the *saprawara* restrictions up to seven degrees: beyond those degrees, I would permit a valid marriage.

As regards the limits of sapinda relationship, I would not make any change in the provisions found in the Code.

I am in favour of inter-caste and inter-sub-caste marriages.

I am opposed to the simultaneous heirship of the daughter with the son. The unmarried daughter, and the married but indigent daughter, should both be provided with maintenance on a liberal scale. I would not, however, give anything as a share to any daughter.

The Mitakshara Law should remain as regards right by birth and survivorship. I am against women getting an absolute right, although the Mitakshara may be regarded as giving them such a right.

As regards adoption, the provisions in the Code do not seem to me to make any material differences. The *kritrima* form of adoption is like the Jain form and may be maintained.

8. Mr. KRISHNA DEVA PRASAD then gave evidence on behalf of the Patna District Bar Association. He was supported by other members of the Association.

We are against codification and consider that uniformity in the law is not desirable. The existing law with its different schools should be preserved. If you wish, a plebiscite may be taken in the country on the proposals contained in the Code.

We are opposed to divorce. We consider that to legislate in favour of monogamy would be an insult to the community which is quite competent to look after itself. Polygamy is a very rare thing. We are against inter-caste marriages, but in favour of *sagotra* marriages if the bride and bridegroom are separated by more than seven degrees. The limits of sapinda relationship as laid down in the draft Code—seven degrees on the father's side and five on the mother's—should remain.

We want that the law of the Mitakshara should be maintained. We are not in favour of an absolute right being given to women.

In regard to adoption, we are not in favour of making any changes, and do not consider that the Bombay law is suitable to all provinces. The *kritrima* form of adoption which now prevails in Bihar should be maintained. We, however, feel considerable doubt as to the correctness of the decisions of the Privy Council on many matters.

9. Messrs. CHANDRASEKHAR PRASAD SINHA and ATULENDU GUPTA, Pleaders, appearing on behalf of the *Dinanur Bar Association*, were the last witnesses for the day.

The majority of the members of our Association are in favour of codification. A minority is opposed to it. The

voting was close, 13 being for, and 12 against. The majority favour codification on the ground that the law will then be available in a simple and handy form.

The majority wish the Mitakshara Law to prevail, that is, that the right by birth and the right of survivorship should remain, the voting in regard to this matter being 18 for, and 7 against.

The validation of inter-caste marriages was supported by an overwhelming majority, all but 2 being in favour.

The majority (15) are against divorce, but a minority (10) are in favour of it and wish that cruelty should also be a ground for divorce.

The Association is in favour of monogamy and the absolute estate for women, but against giving the daughter a right of succession simultaneously with the brother, on the ground that the father, if he so desires, could make gifts or donations in favour of the daughter.

Saturday, 24th February 1945.

The Committee resumed their sittings in the Radhika Sinha Hall on Saturday, the 24th February 1945, at 11-20 a.m.

The following members were present:—

Dr. DWARKA NATH MITTER (in the chair).

Principal J. R. GHARPURE.

Mr. T. R. VENKATARAMA SASTRI, C.I.E.

1. The following witnesses, representing the Provincial Hindu Mahasabha, were examined first:—

1. Rai Sahib Sri NARAIN ARORA.

2. Mr. NAWAL KISHORE PRASAD No. 1.

3. Rajah Sir RAGHUNANDAN PRASAD SINGH of Monghyr.

4. Rai Bahadur SHAMNANDAN SAHAY, C.I.E.

5. Dr. M. P. TRIPATHI.

6. Mr. LAKSHMI KANTH JHA, Advocate.

7. Mr. J. P. JHARUAR.

8. MAHANTA JNAN PRAKASH of Ranchi.

9. Pandit GANESH SHARMA.

10. Mr. ADITYA NARAIN LAL.

11. Mr. HARI SHANKER CHOWDHRY from Darbhanga.

They gave evidence as follows:

We are opposed to the codification of the Hindu Law. If the law is codified, its growth will be automatically arrested, because recourse will no longer be necessary to the original Sanskrit sources.

Our belief is that the Hindu Law is of divine origin. It is not a king-made law. If there is codification, we shall be governed by a king-made law and cease to be governed by divine law.

Again, our social life is intimately connected with the Hindu Law of property and any alteration of that law involves an interference with our social life and institutions and has to be deprecated. In the long run, the effect of codification will be that we will forget our ancient civilization and our culture will be adversely affected.

In spite of many inroads during the Muhammadan period, we were left to our personal law as propounded by our great commentators. Our British rulers also have given us solemn assurances that our personal law will not be touched in the great Proclamation of Queen Victoria.

The principal object of the draft Code is unification of the law throughout India. We submit that this unification is not possible because we can only unify the law in British India, and the Indian States will have to be left out.

Again, the five schools of law which prevail in different parts of the country cannot well be unified. The growth of the different schools of law is due to differences in local customs, which have arisen by imperceptible changes and growth. Custom, whenever it is in derogation of law, should be respected, provided it is not unreasonable in character. In the matter of adoption, for instance, we would leave the existing differences in the schools of law as they are; in particular, the special customs of Bihar in regard to adoption should, we think, be respected and preserved.

Mr. VENKATARAMA SASTRI: Is it not possible to decide which customs should be preserved and which should not be made a fetish of?

WITNESS: We cannot possibly catalogue what customs should be preserved. Our point is that all customs which are not repugnant to good morals should be preserved.



Mr. VENKATARAMA SAS TRI : You suggest that existing customs should be preserved. Do you also intend to suggest that room should be left for future customs to develop ?

WITNESS : We would preserve all existing customs. It is impossible to codify all of them. We cannot say anything now about future customs.

We are opposed to simultaneous heirship of the daughter with the son. We are also opposed to giving an absolute estate to woman. If you provide for succession as proposed, the daughter will get shares both from her father and from her husband. In the case of 'stridhan', she gets twice the share of her brother. Thus, simultaneous succession will give the daughter an unfair advantage over her brother.

We do not object to the 'Deshmukh' Act, as under that Act the property reverts to the family after the death of the widow.

Where the daughter is the sole heir, she will be the nearest surviving relation and there is no objection to her taking the property. But the case is different when there are brothers.

In the case of the unmarried daughter, we suggest that provision should be made for her marriage expenses. If she does not marry, she must get maintenance. We do not wish to give even the unmarried daughter a share.

Dr. MITTER : The clause giving absolute right to women is in accordance with the Mitakshara. Do you agree to it ?

WITNESS : No, we prefer the Hindu Law as interpreted by the Privy Council to the Mitakshara.

So far as property acquired by inheritance or partition is concerned, we think that women should not have an absolute right. The practical application of the existing law regarding limited estates has shown that it is advantageous and that its effect on society is good.

We admit the right of women to alienate 'stridhana' in the technical sense, i.e., property inherited from her mother, etc.

As regards monogamy, we are not opposed to it, but in some exceptional cases, provision should be made for a second marriage. For example, where the wife is barren or gives birth only to female children. A man who has attained the age of, say, 35 years without begetting a son should, we think, be allowed to marry again until he reaches 45. It should also be a condition that the wife should have attained the age of 30 years. There may be medical examination, if necessary, in the case of barrenness. Summing up, the witnesses said that they were not in favour of monogamy being made a rule of law and that society will work the matter out.

As regards inter-caste marriages, the Sabha held the view that only such inter-caste marriages should be allowed as were permitted by Manu, viz., *anuloma* and the children begotten of such a union should be given only such rights as the Shastras laid down. The personal opinion of Mr. L. K. JHA and Mr. N. K. PRASAD was that all inter-caste marriages should be held valid and the children of such marriages should be declared legitimate.

With regard to *pratiloma* marriages the view of the Sabha was that such marriages should not be allowed to take place. Here also the opinion of Messrs. Jha and Prasad was that such marriages should be recognized as valid.

The considered opinion of the Sabha was against divorce and they would not give relief even in cases of gross desertion. They were, however, in favour of allowing the customary rights of divorce to continue, for example in the case of *sagai* marriages.

Dr. MITTER : There is one text ("Nashte Mrite") which is very much canvassed. What is your view of it ?

WITNESS : Our view is that 'Kanyadhan' can take place only once. The text refers to marriages which were not performed according to Vedic rites because, even according to Narada, there can be only one dhan (Chapter XII, pages 95-97). (On the suggestion of Mr. VENKATARAMA SAS TRI, the witness promised to give a reasoned note in writing on the subject.)

With regard to right by birth and survivorship, the Mitakshara system should be maintained. If uniformity was a desideratum, the law of the Dayabagha may be changed.

Adoption should be with the express permission of the husband, as under the existing law. The *kritrima* form

of adoption should also remain. In other words, the *Mithila* law should stand as it is at the present day.

The Committee then adjourned for lunch.

2. Resuming after lunch, the Committee examined Dr. M. P. TRIPATHI, General Secretary of the Bihar Provincial Hindu Sabha. He said :

I have already submitted a printed memorandum on behalf of my Sabha. The evidence I am going to give now is based on information received by me. I have received a large number of letters from all over the Province, enquiring whether there is not some political motive behind the attempt to codify the Hindu Law

Dr. MITTER : You may take it from me that there is absolutely no political motive.

WITNESS : This is not an opportune moment to attempt to codify the law. The whole world is struggling for existence and India is in the grip of starvation and disease. If this measure becomes law, I fear that there will be an upheaval in the country.

If sufficient time had been given, a mass of evidence could have been produced and we could have carried conviction to the Committee.

3. Messrs D. P. TIWARI, D. P. JHUNJHUNWALA and R. C. MISRA representing the Bihar Pranthiya Sanathan Dharam Sabha appeared before the Committee next, and associated themselves with the views expressed earlier in the day on behalf of the Provincial Hindu Mahasabha. Mr. L. K. JHA, who was one of the representatives of the Mahasabha, was also the President of the Sanathan Dharam Sabha. There was only one point on which they differed. The Dharam Sabha was against both *pratiloma* and *anuloma* marriages. The Sabha was also against *sagotra* marriages.

4. Mr. NAVADWIP CHANDRA GHOSH, Advocate of the Patna High Court, then gave evidence on behalf of the All-India Yadav Mahasabha. He said :

I am an advocate of 19 years' standing. I represent the All-India Yadav Mahasabha. The Yadav Mahasabha has its organization throughout India. There are 12 provincial branches which are distinct sabhas, and there are also 50 district sabhas. The total Yadav population in India is 14.3 millions, and there are about 4 millions in Bihar.

I am an ex-President of the Mahasabha. Rao Sahib SUCHIT SINGH of Delhi is the present President.

The Sabha is not in favour of codification of the Hindu Law. We are very much against it. We believe that the Hindu Law is of divine origin and that the law of the Rishis should not be tampered with. We prefer to have our Hindu Law straight from the Rishis. Let the system of different interpretations continue to prevail as at present.

I have, however, no objection to a Code which merely declares the existing law prevailing in the different parts of the country.

Mr. VENKATARAMA SAS TRI : Do you consider that the law in each of the different schools is Rishi made law ?

WITNESS : Yes. The different interpretations may continue.

Dr. MITTER : From the same texts, the Mitakshara and the Dayabagha have drawn diametrically opposite conclusions with regard to sons' right in ancestral property by birth. Do you want that this distinction should be kept up ?

WITNESS : Yes.

Mr. VENKATARAMA SAS TRI : Do you think that the original texts could possibly have intended both the meanings ?

WITNESS : I am against any change in the present law.

Our Sabha is against Divorce. It is also against monogamy ; against simultaneous heirship of daughter and son ; and against an absolute right for women.

We are not in favour of disturbing the position assigned to the widow by the Deshmukh Act.

In the absence of prohibition by the husband the widow may have power to adopt.

We are in favour of the Mitakshara ; right by birth and survivorship should remain. The view-point of my Mahasabha is that both the Schools of Law, the Mitakshara and the Dayabagha, should remain in their respective areas.

We are in favour of *anuloma*, but not of *pratiloma* marriages. Where however, a *pratiloma* marriage has taken place, we are in favour of applying the *factum valet* doctrine to the marriage.

I am against *sapinda* marriages and would maintain the limit of seven and five degrees as at present.

5. Mr. HARI NANDAN SINGH, M.L.A., Advocate, was the next witness.

I am an advocate of the Patna High Court of 16 years' standing. I was elected to the Provincial Assembly on the Congress ticket by the North East Shahabad constituency. The fate of the Draft Code will ultimately depend upon the views of the Provincial Legislatures inasmuch as the bulk of property in India, viz., agricultural land—is outside the scope of the present proposals.

I am against codification at the present time, which is most inopportune for the purpose. The existing law has worked, not unsatisfactorily, for many years.

Principal GHARPURE: You are completely satisfied with the present working of the Hindu Law?

WITNESS: Yes.

In 1833, 1855, 1861 and 1921, the question of codifying Hindu Law was considered, but on each occasion it was dropped. The proposal on each of the three earlier occasions was to codify both the Hindu and the Muslim Laws. The report of the Law Commissioners was that codification would restrict the growth of the laws. Dr. GOUR, some years ago, urged that the Hindu Law should be codified, but the Government of the day took the view that codification would arrest growth and were, therefore, against the proposal.

In view of the above history of the case, the present move for codification is rather suspect in the eyes of the public.

Dr. MITTER: I may give you the same assurance as I have given to other witnesses, that there is absolutely no political motive behind the present proposals.

WITNESS: I am not referring to the Committee at all. I have nothing whatever to say against the members of the Committee for whom I have the highest regard. It is the Government of India, as at present constituted, who are suspect.

Legislation, must meet the particular needs of the public at particular times. No general codification seems called for.

I am against giving a share to the daughter. Notwithstanding the Mitakshara definition of "*stridhana*", I am against giving an absolute estate to women, and would like the existing law to continue in this regard.

I prefer the Privy Council decision to the Mitakshara view. Right by birth and survivorship should both remain. The Code refers to rights, and does not mention anything about obligations. In fact, no Code can cover all obligations.

As regards monogamy, I am against making monogamy a rule of law by legislation. Society may be left to take care of itself.

I am against divorce for sacramental marriages. The principle of divorce is foreign to the Hindu Law. It is really a principle of the Muhammadan Law.

I am against inter-caste marriages and would leave this matter also to be regulated by Society. However, the doctrine of *factum valet* may be applied to accomplished marriages.

I am against *sagotra* and *sumana-pravara* marriages.

*Sapinda* relationship should extend to seven and five degrees respectively.

As regards the provisions contained in Part VI of the Draft Code regarding Adoption, I am indifferent and see no objection to their being enacted into law.

6. Sri BRAHMO DEO NARAYAN, Advocate, was the next witness:

I am an advocate of 10 years' standing and I am 35 years of age. If the law is to conduce to the benefit of society, it must reflect public opinion which should be ascertained by adult franchise or something akin to it. Until this process of ascertaining public opinion becomes feasible, I would postpone codification.

Giving a share to the daughter will lead to disintegration of the family property. I do not subscribe to the view that Hindu Law is divine in its origin and that it should, therefore, be sacrosanct. I consider that the Hindu Law, like other systems of law, ought to change with the needs of the changing times. The Hindu Law has been changed in the past and there should be no objection to changing it again, if changes are really needed.

I am in favour of liberalising the marriage laws. In particular, I want monogamy without any exception. I am also in favour of inter-caste marriages.

I am against divorce.

The right by birth and the right of survivorship should continue to prevail in the present Mitakshara jurisdictions.

I am against giving an absolute estate to women, because I feel they are liable to be duped easily. Like minors, they seem to stand in need of protection. An adult male cannot be duped so easily as a woman.

As regards adoption, I would like the law to continue as at present.

7. The last witness for the day was Mr. MUKTESWAR PANDYA, M.L.A. He said:—

I am a member of the Bihar Legislative Assembly. I represent the Shahabad South constituency. I am opposed to the Code, as I feel that it is against the fundamental principles of Hindus. There can be no uniform legislation for Hindu Society. As in nature, there is no uniformity in Hindu Society. I mean that the very creation varies with the *trigunas*. I agree that each varna should have a uniform law.

I am against the daughter, whether married or unmarried, inheriting simultaneously with the son. The widow and the son may, however, take together, as in the existing law. I am against the absolute estate for women.

I am generally for the *status quo* in regard to other matters, for instance, the right by birth and survivorship; divorce; and adoption.

With the examination of this witness which terminated at 5 p.m., the Committee concluded their session at Patna.

## V. CALCUTTA.

Monday, 26th February 1945.

The Hindu Law Committee commenced their sittings at Calcutta on Monday the 26th February, at 12 o'clock, at 'Ranjani' (No. 237, Lower Circular Road), the residence of Mr. Nalini Ranjan Sarkar. SIR B. N. RAU, C.I.E. (Chairman) and the other three members were present.

1. Mr. A. C. GUPTA, Advocate, was the first witness examined by the Committee. He said:

I am a senior advocate of the Calcutta High Court, having been in practice here from 1914. Before that, I was a pleader in Rangpur for four years. I was Vice-President of the Calcutta Advocates' Association for two years.

I have studied the draft Hindu Code more than once. Generally speaking, I approve of its provisions. I am in favour of a uniform law for all Hindus. It is both feasible and desirable.

I am very much in favour of giving a half share to daughters, whether they are married or not. As regards the fragmentation argument, I would say, in the first place, that *the chief object of the Hindu Law of inheritance is not economic at all*. At one time the eldest son had the largest share, but this practice subsequently fell into disuse, because it was against popular sentiment. Fragmentation can be stopped only by adopting the principle of *primogeniture*. Even when property is divided among sons, there is *no guarantee that it will remain in the family*. Brothers may partition, they may sell. The economic arguments would be all right if there were a ban on partition and alienation, but there is no question of imposing such a ban. It is a most impracticable proposal.

The object of intestate succession is *to do what the owner would have done himself, if he were free and from this point of view, the provisions of the Code seem to me to be very natural and right*.

As for the argument that family affection would be strained by giving the daughter a share, I would ask what sort of affection is it that will be effected by putting this little strain on self-interest? Again, what is the position as between brothers in this respect? For sometime and among some brothers, they may not accept the change with good grace. Ultimately, in the course of a few years, all will come to accept the new law as in the natural course of things.

Left to myself, I would give the widowed daughter-in-law an equal share with the daughter, i.e., half the share of a son. That would be a good compromise solution, steering midway between excluding her altogether and giving her a share equal to that of a son.

I am against any limited estate. It was unknown to the Mitakshara jurisdictions until the Privy Council decision.

In Bengal, the most successful administrators of estates have been women. Their names are famous. I could give only one instance. The Parbatjuar Estate which had been brought to the brink of ruin in the hands of its male proprietor was saved by his widow. Women are more conservative and are not less capable of good management than men. After all, the capacity for management is the same whether the estate is limited or absolute. A mother is not likely to forget all her natural affections and ties, merely because she has an absolute estate. A general rule of absolute estate is simplest in the end, and I prefer it to any other solution, for example, giving the widow a limited estate so long as there are certain heirs (e.g., descendants), and promoting her to an absolute estate in the event of the failure of those heirs.

As for laying down limits to succession, it is a matter which depends upon the State. In the present conditions I would stop only when blood relations fail. I would cut out the Sishya, Brahmacharis, etc.

I accept the provision made in the Code regarding the descent of property inherited by a widow from her husband, viz., that it should go to his heirs.

I do not know of anybody in Bengal who is opposed to monogamy, at least in public. I would not admit any exception. Some hard cases are inevitable, whatever course you adopt. The number of hard cases will be far less under monogamy than under any other solution. If a marriage is barren, adoption is a remedy.

I would abolish all restrictions of caste and gotra or pravara, from the law of marriage. Every month, I am getting a case for opinion whether a contemplated marriage is barred by the sapinda restriction. A limit of five degrees on the father's side and of three on the mother's side should, I consider, be enough.

As regards divorce, I support the provisions made in the Code. In the first place, divorce is a natural consequence of monogamy. In the second place, the provisions regarding nullity and dissolution found in the Code are 'fairly balanced.' They do not make dissolution too easy, nor do they make it impossible. Divorce was known in a far more extended state in ancient India. The *Arthashastra* says that if parties are 'inimically disposed,' that is a ground for 'release.' This perhaps did not apply to approved forms of marriage. But in addition to this, we have the specific texts of Narada, Parasara and Devala, expressly recognizing the right of divorce, in certain circumstances. I think that it will be cruel not to allow divorce for incurable disease. Merely because there is a provision for divorce, it does not follow that it will generally be availed of. After all, these are bankruptcies of marriage.

A strong argument in favour of monogamy is outside world opinion which does not generally recognize a non-monogamous union as a valid legal marriage.

As regards adoption, I have given my detailed views in my memorandum. I would have one form for all India.

The tendency of Hindu Society in the Mitakshara jurisdiction is distinctly towards the Dayabagha; and the draft Code in preferring the Dayabagha is in the right direction.

I have published five articles on the subject of the Rau Bill in the *Ananda Bazaar Patrika*.

2. Professor K. P. CHATTOPADHYAYA of the Calcutta University was the next witness—

I am the University Professor of Anthropology in the Calcutta University. I have published a pamphlet on the Cultural Basis of the Rules of Inheritance. I have examined the draft Code. I should like a distinction made between self-acquired and ancestral property; widows should get an absolute estate in the former and an absolute estate in one half of the latter plus a limited estate in the other half. The widow should not get the entire property when there are grandchildren; she should have only one-half.

At the time of marriage of the daughter, whatever is spent on her should, if the father so wishes, be embodied in a deed and set off against her share of his property. In the absence of such a deed, she should get an unreduced share.

I have had occasion to make a survey of some 60,000 families, both Hindus and Muslims; the vast majority, at least 95 per cent, are monogamous. This is the case even among aboriginal tribes, such as the Santals. I am in favour of enforcing monogamy. My great grandfather, Pandit Ishwar Chandra Vidyasagar wrote a very elaborate work on the subject.

For sapinda bar, I would have three degrees on each side. That is to say 'first cousins' and 'second cousins' should not marry. Third-cousins of different gotras may marry.

Monogamy necessarily implies some provision for divorce.

I myself know of four or five cases of conversion to obtain divorce during the last two years.

Now that we educate our girls, let them move about and qualify themselves to earn a living, etc., a change in the social structure is required to fit in with those other changes. Otherwise, there will be maladjustment. The economic and social setting has changed and the law must change with it.

I was for fifteen years Educational Officer of the Corporation of Calcutta. I have also been connected with the Vidyasagar Vanibhavan for about six or seven years and with the Vidhava Silpa Asram for some twenty years. In those capacities I have come across many cases of deserted wives, among the 'pure castes' in which a provision for divorce would have been socially healthy.

Regarding fragmentation, it has already proceeded beyond redemption in Bengal and some drastic remedy is needed. Mere exclusion of the daughter will not solve it. Collectivization is required.

3. Messrs. PHANINDRA NATH BRAHMA (Ex-Mayor of Calcutta), Rai Bahadur BIJAY BIHARI MUKHARJI, JATINDRA MOHAN DATTA, SANAT KUMAR RAY CHOWDHURY (Ex-Mayor of Calcutta), PURNENDU SEKHAR BASU, PHAKIR CHANDRA PAL, BIMAN CHANDRA BOSE, APURBA KEISHNA DUTTA and SACHINDRA K. RAY CHOWDHURY, representing the Bengal and Assam Lawyers' Association, gave evidence next.

We represent the Bengal and Assam Lawyers' Association which was founded 13 years ago in 1932. We have gone through the draft Code. We oppose it in its entirety.

*Regarding Adoption (Part VI of the Code).*—We want the husband's authority to authorize adoption, to be retained. Five out of nine of us also want a provision permitting the adoption of daughters, if the law is to be altered. We approve of the abolition of the *viruddha sambanda* rule. We are against clause 7 (which requires that authority or prohibition should be given or imposed only by a registered instrument or a will) and want it to be deleted. We think that the adopted son, as soon as he is adopted, should get the entire estate of his adoptive mother. We doubt the advisability of abolishing the forms of adoption other than the *dattaka*. Where the *datta bhra* is essential at present, it should be retained.

*Regarding Minority and Guardianship (Part V of the Code).*—The age of majority for boys should be 18 and for girls at least 21.

Clause 4.—The 'joint family property' referred to here should be defined.

Clause 6.—The father and the mother should not be subjected to the restrictions laid down in this clause. Proceedings in Courts to get their permission for sales, mortgages, etc., are bound to be very expensive and are unnecessary as a safeguard where the father or the mother is the guardian. In the case of other relatives, the provisions of the clause may stand.

Clause 7.—Although this embodies the present law as laid down by the Privy Council, we think that it should be changed and that authority over a minor which is given by his natural guardian should be revocable in all cases.

Clause 10.—Speaks of 'merely' on the ground of his or her being the *de facto* guardian. This should be made more explicit. We should not put too much strain on the word 'merely'.

*Marriage and Divorce (Part IV).*—The limits of sapinda relationship may be reduced from seven and five degrees to five and three degrees respectively. We want the Bengal rule maintained.

We want customary marriages (e.g., *sangai*) recognized in the Code.

Civil marriages should not be provided for in the Hindu Code.

Monogamy should not be made a rule of law.

In clause 3 (b) of Part IV, we will disqualify not only lunatics and idiots, but also impotent persons. The clause may read as follows:—

“Neither party must be a lunatic or an idiot or impotent at the time of the marriage.”

We are against *sagotra* or *saprarava* marriages among any caste. We are also against inter-caste marriages, but *factum valet* should apply in these cases.

The Committee rose for the day at 6-55 p.m. The representatives of the Bengal and Assam Lawyers' Association who had not concluded their evidence agreed to continue the next morning.

Tuesday, 27th February 1945.

The Hindu Law Committee resumed their sittings at 'Ranjani' (237, Lower Circular Road) at 12 o'clock on Tuesday the 27th February. Sir B. N. RAU, C.I.E. (Chairman) and the other three members were present.

1. The Bengal and Assam Lawyers' Association continued their evidence.

*Part IV—Clause 1—Explanation.*—The reference to 'uterine blood' here should be cut out as it might mislead. In any case, it should be made clear that the ancestors of the second husband and their descendants are not prohibited from marrying the ancestors of the first husband and their descendants.

Mr. VENKATARAMA SASTRI: Our definition does not cover that aspect at all, so that there is really no prohibition in the case mentioned by you.

WITNESSES: On political, social and other grounds, we do not approve of any restriction on the number of wives whom a Hindu may legally marry. Hindus have been decreasing proportionately to the Muslims in Bengal and should maintain their population strength. If monogamy were made obligatory on every community, we would not object to monogamy for Hindus also.

Consent of guardians should be required for the marriage of girls until they are at least 21, though we would prefer to fix the age-limit at 25. Communist activities make this alteration necessary.

*Clause 9 (2) (Civil Marriage).*—Residence should be required for at least one year and not fourteen days. Fourteen days is insufficient for neighbours and relatives to know all about a run-away couple.

We should like a provision to be made either in the Hindu Code or elsewhere, enabling a Hindu to marry a non-Hindu and yet retain his Hindu religion. We make this recommendation on political grounds.

*Clause 28.*—The consideration should enure for the benefit of both the husband and the wife, and not of the wife only.

*Clause 30.*—The Association, as a whole, is against any provision for divorce. (Three of us are in favour of reviving the texts of Parasara and Narada.) Cases of desertion are rare and must be regarded as inevitable misfortunes. Public opinion should be allowed to stop them. If the text of Yajnavalkya provides for a one-third share to the superseded wife, we are in favour of the provision. If there is to be divorce, Hindu matrimonial courts should be set up with Hindu jurors.

Heritable property should include co-parcenary property.

The definition of 'maintenance' in Part III-A should include expenses of education, medical treatment and marriage. The list of dependants should be extended. Any relation by blood or marriage, for example, a brother's son or widow, should be a dependant.

*Part III—Succession.*—Oral wills should be permissible for Hindus.

*Part II.*—We object to the daughter being a simultaneous heir with the son, whether she is married or unmarried. We also object to giving an absolute estate to women. The daughters' daughters' daughter should not come before the father's mother. The father should come before the mother.

The rules of the Dayabhaga may be left unaffected so far as Bengal is concerned. The illegitimate son of a *sudra* should take a share in the father's property as at present.

*Stridhan* should not include property inherited from males.

Succession to endowed property should not be governed by the Code. Express exclusion is desirable in this regard. For example, devolution to shebaitship should not be governed by the Code. A non-Hindu should not become a shebait. This may be made clear.

Mr. VENKATARAMA SASTRI: I doubt whether the Centre can legislate on this subject at all. It appears to fall within the Provincial sphere. (See entry 34 in the Provincial Legislative List in Schedule VII of the Government of India Act.)

Gonds and certain other hill men are Hindus by religion, but have not adopted the Hindu Law of Succession. They must be excluded from the scope of the Code, as they follow the matriarchal system.

*Definition of 'Hindu.'*—Any one who is not a Christian, Muslim or Parsi should be governed by the Code.

In conclusion, we submit that we are all wholly opposed to the codification of the Hindu Law, and that in any case the operation of the Code should be put off until it is ratified by a Federal Legislature after Federation is introduced.

2. Dr. ANANTA PRASAD BANERJI, Principal, Sanskrit College, Calcutta, was the next witness.

The procedure followed has not been satisfactory. Copies of the Code were not published in Bengali until recently, and there has not, therefore, been sufficient time for the consideration of the draft Code.

There has been no demand for a Code of this kind. It is neither possible nor desirable to have a uniform Code of law for all Hindus. India and China have survived because of the very absence of this uniformity. The Committee seek to destroy this wholesome non-uniformity.

I am against a share being given to the married daughter, but in favour of a share being given to the unmarried daughter, equal to one-half the share of the son in the father's property. The daughter may take double the share of the son in the mother's property. A share to the married daughter tends to fragmentation and will create other complications. I will deny a share to the married daughter both in her father's properties and also in her mother's *stridhana* properties.

I am against giving an absolute estate to women; in my opinion it is against the shastras. It also introduces a foreign element. Moreover, an absolute estate would make the women too independent.

I am not against giving an absolute estate to a widow who has children; my objection is to a childless widow getting an absolute estate. Even here, I would not press my objection so far as movable property is concerned.

I strongly feel that monogamy should not be made a rule of law. Any attempt to enforce such a law would drive the lower strata of Hindu Society to Islam which allows a plurality of wives. I am in favour of unrestricted polygamy, so far as legal restrictions are concerned. Public opinion should be a sufficient deterrent. I am in favour of the provision that a superseded wife should get one-third of the husband's property.

The provisions regarding civil marriages should not form part of the Hindu Code.

Divorce should not be permitted in Hindu Law. The word is not known to Hindu Law. In the five cases mentioned in the texts of Narada and Parasara, I would favour a provision permitting a woman to take another husband; but this is different from divorce. In my view, the texts hardly admit of any difference of opinion.

3. Mahamahopadhyaya CHANDIDAS NYAYA TARKA-TIRTHA, President, Bangiya Brahman Sabha, Mahamahopadhyaya DURGA CHARAN SANKHYA VEDANTATIRTHA, Pandit SABAT CHANDRA SANKHA-TIRTHA, Pandit NABENDRA NATH SIDHANTHA SASTRI, Secretary, Pandit TRIPATHA NATH SMRITITIRTHA, Secretary, Navadwip Ranga Bibudha Janini Sabha and Pandit SATYENDRA NATH SEN, Secretary, Varnashram Swarajya Sangha, representing the Bangiya Varnasharama Swarajya Sangh and the Bangiya Brahman Sabha, gave evidence next:

The Committee have no power to change the laws. We give evidence most reluctantly and because there is no alternative open to us.

*Monogamy.*—Only in certain exceptional circumstances could the husband take a second wife. But there was no bar to his marrying again, even in other circumstances. This was the old rule and we should like it to continue.

A rule enforcing monogamy would destroy Hindu society in Bengal.

*Divorce*.—In the text of Parasara and Narada, "*pathi*" means not *husband*, but *fiancé*. Narada makes it clear that a marriage, once effected, is indissoluble.

The daughter, whether married or unmarried, should not be a simultaneous heir with the son. We are against the absolute estate for women. Even the Mitakshara does not, in our opinion, decree it.

Inter-caste marriages are neither customary nor sanctioned by the *Veda*. If such marriages were legalized, Hindus in Bengal would perish. If such a marriage has taken place and children are born, they should not get any share in the property; but some provision may be made for them by way of maintenance.

We are against the proposed Code. If it should be enacted, it should not be called the *Hindu Code*.

4 Messrs B. K. CHATTERJI (Chief Auditor, East Indian Railway) and CHOTAYLAL KANORIA gave evidence next, as representatives of the Dharam Sangh:

We are against codification, because it should be done only by men of the type of Jimuthavahana and Vignaneswara.

We are against the daughter, whether married or unmarried, being a simultaneous heir with the son. Large sums are now spent on the daughter's marriage, and she is well cared for. The widow may remain, as a heir but not the widowed daughter-in-law. In any case, the estate should be limited. There should be no absolute estate for women except in technical stridhana. The interpretation of the Mitakshara to the contrary is erroneous.

Monogamy should not be made compulsory by law. Polygamy should be restrained only by public opinion. (Swami Shradananda who came with the others, said, however, that only if the first wife has no children and gives her consent, should a second wife be permitted.)

We are against the dissolution of marriage. The texts of Narada and Parasara should be interpreted in the light of all surrounding circumstances. They apply only to betrothals.

We are against inter-caste marriages, and *sagotra*, *samanapravara* and *sapinda* marriages. These should be declared null and void. Even if years have elapsed, they should still be invalid and the Courts should not hesitate to declare them null and void, merely because they took place long ago. In Western countries, the institution of marriage has failed, and we should not imitate them.

We have no objection to the Chapter on Adoption, but have not really studied it.

We are against the abolition of the right by birth. All classes of people are agreed in regard to this.

Brahmans, Kayasthas and Marwaris are alike opposed to this Code. So are many influential ladies.

5. Messrs. HIRALAL CHAKRAVARTHY, RAMAPRASAD MUKHERJEE, PANCHANAN GHOSE, BANKIM CHANDRA MUKHERJEE, CHANDRASEKHAR SEN and PURNENDU SEKHAR BASU, representing the Calcutta High Court Bar Association, gave evidence next.

A rigid Code of Hindu Law is not required. There is no case for codification as proposed. No Judge has complained of the absence of a codified law. It is after all the Judges who have to interpret the law finally. Codification will arrest the growth of Hindu society. It is not practicable or desirable to secure uniformity throughout the country. Artificial uniformity is more harmful than natural diversity. Customs prevailing in particular areas for a very long time should be respected and preserved. The Legislature should not interfere with the basic principles of the Hindu Law. We would prefer piecemeal legislation directed to particular ends.

*Definition of 'Hindu'*.—We are opposed to the definition in the Code. It is correct to say that Buddhists and Sikhs are governed by the Hindu Law. But some Buddhists (like those of Chittagong) claimed to be Hindus while other Buddhists (like those of the Darjeeling area) did not claim to be Hindus. Sikhs have their own customs of marriage in the Punjab. All these are matters which should be considered carefully.

Aborigines should be included specifically as Hindus, to prevent all doubt. There was an attempt recently to take some of them who were clearly Hindus from out of the Hindu fold.

Mr. CHAKRAVARTHY: If the definition had been drafted by the members of the Committee in their individual capacity, there might not have been so much objection to it. But the authority of the State is behind the project and this has made people highly suspicious.

Mr. VENKATARAMA SASTRI: There is nothing to be suspicious about. We have to think now about the lines on which the Hindu Law should be shaped. Some kind of a foundation for the future Hindu society must be laid now. At any rate, it is high time to bestow some constructive thought on these matters.

WITNESSES: We are definitely opposed to making the daughter a simultaneous heir, whether she is married or unmarried. The unmarried daughter should have her maintenance and marriage expenses and may have a charge on the father's property for the same. The widowed daughter-in-law may also have a charge for maintenance on her father-in-law's property.

The Bar Association had not concluded their evidence when the Committee rose for the day at 7-15 p.m. (See page 36 *infra*—No. 6.)

Wednesday, 28th February 1945.

The Hindu Law Committee resumed their sittings at 'Ranjani,' (237, Lower Circular Road); on Wednesday, the 28th February 1945, at 11 a.m. Sir B. N. RAU, C.I.E. (Chairman) and the other three members were present.

1. The following women representing the All-India Women's Conference and various other women's organizations gave evidence jointly:—

Mrs SARALA BALA SARKAR, Dr. Miss PHULRANI DUTT and Mrs ELA MITRA—All-India Women's Conference; Mrs. ROMOLA SINHA and Mrs. ABALA GHOSH—All Bengal Women's Union; Mrs. SOUDAMINI MEHTA—Gujarati Stree Mandal; Mrs. KAMALA MUKHERJEE—Mahila Atma Raksha Samiti, Mrs. GITA BASU—Post-Graduate Students' Women's Section; Mrs. NATARAJAN and Mrs. NATESAN—South Indian Ladies' Club; Mrs. RAMABAI SRIKHANDAS and Mrs. MALINI DIVEKAR—Maharashtra Bhagini Samaj. They said—

We are very much in favour of the proposed Code. The opposition comes from a select portion of the aristocracy who have organized themselves for the purpose. These aristocratic ladies have done little social work among women. They rendered little help to the people in their recent troubles. They have no knowledge of the masses. We, on the other hand, have done a good deal of social work and know the actual conditions. It is because of this knowledge which we have gained that we support the Code.

Opposition to the Code is due, to some extent, to misrepresentations, for example, it has been said that its result would be marriage between brothers and sisters, transfer of property to Muslims, etc.

Mere volume of opposition should not count. Its quality should also be examined. See for yourselves the Rescue Homes which we are running, e.g., the Lake Road Destitute Home run by the Nari Seva Sangh. Also visit any widows' home. Records of cases will be found in these institutions. They will show that Hinduism has treated women badly and that a change is called for.

At meetings held by the opposition, we are not allowed to speak. For example, at to-day's meeting I (Mrs. Ela Mitra) have been told that I cannot attend. We invite members of the opposition group to our meetings. They exclude us from their platforms. The opposing groups are new bodies, and before they were started, there was no opposition.

Srimathi SARALABALA SARKAR: I am an old, orthodox lady, observing fasts and living an austere life; I would not possibly support the Code if it were against the Hindu religion.

The younger generation is all in favour of the Code. The middle class women, speaking generally, support the Code; but they do not venture to say so in public, because they are dependent upon, and afraid of, their men-folk.

As regards divorce, we would add cruelty as a ground. We support the provisions for divorce. The period specified in clause 30 of Part IV should be reduced from seven to five or even three years.

The members of the deputation mentioned several actual cases of desertion and remarriage and added:

These cases are not so rare as is sometimes imagined; they occur among orthodox, middle-class families. We can give names and details, if necessary. If the cases are rare, so will divorce be. Unless there is great hardship, why should women, particularly Hindu women, seek divorce?

The provisions for divorce should be made retrospective in their operation. Relief should be given in existing cases of hardship also.

There should at least be provision for separation in the cases referred to in Clause 30 of Part IV of the Code.

*Monogamy.*—Even among Muslims, economic grounds do not permit of more than a single wife. So, we have no fear that monogamy would force Hindus into Islam.

Monogamy, to most of us, seems to import divorce, but some do not share this view.

*Daughter as simultaneous heir.*—If giving shares to sons does not lead to fragmentation or discord, why should giving shares to daughters do so? The daughter gets a share all the world over. A share of the father's property would lead to increased respect for the daughter in her husband's home. We prefer the daughter to the widowed daughter-in-law, but would be prepared to see them both put on the same footing. We do not want the daughter-in-law to suffer. Childless widowed daughters-in-law are rare and a share to them would not make much difference. The opposition can be appeased to some extent by giving the daughter-in-law a share.

As regards the buying out of the daughters' share, we would give the right to all (whether sons or daughters) who remain in the family to buy out the share of those who go out of it.

We are in favour of an absolute estate for women.

We think that all caste distinctions should be done away with as regards marriage. So should *gotra* restrictions which are meaningless now. For example, all Mitras belong to the Viswamitra *gotra*, although there is no blood connexion between them.

2. DR. NALINI RANJAN SEN GUPTA, Mr. N. C. DAS GUPTA and Mr. J. MAZUMDAR, representing the Shastra Dharma Prachara Sabha, then gave evidence.

CHAIRMAN: Is there anything in the Adoption Chapter to which you object?

DR. SEN GUPTA: I could not find anything to object to, myself.

CHAIRMAN: Any objection to the Chapter on Minority and Guardianship?

DR. SEN GUPTA: No.

The provisions of the Code may be fair, but I object to their being put into a Code and laid before the Assembly. We object to any legislation on the subject by the Assembly. Although the uncle-niece marriage is bad, we object even to such a marriage being stopped by legislation. Our objection is fundamental and there is no use going into details. Only society can reform abuses.

3. Mahamahopadhyaya Pandit ANANTAKRISHNA SASTRI was the next witness. He gave evidence in Sanskrit.

CHAIRMAN: What is your view regarding the absolute estate of the Hindu widow?

WITNESS: (See Viramitrodaya, pages 491 to 493; Apararka, page 746, Volume II.) The daughter has a right by birth like the son.

My view is that she has an absolute estate with certain limitations even in inherited property. A widow should be considered to have the same rights as a man in property, and subject to much the same limitations. According to the Mitakshara, full rights are not possessed even by men in immovable properties.

*Daughter's share.*—According to my reading of Yajñavalkya's text, a daughter, whether married or unmarried, is entitled to an one-fourth share. My interpretation of the verse about *Dattaram Thuriyakam* (see also Viramitrodaya, page 588) is that the one-fourth share is to be given in addition to expenses incidental to marriage. (Balambatti, page 159, 1-24 "Kanyaha . . . Sarvaha"; and Viramitrodaya, page 458.)

Although this may be the Smṛiti rule, giving a share to the daughter would, on the whole, be to her detriment, because the presents which she now gets will cease.

*Monogamy.*—Monogamy should be the rule with certain exceptions (see Madanaparijata, pages 188, 189, etc., for exceptions), *Sagotra* and *samanapravara* marriages

should be void. The *factum valet* doctrine should not be applied to such marriages.

*Uniform law.*—As far as possible, let there be uniformity, but where the schools differ, maintain each in its own locality.

Marriages not in strict accordance with the Hindu Shastras should be provided for outside the Code in the Special Marriage Act.

*Divorce.*—*Ananya Purvikam, Kantam asipindim yati asi,* etc., precludes divorce. As regards *Punarvivaha*, Narada's text *Nashte Mrithe* deals with *Niyoga*, not with marriage. (See Dharmapradipa, pages 135-137.) In any case, *achara* overrides all. Do not legislate against *achara*. (See Mitakshara, Chapter I, Achara, Verse 52.)

4. BABU TABAK CHANDEA DAS, Lecturer in Social Anthropology, Calcutta University, gave evidence next: I do not represent any organization. I lecture to post-graduate students.

*Daughter's share.*—I am against giving any share to the widow or the daughter in present conditions. They are at present uneducated; in Bengal, only 41 per cent of women can read and write their names in English; 28 per cent are literate in the vernacular. Among men, 18 per cent of those over five years of age are literate in the vernacular. Again, women are *Purdanishins*. These are the main conditions which make them unfit for any share. Even if a man dies leaving only a widow, she should not get his property—the next male heir should get it, from the sociological point of view. The same position holds good in the case of a daughter. Even the mother should be excluded. Property should go to those who can use it effectively; that is, only to men. The men who take the property should protect the women.

Even if a man is incompetent, I would not deprive him of his share, as he can move about freely.

Generally widows have no opportunity of wasting property as compared with men. That is why they manage zamindaris better than men some times.

*Monogamy.*—Monogamy is desirable; but should not be made a rule of law. I surveyed 2,000 families (partly in Calcutta and partly in the interior) in 1943-44, both Hindus and Muslims. I did not find a single instance of polygamy. So polygamy is going out of existence by itself. I am 49 now and have myself seen no cases of polygamy so far. I have heard of only five or six cases.

*Divorce.*—I have studied this problem among aboriginal tribes, for instance, the Kols; divorce does not do them any good. Some tribes practise it on a fairly large scale. Often, the divorced woman finds it difficult to maintain herself. She is often unable to find a new husband. She is not welcomed in her father's family or her brother's family, and she cannot set up a home for herself. She is really between the devil and the deep sea.

Divorce is not extensively practised among Muslims.

Among the Hindus of whom I am speaking, even maidens find marriage difficult, because of the high bride-price demanded by the boys' parents. Women aged 20, 25 and even 30 remain unmarried for this reason. But girls and men often live together without marriage and after some time the marriage takes place, bride-price being thus avoided.

On an important legislation of this kind, the opinion of the masses should be ascertained by sample surveys. Surveys involve interpretation, no doubt. But a large number of cases will eliminate misinterpretation. I have myself made a small survey of this kind among 125 families of Faridpur, but have not tabulated the results.

5. Mr. S. N. GHOSE and H. C. GHOSE, representing the United Mission, gave evidence next.

We are of opinion that Hindu Law being of divine origin should not be interfered with by men; even as regards interpretation, this should only be undertaken by 'Man in the image of God,' such as our President (Sri Hari Mohan Banerji). This makes it unnecessary for us to enter into details. We are opposed to divorce.

6. The Committee then proceeded to the residence of Sir N. N. Sircar, K.C.S.I., ex-Law Member, Government of India (36-1, Elgin Road, Calcutta) for the purpose of ascertaining his opinion. Sir N. N. SIRCAR expressed his views briefly as follows.

*Daughter's share.*—I am not in favour of giving a share of the father's property to the married daughter. I do not put this on the ground of religion, of fragmentation or anything

of the kind ; I put it on the practical ground that in these days a father spends a good deal more on his daughter's marriage and on presents to her after marriage than is represented by the share proposed to be given to her. As regards the unmarried daughter, however, I think that she must be given a share as proposed and she must also have an absolute estate. It will not be enough to say that she must have maintenance and marriage expenses ; her position must be made secure by giving her a share.

*Monogamy.*—I am in favour of monogamy being made a rule of law and I also think that marriages which have already taken place should not be invalid merely on the ground that they have contravened *gotra* and other restrictions. But I would suggest that the provisions regarding civil marriage should remain outside the Code in the Special Marriage Act.

*Divorce.*—I am personally in favour of a limited right of divorce although I must say that the vast majority of Hindus have a deep-rooted sentiment against it. Whether legislation can or should be enacted in these circumstances is a different matter, but I am personally in favour of such a provision. Although few women will avail themselves of it, I think it will have a very salutary effect on the treatment of wives by their husbands.

Thursday, 1st March 1945.

The Hindu Law Committee (SIR B. N. RAU, C.I.E. and the other three members) met at 10-30 a.m. on Thursday, the 1st March 1945, at Natore Palace, for the purpose of taking the evidence of the Maharani of Natore and certain other Purdanishin ladies whose names are given below :—

1. The Maharani of NATORE, Mrs. SARADINDU MUKHERJI, Mrs. MANZURA BANERJI, SEJA BOWBANI (Mrs. SUDHIRA DEBI) of Dighapatia Raj, Mrs. PRATULPATI GANGULI, Mrs. D. MULLICK, Mrs. B. C. GHOSH, Mrs. PURNENDU TAGORE, and Mrs. RATAN BEN JATHI (Gujarati Sevika Sangh). They said—

We have never appeared before anybody. We do so now as a special case to express our views to the Committee.

We object to the Code in every respect. We are quite happy as we are. For the sake of a few, such radical alterations should not be made.

*Monogamy.*—We do not like monogamy to be enforced by means of a law. Most marriages are now monogamous and no law is necessary. Compulsion by legislation is not desirable in this matter.

*Divorce.*—We are strongly opposed to the dissolution of marriages.

*Daughter's share.*—So far as the unmarried daughter is concerned, only maintenance and marriage expenses need be provided for. She should not be given a share. No share of the property should be given either to the married or to the widowed daughter. The father can make a will if necessary. To give a share to the daughter by law would create discord.

Mrs. MUKHERJI: The unmarried daughter may have a share, but it should revert to her brothers on her marriage or unchastity.

*Daughter-in-law.*—We prefer that the widowed daughter-in-law should remain as she is, under the Deshmukh Act.

*Absolute estate.*—The *status quo* should continue, and no changes are necessary.

*Adoption.*—We do not object to adoption where there is no prohibition by the husband. All of us are agreed that the Bombay rule is good and worthy of universal application throughout India.

*Inter-caste marriages.*—We are against inter-caste marriages. If such marriages have already taken place, we have no objection to their being registered and treated as civil marriages ; but they should not be treated as sacramental marriages.

*Sagotra marriages.*—Maharani of NATORE: Sagotra marriages should be null and void. Mrs. S. MUKHERJI: The sagotra rule should be confined to Brahmans. If such marriages have taken place among Kayasthas, they should be recognized. Mrs. BANERJI: I have not thought about this problem. Mrs. PRATULPATI GANGULI: I would not object to sagotra marriages, if the parties are not *sapindas*. This is my personal view. It is difficult to find husbands for girls now-a-days.

ORAL—5A

Mrs. MUKHERJI: We do not want anything imposed upon us by external law. The community should be left to put its own house in order in its own way. Legislation is ineffective. Look at the fate of Vidyasagar's Hindu Widow Remarriage Act. The text of Parasara is already there and if Hindu society wants it, it will avail itself of it. No new law is required.

Mrs. RATAN BEN JETHI: I have read the Code. The Gujarati Sevika Sangh which I represent has a membership of 200 to 250. I came from Cutch. We do not want the Code. The Code will destroy whatever rights we have.

The Committee left Natore House at 12 o'clock and resumed their sittings at 'Ranjani,' No. 237, Lower Circular Road, ten minutes later.

2. Pandit AKSHAY KUMAR SHASTRI and Pandit SARAT KAMAL NYAYATHIRTHA and SMRITITHIRTHA, representing the Tarakeshwar Dharma Sabha, gave evidence in Sanskrit.

*Monogamy.*—No law should be enacted.

*Divorce.*—This is not known to the Shastras and we are against it. See *Manu*, Volume 154. 'Pathi' in Narada's text means 'protector.'

*Daughter's share.*—This is against the *Rig Veda*, III-2 (5). See also Nirukta, III-1 (6) and Nighantu.

*Absolute estate.*—This is against the above authorities. We have no objection to the Mitakshara being assimilated to the Dayabhaga.

3. Rai Bahadur B. B. MUKHERJI, Retired Director of Land Records, was the next witness.

The sociological aspect of these problems has to be considered. The Bengal system of inheritance and marriage has produced some of the finest specimens of the human race and may be preserved. There is no evidence to show that Jimuthavahana brought about any change. The Dayabhaga has been in vogue for a long time and there is no case for changing it now. If uniformity is desired, let the Dayabhaga be made the rule for all India. The old traditions and customs should be preserved, as they are accepted in rural parts. I would request the Committee to have the archives examined for wills: the examination will show that there are no signs of dissatisfaction with the existing system.

I have had extensive experience of Bengal: inter-caste marriages will not be approved, especially in rural areas. Even among Christians, Brahman Christians marry, by preference, only Brahman Christians.

I am submitting a further memorandum on this aspect.

4. Srimathi ANURUPA DEBI and Lady Nambala BRAHMACHARI then gave evidence.

Srimathi ANURUPA DEBI: I have submitted a long memorandum. Lady Brahmachari represents the Deshbandhu Mahila Vidyan Samiti, of which she is the President. I am an extensive social worker.

*Monogamy.*—We have no objection to monogamy without divorce, but law cannot make man into Ramachandras. We would leave the matter to education and public opinion. For cast-off wives, rescue homes afford shelter. They may earn their living as nurses, social workers, etc.

*Divorce.*—We are absolutely against divorce. The Code will make divorce easy. In the cases for which the Code provides divorce, let there be judicial separation with maintenance. If this Code becomes law, men will divorce their wives but very few women will seek divorce. Even now widows do not make much use of the Hindu Widows' Remarriage Act.

*Daughter's share.*—We are against this, whether the daughter is married or unmarried. As to the unmarried daughter, her maintenance and marriage expenses may be made a statutory charge on the property of the father. If a share is given to her, it will create discord, in the family.

*Daughter-in-law.*—She should remain as at present (under the Deshmukh Act).

*Absolute estate.*—We are against an absolute estate for women. They are liable to be duped, as they are illiterate.

5. Mrs. BASANTA K. CHATTERJEE then appeared before the Committee and vehemently opposed the Code in all respects.

The Committee then rose for lunch.

6. Resuming after lunch at 2-15 p m., the Calcutta High Court Bar Association continued their evidence. (See page 33 ante). Mr. HIRALAL CHAKRAVARTHI, Mr. RAMAPRASAD MUKHERJEE, Mr. CHANDRASEKHAR SEN and Mr. PANCHANAN GHOSE represented the Association. They said.

*Daughter's share.*—We are against a share being given to the daughter. The unmarried daughter may have a charge given to her for her maintenance and marriage expenses.

*Absolute estate.*—We are against this and would like to preserve the existing law. Property should not pass into the hands of strangers. If a mother is made an absolute heir, she is likely to favour others, for example, daughters in preference to her own sons.

There are sociological and economic reasons against women having absolute estates. The ordinary woman proprietor should not be judged from exceptional specimens. A woman is likely to be duped.

Even where the last full owner has died, leaving no direct descendants, the widow should have only a limited estate. We do not agree that even where there are no heirs of the 'compact series', the widow should have an absolute estate.

As regards the order in which heirs should take, we should like to submit a list of our own after reconsideration.

*Monogamy.*—Should not be a rule of law. Please see—(a) "Bahubibaha" by Bankim Chandra Chatterji, Vol. II—p. 108; (b) Government Committee of 1867—Hobhouse and others; and (c) Risley's Book—App. VI, Second Edition (People of India).

*Inter-caste sacramental marriages.*—We are opposed to such marriages, as there would be even more castes than now. We have no objection to the Special Marriage Act being amended by the omission of Sections 22 to 26; but civil marriages should remain outside the Code.

*Sagotra marriages* should be nullified, no matter when they are challenged and whether children have been born or not. We regard clause 18 of the civil marriage portion, which permits of the conversion of sacramental into civil marriages, as a beneficial provision.

In the alternative clauses 3 to 6 of Part IV, under sacramental marriages, sub-clauses (a) and (b) of clause 6 (which apply the *factum valet* doctrine to *inter-caste* and *sagotra* and *saprawara* marriages) should be deleted.

*Dissolution of marriage.*—We are very much against this. There is no sanction for it in the texts. The texts of Narada and Parasara have become obsolete.

*Adoption.*—We have no objection to the Bombay rule, permitting an adoption unless it is prohibited by the husband, being extended to Bengal.

Clause 18 of Part VI (providing for property vested in the adopted son before the adoption continuing to vest in him after adoption).—Although this is the existing law, it is not fair and should be omitted.

All our detailed criticisms have been expressed by us without prejudice to our general objection to codification.

7. MESSRS. R. M. GAGGAR, K. C. KOTHARI and B. D. D. MUNDHRA, representing the Maheshwari Sabha, were the next witnesses.

We are sending a written memorandum, containing our recommendations. We belong to Jodhpur and Bikaner in the Rajputana States.

We should like succession to be governed by the laws of our own States as regards all forms of property.

We want our joint family law to remain as it is.

*Adoption.*—We like the provisions of the Code, and wholeheartedly support them.

*Monogamy.*—We agree to monogamy, but not to dissolution of marriage.

*Absolute estate.*—We agree to the absolute estate for women.

*Marriages.*—We do not agree either to *inter-caste* or *sagotra* marriages.

We appreciate this attempt to simplify the Hindu Law and would welcome a single law. Most of us, even those who profess to be opposed to this Code, desire codification. Even lawyers are in favour of codification, though not of all the provisions contained in this Code. The process would have been easier, if the Committee could have consulted all sections of opinion before putting out a draft. If a sort of Round Table Conference had been held, it would have been a good and conciliatory step. If the

voting on the Code is confined to the Hindu members of the Legislature and a majority of such members approve of the Code, my community will support it.

8. Pandit NARAYANA CHANDRA SMRITITIBHA and Pandit SRIJIVA NYAYATIRTHA of the Calcutta Sanskrit College and the Bhatpara Sanskrit College respectively, gave evidence next.

*Daughter's share.*—The daughter should not have a share, whether she is married or unmarried. The Dayabhaga should be retained.

*Absolute estate.*—We are against this and can cite the Mahabharata in favour of our view. The Dayabhaga decrees only a life estate.

*Monogamy.*—There should be no hard and fast rule. If a rule is made, exceptions should be provided, e.g., barrenness.

*Divorce.*—This is against all the Hindu shastras and we strongly oppose it. See *Manu*, IX—46. The West is suffering as a result of their divorce laws, and we should take warning by their example.

Under the guise of codification, no modification of the law should be made.

The enactment of the Code will result in our smriti texts and commentaries losing all their authority.

We have submitted a written memorandum on the subject.

9. Mr. RISHINDRA NATH SARKAR, Advocate, was the last witness for the day.

*Codification.*—I am against codification.

*Monogamy.*—I am in favour of monogamy, but not now. Let us wait and see what others do in post-war conditions.

*Adoption.*—On the whole, I see no harm in permitting a widow to adopt in the absence of any prohibition by the husband.

*Joint family.*—In my view, the Mitakshara joint family should continue. It is an institution which provides unemployment insurance. It is a state in miniature. The Dayabhaga joint family is inferior to the Mitakshara joint family. I think the father should not alienate property without obtaining the consent of his sons. Sons should have a right by birth, but not a right to demand partition. I am speaking of ancestral property.

I am strongly against giving a share to a daughter, whether married or unmarried.

I am in favour of giving the widowed daughter-in-law her place under the Deshmukh Act, but she (and the widow of the owner) should have an absolute estate and what she does not alienate or dispose of by will should descend to the reversioner.

"Predeceased son's predeceased son" may leave some cases uncovered; for example, where A has a son B, and a grandson C by B, if B dies first, then C, and then A, C's widow should inherit to A. This may be further considered by the Committee.

The Committee then rose for the day at 5-45 p m.

Friday, 2nd March 1945.

The Hindu Law Committee reassembled at 'Ranjani' (237, Lower Circular Road) on Friday, the 2nd March 1945 at 11-20 a.m. Sir B. N. RAU, the Chairman, and all the other members were present.

1. Mr. P. L. SHOME, Advocate-General of Assam, was the first witness for the day. He said:

I am against giving of a share to the daughter, whether married or unmarried. For the unmarried daughter, a provision for maintenance will be sufficient. Giving a share to the daughter would lead also to fragmentation. Once the giving of shares begins, one does not know where the process will stop. I would even relegate widows and widowed daughters-in-law to the position of dependants entitled to maintenance, instead of keeping them as heirs.

I am in favour of an absolute estate for women even in inherited property.

"Maintenance" should also include education expenses.

I am against *inter-caste* sacramental marriages, if "caste" means one of the four primary *varnas*. If they take place, I would apply the doctrine of *factum valet*, once the marriage is completed. I would apply the same rule with regard to *sagotra* marriages.

I do not want any legislation with regard to sacramental marriages except as to the application of *factum valet*. (On reconsideration): I prefer the alternative set of



clauses 3-6 in Part IV except that I do not think that monogamy should be enforced by law. A law enforcing monogamy might be politically dangerous.

I am not very clear on nullity, but I am against dissolution of sacramental marriages.

I have nothing to say as to the parts on minority and guardianship and adoption.

Predeceased son's daughter and predeceased grandson's daughter should be added to the list of dependants entitled to maintenance.

Though codification may be desirable, it is neither advisable nor practicable at present. The so-called Hindus in the present Legislature do not represent Hindu Constituencies and there is no knowing how a draft Hindu Code put before such a Legislature would emerge. Isolated changes in the law may be made, e.g., changes may be made for the maintenance of certain female relations, also for the conversion of women's limited estate into an absolute estate—that is a different matter. The growth of Hindu Law may be arrested by codification.

There is no objection to legislation to put right particular errors or abuses. In fact, there is no escape from legislation, to remedy situations arising from erroneous decisions.

2. Swami RAM SHUKLA DAS and five others representing the Govind Bhavan were the next witnesses.

We represent the Govind Bhavan, an organization which is nearly 30 years old. We are against the Code, because it is against the Hindu Shastras. We are against all the provisions. Adoption should be of a sapinda, or, of a sagotra. The *datta homa* should not be omitted where it is now necessary. The Dayabhaga and Mitakshara should remain as they are, in their respective jurisdictions.

3. Messrs. SATINATH ROY, J. M. DUTT, R. CHOWDHURY, CHUNILAL ROY and B. K. CHOWDHURY representing the Indian Association gave evidence next, as follows: Our Association is a political body founded in 1876 by Sir Surendranath Bannerjee and Mr. Ananda Mohan Bose.

We disapprove of the codification of the Hindu law. It is not necessary. See, Strahge (1825) Colebrooke 311.

*Daughter's share.*—We want no change in the existing law. It is sufficient to provide for the maintenance and marriage expenses of unmarried daughters.

*Absolute estate.*—We are against this; it may be detrimental to the interests of the women themselves and of their family.

*Monogamy.*—Marriages are almost always monogamous in practice. Monogamy should not be enforced by law. It will handicap the Hindu community and enable the Muslims to multiply their numbers and forge ahead. We are in favour of restricting polygamy by making provision for a superseded wife, and by insisting on a minimum period, say five or seven years, before a second marriage takes place. If a man marries after this period, it should be made clear that he is under a legal obligation to pay compensation to the superseded wife.

*Dissolution of marriage.*—We are against this.

*Civil marriages* should be kept out of the Hindu Code.

We are opposed to sagotra sacramental marriages, but will apply the *factum valet* rule to them, if they have already taken place. We will apply the same rule to inter-caste marriages. Our feeling is that the children should not be bastardised. They should have the status of legitimate children. Some of us are of opinion that sagotra marriages should be allowed outside the sapinda relationship.

What is to be the *gotra* of a Hindu widow or of a divorced woman when she decides to remarry? This should be settled (See 58 All., 1053).

In clause 19 of the succession part the proviso should go, and an unchaste wife should be disqualified absolutely, even though there has been no decision of a Court in regard to her unchastity.

We feel that the definition of "Hindu" should be expanded.

4. Messrs. S. C. MUKHERJEE (I.C.S., Retd.), S. C. ROY, S. M. BOSE and Dr. D. Mitra representing the Sadharan Brahmo Samaj said: Brahmos are governed by the Hindu law and hence our interest in this Code.

We are in favour of the Code, which we welcome. Our criticisms (see our printed memorandum) are meant to be

constructive. Subject to these criticisms, we strongly support the Code. We wish particularly to emphasize that Brahmos should be included specifically within the scope of the definition of "Hindu", and that we are strongly in favour of giving sons and daughters equal shares in property.

5. Mrs. S. R. CHATTERJEE, Mrs. I. P. GANGULY, Mrs. S. P. ROY, Mrs. K. C. CHUNDAR, Mrs. AMAR BALA BHATTACHARYA, Mrs. T. N. BANNERJEE and Miss ARATI MUKHERJEE representing the Hindu Women's Association, gave evidence next. Lady RANU MOOKERJEE was also present. Mrs. CHATTERJEE, who was generally the spokeswoman, said: Our Association has a total membership of 4 to 5,000. It was formed about a year ago at a public meeting held for the purpose. It is not a registered society. We have a few branches. The objects of the Association are to promote the welfare, of Hindu women. There is no subscription. Voluntary donations are received, and these suffice.

Purdah women do a good deal of quiet social work in helping poor dependants, etc. Naturally, they do not take part in public work, being purdanishins, and therefore their work receives no publicity. The younger generation who are members of this Association are against this Code.

We do not think that Hindu women of the middle classes are not in a position to give free expression to their opinion.

We are against the codification of the Hindu Law. It is neither possible nor desirable and nobody wants it. We are quite happy as we are.

We are against *sagotra* marriages in sacramental form in any caste. If any such marriage has taken place, it should be nullified and the children, if any, declared illegitimate. But it should be open to the parties, upon discovering this mistake, to register the marriage and thus to regularise it as a civil marriage. The same rule should apply with regard to inter-caste marriages.

*Monogamy.*—We do not think it necessary to make a law enforcing monogamy. It is better to leave this matter alone, whatever hardships might have arisen elsewhere. It is already the practice, among the large majority. If monogamy is made a rule of law, the lower classes may become Muhammadans in order to have the privilege of marrying more wives than one. One community should not be bound to monogamy leaving the other community free and unbound. We can't say if Christians turn Muslims for this purpose but Hindus might.

*Dissolution.*—Even if a child-wife is deserted by her husband, we would say it is a misfortune and exhort her to devote herself to good works and live that way. We hope she will be better educated then, and not be tempted to embrace another religion for the sake of getting a divorce and getting herself remarried. Alleviation is not possible for these few cases. I am not going to descend from the high ideal of womanhood for a few cases.

The Hindu Widows' Remarriage Act passed at the instance of Ishwar Chandra Vidyasagar (an ancestor of Mrs. Chatterjee) has not been availed of very much.

*Daughter's share.*—We are against this, whether for the married or for the unmarried daughter.

*Absolute estate.*—We are against an absolute estate in inherited property for women, however educated or capable they may be. At any rate, in present conditions, an absolute estate seems to be inadvisable.

*Adoption.*—In the absence of prohibition, the widow may adopt, provided she adopts a *sapinda* of the husband.

6. Lady RANU MOOKERJEE then gave evidence in camera. Before doing so, she said that she happened to be in rather a fortunate position, as she had connections both with orthodox associations and with those which were not, and was therefore in a position to see both sides of Hindu life. She said that she took more or less the same view as Mrs. S. R. CHATTERJEE and said that divorce, if introduced, would do more harm to women and men will take advantage of it. Divorced women will not get a place even in the street.

7. Mr. KUMAR PURENDRA NAGOBE TAGORE, Bar.-at-Law, representing the All India Anti-Hindu Code Committee gave evidence next.

We do not want this Code, but would like the law changed in some minor matters by legislation. But these are not urgent changes. There is nothing in the Adoption

Chapter to which we would object, except as regards certain small points.—*Datta Homa* should continue to be obligatory where it is so now. There is nothing objectionable in the Minority and Guardianship Chapter.

*Monogamy*.—We think that a Hindu should have an unrestricted right to marry as many wives as he likes. That is our law at present and it should continue. It is the Shastraic law.

We are against inter-caste *sagotra* and *saprarava* marriages. Where a *sagotra* marriage has taken place, the children must remain illegitimate; but it should be open to the parents at any time to validate the marriage and legitimise the children by having the marriage registered as a civil marriage. If the father is dead, it should be open to the widow to register and validate the marriage.

*Dissolution of marriage*.—We are, against this: we do not think that the text of Parasara is operative to-day.

*Daughter's share*.—We are against this, whether the daughter is unmarried or married. So far as we are aware, there is no text in support of it, even as regards the unmarried daughters.

*Absolute estate for women*.—We are definitely against this.

8. Mr. N. C. CHATTERJEE, Mr. SANAT KUMAR RAY CHAUDHURI and Mr. DEBENDRANATH MUKHERJEE representing the Bengal Hindu Mahasabha gave evidence next. Mr. CHATTERJEE who was generally the spokesman said: We have 1,900 branches in Bengal and our membership exceeds 125,000. We had opportunities of ascertaining the opinion of our members on the draft Hindu Code at the recent Jalpaiguri conference which was attended by 600 delegates. There was unanimity that there should be no fundamental changes in the Hindu law except by a properly constituted legislature acting on a mandate given by the Hindu electorate. The present legislature which is based on the communal award, is not a proper legislature. The issue should be decided by Hindus alone, and non-Hindus should not vote or have any say in the matter. There should be no codification unless the proposal is supported by a referendum taken among the Hindus or unless the Code is ratified by the Hindu members of a legislature who have been specifically elected on the issue.

*Daughter's share*.—There was unanimous opposition to making the daughter, whether married or unmarried, a simultaneous heir with the son. The average Hindu father in Bengal sacrifices more for his daughters in the shape of dowry and ceremonial gifts than for his sons. Only in exceptionally wealthy families is the reverse the case. They can be provided for by wills. The rights of the unmarried daughter may be protected by giving her a charge on her father's property for her maintenance. Then, there is the fragmentation argument. We think that property will get split up into small, uneconomic fragments if daughters get a share. Among Muslims, paternal cousins marry and this prevents fragmentation. The Muslims can also make wakfs. This will not be possible in Hindu society. Further, the son-in-law is not interested in carrying on the family business of the father-in-law and partition of the business, if the son-in-law insists on it, will lead to the collapse of the business. Hindus marrying under the Special Marriage Act prefer the Hindu Law to the Indian Succession Act and this shows that the Hindu Law meets the needs of our society. There is no objection to meeting the wishes of such Hindus to be governed by the Hindu Law. The Special Marriage Act may be amended accordingly.

*Monogamy*.—We are opposed to monogamy being made a rule of law. The general consensus of opinion is against it.

*Dissolution of marriage*.—There were differences of opinion on this, but divorce was repugnant to the sentiments of the majority.

*Marriage*.—We are in favour of amending the Special Marriage Act so as to permit a Hindu, man or woman, to marry a non-Hindu.

We are particularly anxious to preserve customs, in order to preserve the flexibility of the law, as far as possible. Amongst certain communities divorce is now allowed by custom. These customs should continue. Suppression or non-recognition of customs, would be a retrograde movement.

CHAIRMAN: Legislation is one form of education. When people know that a particular custom has been forbidden by law they would do away with it. Law will have an educative effect on the people. Take the case of the Sarda Act. At one time child marriage was common, now it is very rare.

Mr. DEBENDRANATH MUKHERJEE: The question of morality is a relative term. The case of an uncle marrying his niece is certainly revolting to us. But it is not revolting to those among whom the custom prevails. Just as marriage with the cousin sister in certain communities in Bengal is not considered immoral although Hindus generally consider it as highly immoral. With the progress of education such customs will disappear. We do not like legislation to be framed for the abrogation of such customs.

Uncle-niece marriage may perhaps be discouraged by the imposition of a legislative ban.

So far as sacramental marriages are concerned, if inter-caste, *sagotra* or *saprarava* marriages have already taken place, either party to the marriage may be given at any time the option to have it registered as a civil marriage and regularized that way. We are not in favour of the application of the *factum valet* rule to such cases.

Mr. DEBENDRANATH MUKHERJEE: Our fundamental thesis is that there should be no legislation regarding sacramental marriages, even as regards uncle-niece marriages. There should be no provision for the registration of sacramental marriages.

The abolition of the coparcenary is a radical revolution. If the bulk of the Hindus who are governed by the Mitakshara law is opposed to its abolition, then there is no point in enacting the Code. It will then be merely a Code for the Bengali Hindus and the case for uniformity will disappear. Our point is that the Code should not apply to Dayabagha Hindus only, in case clauses 1 and 2 of Part III-A which abolish the coparcenary go out.

*Stridhan*.—There should be no absolute estate for women in inherited property.

*Order of heirs*.—As regards the order of heirs, we should like to submit our own list. For *stridhana* we may perhaps adopt the rules of succession to *ayutaka* stridhana in the Dayabhaga.

*Part II—Clause 19 (regarding unchaste wife)*.—The proviso should go out.

*Part II—Clause 21*.—Both the convert and his descendants should be disqualified. An apostate should not be allowed to inherit any property.

*Part III-A*.—In the case of a conversion of a Hindu dependant to any other religion he or she should forfeit his or her right of maintenance.

*Part V—Clause 6—Guardianship*.—Natural guardians should have power to dispense with the Court's permission before alienating the property of minors.

*Part VI—Adoption*.—Generally speaking there is no objection to these provisions.

Saturday, the 3rd March 1945.

The Hindu Law Committee resumed their sittings at 10 a.m. on Saturday the 3rd March 1945 at "Ranjani" (237, Lower Circular Road). Sri B. N. RAU, C.I.E., the Chairman, and the other three members were present.

1. Evidence was first given jointly on behalf of the following bodies, by the representatives specified against them:—

(i) The Marwari Association, represented by Mr. BALJNATH BAJORIA, M.L.A., Rai Bahadur RAMDEV CHOWKHANY and Mr. BHURAMAL AGARWAL; (ii) The Marwari Chamber of Commerce, and (iii) The All-India Marwari Federation, represented by Messrs. I. D. JALAN, M.L.A., Attorney-at-Law, C. M. SARAJ, PANNALAL SARANGI and B. S. SHARMA.

We are against codification. We want to retain the right by birth and the doctrine of survivorship.

CHAIRMAN: If A and B are brothers, and A dies leaving a daughter and later B dies leaving a daughter, do you want A's share of the ancestor's property to go first to B and then to B's daughter, to the exclusion of A's daughter.

Mr. BAJORIA: I think this hardship should be remedied; in the case put, each man's daughter should take her father's share.

Mr. JALAN: My answer to the question put is: Yes, if that is the result of the existing law. Some of the other witnesses supported Mr. JALAN, but the rest said: We have not really thought about these matters. We shall consider the question and then make our suggestions.

The benefits of the Deshmukh Act should not be withdrawn, but if anomalies arise, they should be put right.

We are against giving any share to the daughter, whether married or unmarried.

We are also against giving an absolute estate to women in inherited property. The daughter may, however, retain her absolute estate in Bombay, as that is the existing law there. In other Provinces, she may continue to have a limited estate.

One of the witnesses wanted the step-mother to be an heir. The others did not agree.

Monogamy is the rule in practice even now, and need not be made a rule of law. Two of the three representatives of the Marwari Association, however, said that monogamy should be made a rule of law, subject to certain exceptions to be proved in Court.

Civil marriages should be provided for outside the Hindu Code. We are against the repeal of sections 22 to 26 of the Special Marriage Act. We are against inter-caste and sagotra marriages. If such marriages have actually taken place, either party may have the option of regularizing the marriage by registering it as a civil marriage, but it should not be regarded as a sacramental marriage.

*Dissolution of marriage.*—We are opposed to this.

The *sapinda* relationship for purposes of marriage should be traced only through the male line of the father or the mother.

CHAIRMAN: Can a man marry his sister's daughter's daughter?

WITNESS: No.

CHAIRMAN: But this does not follow from the rule you suggest?

WITNESS: We shall reconsider the point.

'Kanyadhan' should be added in clause 4 of the alternative set of clauses suggested for sacramental marriages.

Part VI—Clause 16 (ii).—Even where the husband has specified a time-limit for the adoption, a time-limit should not be regarded as mandatory.

CHAIRMAN: It is a question of fact whether the time-limit is of the essence of the matter or not.

WITNESS: This may be made clear.

Part VI—Clause 19 (5) [which provides that estates should not be divested except as provided in clause 19 (1) to (4)] should be deleted: so too clause 20 (which invalidates agreements not to adopt or curtailing the rights of an adopted son).

Apostates should be disqualified from succession.

When a Hindu changes his religion, the rights of his wife and children over his property should be safeguarded. In particular, his duty to provide maintenance for them should remain unimpaired.

An apostate dependant should have no right of maintenance.

The wife should be regarded as an agnate of her husband.

Inherited property should not be *stridhan* going to the woman's own heirs.

2. The Maharajah of COSSIMBAZAR and Mr. B. N. ROY CHAUDHURY (of Santosh) were the next witnesses. They said:—

We are against the Code; codification is not possible. A uniform personal law for all castes is not possible. Contracts, torts, etc., are different. So too is the penal law different.

*Daughter's share.*—We are against this, even for unmarried daughters. Apart from other reasons, our daughters are uneducated. Further, they are likely to bring strangers into the family by marriage.

Monogamy should not be a rule of law. Monogamy without divorce would be a hardship to men, though it is the present law for Hindu women. We consider that the case of men is different from that of women.

*Divorce.*—We are opposed to this. A woman who has been divorced by the husband is likely to be helpless.

CHAIRMAN: What would be your solution for the deserted child-wife problem?

WITNESS: If there are a sufficient number of cases of this kind, we would agree to civil marriage being permitted

after dissolution of the first marriage. We would limit the remedy of dissolution to cases of desertion.

We are against inter-caste and *sagotra* marriages. These must be capable of being declared null and void at any time. In exceptional cases, for example, where there has been a *bona fide* mistake, they may be permitted to be regularized by subsequent registration as civil marriages. We are opposed to the application of the *factum valet* doctrine to such cases.

The Maharajah of COSSIMBAZAR added: There is very small demand for codification. The Central Legislature contains non-Hindus as well as Hindus. It is now an effete body. It has no mandate for undertaking this work. The time is not propitious. Uniformity is impossible. The Code will result in the disruption of joint families and the fragmentation of properties. It will weaken the Hindu community in every way. The illiteracy of the people now is a great handicap. The civil marriage provisions afford a sufficient remedy; if necessary, these may be amended.

3. Messrs. SACHIN CHAUDHURY, G. P. KAR, K. K. BASU and B. DAS, Barristers, Messrs. H. N. BHATTACHARYA, N. C. SEN, R. N. CHAKRAVARTHY, Advocates and Mr. R. C. KAR, SOLICITOR, gave evidence next.

We are all lawyers: there are amongst us, four Barristers, one solicitor and three advocates. We represent the views of about 100 persons, not all of them being lawyers.

Generally speaking, we support the Code. We have certain modifications to suggest. (See our memorandum).

As regards the marriage and divorce provisions, they are of a permissive character. Nobody need object to them. Regarding the inheritance provisions, although we ourselves support them, we have no objection to there being a referendum on the matter, especially as wills are not usual.

*Monogamy.*—We think that the time has come to make this a rule of law. It is already a rule of practice and society is ready for its conversion into a rule of law.

We approve of inter-caste and *sagotra* marriages being permitted by law. They would make for the unification of Hindu society.

*Dissolution of marriage.*—We support this; again, we wish to urge that the provisions are purely permissive. We think Hindu Law permits dissolution for example, Manu, the greatest of law-givers, who refers to the case of *Unmathas*, etc., and Narada, whose *Nashite Mrite* text is well-known. As lawyers, our reading of these *Smritis* is that they permit remarriage in certain cases. Yajnavalkya also supports this view. A variety of marriages has been recognized in the *Smritis* including the marriage of a "Punarbhū", i.e., of a woman who has already been married. Although the Brahma form of marriage is best, the others are also recognized forms of marriage.

Dr. MITTER: Would you confine divorce to the case of unapproved marriages?

WITNESS: No.

If the language of the *Smritis* is clear, there is no need to go to the commentaries. The *Smritis* have the same importance as statutes. Commentaries need not bind the Legislature, though they may bind the Courts.

Adoption is now an anachronism: all that is desired can be effected by making a will or a settlement, etc. The time has come to abolish fictions like adoption.

Our detailed proposals are embodied in our memorandum.

Mr. H. N. BHATTACHARYA: Personal law should not be changed by legislation.

4. A very large number of women, estimated at over one hundred and representing various women's organizations then arrived in the grounds of "Ranjani" and expressed their desire to meet the members of the Committee. There being no room for all of them in the first floor in which the other witnesses were examined, the Chairman and the other members of the Committee came down and met the leaders of the party who said that the women present represented various organizations, for example, the Hindusthane Association, the National Council of Women in India, the Girl Students' Association, the Burra Bazaar Congress Mahila Sangha and the teachers of the Beltala Girls' School. Some members of the Saroj Nalini Association and the All-India Women's Conference were also present in their individual capacities. The leaders told the members of the Committee that all of them were strongly

in favour of the Code and wished it to be passed into law with the least possible delay. The opposition was due to factious misrepresentation of what the Code proposed, was artificial and should be ignored. The gathering then left "Ranjani" in procession shouting slogans in favour of the Code.

With this, at 1-15 p.m., the Committee's session at Calcutta terminated.

## VI. MADRAS.

Monday, 5th March 1945.

The Hindu Law Committee commenced their session at Madras at "Kaustubha," Edward Elliot's Road, Mylapore, Madras, the residence of Mr. T. R. Venkatarama Sastri, at 4 p.m. on the 5th day of March 1945.

Sir B. N. RAU, C.I.E., Chairman, Dr. DWARKANATH MITTER, Principal J. R. GHARPURE and Mr. T. R. VENKATARAMA SASTRI, C.I.E., were present.

1. The Right Hon'ble V. S. SRINIVASA SASTRI was the first witness examined. He said:

I consider this legislation unobjectionable and necessary. Changes in Hindu legal practices and customs can be made only by legislative authority. I would not leave reform, as some others would, to be accomplished by the community itself. The present Legislature has the legal and moral competence to pass this measure. I attach little importance to the objections that it is old, mixed, stale and not omnipotent like Parliament. I do not see how if the Legislature were younger, or more predominantly Hindu, or abler, its title to consider this legislation will be more valid. Besides, there is no guarantee that a new set of people will be better qualified to judge the proper line of reform.

I should like to congratulate the Committee on their attitude to orthodox opinion. I feel that this section of our people, clinging as they do to the old ways, have every right to be consulted and to have their views treated not only with respect but, as far as possible, with tenderness. It is only proper to meet their wishes to the largest possible extent. But I will not go so far as to wait until their active consent is obtained for the necessary changes. That ideal is impossible of achievement. Our pandits and other pious men have a remarkable capacity for adjusting themselves to accomplished changes, but they have not the vision to recognize in advance the necessity for changes to meet current or future needs. That is not a prominent or marked characteristic of theirs. To wait, therefore, until they bless the proposed changes would be to wait till the Greek Calends!

I confess, having grown up under the old ideas of the joint family, I was a little shocked at first at the right by birth being abrogated. There is some point in the objection that the joint family system is being disrupted. But the joint family is already crumbling; many inroads have been made into it; the modern spirit does not favour its continuance any longer. The choice is between maintenance of big estates and recognition of the independence of individual members of the joint family. The latter in my opinion is a more important aim as it affords greater scope for individual initiative and prosperity.

I am all in favour of the attempt to enlarge women's rights to inherit and to abolish the women's limited estate. Both changes are in consonance with modern ideas. The ultimate aim must be to bring men and women to the same level. I welcome these changes.

I was astounded at some sensible people's objections to monogamy. I thought that the pride of Hinduism was that although polygamy was permitted in theory, it was monogamy which was actually practised. It is therefore surprising that when monogamy is sought to be enacted as a rule of law, hands should be raised in horror. As one who has travelled outside India I can say that many Christian peoples have denied to our "vivaha" the sanctity which we have always attached to it. In South Africa, for instance, they thought that our women were not legally married as our system permitted polygamy which their law would not recognize. The difficulties encountered by the present Lord Sinha in getting his status as such recognized are also well-known. Monogamy may take a long time in filtering down into the lowest grades of Hindu society, but this sort of initial difficulty there will always be in getting any new law into full operation. We had it, for instance, in the case of the Sarada Act. In time society will learn to adjust itself.

Divorce is essential if monogamy is introduced, although it may be seldom availed of. There are societies which are monogamous but have no divorce, but I think that experience justifies the provisions for divorce in some exceptional cases (as contained in the Code) as a corrective to the new vigour of the monogamic system.

I don't know why people object to sacramental and civil marriages being in the same Code. Was it such a profanation or sacrilege that the same book of law should not contain reference to both? Though the two modes of marriage may differ as to their origin and their sanction, it is well that their effects on society should, as far as possible, be similar.

I am glad to see that the list of prohibited degrees relationship is not very large. But I think first cousins should be prohibited from marrying, particularly children of sisters, as they are actually regarded as brother and sister.

CHAIRMAN: Children of sisters do marry in certain localities. Again, while a marriage between the children of two brothers will be a *sagotra* marriage, one between the children of two sisters or of a brother and sister will ordinarily be free from this objection. This also constitutes an essential difference between the two cases.

Mr. SRINIVASA SASTRI: While the draft Code permits of a marriage between children whose parents are brother and sister, it expressly forbids an uncle from marrying his niece and a nephew from marrying his aunt. Our Smritis discountenance both types of marriage. Custom has, however, allowed these types of marriage in certain sections of society. It is difficult to understand, upon what grounds, one customary marriage is chosen for prohibition while the other is left alone.

CHAIRMAN: A line has to be drawn somewhere.

Mr. VENKATARAMA SASTRI: Besides, the children of brothers and sisters, though prevented from marrying by the bulk of scriptural authority, are permitted to marry by the high authority of Madhava, the great commentator, who, in his turn, relies on a passage in the Veda itself.

Mr. SRINIVASA SASTRI: I give my full support to the removal of the ban on inter-caste and *sagotra* marriages. I should prefer these restrictions to be openly and frankly removed. Why permit these marriages by the window and not openly by the front door? Why prohibit them in the first instance and then validate them by the application of the *factum valet* principle?

Mr. VENKATARAMA SASTRI: The provision is mostly a concession to strong prejudices in existence now and to the susceptibilities of orthodoxy.

CHAIRMAN: It is one way of saying that the prohibition is not really important.

Mr. SRINIVASA SASTRI: Is there any other enactment similar to this?

CHAIRMAN: Take the Sarda Act, for instance. The marriage is not nullified, but only certain penalties are provided.

Mr. SRINIVASA SASTRI: There are at least penalties there, but there are none here.

Mr. SRINIVASA SASTRI referred to another provision regarding marriage between sapindas which ran on similar lines. Under the heading of sacramental marriages, a marriage between sapindas was expressly forbidden but the defect could be cured by the subsequent registration of the marriage as a civil marriage. It will be a great advantage if the Code is absolutely clear on topics like these. If innovations are contemplated, they should be brought in boldly and directly.

CHAIRMAN: Mr. Sastri, the Committee would like to know what view you take of the apprehension expressed in some quarters that if Hindus are prevented from having more wives than one, they would embrace Islam to enjoy that privilege?

Mr. SASTRI: The apprehension seems to me utterly fantastic.

Mr. SASTRI finally raised some drafting points.

Mr. SASTRI: In Part IV, clause 3 (d) the word 'also' seems to have no meaning and can be omitted.

CHAIRMAN: I agree that the word 'also' should be omitted.

Mr. SASTRI: What exactly is the meaning of the expression "the former husband or wife" in sub-clause (v) of clause 29 of Part IV?

CHAIRMAN: It is assumed that the husband or spouse is a lawfully wedded husband or wife.

Mr. SASTRI: (See clause 24 of Part IV.) I do not quite see the necessity for this clause. Is it the usual form?

CHAIRMAN: Under the existing law, if two Hindus marry under Act III of 1872 and if the man marries a second wife in the sacramental form, the second marriage is not null and void, though he may be punishable as for bigamy. Hence the first portion of clause 24 expressly declares the second marriage to be null and void. The latter portion of the clause merely reproduces the existing enactment (section 16 of Act III of 1872) with regard to the punishment of bigamy.

2 Rao Bahadur K. V. KRISHNASWAMY AYYAR, Advocate, was the next witness.

I agree to the property provisions in the Code. The Mitakshara coparcenary should go. The daughter should get a share in her father's property whether she is married or unmarried. She should get an absolute estate, but the widow and the mother should only get a life estate with vested remainder to the next heir.

CHAIRMAN: What is the ground on which you prescribe a life estate for the widow and the mother?

WITNESS: As daughters, they will get an absolute estate. I prescribe a strict life estate for the widow and the mother on the assumption that the daughter is to get a share in her father's property absolutely. If a daughter is not to be given a share, then the widow may be given an absolute estate.

As regards adoption, I agree with the Bombay rule. In the absence of prohibition, the widow should have the power to adopt.

The Code bases inheritance on a legal marriage. This leaves out possible relations by consanguinity, for instance, in the Devadasi community. A child, whether legitimate or illegitimate, should always inherit to his or her mother and illegitimate children must inherit *inter se*. For example, a dancing girl's property should go to her child or where there is no child, to her sister, etc.

I would insist on *samana varna* for sacramental marriages. The Special Marriage Act, as amended in 1923, may be availed of for inter-caste marriages. The Caste Disabilities Removal Act will remove any doubts regarding inheritance in such cases.

I would permit *sagotra* marriages except where the agnatic relationship between the parties is known. When the agnatic relationship between the parties is known, even though it is beyond 7 degrees, a sacramental marriage should not be possible.

Mr. VENKATARAMA SASTRI: Would it not be better to have definite degrees to prevent abuse of such a provision?

WITNESS: *Sagotras* should be permitted to marry only if the connection by blood-relationship is not known. *Samana pravara* marriages may be permitted since they will not have any known relationship.

I am in favour of monogamy, but in a limited form. Strict monogamy draws in its train divorce as a necessary corollary and this seems to be undesirable. I would permit a man to marry again with the express permission of the Court. The Court will permit the second marriage without dissolving the man's first marriage. The case of women marrying a second time is not known and need not be provided for.

I am not in favour of divorce for sacramental marriages.

CHAIRMAN: Suppose a girl is married in the sacramental form when she is a child, and is then deserted; she did not know even the implications of the marriage. Is it not desirable to have a provision for dissolution in such a case?

WITNESS: Such cases are very rare. If you legislate for the dissolution of sacramental marriages, you would be going against fundamental principles.

Mr. VENKATARAMA SASTRI: Take the case of a couple who marry in the sacramental form and immediately after the marriage, the husband deserts the wife. Would you not provide for dissolution in such exceptional cases? Even Smriti texts allow them.

WITNESS: Such texts are not now followed in practice. In the instances which have been pointed out, provision may be made for maintenance. Child marriage will not be common after the Sarda Act.

CHAIRMAN: Supposing such cases are not rare, would you permit legislation?

WITNESS: I would not allow the sanctity of sacramental marriages to be interfered with. The man can be penalized to any extent which may be necessary. For example, one-third of his property may be given to the superseded wife.

In such cases, the tendency of the Courts generally is to give large maintenance.

3. Diwan Bahadur R. V. KRISHNA IYER, B.A., M.L., C.I.E., was the last witness examined for the day.

I was Secretary to the Madras Legislature for over 18 years, from 1924 to 1942. I was also the Legal Adviser to the Todhunter Taxation Inquiry Committee.

I have studied the draft Hindu Code and have submitted a memorandum. The Brahman Sangham in Salem (of which I am the President) is entirely opposed to the Code. I am opposed to most of the provisions in the Code. I think I represent the views of the majority of the people in this Province. As far as I know, there has been no agitation for changes, excepting perhaps with regard to the rights of women. I have no objection to the codification of the existing law with such changes as may be absolutely necessary to set at rest conflicts in decisions. I am opposed to fundamental changes. All local peculiarities should be preserved, but small changes in petty matters may be made, for example, in adoption, the Bombay rule, that a widow may adopt in the absence of prohibition by the husband, may be extended to other Provinces.

The Mitakshara and the Dayabagha should remain in their respective jurisdictions. In a vast country like India, uniformity is not possible. People have become accustomed to their own laws in the various places and in the absence of a demand from the public for unification, diversity should remain.

I would prefer the existing systems of succession to continue to prevail, and I am opposed to the new lines of succession and the introduction of new heirs. If it is a question of mere propinquity, why not simply apply the Indian Succession Act?

I am not in favour of giving a share to the daughter, whether married or unmarried. The change may be detrimental to her. Many people have spent the whole of their fortunes in getting their daughters married. If a share is to be given to the daughter, this system might go. It would be difficult for the daughter, especially in these parts, to assert her rights to her father's property. Again, the husband will exercise his sway over her and she is likely to part with the whole of her property to him. When the daughter is the only heir, I would certainly desire that she should take the property, instead of its going to a comparative stranger.

I am very much in favour of the absolute estate for women. In fact I would go further and give them an absolute estate even when the property was inherited by them, before the commencement of the Code. All property acquired by a woman, whatever the manner of acquisition, should be her absolute property. There has been a demand for a change in this direction and the Mitakshara which gives an absolute estate to women may be made applicable. Of course, when a gift is specifically made to a woman for her life, then, that direction should prevail. Sir M. Ramachandra Rao, many years ago, brought a Bill to remove the evils arising from the women's limited estate, but nothing came out of it.

I am against monogamy. Polygamy prevails largely in villages where for economic reasons more wives than one are necessary. I would say that 50 per cent of the marriages are bigamous. It is only among the Brahmans and a few other communities that monogamy is observed. I have known cases where co-wives have been getting on in harmony. I feel that it would be economically unsound and practically impossible to enforce monogamy. Besides monogamy will have the effect of encouraging concubinage. I would not object if a second marriage is prohibited except with the consent of the first wife.

CHAIRMAN: In view of your statement that as regards property, women are in the hands of their husbands, would consent of the first wife mean anything?

WITNESS: That is why I agreed to the condition. It will not be a real safeguard. The first wife may be given a right to divorce in such cases.

I have no objection to *sagotra* marriages being permitted. *A fortiori*, regarding *sapravara* marriages. The provisions are only permissive.

I would not agree to a sacramental inter-caste marriage, though it may take place as a civil marriage. Where it has already taken place in the sacramental form, I agree that it may be legitimized by registration as a civil marriage. I cannot agree to the marriage being treated as valid, simply on the ground that consummation has taken place.

I have no objection to the divorce provisions in the Code even for sacramental marriages, with one exception: I do not agree to the keeping of a concubine being a valid ground for claiming divorce, unless the concubine is actually brought into the house. Cruelty endangering life may also be a ground for divorce. A single act of adultery should not be a ground. There is a demand for the divorce provisions and they meet a real evil. Particularly, in the case of a deserted child-wife who has never lived with her husband, a provision for divorce will be salutary.

At a women's meeting at Salem (National Women's Association) they were in favour of monogamy but against divorce.

I am wholly against the abolition of the Mitakshara coparcenary. This is a system peculiar to Hindu society, and its abolition would be a great hardship.

CHAIRMAN: Supposing there are two brothers, each with a daughter. If one of the brothers dies, would you prefer his daughter to get his property or his brother and after him his brother's daughter?

WITNESS: That is an exceptional case and I would not object if special provision is made for it, without going further.

CHAIRMAN: Should not other hard cases also be remedied by legislation?

WITNESS: I do not want any inroads to be made into the joint family system.

CHAIRMAN: Many inroads have been already made?

WITNESS: If survivorship is there, the girl may not get anything, but we can leave it to the good sense of the family to provide for her properly.

We always accept the Sankaracharya's views, as he is the accredited leader of the Hindus and his views are regarded with respect, especially as they are disinterested. I feel that this legislation should be dropped altogether, unless there is a public demand for it. I also feel that this is not the proper time to make changes in the law, when there is a feeling of depression in the country and there are also various other difficulties.

Tuesday, the 6th March 1945.

The Hindu Law Committee re-assembled in the Committee Room of the Madras Government Secretariat in Fort St. George, at 11-55 a.m. on Tuesday the 6th March 1945. Sir B. N. RAU (Chairman) and the other three members were present.

1. Mrs. INDRANI BALASUBRAMANIAM was the first witness for the day.

I do not represent any organization, but have done public work. I was an elected Vice-Chairman of the Berhampore Municipal Council for ten months in 1928. I was Municipal Councillor at Tanjore in 1924, and at Rajahmundry in 1927. I am a member of the Indian Women's Association, Madras, and have attended the All-India Women's Conference as a delegate. I gave evidence before the Lothian Committee. I have done war work for the last five years, and have been awarded the Kaiser-I-Hind Bronze Medal.

I have read the draft Hindu Code and am generally in favour of it. I have attended many meetings in connection with the present Bill, women's meetings as well as mixed ones. I have spoken at seven or eight meetings myself and have attended 20 to 25 in all, in the City and the suburbs. The resolutions passed at such meetings have been communicated to the Secretary to the Committee. These have been in support of the Code.

Daughter's share.—I think the daughter, whether unmarried or married, should have the same share as a son. I do not think there will be any fragmentation, or any greater fragmentation than at present. The property is not going to remain intact in any case; there will be sons to divide it.

CHAIRMAN: Do you think that it will affect the affection between brothers and sisters?

WITNESS: No, if there is real affection, it will not be affected by the property question.

CHAIRMAN: Do you think that the brother-in-law will bring discord into the family?

WITNESS: It depends upon the individual. If he is a bad fellow, he might give trouble even when there is no property. After all, he can ask for his wife's share only after the father's death, and where is the harm in such a demand being made? If the demand is made, it should be adjusted.

Absolute estate.—I am in favour of this. This question was also considered at the meetings mentioned by me.

Monogamy, etc.—No man should be allowed to have more than one wife. Inter-caste sacramental marriages should be permitted. There should be no gotra restrictions, except that they should not be permitted within near relations.

Divorce.—There must be provision for divorce, equally for both husband and wife. The husband may desert his wife, may be cruel, may be suffering from bad disease, etc. In such cases the wife should have the right to divorce. I am not speaking of ordinary diseases, but of loathsome diseases likely to be transmitted to children. A period of five years or seven years may be fixed as the minimum for which the disease should have lasted, before the party can claim divorce. I am a non-Brahman. Up to now, divorce does not prevail in our community.

To Dr. MITTER: The widowed daughter-in-law and grand daughter-in-law should remain as at present under the Deshmukh Act. Fragmentation is inevitable in any case.

I have not considered the legal aspect of the Mitakshara and the Dayabagha.

To Principal GHARPURE: The widow should have the right to adopt, even if she has been prohibited by the deceased husband. What I mean is that she may be allowed a son to herself in such cases. She should also have a right to adopt a daughter to herself. Our meetings were to adopt in favour of such adoptions.

If there is no prohibition, the widow should have the right to adopt a son in the ordinary way, that is, to her husband.

To the CHAIRMAN: Among women generally, opinion is divided as to divorce. In the society in which I move, the majority are in favour of the provision. But only very few will actually avail themselves of it. I am personally aware of some 15 to 20 cases of deserted wives. The Seva Sadans and Children's Homes will disclose numerous instances. In some cases, the deserted women actually remarry and society tolerates the remarriage, even where the community has no divorce by custom.

My husband is a Superintendent of Jails, and I naturally follow him in all his transfers. I have thus experience of different parts of this Presidency.

2. Sir VEPA RAMESAM, Retired High Court Judge, was the next witness. He said:

I retired from the Madras High Court in July 1933, having become Judge in 1920. Before that I was Government Pleader for some years.

My general opinion is in favour of the draft Code; in fact, I would go further in some respects.

Daughter's share.—For the reasons I have given in my written memorandum, I would start with a quarter share, both for the married and the unmarried daughter. Some inequality is inevitable. The one-fourth share is in accordance with the Smriti texts. The burden of getting the daughters married must fall on the brothers; hence the one-fourth share. Otherwise, I would recommend more. I suggest an one-fourth share as a compromise. If this stops the dowry system, we may go further and increase the daughter's share. I have no sympathy with those who would deny the daughter any share.

The provision against the dowry evil put into the Code (clause 28, Part IV) will not be effective, because the bride will not be in a position to enforce it.

Stridhana.—Stridhana inherited from the father should go to the woman's relatives rather than to her husband's relatives. The reasons have been given in my memorandum. In such cases, in the absence of children, the devolution should be in the following order—father, mother, husband, parents' heirs, and lastly, husband's heirs. There should be no distinction in the order of devolution based on the nature of the marriage, that is, whether it is in the asura or brahma form.

Absolute estate.—I am not opposed to this, but have my misgivings in present cultural conditions. In certain grades of society, there will be no danger; in others, there may be. But we should confine the right of challenging the widow's alienations to the husband's descendants; in any case, the right should not extend beyond the compact series of heirs.

Monogamy is now the only rule for civilized people. I am in favour of it. But, of course, divorce would be a necessary corollary.

Personally, I am in favour of inter-caste marriages, even in the case of sacramental marriages; but sentiment may be against them.

Cross-cousin marriages are very common in South India. In the last four generations, in my own family, 75 per cent of the marriages are of mother's brother's daughter or father's sister's daughter. But the marriages of uncle and niece may be prohibited, also of a man with his father's brother's daughter or his mother's sister's daughter. *Sagotra* marriages beyond seven degrees may be permitted. I do not consider the *samana pravara* objection serious. In any case, I would request the Committee not to restrict marriages to a greater extent than under the existing law.

*Divorce*—I am generally in favour of the provisions in the Code, but would make the conditions less rigorous. A woman may be habitually unchaste without being the concubine of any one, or may try to poison her husband. Such cases should be provided for by divorce. The period of seven years provided in the Code is too long and should be reduced to five years.

The right to divorce should also apply in the case of sacramental marriages. Monogamy without divorce cannot work. This, I believe, is the experience in Catholic countries. It is fairer to both sides to provide for divorce. As the world progresses, there must be change. There must always be some opposition to every reform, but my own view is that there will be no opposition to divorce, except from certain extreme sections. After all, there is the *Parasara* text, which Pandits have distorted. In many instances, the older texts were more liberal. I am afraid that it is not possible to conciliate the extremely orthodox in this matter. There is no room for compromise here.

*Adoption*.—This is an archaic fiction, to be limited as far as possible and not extended. I would not extend the Bombay rule which, in my opinion, has worked havoc, to other parts of India. Uniformity is not essential in this matter. Particularly for impartible estates, the husband's authority should be insisted on in all parts of India. I doubt whether the three years' rule laid down in clause 19 of Part VI will work well.

3. Mr. S. MUTHIA MUDALIAR, C.I.E., Advocate and ex-Minister, gave evidence next.

I sent a written memorandum to the Committee in December last. I am generally in favour of the Code, but would like all the other branches of the Hindu Law also to be codified. Let the whole Code be passed by both the Central and Provincial Legislatures so as to avoid any question of *vires*.

*Lingayats*.—In the definition of 'Hindu,' I would include Lingayats specifically.

*Daughter's share*.—I approve of a share for the daughter, whether she is married or unmarried. In the case of unmarried daughters, marriage expenses should be set apart first and then the shares should be divided. I agree that the marriage expenses of sons also should be set apart before a partition takes place. The widowed daughter-in-law and grand daughter-in-law should retain their rights as at present, under the *Deshmukh* Act.

*Absolute estate*.—I am not in favour of this. The limited estate should continue as at present. After the widow's death, the agnatic relatives of the husband should get the estate. My chief reason is that the property should remain in the family as long as possible. If litigation is to be avoided, let the Court's previous sanction be required for an alienation of property. I do not like to limit the right of challenge to the nearer reversioners, e.g., the heirs in the compact series.

*Monogamy*.—In certain cases, a man should be allowed to take a second wife, giving one-third or one-fourth of his property to the superseded wife—e.g., where the first wife is a lunatic, or a permanent invalid, or barren, or possessed of a bad temperament. I think the wife would prefer to be superseded rather than divorced. The wife should have the right to sue for divorce in such a case, if she prefers it. I would not impose the Court's previous sanction as a condition for the second marriage.

*Inter-caste marriages*.—I would permit these even in the sacramental form of marriages; but parties in such cases are not particular as to the form of their marriage. I have the same views with regard to the *sagotra* marriages. There is no *sagotra* restriction in my community, as we have no

*gotras* in that sense. There is something akin to the *gotra*, but it is not operative in practice.

*Divorce*.—This may be allowed; divorce is known to the Hindu Law, and prevails even now among the lower castes. See my detailed memorandum.

*Adoption* of girls is permitted by Nanda Panditha and may be allowed. Daughters are sometimes adopted by the Tamils.

4. Mr. K. BASHYAM (President), Mr. K. VENKATARAMA RAZU (Secretary) and Messrs. N. R. RAGHAVACHARI and N. SIVARAMAKRISHNAIYER, Advocates, gave evidence next as representatives of the Madras High Court Advocates' Association.

We have submitted a detailed memorandum

We consider that this is not the proper time for enacting legislation of this kind, especially as the Legislature is not now a representative one; but the preliminary work can be done now and the results of the Committee's work may be placed before the Legislature after an election is held.

The *Mitakshara* is a system of social security and we consider that the *Dayabagha* may be assimilated to the *Mitakshara* rather than the reverse. But two changes should be made in the *Mitakshara*: (1) The pious obligation of a son to pay his father's debts should go. The son should be on the same footing as other members of the coparcenary. (2) The powers of the manager in the matter of alienating joint family property should be restricted, by enumeration, if possible. We shall try to give a specific list

Impartible estates should not be entirely excluded from the scope of the Code. The Committee should consider this point further.

We are in favour of granting an absolute estate to women; even those now holding a limited estate may have their estate enlarged into an absolute estate. The Mysore rule is that women's estates should be limited if there are descendants of the deceased. This may be considered as an alternative suggestion.

We are in favour of giving half a share to the daughter, whether married or unmarried.

Apostasy should be a disqualification. The Caste Disabilities Removal Act may be repealed. The widow's estate should cease on conversion.

Part II of the Code does not deal with the case of uterine relatives. Their case also should be further considered.

Illegitimate sons who are now heirs in certain communities should continue to be heirs and take half a share. A mere right of maintenance will not be sufficient. If the father has failed to give them any share, they should be entitled to half a share.

Parents' maintenance should be a charge on the estate if possible.

The divided son should not have a share.

Regarding the order of succession, the son's daughter and the son's son's daughter should come before the mother and after the daughter's son.

*Stridhana*.—All *stridhana* should devolve in the same way.

*Marriage and divorce*.—The civil marriage provisions should not be in the Code.

*Monogamy* should be strictly enforced without exceptions, even in the case of sacramental marriages.

*Sagotra* marriages beyond the seven degrees and *sapra-vara* marriages should be permitted.

*Inter-caste* marriages should not be permitted in the sacramental form.

In cases of marriage under the Special Marriage Act, the father should have the right to adopt. Also their issue should have no right to collateral succession. Other disabilities may be removed. The time has not arrived for placing marriages under the Special Marriage Act on the same footing as a sacramental marriage for all purposes.

We see no great harm in the provision for divorce. We are sure that it will not be availed of, except where the conditions are intolerable.

*Adoption*.—We approve of the Bombay rule of adoption being extended to other Provinces. Clause 25 (2) of Part VI: this modification to meet the case where the death of the husband has occurred before the commencement of the Code does not seem to us to be necessary.

5. Mr. K. KUTTIKRISHNA MENON, Government Pleader, was the next witness.

I belong to Malabar and am governed by the Marumakkathayam Law. Amongst us, monogamy has been made a rule of law by Madras Act XXII of 1933. No one has become a Muslim for the purpose of circumventing this Act. It has worked very well. I see no objection to enforcing monogamy as a rule of law for all Hindus.

As regards divorce, I would make a provision as in the Malabar Act. Although under the Act, divorce can be secured by an instrument of dissolution executed by the parties or on a mere application to the Court by one of the parties, yet there are very few divorces in practice. If the freedom allowed is genuine, the parties feel their responsibility all the more.

I agree that the Mitakshara coparcenary should be abolished, as proposed.

*Part VI, clause 19*—Even adoption within three years, should not divest any estate already vested.

In my opinion, the daughter should get an equal share with the son. The unmarried daughter gets it amongst the Nambudri Brahmans in virtue of Madras Act XXI of 1932 (but the married daughter gets no share), so does the widowed daughter-in-law. As far as I know, the giving of a share to the unmarried daughter has led to no discords after her marriage.

6. Mr. P. GOVINDA MENON, Crown Prosecutor, giving evidence next, said:

I want an inclusive definition of the expression 'Hindu' instead of an exclusive one. I would make the Code applicable to all Indians except Muslims, Christians, etc. The Code must apply to all who have any faith in Hinduism.

I also belong to Malabar and I am governed by the Marumakkathayam Law. The Committee may exclude marumakkathayis from the Code, unless they specifically elect to come under it. If the Code is passed, it may supersede the Marumakkathayam in respect of testamentary power, guardianship, etc. I prefer a general exclusion with an option to come in.

*Adoption*—There should be no divesting even within the three years' period, except of the adopting mother. I wish also to suggest that the right of guardianship should continue to be exercised by the relatives in the adoptive boy's natural family, notwithstanding the adoption.

*Monogamy and divorce*—Although the Marumakkathayam Act, Madras Act XXII of 1933, makes divorce easy, there have not been, to my knowledge, more than half a dozen petitions for divorce in Court. I can speak with intimate knowledge of Malabar. Monogamy has worked very well in that district. Similar legislation has been in force in Travancore and Cochin for a much longer period and even there, divorce among Hindus is very unusual. Travancore and Cochin, both had monogamy and divorce earlier than British Malabar. Even among Christians in Malabar, there have been comparatively few divorces.

Moplahs are polygamous and there is more divorce among them than among the Hindus. As far as I am aware, Hindus in Malabar have not gone over to Islam because of monogamy being enforced by law. Conversions have been due to other causes.

There is a Moplah Marumakkathayam Act of 1938; it regulates succession, inheritance and partition among Moplahs. As regards marriage and guardianship they are governed by the Shariat Law.

*Succession*—The son's daughter and the daughter's daughter should share equally *inter se*, when their turn comes.

*Guardianship*—When a mother is alive the father should not appoint any other person as guardian by his will.

7. Mr. S. GURUSWAMI, Editor, *New Viduthalai*, was the next witness.

I do not represent any organization, nor have I sent any memorandum. I speak only for myself. I am the Editor of a Tamil daily called the *New Viduthalai*. The latter is a Tamil expression which means "Liberation". I have been editor for the last eighteen months.

I am generally in favour of the Code. It will further Hindu solidarity.

*Daughter's share*—Daughters, whether married or unmarried, should share equally with sons. They have equal responsibilities in society. I consider that men and women should have equal rights.

*Monogamy*—I am in favour of monogamy, without any exceptions. I am for permitting and even for encouraging inter-caste marriages. Because we have not done so in the past, conversions take place to other religions.

*Divorce*—I support the provision for divorce as an overdue reform in Hindu society. The unchaste wife has been excluded from inheritance, but not the unfaithful husband. This is unfair.

8. Mrs. KUNJITHAM GURUSWAMI, wife of the last witness, gave evidence next.

I am a B.A., L.T., of the Madras University and a lecturer for the National War Front. Before I joined the National War Front, I was Headmistress of a school in Mylapore. I have also done a good deal of social work for the last 13 or 14 years among women. I am not a member of the All-India Women's Conference or of any other organization. I express my own views. I have spoken at many social reform conferences of women in the Tamil districts, chiefly among the middle and poorer classes and sometimes among the richer. I have addressed 8 to 10 meetings, some of women and some of men and women, in the City, about the Code. The Code was generally supported at the meetings. The attendance has varied from 40 to 50 to many hundreds. To my knowledge, most educated women support this Code. Even among uneducated women, large sections support the Code, although the papers try to make out the contrary. Resolutions favouring rights of inheritance and divorce for women were passed over 13 years ago.

I think this Code should have come long ago. Orthodox opinion will always say that the time is not opportune for any reform.

*Daughter's share*—Daughters should share equally with sons. I see no force in the fragmentation argument. If the daughters had been sons, would they not have had shares? As regards the family discord argument, I would like to ask: do not sons litigate about family property now?

*Monogamy*—I would enforce this without any exceptions whatever.

*Divorce*—I support the provisions in the Code. But seven years is too long. Five years should suffice. The right of divorce should be permitted even to those already married.

*Adoption*—Women should have a voice in adoption, just like their husbands.

*General*—The definition of 'Hindu' is not comprehensive enough. An Indian who does not profess any religion in particular should also be governed by the Code.

There should be equal rights for men and women in matters of inheritance, marriage and divorce.

9. Mr. P. V. RAJAMANNAR, Advocate-General of Madras and Judge-Designate, Madras High Court, was the next witness. He said:

I have submitted a memorandum to the Committee. Generally, I support the Code.

As regards the order of succession, I think that one's own descendants should come before ascendants or collaterals. The nearer in degree should be preferred. I see no reason why the sister and the sister's son should be placed after the brother's son's son. The divided son should not take with the undivided son.

I am in entire agreement with the proposal to abrogate survivorship and the right by birth. The coparcenary is a fruitful source of litigation, and it has already disappeared to a large extent.

*Succession—Part II—Proviso to clause 19*—On reconsideration, I agree that the proviso may remain.

Whether the widow loses her right to the estate on remarriage is not clear. It may be made clear.

*Marriage*—I agree to the provision for divorce but not to the strict enforcement of monogamy. If the husband takes a second wife, the first wife should have the right to apply for divorce. She may also be given one-third of the husband's property. If monogamy is enforced on a man who is polygamous by nature, it would only lead to increased concubinage. I can see no harm in an enabling provision for divorce. It will not be utilized by most



people. Even the Hindu Widows' Remarriage Act has not been availed of very much.

*Daughter's share.*—I am not impressed by the fragmentation argument. Collectivisation is the remedy for the exclusion of the daughter. Generally, I support the Code in this regard.

*Absolute estate for women.*—I am in favour of this. Even in respect of inherited property, I think, women should have absolute rights.

The Committee then rose for the day at 6-30 p.m.

Wednesday, 7th March 1945.

The Hindu Law Committee resumed their sittings in the Committee Room of the Madras Government Secretariat at 11-30 a.m. on Wednesday, the 7th March 1945. Sir B.N. RAU (Chairman) and the other three members were present.

1 The Women's Indian Association, Madras, represented by Mrs. AMBUJAMMAL and Mrs. SAVITRI RAJAN, gave evidence first.

Mrs. AMBUJAMMAL: I am a daughter of the late Mr. S. Srinivasa Ayyangar. I am the General Secretary of the above Association, which is also the Madras Branch of the All-India Women's Conference. In fact, the Association, which was started 25 years ago, is the original body, and is the parent of the A.I.W.C. The Association has a membership of about 150 in the City of Madras—I mean 150 paying members—but our meetings are attended by others as well, and 400-500 women are usually present. Our meetings are held in the City. Dr. Muthulakshmi Reddi, at one time the Deputy President of the Madras Legislative Council, is the present President of the Association, but she is too ill to give evidence before the Committee. We have sent a memorandum in favour of the Code.

CHAIRMAN: It is often said that you represent only a handful of women. What do you say to that?

WITNESSES: That is not true. In connexion with the questionnaire issued by the National-Planning Committee in 1938-39, a questionnaire which raised all the points dealt with in the present Code, we had occasion to hold meetings, make house-to-house inquiries and educate public opinion. Mrs. Subbarayan was then President of the Association and Mrs. Savitri Rajan the Secretary. We can therefore confidently claim to speak for women in general, although our paying members are small in number. As Gandhiji says, our masses cannot speak for themselves. We are in a position to speak for them, after investigating actual cases of desertion, in our Seva Sadans and other Homes. I have held six or seven meetings recently and explained the Code to the assembled women: they all supported it. Of course, orthodox ladies were at first shocked by the mention of divorce, but when I explained that it was a permissive provision and that it was circumscribed by various conditions, they not only supported it but even suggested that the conditions should be relaxed; for example, they said that 7 years was too long.

In one case (which I know personally), a girl was married to a man in Rangoon, then there was a quarrel about the dowry between the husband and the father-in-law and the husband left his wife and either married or kept a Burmese woman. The wife came back to India and is now living with her parents. She is now about 25, has no children, and would like to get married, but cannot. The parties are Brahmans.

In another case I know, in which also the parties are Brahmans, the facts were similar. The wife is now living with a cousin of hers and would like to marry him, but cannot do so.

CHAIRMAN: Are there many cases of this kind?

WITNESSES: Only a few come to our notice. We shall try to send a list of actual cases of desertion within our knowledge. These are enough to show that monogamy is badly needed. At present, second marriages take place for flimsy reasons, for instance, quarrels over the dowry, the husband's caprice, etc. Even for Brahmans, the demand has been made by us that there should be monogamy ever since the Seva Sadan was started some 25 years ago and facts came to light. Mrs. Subbarayan sponsored an anti-polygamy Bill in 1938 or thereabouts. Every woman, whether Sanatanist or not, is for monogamy.

As regards sacramental marriages, the majority of the members of the Association prefer the alternative clauses,

except that *sagotra* marriages outside the prohibited degrees should not be forbidden. We do not wish to encourage inter-caste marriages, because of social difficulties; but where they have taken place, the *factum valet* principle should be applied and the marriage validated.

*Divorce provision.*—We are in favour of this.

CHAIRMAN: It has been said that if monogamy were enforced strictly, Hindus would become Muslims in order to marry more than one wife. What do you think?

Mrs. AMBUJAMMAL: I would answer that if monogamy were not enforced, Hindu women might turn Christians to secure the benefit of monogamy! But I do not think that either view is justified. Divorce should be provided along with monogamy; but even if any chance, divorce cannot be provided, monogamy must be strictly enforced. Monogamy may lead to the re-union of separated couples in some cases.

WITNESSES: Divorce should be provided particularly in cases of desertion: these cases are growing alarmingly in number. Desertion is usually followed by the taking of a second wife. We shall show from the figures of several years how cases of desertion have been growing in number.

*Daughter's share.*—We strongly favour this.

We think the daughter-in-law should be reintroduced as an heir. The predeceased son's daughter should also be added.

*Adoption.*—The mother should have a voice in the giving as well as in the taking of a boy in adoption. We have not considered the question of adopting daughters and are not in a position to urge this. We agree to the Bombay rule.

*Guardianship.*—The father should not have the right to oust the mother by will, except with her consent. A remarried widow should not forfeit her right to the guardianship of her children by the deceased husband.

2. Mr. S. RAMANATHAN, M.A., B.L., was the next witness,

I was a Minister during the Congress regime from 1937-39. I have been the Secretary of the "Self-Respect League," a body formed in 1926, with the object of abolishing all distinctions based on mere birth, from its inception. I have read the draft Code and have submitted a brief memorandum.

"Self-respect marriages" should be recognized. Thousands of these marriages take place at present. I have myself presided at these functions. A public meeting is held, speeches are made, explaining the objects and ideals of marriage and the futility of ceremonial. In essence, the couple are exhorted to be faithful to each other so that the marriages may be lasting. Then the couple take an oath of mutual fidelity before the assemblage and sometimes exchange garlands. That completes the marriage. No registration is effected in such cases. There have been some inter-caste marriages of this type, but mostly they are within the caste. Such marriages take place at present in the Tamil districts, and the movement has not yet spread to the Telugu areas, but it will grow.

I agree that the Mitakshara joint family may go. The daughter should have the same share as a son, and all sex distinctions should be abolished. There should be compulsory registration of all marriages, just as there is a register of births and deaths. Inter-caste marriages should be encouraged by all means, if the nation is to progress.

The draft Code is a limited measure and does not go far enough. All distinctions based on caste should go.

3. Mr. P. V. SUNDARAVARADULU, Advocate, Chittoor, was the next witness.

I am an advocate of Chittoor. I was the Secretary of the Andhra Provincial Ryots' Association for seven years. The Association still exists. I was also nominated by the Government as a member of the M. & S.M. Railway Advisory Committee for representing agricultural interests.

Daughters should not be given a share in *agricultural lands*, as this may result in further fragmentation of holdings.

Daughters may be given one-fourth the share of a son, except in agricultural land and the residential house. These exceptions will prevent discord. In any emergency, they can rely on the brothers' natural affection. The daughter's estate should be absolute. But she should not have a right to claim partition. If the brothers partition, she should have her share. Meanwhile, she should get her portion of the profits.

The widow's estate should be limited as at present. A woman's affections are usually centred on her mother's

side relations. Hence my preference for the limited estate in the case of property inherited by a woman from her husband. The property should, after the widow's death, revert to her husband's heirs.

Monogamy must be enforced, without exceptions. It is fantastic to suggest that Hindus, even in the lower classes, would turn Muslims if monogamy is enforced. Nor do I think that it would lead to concubinage. I know the lower classes well and have no such fears.

Inter-caste marriages should not be regarded as invalid. The time has gone for enforcing these restrictions. Similarly, with regard to *sagotra* marriages: although sentiment is against them, there should be no legal ban.

I belong to the upper middle class of Telugus, the Kammavarus. We wear no sacred thread but claim to be Kshatriyas. We have *gotras*; mine is *Srikarlu*.

I advocate compulsory registration even for sacramental marriages for facility of proof.

*Divorce*.—I do not approve of divorce, but if it is provided, it should be capable of being effected by a registered instrument without going to the Court. The parties will have to admit execution of the instrument before a Sub-Registrar.

I think monogamy can be enforced even without divorce. For a few cases of desertion, I do not think we should have a provision which will make the marriage tie less sacred.

I think the right by birth should now go: it is a shackle to individual enterprise. Even survivorship may go.

4 Sri Rao Bahadur D. S. SARMA, M.A., gave evidence next.

I was a Professor of English in Presidency College, Madras, for 20 years. I was then Principal of the Government Arts College, Rajahmundry; and afterwards I became Principal of Pachaiyappa's College for three years. I have written several books on the Bhagavad Gita; also on 'What is Hinduism,' and the 'Renaissance of Hinduism.' I am a Brahman by caste. I am the President of the Harijan Sevak Sangh, Andhra Provincial Branch. My age now is 62.

I have read the draft Code and have submitted a brief memorandum. I approve of its provisions except as regards some sections in the part relating to adoption.

The age at which a man may adopt should be raised. Fifteen years is too low. The mother should have a voice in the giving and the taking of a son in adoption. I feel very strongly on this point. The adoption of the eldest or of the only son should be forbidden. Distinctions of caste should be abolished in matters of adoption as well as in those of marriage.

I am in favour of this Code for three reasons: (i) It introduces greater uniformity in the laws governing Hindu society in the various Provinces, (ii) It introduces integration among Hindu castes. The crying need of the hour is their solidarity, (iii) It raises the status and dignity of women.

Far from thinking that the Code will disrupt Hindu society, I think it will consolidate it.

Such changes as may be necessary for bringing about uniformity should be made, even if they are regarded as revolutionary. There will always be prejudice against a change, but legislation should take into account the thinking public as in the case of the Sarda Act. Those who opposed it at first are now reconciled to it, and see its benefits. Whether one should proceed with a piece of legislation or not depends upon the volume of opinion—among the thinking public—in its favour. In my opinion, the majority of the thinking public would support the divorce provision in the Code as there are very stringent safeguards. I speak of course, for the public in this Province. So also as regards the monogamy provision.

Even as regards the succession provisions of the Code, I do not think any referendum is needed.

I consider that the method adopted by this Committee is fairer than merely putting the proposed legislation to the legislature.

5. Sri Rao Bahadur V. V. RAMASWAMY, Chairman, Municipal Council, Virudunagar, and Vice-Chairman, Nadar Mahajana Sangham, Madura, was the next witness.

I have studied the draft Code and have submitted a written memorandum. I am in favour of the Code.

I agree that the right by birth and survivorship should go.

I think daughters, whether married or unmarried, should have equal shares with sons.

I am a non-Brahman. I am a Hindu Nadar. There are Christian Nadars. There are sacramental marriages as well as other marriages amongst us. All marriages must be registered. "Self-Respect Marriages" have been in vogue among us for nearly 30 years and their validity should be clearly recognized. Absence of ceremonies should not invalidate the marriage.

I am a member of the "Self-Respect League." The League is not working, but its spirit is at work in the entire Province. Inter-caste marriage should be encouraged, as they will promote national solidarity. Even when they take place in the sacramental form, they should be valid.

There are many instances of cruelty, desertion, disease, etc., where women have had to suffer silently. Even last week, there was a case of a couple who were accusing each other and all on a sudden, the man clandestinely married another wife. In our community breach of monogamy was at one time followed by ex-communication, but now that control is not so strictly exercised. If monogamy is enforced, there must also be provision for divorce. I have no fear that the provision will be abused. Christian Nadars have divorce but there have been no cases of divorce to my knowledge even among Protestants.

6. The Velala Sangham represented by Messrs. A. ARUNACHALA PILLAI, V. MANICKA MUDALIAR, C. TYAGARAJA MUDALIAR and SIVAMUTHUKUMARASWAMI MUDALIAR, gave evidence next.

We represent the Velala Sangham. A list of members will be found in our Chairman's book. The Velalas are the agricultural community of South India. We are not Brahmans. The Sangham was founded in 1919. We have studied the draft Hindu Code and submitted a memorandum on the subject. In general, we heartily welcome the Code. We have had it translated into Tamil and circulated individually. Several meetings have been held and they voted in favour of the Code.

We are mostly Dravidians. We consider that the Sanskrit Hindu Law has been wrongly applied to us but the mischief has been done; we welcome the Code principally for the reason that it does not recognize caste distinctions. We would in fact welcome a territorial law for all Indians, whether Hindus, Muslims or Christians.

MR. VENKATARAMA SASTRI: It is easily said, but great are the difficulties.

CHAIRMAN: Even when we try to make changes in the law applicable to the various sections of the Hindu community, to make it uniform, there is agitation; I do not know what would be the result if changes were introduced for Muslims, Christians and Hindus on a territorial basis.

WITNESSES: There was a good deal of opposition to the Sarda Act at the time, but it is appreciated now. We think that this Code will be similarly approved and appreciated in due course, after it has been passed. The opposition now comes from a small group. We have attended a number of meetings and have found that when the Code is explained to the people properly, they approve of it. The majority, we think, approve.

The two main objections are: (i) that it offends against the Hindu religion, (ii) that the present Legislature is incompetent. We have dealt with both these objections in our memorandum. Even among the orthodox, there are many who approve of the Code, for example, Mr. V. V. Srinivasa Iyengar, an ex-Judge of the Madras High Court. Many orthodox people there are, who are in favour of the Code but who do not wish to say so openly.

We have suggested certain amendments to the Code in our detailed memorandum.

Unchastity provision—Part II, Clause 19, Proviso—We would omit the proviso, as we consider that the fact of unchastity should be capable of proof even subsequently.

Absolute estate for women—The Sangam supports this. [MR. ARUNACHALA PILLAI: My personal view regarding the absolute estate, however, is that the Hindu woman's limited estate in inherited property should continue as at present. Women are not so educated or advanced as to be capable of holding an absolute estate. Men are more circumspect and capable. Besides, the absolute estate would lead to fragmentation.]

*Divorce*.—Cruelty should be added as a ground for divorce. The period of seven years mentioned in clause 30,

of Part IV should be reduced to three. The proceedings should be *in camera*.

*Adoption*.—A person should have the right to adopt any boy of any caste, just as he has the right to marry a woman of any caste.

An orphan should be capable of being adopted. He is most in need of the protection which an adoption will confer.

7. Mr. P. BALASUBRAMANIA MUDALIAR, Editor, *Sunday Observer*, was the next witness.

I speak for the Young Justices' League of which I am the President. It has a membership of about 3,500 all over the Province. It includes some Muslims and Christians, but a large majority of its members are Hindus. We are for large changes in all departments of life, including the law. We have not submitted any written memorandum but the League wholeheartedly supports the draft Code. We have held meetings in support of the Code, at which I have spoken. Especially do the provisions as to monogamy and divorce have our support.

Monogamy without divorce would be like a still-born child. I do not believe that a provision for divorce will be abused by any section of the Hindu public. On the other hand, it will strengthen morals and keep husband and wife together.

I also support the law of inheritance for women embodied in the Code. I do not think women will abuse their right or waste the property which they inherit. On the other hand, I feel the property will be safer in their hands than in the hands of men. To this portion of the Code, there would be wholehearted support from all Hindu women. Our League includes women.

Lingayats should be included among Hindus.

I may point out that even Roman Catholics observe Hindu ceremonies, e.g., the *saptapadi*, placing the foot on the stone, tying the *tali*, etc.

Part IV—Clause 30 (e)—*Dissolution of marriage*.—Venereal disease should not be a ground for divorce, because by the time the cause of action accrues, it will already be too late for the remedy by divorce to be effective.

To Dr. MITTER: A Hindu will dislike the idea of his wife remarrying during his life time. So the provision for divorce will act as a deterrent and keep him straight and considerate to his wife.

Divorces are very rare among Christians although they have the provision for divorce. So too among Hindu communities where divorce now prevails by custom, it is not resorted to very frequently.

This Code has met with much smaller opposition than the Child Marriage Restraint Bill.

8. Rao Sahib T. A. V. NATHAN, B.A., B.L., Special Press Adviser to the Madras Government, was the next witness.

I do not represent any organization but I was connected with the non-Brahman movement for over fifteen years. I was also connected with the Anti-Untouchability League and was Joint Secretary of the South Indian Social Service League. Both these Leagues are now defunct, with the departure of Dr. Surendranath Arya (the President of both) to the Punjab.

I have studied the Code and submitted a written memorandum which represents my personal views. I strongly support the Code, as detailed in my memorandum.

I do not think the provision for divorce is likely to be abused. Hindus are conservative by temperament and are not likely to resort to it even when there are grounds.

Adoption of girls should not be prohibited. There should be no caste distinctions recognized in the matter of adoptions.

9. Sri THETHIYUR SUBRAHMANYA SASTRIAR who was the next witness gave evidence in Sanskrit.

I am the President of the Madura Adwaita Sabha. I give evidence both in this capacity and in my personal capacity. I have submitted a memorandum to the Committee giving my views in detail.

I am opposed to most of the provisions of the draft Code.

*Daughter's share*.—I hold that the one-fourth share given by the *smritis* to unmarried daughters is only for marriage expenses; if the marriage is performed with less, the balance should be given to her. If the marriage costs more, the brothers should meet the excess themselves. [The view of Apararka about the daughter's "right by birth" was pointed out to the witness.]

*Monogamy*.—There can be only one *dharmapatni*. If a man marries a second wife, when his first wife has all the qualifications mentioned in Yajnavalkya, he should be punished. The *sastras* recognize that the second wife may be of inferior caste.

*Adoption*.—I would stick to the Madras rule requiring the consent of husband or *sapindas*, and am not in favour of extending the Bombay rule to this Province.

10. Srimathi M. A. JANAKI, Advocate, was the next witness.

I am an advocate of the Madras High Court. I am the third advocate among women in Madras. Three of my sisters are also advocates.

I have read the draft Code and given my written opinion on it. I am in favour of the Code generally.

*Daughter's share*.—Daughters should have equal shares with sons. Their marriage expenses should be deducted from the estate and the remainder divided.

*Absolute estate*.—I have long been in favour of this. In these days, men are more likely to waste property than women. Speculations, etc., are temptations for man, not for woman. What does it matter after all if a woman does give the property to her own blood relations? Retrospective effect may be given to the provision regarding absolute estate from, say, 1941.

*Monogamy*.—We all want monogamy. I am quite sure that Hindus will not become Muslims for the purpose of marrying more wives. Even if it is not possible to enact any provision for divorce, I would still have monogamy.

*Divorce*.—I am in favour of the provisions made, but they should be more liberal. The period of seven years for instance is too long. It may be reduced to three years, especially as the proceedings in Court will take another two years. The divorce provisions should apply to persons now married as well as to those who marry later. Women will not abuse the privilege: they are conservative by nature. Even in cases of desertion, they may not use it. Men may abuse the privilege but it cannot be helped.

It is desirable to provide for divorces being effected by the family elders or by a decision of the community. Divorce so effected should be evidenced by a registered instrument. Matrimonial Courts should be set up for the purpose of bringing about a reconciliation between husbands and wives.

*Miscellaneous*.—Mother and child should be held to be related, even if the child is illegitimate.

The *daughter-in-law* should also be a simultaneous heir.

Parents should be made simultaneous heirs and not left to the mercy of their daughters-in-law. Fragmentation is inevitable if there are many persons to be provided for.

Some limit should be placed on the difference of age between husband and wife at the time of marriage. A man of fifty should not marry a girl of fifteen.

11. Mr. K. S. CHAMPAKESA IYENGAR, Advocate, giving evidence next, on behalf of the Vanamamalai Mutt, said.

I am an advocate of 28 years' standing. I represent the Vanamamalai Mutt. I have submitted a memorandum on its behalf. The Mutt is against the provisions of the Code.

*Daughter's share*.—The daughter should have no share whether she is married or unmarried. The *status quo* should continue.

*Absolute estate*.—We are against this. Women are sufficiently provided for under the existing law. (After argument): I have no objection to the right of challenging a woman's alienations being confined to the heirs in classes I to III.

*Monogamy*.—Bigamy should not be made penal. In practice, not more than one marriage in a thousand is polygamous. I would nullify a second marriage where there is a son by the first marriage, and the first marriage subsists. A law requiring a man to prove certain specified exceptional conditions (in accordance with the *smritis*) in the court and obtain the court's permission before contracting a second marriage would solve all difficulties. I would also insist on the consent of the first wife being taken for the second marriage.

We are against *inter-caste* marriages even where the texts permit such marriages, as they are against the present *ashara*. Even a second marriage must be contracted

within the caste. We are also against *sagotra* and *samanapravara* marriages for Brahmans. The *factum valet* rule should not be applied in such cases. But there is no objection to the subsequent regulation of such marriages by registration as *civil marriages* at the instance of either party. Only it must not count as a sacramental marriage.

*Dissolution of sacramental marriage*—We are against this, even in cases of desertion by the husband. But if my suggestions are accepted, the husband will seldom be able to marry again. There will be suffering in hard cases no doubt, but it should be patiently borne as inevitable, in the larger interests of the community.

The Committee rose for the day at 6-50 p.m.

Thursday, 8th March 1945.

The Hindu Law Committee resumed their sittings under the Chairmanship of Sir B.N. RAU, C.I.E. in the Committee Room of the Madras Government Secretariat at 11-15 a.m., on Thursday, the 8th March 1945. The other three members were present.

1. Miss E. T. CHOKKAMMAL, B.A., B.L., Advocate, Madras High Court, was the first witness for the day.

I am an advocate of the Madras High Court of nine years' standing, having been enrolled in 1936. There are 12 women enrolled as advocates at present in the Madras High Court, but only six are in actual practice.

I have studied the draft Code and have submitted a written memorandum to the Committee. I am, generally speaking, in favour of it, but have suggested certain changes.

I am in favour of monogamy and divorce. As regards divorce, the present practice of a Hindu changing his or her religion, in order to get a divorce, should be stopped, if possible. The draft Code will, I think, do so, and I, therefore, welcome it. I do not think that the divorce provisions will be abused. Only extreme cases are provided for. The period of seven years in the divorce clause (clause 30 of Part IV) may be reduced to four. In cases of desertion, the period may be smaller. There may be a right to divorce when either party has not been heard of, say, for seven years. In all cases of divorce, alimony should be provided for.

Daughters should have equal shares with sons. The sons are given foreign education at considerable expense. In any case, the unmarried daughter's marriage expenses should be met out of the estate before distribution.

The *gotra* and *pravara* restrictions are not required and may be removed. All marriages should be registered within a week of their solemnization.

All *stridhana* should devolve in the same way so as to obviate legal complications. Here also sons and daughters should get equal shares, but not if they do not get equal shares in the father's property.

The predeceased son's daughter should also have a right to maintenance. Perhaps, she may have a share like the predeceased son's son. She may perhaps be given half a share.

I think it is time to do away with adoption. After all, it is only a fiction. If it is retained, the adopted son should be at least seven years younger than the adoptive mother.

2. Mr. V. N. SRINIVASA RAO, M.A., Barrister-at-Law, was the next witness.

I have come here to give evidence on behalf of the Madras Majlis, a debating society formed on the lines of the Oxford Majlis of which I was Secretary in 1936-1937. I started the Madras Majlis on the same lines: we have between 30 and 35 members. We had a discussion (in the Majlis on the draft Code in December and have submitted a written memorandum to the Committee on it. I am a Barrister practising in the High Court. I was in the Committee of the Bar Association which considered the Code. I am a grandson of Justice Sir C. V. Kumaraswami Sastri; and my father, Diwan Bahadur V. N. Viswanatha Rao, is the Collector of Tinnevely.

Generally speaking, the Majlis is absolutely in favour of the Code. Our only complaint is that it does not go far enough. After all, it is the younger generation that has to live under the Code.

As regards Part II, Intestate Succession, I have the following suggestions to make: (a) The mother and father should come before the daughters' son. This is on grounds of natural affection and age. (b) The son's

daughter and the daughter's daughter should be bracketed with the daughter's son. (c) The descendants of the third degree should come before the brother who is only a collateral, and should take together. (d) If you want to prevent fragmentation, primogeniture should be prescribed. (e) In my view, the sister should take along with the brother. [This however is not necessarily the Association's view.] (f) In Provinces which have not passed complementary legislation, daughters should be given the equivalent of a half-share in agricultural land also. (g) In the rules of preference, sex distinctions should be ignored where the degrees are equal. (h) In the devolution of *stridhan* the husband must come before grand-children; and grand-children must take per capita.

*The unchastity disqualification.* (Part II, Clause 19)—This must either be deleted, or a similar provision should be made against the unfaithful husband.

*Marriage and divorce.*—We are for monogamy without exceptions. The registration of marriages including sacramental marriages should be compulsory and free like the registration of births and deaths, except that I want the parties themselves to go to the Registrar.

If an objection to a civil marriage delays it until *after the birth of the child*, the marriage should have retrospective effect, so as not to bastardise the child.

Part IV, clause 3 (b): Impotency at the time of marriage should incapacitate for a marriage just like lunacy and idiocy.

Part IV, clause 23 (1) (b): I would put the maternal grand-father after the paternal grandfather and before the brother. This is my personal view.

Part IV, clause 29 (4): Good faith of *one party* should be enough. In such a case, the children should not be illegitimate.

Part IV, clause 30: Seven years is too long. Three or four years should be enough. In sub-clause (e) besides venereal disease, reference to any wasting disease or any infectious disease may be added. Similar additions may perhaps be made in clause 26 (a) also.

Part V, clause 8: I would not authorize a father to appoint a guardian for the person of a minor when the mother is alive.

*Part VI, Adoption.*—Why should not an adoption by a *spinster* to herself be permitted? It is my personal view that it should be permitted. I would prohibit adoptions during a period of four years after the marriage. The mother's consent should be necessary for *giving* in adoption, particularly in the case of an eldest or only son.

3. Sri V. VENKATARAMA SASTRI was the next witness.

I represent nine organizations; viz.—The Kistna District Mahila Sangham, The Guntur District Mahila Sangham, The West Godavari District Mahila Sangham, The Kistna District Youth League, The Guntur District Youth League, The West Godavari District Youth League, The Andhra Provincial Students' Federation, The Andhra Provincial Trade Union Council and The Andhra Provincial Ryots' Association.

The above associations have a membership of more than 20,000 with branches in nearly 400 villages. We have submitted a printed memorandum dealing fully with the draft Code. We wholeheartedly support the Code, but would like the amendments we have suggested to be made in it.

We have held meetings of Kisan Leagues in every district—more than 100 meetings have been held in all. These meetings were attended by the *older folk* as well as by the youth. The provisions of the Code were explained to them and they all approved of it. We have already sent a monster petition signed by 4,000 people in favour of the Code. In the case of the previous Intestate Succession Bill, we sent a petition signed by 25,000 people. We have had no time on the present occasion for obtaining more than 4,000 signatures. If the Hindu Law Committee would only visit Bezwada, we can show them how much public opinion is in favour of the Code. We feel that there may be a regular revolt if the law is not speedily brought into harmony with the needs of the times.

Even the older generation in the Andhra Desa is on our side—i.e., in favour of the Code. I am personally aware of three cases in which parents have had their daughters "remarried" after obtaining a letter of release from the former husband who had deserted her. Divorce being impossible in such cases, this is what is done. To

the second marriage, friends are invited. These cases are among the *Kamma* or cultivator class, claiming to be Kshatriyas but often regarded as Vaisyas. They are the highest non-Brahman caste, and divorce does not prevail among them.

We are against the abolition of the Mitakshara joint family at present. But we approve of the daughter being placed on the same footing as a widow as regards coparcenary property. We would not go further at present.

Regarding the age for free marriage, 16 years should be uniformly adopted both for boys and girls and for civil as well as for sacramental marriages. At most, 18 years should be prescribed.

Monogamy, we totally support. Polygamy does prevail, but not largely, among the weaver and some other classes, but these marriages are not a happy relationship. If only the first wife had a voice in the matter, these marriages would not have taken place. They take place against the will of the first wife. In such cases, the first wife should have a right of divorce.

In spite of the Sarda Act, child-marriages do take place. Only a month ago, in Bezwada, a girl of 5 was married to a boy of 16 or 17. In these parts, marriage of girls after 14 is exceptional. Often men of over 50 marry girls in their teens. Such disparities in age should be prohibited. I suggest for consideration that when a girl has been married below the age prescribed by the Sarda Act, she should have the option of having the marriage nullified on attaining the age of majority or any other age prescribed in this behalf in the statute.

The mother should also have a right to appoint a guardian for her minor children.

The wife's consent should be taken before a boy is taken or given in adoption.

4. Messrs. V. P. S. MANIAN, R. P. THANGAVELU and M. PONNU representing the South Indian Buddhist Association gave evidence next.

We have not submitted a memorandum. We should like Buddhists to be excluded from the Code. We represent 19 sanghams.

We want equal rights for daughters and sons. We want to give an absolute estate to the daughter, but only a limited estate to the widow. We have no objection to the line of heirs suggested in the Code.

Our present rules regarding marriage and divorce are :

- (i) Strict monogamy.
- (ii) Consent of the guardians of both sides before parties attain 21 years—no consent afterwards.
- (iii) Marriage before *Sangha* and signing in register.
- (iv) If at any time the doctor certifies that one of the parties is not fit for married life, the marriage may be dissolved by the president of the *Sangha*. Release on other grounds has not yet occurred either before the *Sangha* or before the Court.
- (v) No caste distinctions.
- (vi) Buddhist men marry Hindu women after converting them to Buddhism.
- (vii) Widows can remarry.

We have no system of adoption.

We would like the Burmese Buddhist Law to be applied to us. We do not like to be classed as Hindus.

5. Mr. G. V. SUBBA RAO, President of the Andhra Swarajya Party, Goshti, Bezwada, was the next witness.

I was a member of the Working Committee of the All-India Hindu Mahasabha but am not now a member. At present, I am the General Secretary of the All-India Rama Sena of which Dr. Moonje is Chairman. I am also the head of a number of Provincial organizations in the Andhra country. For example, I am the president of the Andhra Swarajya Sangh, Goshti, Bezwada.

I have gone through the draft Code and have submitted a printed memorandum. I agree with some provisions found in the Code. The Hindu Law requires big revolutionary changes. I would much like to have a new Hindu *smriti*. 'Hindus' should include "Adi Nivasis" or aboriginals. There is a tendency in certain States to absorb them into Islam.

I approve of the property rights which the Code proposes to give to women.

In very special cases, divorce may be allowed. I have said so in my memorandum. In my part of the country a Singh midwife does about 600 abortions every year. This is a crying evil brought about by illicit relationships,

and the Committee should take steps to stop this. The contracting of illicit relationships should be prohibited by law.

I do not support monogamy. To meet post-war conditions, polygamy may be necessary. Hinduism will die out, if monogamy is enforced among the Hindus alone.

6. Mr. V. APPA RAO, Advocate, Vizagapatam, was the next witness.

I am an advocate of the High Court and have been practising at Vizagapatam for the last eight years. I appear for the Ad Hoc Committee and Bar Association, Vizagapatam. Its strength is 15 or 16, and it was constituted at a Hindu Law Conference attended by about 300 persons.

I am a Brahman.

*Definition of "Hindu"*—We do not want Jains, Buddhists, etc., to be called "Hindus" although they may be governed by the Hindu Law. I therefore object to the definition of "Hindu."

*Mitakshara*.—We would adopt the Mitakshara order of succession for all India.

We are against the abolition of the right by birth or survivorship, in spite of the existence of hardship in exceptional cases. The Dayabagha should not be imposed on the rest of India.

*Daughter's share*.—We are against this, whether the daughter is married or unmarried. It will give rise to discords and much litigation.

*Absolute estate for women*.—We are in favour of giving an absolute estate to women in inherited property as well as in other stridhan.

*Monogamy*.—We are against monogamy. At the same time, restrictions should be imposed on the practice of polygamy. A Hindu should be permitted to take a second wife in cases of the first wife's barrenness and disease, with the consent of the wife and the permission of a Court. In such cases, the husband must maintain the first wife.

We are against inter-caste sacramental marriages. We are also against *sagotra* and *sapavara* marriages. Such marriages should not be validated by the application of the *factum valet* doctrine. But we have no objection to their regularization by subsequent registration as a civil marriage at the instance of either party to the marriage, with retrospective effect.

*Dissolution of marriages*.—We are against dissolution of any sacramental marriage, even where they have been procured by force or fraud.

CHAIRMAN: Suppose a child is married at the age of 6 and deserted at the age of 10. Would you keep the marriage intact for all time?

WITNESS: In such cases, the father may have the option of registering the marriage as a civil marriage and then getting it dissolved.

*Adoption*.—We are generally in favour of the provisions of the Code. I would prohibit adoption after a lapse of three years from the date of the husband's death or from the date on which the widow attains majority.

7. Sri V. V. SRINIVASA IYENGAR, retired High Court Judge, gave evidence next. He said :

I am a retired Judge of the Madras High Court. I retired from the Bench in 1928 lest I should be confirmed, and resumed practice. I have been 47 years in practice at the Bar.

I have had an opportunity of studying the draft Code and have also spoken on the subject at a few meetings at Bangalore, Trichinopoly and other places.

I am absolutely in favour of the Code—apart from small details. I have toured the whole of the Province in connection with my legal work and other matters. I must say that there is a lot of opposition from the orthodox, but I venture to think that all this opposition is based on sentiment and not on reason. I also think that the strength of the opposition is due to a misconception on the part of the public that what they call Hindu Law has remained the same from remote antiquity up-to-date. Changes have been made in the Hindu Law by the authors of the Dharma Shastras from time to time, in consonance with changing ideas and requirements. But the people have not appreciated this. Nor have they adequately realized the fact that when the British came to administer the law in this country, they failed to recognize customs and changes in customs which came into existence after the last of the Dharma Shastras

had been written. The British went back to Manu and the pandits were no better. They did not declare the law according to the consciousness of the community at the time, as to what the law then was.

More than 60 years ago, I have heard old women of 70 or 80 say, "It is our husband's property—who is to say that we can't dispose of it as we like." Such was the consciousness of the community at that time, but judges held otherwise and the limited estate has come into existence.

But I should like also to say that with regard to matters affecting the religious notions of the community, we should not deal with their susceptibilities rudely. As far as possible, regard should be paid to their sentiments and feelings. This is only a measure of practical wisdom.

As regards inheritance, I heard the late Sir V. Bhasyam Iyengar say more than once that our Hindu Law was inequitable, and that the Muhammadan Law was really admirable.

It is absurd to suggest that divorce was unknown to the ancient Hindu Law; the texts clearly recognize it. But the right was never availed of. I am in favour of a provision for divorce with safeguards to prevent its abuse. Some kind of testimony from the near relatives and neighbours of the parties might be a sufficient safeguard. A statutory direction to the Courts to remember that they are being invited to dissolve a sacrament and that they should take every precaution to get at the truth might allay fears of abuse. The conscience of the Court should be satisfied that the case is a fit and proper one for the exercise of its powers. A judicially trained conscience is better than any particular body of men. I shall put into writing any specific suggestions I have to make.

I am very pleased to see the provision for monogamy in the Code. About forty years ago, a Vaisya married four wives so that they might carry his corpse to the burning ground; but that sort of thing is now disappearing. Of Rama, Tyagaraja, the great poet and musical composer wrote about 200 years ago, "One word, One arrow, One wife." Monogamy was therefore the ideal even then.

I am in favour of keeping the right by birth and survivorship. The ideal joint family system is the best for the whole country. But I would give the power of disposition by will of coparcenary interest. This can be done by two steps now. My suggestion is that it be done in one, hereafter:

8. Mr E. S. REDDI, Secretary, Nellore District Students' Federation, gave evidence next.

The Conference of the All-India Students' Federation held in Calcutta in December 1944 was in favour of the Code. Professor D. P. Mookerjee of the Lucknow University presided over the Conference and Dr. B. C. Roy inaugurated it and Mrs. Sarojini Naidu spoke. The All-India Students' Federation has a membership of 76,000. The Andhra Provincial Students' Federation has ratified the resolution and sent a printed memorandum to the Committee.

9. Mr. P. C. Reddy of the V.R. College, Nellore, was the next witness.

I am the Head of the Department of Economics in the Venkatagiri Raja's College, Nellore. I am appearing both in my personal capacity and on behalf of the women of Nellore, who have deputed me to speak for them. I have submitted a written memorandum.

The Code is acceptable in the main. But it does not go far enough. I have mentioned the detailed changes which I think necessary, in my memorandum.

The Code is only a half-way house between orthodox Hindu Law and present day requirements.

We would like daughters to have equal shares with sons. I don't think there is likely to be any discord. After all, the dowry given at present is as much as a share and there is no discord. The dowry goes up to even Rs. 75,000 in some cases. The average dowry given in upper middle class families is Rs. 25,000.

About a century ago, we had among the Reddis a "composite family." For example, the daughter would be married to the maternal uncle's son and the two families would be together. But under the impact of modern ideas of individualism, this is disappearing.

*Absolute estate.*—I agree to this. I don't think women will waste the estate at all.

*Monogamy.*—I support this. No exceptions should be made.

*Inter-caste (sacramental) marriages.*—These should be positively encouraged, because the caste system is hampering the progress of Hindu society. Inter-caste marriages are very rare in my part of the country although inter-sect marriages are becoming very popular of late.

*Divorce.*—The provision should be made more liberal. The seven years' period is too long. One year is enough. At the ladies' meeting held in Nellore, an old lady of 65 vehemently argued that the period provided was too long and that no period need be fixed. Women attend our meetings, sometimes in stealth unknown to their husbands, and they support the Code. I have addressed several meetings and can say that the general public, and especially the women, welcome the Code. The public are disappointed at the attitude of lawyers and Bar Associations, who are regarded as reactionaries.

We would like the *Mitakshara* to be retained.

To Dr. MITTER: In our community, the boy and the girl do not see each other until after marriage. The age of marriage should be raised in the case of girls to 16 and the guardian's consent should go. In practice, she will not marry without such consent. In my district, most marriages are arranged by the parents from economic motives. The provision inserted in the Code for checking the dowry evil (Part IV, clause 28) is, in my opinion, sufficient.

10. Mr. G. KRISHNAMURTHI, Subordinate Judge, giving evidence next, said:

I am a Subordinate Judge. I have served in 13 districts so far. I took up the study of the Code at the instance of the Kamakoti Pith Sankaracharya. I have addressed many meetings. What I am stating now is a sort of judgment on the facts as known to and elicited by me, rather than my purely personal view. The statement (marked 'latest') which I have just handed in gives my latest conclusions.

I have come all the way here from Chicacole in the north at my expense, in order to place these conclusions before the Committee.

I am in favour of the Code to-day, with certain modifications.

A person should be capable of becoming a Hindu by making a simple declaration to that effect.

Whatever share is given to the daughter should be a right by birth.

The sex disability should go and the list of heirs should be drawn up in accordance with the principle of natural love and affection. The capacity to offer pindas should not be the governing consideration.

Certain ceremonies ought to be added in the case of sacramental marriages.

Impotency should be a bar to marriage.

Provision may be made for divorce by consent evidenced by a registered instrument executed before a Registrar of Assurances. This is preferable to going to Court.

Maintenance of concubines: Strict continuous concubinage should be proved.

Wills.—Should be compulsorily registered.

Benami.—The doctrine of benami should be abolished. Part II, Clause 19, should be modified. An unchaste woman who has never lived with her husband, for instance, should not take his property.

The *illatom* form of adoption may be retained. An *illatom* son may be given the share of a daughter.

The Mayukha adoption may be retained; in particular I see no harm in married men being adopted.

11. Mr. B. SITARAMA RAO, Advocate, giving evidence next said:

I have been an advocate of the Madras High Court for 40 years. I was the Government Pleader from 1933 to 1941.

I have gone through the Draft Hindu Code.

*Marriage.*—There is a lot of feeling that sacramental marriage should be kept apart from civil marriage and that sacramental marriage should be governed by the old rules and that there should be no divorce for such marriage.

I am not against monogamy in the sense that it will lead to any disaster to the Hindu community. But if monogamy is insisted upon, there will have to be divorce. Divorce is so much against the Hindu spirit that the shastraic method of allowing a second wife only upon

certain conditions may be better than monogamy with divorce.

Inter-caste and sagotra marriages should not be allowed in the orthodox sacramental form. Sagotra marriages sometimes do take place. To such marriages I would apply the *factum valet* rule. But I would not apply the rule to inter-caste marriages.

Hindus marrying under the Special Marriage Act should be governed by Hindu Law and not by the Indian Succession Act.

Sacramental marriages may be optionally registered.

*Adoption ceremonies.*—*Datta homam* may be made essential in the case of the three higher castes, where it is essential now.

I would like preferential rights of inheritance to be given to the issue of sacramental marriages over those of civil marriages, except where the latter satisfy all the conditions of a sacramental marriage.

I am on the whole in favour of preserving the Mitakshara joint family, the right by birth and survivorship.

CHAIRMAN: You are referring, I presume, to ancestral property. But take the case of self-acquired property. Suppose a Mitakshara father dies leaving, say, two sons. Do you see any objection to the two sons taking their father's self-acquired property as tenants-in-common?

WITNESS: No.

CHAIRMAN: Is there any objection to providing that in the hands of the sons (in the case put) the shares they inherit will not be 'ancestral property' and that their sons will not acquire a right by birth.

WITNESS: I see no great harm in such a provision.

*Daughter's share*—There is a general feeling that daughters should be given a share along with sons. Among educated people, the feeling is very strong, whether the daughter is married or unmarried. Whether the share should be one-fourth or one-half is a detail. There is a general feeling that the time has come to give a share to the daughter.

*Absolute estate.*—Personally, I am in favour of the absolute estate. So far as daughters are concerned, everybody would agree; but as regards widows, the feeling is against.

*The definition of Hindu* might require supplementing by some presumption that a person domiciled in India and not being a Muslim, Christian, Jew or Parsi, shall be presumed to be a Hindu. There may, for example, be animists worshipping some sort of Bhut.

*Adoption.*—I agree that non-prohibition may be taken as a consent. The Bombay Rule may be made universally applicable. Among Marumakkatayis and Aliyasanthanis, adoption is of daughters. This should not be overlooked.

12. Vidwan KUMARA THATHACHARIAR was the next witness. Giving evidence in Tamil, he said:

I am a Brahmin and a Pandit. I am the Secretary of the Akhila Bharatiya Vidvat Parishad, which is still in existence. Sir P. S. Sivaswami Iyer is its President. I am 82 years old. I have read the Code: it was interpreted to me in Tamil. I have sent a written memorandum. I support the Code with a few amendments.

CHAIRMAN: How is it that while most Pandits are against the Code, you are for it.

WITNESS: They are short-sighted. We must move with the times. So long ago as 1912, I wrote a book in favour of Temple Entry. I was in favour of post-puberty marriages and gave evidence before the Age of Consent Committee. The worst of pandits is that they will not listen to questions; otherwise, I would challenge them to answer me. I too have my supporters.

There is no definition of "gotras" and "pravaras" in the original shastras. These were adopted later for the sake of convenience.

There was only one caste originally. Out of egotism Brahmans assumed superiority and created caste.

The Narada Smriti supports the case for a woman taking a second husband. The Committee may recognize a second marriage without saying anything about divorce. These changes are bound to come, even if they may be opposed now.

13. Mr. V. M. GHATKACHALAM of the Madras Provincial Backward Classes League was the next witness.

I am the Secretary of the Madras Provincial Backward Classes League which has 7,000 members on its rolls. We

are not scheduled classes, who are regarded as untouchables. I have submitted a written memorandum.

There are 140 communities in this Province regarded as "backward classes" and these number 25 millions. They wholeheartedly support the Code. We had a number of meetings convened in Madras and outside and the general opinion was in entire support. The main reason for this support is economic. We want to form one solid Hindu Block. The Code will provide a simple, inexpensive marriage by a declaration before a Registrar. We feel very strongly the need for unity among Hindus. They now present a pathetic picture of a house divided against itself. If they are to be strong and united, they must discard caste distinctions which have been their bane.

The joint family system should be preserved. It will prevent fragmentation. But justice must be done to the daughters, who should be given a right by birth for their lives.

We welcome monogamy and inter-caste marriages.

14. Sir P. S. SIVASWAMI IYER

The Chairman and other members of the Committee then proceeded to the bungalow of Sir P. S. SIVASWAMI IYER, K.C.S.I., C.I.E., in Sullivan Garden Road, Mylapore, and recorded his evidence. The Chairman first thanked Sir Sivaswami Iyer for consenting to give evidence in spite of his ill-health. Then, questions were put to him and his answers were taken. The questions and answers were substantially as follows:—

#### *Monogamy.*

Q.—What, Sir, is your view of monogamy? Should it be enacted as a rule of law?

A.—No, I do not think it necessary to do so. Though there is no rule of law now enforcing monogamy, yet it is observed by most people as a matter of practice.

Mr VENKATARAMA SASTRI: Are you not thinking rather of the Brahman and other higher castes? It is said that in many castes at the bottom of the social scale, polygamy is prevalent.

A.—I don't think it necessary to prohibit polygamy by a law. As a matter of fact, monogamy is practically observed by most people.

Mr. SASTRI: In certain agricultural communities, we are told that when men require more farm hands, they resort to polygamy to get more workers.

A.—I do not think that that is a fact.

Q.—We have been further told that in Bengal some people marry women to get help in their work. Evidence has also been let in to the effect that where a business man has to distribute his time among a number of places, it is often an advantage to him—so it is said—to have a separate establishment at each place. Would it be injurious to prohibit such practices, by making them punishable under the Indian Penal Code?

A.—As I have already said, I do not think that it is necessary to enjoin monogamy by a law. Some men are immoral. You cannot help it. I would not, therefore, enjoin monogamy by a law.

#### *Sagotra marriages.*

Q.—What about sagotra marriages?

A.—I am in favour of them. It is not as if people are being compelled to perform marriages within their own gotra. All that is proposed in the Draft Code is that when such marriages do take place, they should not be invalidated. I see no objection to this provision.

#### *Inter-caste marriages.*

Q.—What about inter-caste marriages?

A.—I myself may not be willing to marry in another caste. It is a ticklish question. I may not be in favour of it personally. But I do not see why, if people of different castes do wish to marry, the marriage should not be recognized as a valid marriage by the State and the Law.

Q.—So you consider that inter-caste marriages should not be declared invalid?

A.—We should not stand in the way of inter-caste marriages being performed by people who are in favour of social reform.

\* K.C.S.I. (1915), C.S.I. (1912), C.I.E. (1909). Advocate-General of Madras, 1907-12. Member of the Executive Council, Madras, 1912-17. Vice-Chancellor of the University of Madras, 1916-18. Vice-Chancellor of the Hindu University, Benares, 1918-19. Kamala Lecturer, Calcutta University, the subject of the lectures being "Evolution of Hindu Moral Ideals."

Personally, I may not want to encourage such marriages. That is a different matter. The question of marriage is clearly one which must be left to the desire of the parties themselves. We should not invalidate an inter-caste marriage.

#### Divorce.

Q.—What about divorce?

A.—I think divorce must be permitted for good reasons. When people lead an unhappy life, you should not force them to live together; for example, when one party is suffering from a loathsome disease, or has deserted the other party for a number of years. These should be considered good causes for divorce.

I should like to add continued or gross cruelty as a ground, but not, of course, a single beating.

Q.—Conversion to another religion; should it be considered a good ground for divorce?

A.—I think it ought to be allowed. For suppose the wife is a strict vegetarian and the husband becomes, say, a Christian and wishes to take beef regularly, it will be very difficult, if not impossible, for them to live together.

Conversion should not render the marriage void *ipso facto*. But if the wife does not wish to live with the converted husband, I would give her a right to obtain divorce.

#### Daughter as simultaneous heir.

Q.—As regards giving a share to the daughter (the Draft Code provides for her getting half the share of a son), it is said that it will lead to discord between brother and sister, loss of family affection, and so on. It is also urged that there will be fragmentation of holdings and that it is therefore, economically undesirable.

A.—I do not agree with those reasons. I do not think that when no share is given, there will be greater affection. No, that is not possible.

Q.—Will you confine the half-share to the unmarried daughters?

A.—No. I will not draw any distinction between the married and the unmarried daughter, nor between the rich and the indigent daughter.

#### Rights of converts.

Q.—What is your view about giving rights of inheritance to converts to another religion?

A.—I will not touch any vested right possessed by the convert. He should not forfeit such rights when he becomes a convert. But from the day of conversion, his relationship with the family should cease and he should not have rights of inheritance any more.

#### Absolute estate for women.

Q.—What about giving an absolute estate to women?

A.—I think that an absolute estate may be given to women as laid down in the Mitakshara.

#### Dayabhaga and Mitakshara.

Q.—Do you prefer the Dayabhaga or the Mitakshara system?

A.—I am in favour of the Dayabhaga. Right by birth and survivorship should go.

#### Adoption—Bombay rule.

Q.—As regards adoption, what is your view? You know Vasishtha's text has been interpreted in four different ways.

A.—I consider that the Bombay law may be made the rule for all India. Where the husband has not specifically prohibited an adoption, I do not see why the wife should not take a son in adoption, if she so desires.

#### Uniform law for all India.

Q.—Lastly, do you favour a uniform code for all India?

A.—Yes, I do. It is desirable to have uniformity as it will minimize litigation. The differences arising from conflicting decisions given by the different High Courts will also be removed. Unification is, therefore desirable.

The Chairman and the Members again thanked Sir Sivaswami Iyer, and the Committee then withdrew.

This concluded the proceedings of the Committee for the day.

Friday, 9th March 1945.

The Hindu Law Committee resumed their sittings in the Committee Room of the Madras Government Secretariat

at 11-45 a.m. on Friday the 9th March 1945, with Sir B. N. RAU, C.I.E., in the Chair; Dr. DWARKA NATH MITTER and Mr. T. R. VENKATARAMA SASTRI, C.I.E., were also present.

1. Diwan Bahadur K. S. RAMASWAMI SASTRI was the first witness for the day.

I retired as District and Sessions Judge some years ago. I have more than 26 years' judicial experience and I have served in all parts of the Province. I was enrolled in 1902 as an advocate of the Madras High Court and practised for five years before I was appointed District Munsif.

*Definition of 'Hindu'.*—I would follow Mayne, and have a negative definition in view of the difficulties in having a positive definition. Only reconverts may be admitted as Hindus, and not converts.

*Daughter's share.*—I am keen on the daughter being treated like a son, except as regards the extent of her share. I am now for giving her half the share of son. But she need not have any right to a share of the family dwelling house and it may be treated as the exclusive property of the sons. I do not attach much importance to the fragmentation argument, which seems to be a sort of fetish in some quarters. Collective or co-operative cultivation is called for even under present conditions and that would be the proper remedy for fragmentation. A widowed daughter-in-law should get the same share as a son, as under the Deshmukh Act.

*Absolute estate.*—I am in favour of giving an absolute estate to daughters, but the widows should have a limited estate if there are children of the husband; otherwise they may have an absolute estate.

*Siridhan devolution.*—I see no objections to the provisions in the Code. I approve of the half share given to the son.

*Mitakshara v. Dayabhaga.*—I am strongly in favour of the Dayabhaga. The right by birth is a great drag on economic progress and I am, therefore, for the abolition of the Mitakshara coparcenary.

*Marriage.*—With the consent of his wife, a sonless man may be permitted to remarry, provided the husband is less than 50. All these three conditions must be fulfilled. I do not think that the fact that other communities, for instance, Muslims, allow polygamy, should deter us from following the right path.

I am against *sagotra* marriages, myself; I am also against *saprawara* marriages. If there is a custom permitting these marriages in any community, the marriages may be valid. Otherwise, the ban should be enforced. The *factum valet* principle should not be applied in this case. Similarly about inter-caste marriages. The Special Marriage Act makes sufficient provision for those who take a different view.

Civil marriages should go out of the Code and be provided for in the Special Marriage Act. That Act may be amended, so as to repeal the disability sections, viz., sections 22 to 26.

*Divorce.*—Personally, I am of opinion that sacramental marriages should be indissoluble; but if a referendum is taken and Hindu opinion decides otherwise, legislation permitting divorce may be passed. Even in cases of desertion, I am not for severing the marriage bond. If exceptions are made, they may eat up the rule.

*Adoption.*—I agree to the Bombay rule which permits adoption where there is no prohibition.

2. Mr. S. SÉNIVASA IYER, Advocate, and Vice-President of the Madras City Hindu Mahasabha, was the next witness.

I have submitted a memorandum, which has been adopted by the Working Committee of the Madras City Hindu Mahasabha.

Generally speaking, we are opposed to the Code, as unnecessary and uncalled for. Even if all the provisions are beneficial, there should be no legislation. We are now subject to foreign rule and domination and we should not allow our personal laws to be further interfered with under these conditions. We are opposed even to *small* changes. This is the view of the Madras City Hindu Mahasabha.

*Daughter's share.*—We agree to giving half a share to an unmarried daughter. It should be her absolute estate, and she should not forfeit her share on marriage. The married daughter should get no share. The widowed daughter should be on the same footing as the married daughter, that is, she should get no share in her father's property.

*Definition of 'Hindu'.*—Should embrace tribes like the Gonds, "Anybody born in India, who is not a Christian,



Muhammadan, Jew or Parsi" should be brought within the scope of the definition.

*Escheat to Crown.*—We are against this. The property in such cases should go to the Hindu Endowments Board's office and may be used for purposes beneficial to Hindus.

*Dowry evil.*—There is no real remedy for this evil; therefore, the provision in clause 28 of Part IV should go.

*Unchastity.*—A unilateral declaration by the husband in a document should be sufficient proof of the wife's unchastity.

*Monogamy.*—We are against monogamy. It is against biology. There should be no legal restriction on polygamy, which is good for increasing the population. It will be suicidal for Hindus to have a law making polygamy illegal. Even now, there are 30,000 conversions per month. The enforcement of monogamy will accelerate the process.

We have, however, no objection to a permissive law. Let any woman, who is not married, have the right to adopt the Code; so too let a man have the same right. The Code may be made binding on a married couple both of whom have adopted the Code and on all their descendants for all time. We would have no objection.

*Inter-caste marriages.*—We would not stand in the way of these, but we are against *sagotra* marriages.

*Divorce.*—If a man marries a second wife, the first wife may at any time be given the right or the option to apply for divorce, but the husband should not have the option. Divorce may be allowed for humanitarian reasons, e.g., leprosy, epilepsy, etc. But in no case should divorce be permitted, if there are children.

*Adoption.*—We have no objection to the adoption provisions.

*Maintenance.*—Must be limited to those cases where the claimant has no source of livelihood of his or her own.

*Mitakshara.*—We prefer this to the Dayabhaga. Bengal is predominantly Muslim because of the Dayabhaga.

3. Mr. B. N. GURUSWAMI, Secretary of the TAMILAR Nalvazhkkai Kazhagam, Madras, was the next witness.

Our Kazhagam is a society which was registered in 1942 under the Act of 1860. One of the objects of the society is to secure a codification of the Hindu Law, to suit modern conditions.

We are, generally, in favour of the Code and thankful to the Committee for their labours.

The mention of "caste" in the Code is unnecessary.

*Inheritance.*—The property should be divided after the education and marriage expenses have been set apart. We are in favour of the daughter getting half the share of a son. We are also in favour of giving women an absolute estate.

*Monogamy.*—Should be the rule of law with no exceptions.

*Divorce.*—We agree to the provisions in the Code regarding this.

*Inter-caste marriages* should not only be allowed, but encouraged.

*Adoption.*—Daughters and orphans should be capable of being adopted. The mother's consent both to the giving and to the taking in adoption should be made necessary.

4. Sri D. H. CHANDRASEKHARAIYA, B.A., B.L., of Mysore gave evidence next.

CHAIRMAN: You are the President of the Mysore Legislative Council.

WITNESS: Yes.

CHAIRMAN: You speak for the Veerasaivas?

WITNESS: Yes, I do, having been authorized by the Conference of the Veerasaivas held at Davangere in Mysore on the 6th and 7th of May 1944 under my presidency.

We are a community inhabiting mainly the Mysore State, Coorg, the districts of Dharwar, Belgaum and Bijapur in the Bombay Presidency, the districts of Bellary and Kurnool in the Madras Presidency, the Nizam's Dominions, and to a lesser degree, other parts of India. All told, there are about 70 lakhs of Veerasaivas in India. The Veerasaivas are also popularly called Lingayats on account of their wearing a Lingam (which is regarded as a symbol of God) on their bodies.

CHAIRMAN: What is your main point?

WITNESS: My main point is this. Although the Lingayat religion is based on the Hindu Scriptures, yet, it is different in several respects from what can be called orthodox Brahminical Hinduism. Orthodox Hinduism refers to the existence of four *varnas* or castes in Hindu society and these have formed the basis for applying the

Hindu law so far. Even the Draft Hindu Code seems to recognize this system, at least in some parts. But Lingayats do not recognize the institution of caste at all. In their view, castes are merely occupational and have nothing to do with religion. A depressed class man may become a Lingayat. So may a Brahmin. But after either becomes a Lingayat he ceases to belong to the caste from which he originally came. Some Lingayats have no doubt caste titles like 'Shetty' and so on. These are however merely descriptive of the occupations followed by the persons concerned and have no religious significance.

Notwithstanding our clear and definite position in this regard, some of the High Courts in British India as well as in Indian States have, in their decisions, tried to link up our community somehow with one of the Hindu castes. For instance, the Bombay High Court has in its decision reported in 1944 All-India Reporter, page 40, held that Lingayats are Sudras, so far as the application of the Hindu Law to them is concerned. But this view is fundamentally wrong and has occasioned numerous, and emphatic protests from the members of our community all over the country. We are afraid that unless our legal position is clearly stated in the Code, the existing decisions might be followed even in future, very much to our detriment. We do not want to be classified with Sudras or with any other caste for that matter. The definition of 'caste' as given in the draft Code cannot have any application to us.

My request to the Committee therefore is that the expression 'Hindu religion' (which occurs in the definition of the word 'Hindu') may be defined so as to include specifically not only communities which recognize castes but also those (like the Veerasaivas) which do not. In the alternative, the Hindu Law might be made applicable to Lingayats independently, in the same way as has been done in the case of the Jains, the Sikhs and the Buddhists. This may be effected by amplifying the opening portion of the definition of 'Hindu' as follows:—

"Hindu" means a person professing a Brahminical Hindu, the Veerasaiva, the Buddhist, the Sikh or the Jain religion.

Either of the above two ways will satisfy the Lingayat community. Considering the principles and practices of our religion which have come down to us from ancient times, I do not see any reason why those following the Veerasaiva religion should not be treated as independently as, for instance, the Sikhs.

CHAIRMAN: What is your reaction to the other proposals contained in the draft Code?

WITNESS: The other proposals contained in the draft Code are generally acceptable to me. It may be that I would like to have some details differently treated, but the main provisions of the Code seem to be good enough.

I agree to the abrogation of the Mitakshara system in favour of the Dayabhaga. The latter is less complicated, and would render better justice to all.

The provision made in the Code for obtaining divorce in hard cases is sound and reasonable.

Finally, I would very much like to urge that all distinctions based on caste be kept out of the Code altogether.

CHAIRMAN: Your reaction to the proposals contained in the Code is therefore very favourable?

WITNESS: There is no doubt about it. I welcome the draft Code, as it will introduce a law uniformly applicable to all Hindus throughout India and thereby bring about larger unity and fellow-feeling amongst them. That is a great desideratum amongst Hindus at present.

CHAIRMAN: Can you kindly tell us something about the working of the Mysore Regulation?

WITNESS: The Hindu Law Women's Rights Act has been in force in Mysore from the year 1933. It has no doubt improved the position and prospects of women to some extent. But in actual working some difficulties have cropped up. That is why a non-official resolution was moved in the session of the Legislative Council held last December, recommending that a committee be appointed for revising this Act and other enactments bearing on the Hindu Law. This resolution was accepted by the Government of Mysore.

The Mysore Law is not however as comprehensive in its provisions as the draft Hindu Code. As soon as the

draft Hindu Code becomes Law in British India, progressive States like Mysore and Baroda will, I am sure, adopt it with necessary modifications.

CHAIRMAN: We are obliged to you, Mr. Chandrasekharaiya, for coming all the way from Bangalore to help us with your views. Thank you very much.

WITNESS: I am also thankful to the Committee for having given me an opportunity to express my views on the subject of improving the legal status of the community to which I have the honour to belong and on other topics bearing on Hindu Law Reform in general.

5. Sri K. BALASUBRAMANIA IYER, B.A., B.L., Advocate, was the next witness.

I have been an advocate of the Madras High Court for about 25 years. I am a son of Mr. V. Krishnaswami Iyer, who was a High Court Judge and member of Council.

I have studied the draft Code and have submitted a detailed memorandum.

Codification should be in two stages as suggested towards the conclusion of my memorandum.

*Definition of 'Hindu'.*—I agree to the definition, as it stands.

*Daughter's share.*—I approve of a share being given both to the unmarried daughter and the married daughter in her father's separate property. The expenses of marriage should be set off against the share of the married daughter.

*Mitakshara.*—I should like to retain this in preference to the Dayabagha. I would retain the right by birth and survivorship. The Mitakshara joint family is better for securing the integrity of property, especially of agricultural land. But suits raising pleas based on the immorality or illegality of debts should be stopped.

*Absolute estate.*—I am in favour of the provision in the Code in this matter. I would make no distinctions between daughters and widows.

*Monogamy.*—This should not be a rule of law. It must be enforced, if at all, by a common territorial law. I shall not object to monogamy, if it is made applicable to all communities in the land without discrimination.

*Inter-caste marriages* should not be permitted as sacramental marriages. Similarly, as regards *sagotra* and *samanapravara* marriages.

*Divorce.*—I am opposed to this. Full reasons have been given in my memorandum. Deserted wives are, no doubt, an evil, but they are less of an evil than divorce.

*Adoption.*—I accept the provisions of the Code generally, except that I would suggest that in every case, the adoption should divest only the adoptive mother, whenever the adoption may be made.

*Inheritance.*—I would give the parents of the intestate also a share in the property as simultaneous heirs.

*Conversion* should work forfeiture.

6. Mr. T. V. R. APPA RAO, Advocate of Narsapur (West Godavari district), was the next witness:

I am the Secretary of, and represent; the Narsapur Bar Association. The memorandum I have submitted may be taken as reflecting the views of all Hindus of the Andhra districts, including the panchamas.

We are against the provisions of the Code except as regards the Parts relating to adoption and guardianship. These Parts we accept, subject to slight modifications.

*Daughter's share.*—We are opposed to this whether the daughter is married or unmarried. But the father may be given power to bequeath by will a share even of the joint family property to the daughter. We have no objection to the daughter getting a share equal to that of the son in separate property, but her estate should be a limited estate.

*Absolute estate.*—We are opposed to this, whether for the daughter or for the widow.

*Monogamy.*—We are opposed to this also.

*Inter-caste marriages.*—We oppose, so far as sacramental marriages are concerned, *Sagotra* and *sapravara* marriages should not also be permitted as sacramental marriages.

CHAIRMAN: Where such a marriage, for example a *sagotra* marriage, has actually taken place, will you apply the *factum valet* doctrine?

WITNESS: If the marriage took place a long time ago and society has recognized it, I would apply the *factum valet* principle, although, to be quite logical, the marriage must be capable of being nullified at any time at

any one's instance. My difficulty is that children should not be bastardised without the strongest justification.

*Divorce.*—We are opposed to divorce, in the case of sacramental marriages.

*Adoption.*—Where an inter-caste marriage has taken place, I would allow of the adoption of any boy. In other cases, the boy should belong to the same caste.

7. Messrs. K. S. MEHTA and M. L. SHARMA, representing the Sowcars' Association and the Marwari Association respectively, gave evidence next jointly.

We are against any legislation in social or religious matters. We are only for *male* inheritance, not for *female* inheritance. If a man has a brother and a daughter, even his separate property should go to his brother and not to his daughter, because in time, the daughter will become somebody else's property. This is our personal law. We come from Jaisalmer and Jodhpur. There the daughter inherits no property in such a case.

The right by birth is now the law and should be retained.

*Marriage.*—We are against monogamy as a rule of law. We are also against *inter-caste*, *sagotra* and *sapravara* marriages.

*Divorce.*—We are against this. We want to retain our existing customs and usages.

8. Mr. N. SRINIVASA SASTRI of Papanasam was the next witness.

I am a school master of Papanasam. I have studied the draft Code and have submitted a written memorandum.

*Daughter's share.*—No share should be given, whether the daughter is married or unmarried.

*Absolute estate.*—A woman's inheritance under the existing law should be made absolute.

*Monogamy.*—A man who has a wife living may be permitted to take a second wife if he has no son by the first wife, but only with her consent.

*Inter-caste and sagotra marriages.*—I oppose.

*Divorce.*—I oppose.

9. MRS. KAMALAMMAL of the Asthika Madar Sangham gave evidence next in Tamil.

I am a Councillor of the Saidapet Municipality. I cannot speak English. I am a Brahman woman and represent the Asthika Madar Sangham. This is an orthodox association. Our membership has increased, because more women have joined us, as a result of the publication of the Code. I have read the Code and have held meetings, about 100 meetings in all, in many places in the mufassal and in the City of Madras. These were mostly attended by women, except in a few places where men also attended.

None of the women like the changes made as they are against our traditions and customs.

*Daughter's share.*—We are against this, whether the daughter is married or unmarried.

*Absolute estate.*—We are against this, whether for widow or for daughters. If they get an absolute estate, they are likely to waste the property; they should not be exposed to the temptation.

*Monogamy.*—A man must have the right to marry a second wife if he has no children by the first wife and obtains her consent.

*Inter-caste marriages.*—We are entirely against such marriages. Many evils will flow from such marriages.

*Sagotra marriages.*—We tremble at the very thought of the possibility of such marriages.

*Divorce.*—It is a sin to speak of this. The chastity of our women has preserved this country hitherto.

10. Mr. R. SURYANARAYANA RAO, B.A., was the next witness:

I am a social worker. I have been doing social work in the city and outside for about 25 years. I was a member of the Servants of India Society until June last. I am a Brahman.

I have studied the draft Code. I feel that the Hindu Law reform is long overdue and to wait until everybody consents would mean indefinite delay. Besides, Hindu society accommodates itself to changes, although they are opposed at first with considerable vehemence. See for instance the Sarda Act. The fuss over that Act has now nearly disappeared. The Committee and the Government should take due note of this and act accordingly.

*Joint family system—Mitakshara and Dayabhaga.*—This is a difficult question on which I have arrived at no definite opinion one way or the other. The retention of

the family may be conducive to agricultural operations and may also prevent fragmentation. On the other hand, it will retard the development of the individual.

**Marriage.**—I do not understand why sacramental and civil marriages are treated as distinct. I support monogamy without exceptions, also inter-caste marriages. Sagotra marriages should not be prohibited. I agree with the Right Hon'ble Srinivasa Sastri's views. The registration of sacramental marriages should be compulsory.

**Divorce.**—The period of seven years is too long. Adultery by either party should also be added as a ground.

**The age of majority** should be the same for sacramental and civil marriages, say 18 years. I do not see why a difference should be made in the two cases.

**CHAIRMAN:** We have only reproduced the existing law.

**WITNESS:** Why not take the opportunity to make the law uniform now?

I draw attention to an article in the Madras Law Journal for 1944, containing a detailed criticism of the Draft Code.

11. Messrs. S. MAHALINGA IYER, T. L. VENKATARAMA IYER, and V. NARAYANA IYER, Advocates, and Pandit K. BALASUBRAMANYA SASTRI, then gave evidence on behalf of His Holiness the Sankaracharya of the Kanchi Kamakoti Peeth.

We have studied the Draft Code and invite attention to the printed opinion of His Holiness, which we respectfully share.

**Daughter's share.**—We are against any share being given to the daughter, whether she is married or unmarried. Giving of a share to the daughter will be really detrimental to her. The present law provides for an unmarried daughter getting the expenses of her marriage and that should ordinarily suffice. The middle class families spend a lot of money on the marriage of their daughters, much more than on the marriage of their sons.

**Absolute Estate for women.**—We are against conferring any new absolute estate on women. Their rights may continue as at present; in other words, they should have absolute rights only in technical stridhana.

**Mitakshara vs. Dayabaga.**—The coparcenary should be preserved; it is better suited to Indian conditions, and will maintain the solidarity of the family, especially in the present economic conditions. The joint family system has been useful all along and is worthy of preservation. Right by birth and survivorship should, therefore, remain as at present. The Mitakshara may be extended to Bengal also.

**Monogamy.**—There need be no legal restrictions on polygamy, because there are natural restrictions which are working satisfactorily.

**Inter-caste, sagotra and sapravara marriages.**—We are opposed to all these and consider that they are almost incestuous in character. These marriages must be held to be invalid at any time [Mr. T. L. VENKATARAMA IYER: The *factum valet* rule may be applied to such marriages where they have already taken place; but for the future, there should be absolute prohibition. This is only my personal view].

**CHAIRMAN:** Is the number of persons who want to disregard the sagotra restrictions, etc., large or small?

**Mr. MAHALINGA IYER:** \* It is not possible to say. Only a referendum can settle the matter.

**Divorce.**—This is quite repugnant to Hindu Law. It has not been permitted by the *shastras* or *sadachara* and should not be introduced by a new law.

**CHAIRMAN:** Suppose a girl married at the age of six is deserted when she is ten. What is the solution you suggest?

**Mr. T. L. VENKATARAMA IYER:** It is a hard case: Hard cases make bad law.

**CHAIRMAN:** Legislation must provide for hard cases also?

\* In a letter dated the 2:th March 1945, Mr. Mahalinga Iyer has explained this: "At the outset, I wish to make a modification of the reply I made on the spur of the moment, regarding a question whether the number of persons who wanted to disregard the rules of sacramental marriage was large or small. I suggested that only a referendum could settle it. I did not mean, and it should not be taken that I meant, that counting of votes upon a question of religious law is at all permissible. My view is that matters affecting the religious life of any community are not fit to be decided by majority opinion in the legislature or outside.

**Mr. T. L. VENKATARAMA IYER:** There are only two alternatives: either make the marriage void or dissolve it. Extreme circumstances which will make a marriage *ab initio* void should be carefully set out.

**Mr. MAHALINGA IYER:** I would deal with cases of desertion in this way: If a man is not heard of for seven years, the presumption of his death may be drawn. The wife may be treated as a widow and may be permitted to marry as such, but no general provision should be made for such cases.

**CHAIRMAN:** If the marriage ceremony is gone through and the conscience of the Court is satisfied that there was fraud and the marriage has not been consummated, may it not be annulled?

**Mr. T. L. VENKATARAMA IYER:** Yes, I think the marriage should be annulled in cases of fraud. Annulment may not be limited to cases of minors, since fraud vitiates the most solemn transactions. This, however, is only my personal view. My friend, Mr. Mahalinga Iyer, thinks differently.

**Mr. MAHALINGA IYER:** I agree that in the case of minors of tender age, the marriage should be annulled, but not where, for instance, the girl is 15 or 16. Even fraud should not vitiate a sacrament. I would suggest that penal provisions to punish the party practising the fraud may be inserted.

**CHAIRMAN:** It would perhaps be best if you submit a further memorandum fully setting forth your views.

**Mr. MAHALINGA IYER:** Yes, I shall do so.\*

The Committee rose for the day at 7 p.m.

Saturday, 10th March 1945.

The Hindu Law Committee resumed their sittings in the Committee Room of the Madras Government Secretariat at 1-20 p.m. on Saturday the 10th March 1945. Dr. DWARKA NATH MITTER (In the Chair) and Mr. T. R. VENKATARAMA SASTRI, C.I.E., were present.

1. The first witness for the day was Dharma Bhushana Dharma Sarvadhikara Rao Sahib N. NATESA IYER, Advocate, Madura. He said: I was enrolled in 1899 as a vakil of the Madras High Court and I was Government Pleader for the Ramnad district for over 16 years. I was also the Advocate of the Court of Wards in that district for 16 years.

I was the President of the All-India Varnashrama Sangh for two consecutive years. I have been the working President of the Madras Dharma Sabha for over 15 years and the President of the Madura Dharma Sevaka Sangh for ten years. I appear before you as the authorized representative of all these bodies and also as a representative of the Orthodox Ladies' Association, Madura. The Varnashrama Sangh has over 8,000 members on its rolls and the Orthodox Ladies' Association has 120 members on its rolls.

I have read the Code and I disapprove of it entirely. I consider codification both impossible and undesirable. It arrests spontaneous growth. Most of the branches of the English Common Law have remained uncodified to the present day. Codification compels the administrators to keep to the letter of the law and ignore its basic underlying principles. It disables Judges from tempering the ferocity of the law in individual cases in accordance with the requirements of justice.

My objections to the Code are six in number:—

(1) India is a land predominantly of customs. Customs are of varying kinds. There are territorial customs, customs applicable to particular classes, and family customs. To make a Code applicable to all is a practical impossibility.

(2) The Hindu Law is a chiselled product of eons of intense meditation and admits of no change.

(3) The basic principles of legislation have been ignored by the framers of the Code. When a change is contemplated in the law, the Legislature ought first to satisfy itself that the existing law has caused, or is causing, injury, and that the change proposed will remove it and do good. Assuming that there are some evils in the existing Hindu Law, if the evils of the proposed law will outweigh those of the existing law, then there is no case for reform. We shall only be jumping from the frying pan into the fire.

\* Mr. Mahalinga Iyer's views appear in Written Memoranda, Vol. II, page 504 (No. 104, Madras Presidency).

(4) The existing law has held the field for at least 2,500 years and has been accepted by people who are admittedly highly civilized. *Prima facie* there is, therefore, a presumption that the existing law is not barbarous or tainted by folly.

It is said that the opponents of the Code do not take into account the progressive needs of the times. But progress does not mean the destruction of the accumulated wisdom of the past, or the absorption of a set of entirely new and foreign ideas. Each nation or unit in a nation must develop in its own characteristic way. A Punjabi must remain a Punjabi, a Madrasi a Madrasi, and the man from Bengal a Bengali. The individual traits which have been developed in the different provinces should be preserved.

(5) The Hindu philosophy of life takes account both of the life here and of the life hereafter. Alone among the nations, the Hindus have laid down the lofty principle that marriage is intended not for pleasure or gratifying the vulgar appetite, but for subduing the passions and sublimating the human into the divine life. The Code ignores this aspect, and takes account only of the life here, and does not pay any heed to the life hereafter.

Indian rulers never interfered, or even claimed to interfere, in religious and socio-religious matters. The British Government cannot do so either. They have only the powers which the previous rulers exercised. Powers which the Sovereign himself cannot exercise cannot be delegated to Parliament or the Indian Legislature. Our *Smritis* have always been expounded by sages, not by kings. Manu made his Code in his capacity as a *rishi*, not as a king. The Legislature cannot, therefore, interfere in our personal law. It can make laws only for carrying out or implementing the rules laid down in the *smritis* and not to change or frustrate them.

(6) The opposition to the Code is growing in volume.

Mr. VENKATARAMA SASTRI: You referred to the English Law not being codified and said that much was left to the discretion of the Judges. Take the order of inheritance. Is it not rigid?

WITNESS: Yes, it is rigid. The order of succession cannot be interfered with nor the laws of marriage. There is no discretion at all in these matters.

Mr. VENKATARAMA SASTRI: We have also left many matters to the discretion of the Court, e.g., the amount of maintenance, the relative who is to be made the guardian of a minor, the penalty for bigamy, etc. Turning now to another matter, may I ask you how the giving of a share of the property to the daughter will affect *Dharma* in this world or the next?

WITNESS: It is contrary to our philosophy of life. Suppose a person who has property worth Rs. 5,000 dies leaving two sons and two daughters, each daughter will then get only one-sixth of the Rs. 5,000, i.e., Rs. 833. If the sons are left undisturbed, they may feel it to be their duty to expend the whole Rs. 5,000 on the marriage expenses and in the shape of subsequent gifts to the daughters. If the daughters take a share, the love of their brothers will be lost to them. It is, therefore, better to leave the law as it is. So much for the worldly point of view. From the spiritual point of view, property exists for the advancement of the spiritual life which can be done only by the son who offers pindas to his father and other ancestors. The daughter cannot contribute to the spiritual benefit and hence she is not entitled to any share of the inheritance.

Mr. VENKATARAMA SASTRI: Under our system, those who take the property offer pindas, whereas in Bengal those who offer pindas take the property. Up to a limit both travel together, and affection or nearness of kin is also a test.

WITNESS: I agree that the *smritis* proceed on the basis both of spiritual benefit and of nearness of kin. My point is that a wife and a son both promote spiritual benefit, and that this aspect is important and should be duly considered. When there is a conflict between matters pertaining to this world and those pertaining to the next, the latter should prevail. The daughter should not be given a share.

Dr. MITTER: The Bengal Law of Inheritance is different. You do not wish to unify the two systems?

WITNESS: No, both the systems should be maintained.

The existing laws have been in force for thousands of years and there is no reason for changing them now. I would not give a share even to the unmarried daughter.

Mr. VENKATARAMA SASTRI: The half share proposed for the daughter in the Draft Code includes marriage expenses also?

WITNESS: But when there is no property?

Mr. VENKATARAMA SASTRI: The marriages will be performed as they are being performed now.

WITNESS: The share to the daughter will create discord, foment litigation and result in fragmentation. I am opposed to it. The son-in-law will come into the family and create disruption. He is a foreign element.

Dr. MITTER: What about the absolute estate for women?

WITNESS: Even males do not have an absolute estate under the *smritis*. The right by birth is an effective check; except in technical *sridhan*, there can be no absolute estate for women. The *Mitakshara* may be set aside in view of the weighty opinions expressed by the other commentators which have been actually followed up to the present time. I would not disturb the present position in any way. I am, therefore, opposed to the absolute estate for women.

I disagree that the *Dayabagha* should be applied to the whole of India. I am against the abolition of the right by birth and survivorship. The joint family system makes some provision for the unemployed people.

I am against *sagotra* and *samanapratara* and inter-caste marriages.

Mr. VENKATARAMA SASTRI: We do not encourage any of these marriages. Suppose such a marriage has occurred, should it be invalidated and the children declared illegitimate? That is the question.

WITNESS: It may be cruel to the children, but we cannot help it. The marriages must be invalidated.

I am against monogamy, and also against divorce.

Mr. VENKATARAMA SASTRI: Consider a bad case of desertion. Should you not grant some relief?

WITNESS: It will be against the *smritis*. Even if Narada's text is regarded as favouring divorce, it stands alone and should not be followed. Further, the expression '*pathau*' in Narada's text means only the betrothed referred to in Manu's text.

Mr. VENKATARAMA SASTRI: Medathithi says that it refers to the husband.

WITNESS: If that interpretation is accepted, it will go against the whole spirit of the *Shastras*.

Mr. VENKATARAMA SASTRI: In *Kalivarjya*, it is said that such and such things were in force, but have since been abolished. Unconventional things found in the *smritis* are interpreted differently by the commentators who do not agree with the texts.

Dr. MITTER: What is your view about the adoption provisions?

WITNESS: I do not agree to the unification of the various schools. An eldest son cannot be adopted and this law which is in accordance with the *smritis* should be restored.

Dr. MITTER: How can we make this change? You say we have no power to effect any change?

Witness took exception to the definition of 'Hindu' and said that a convert should not be treated as a Hindu. Reconversion should not be allowed. Political considerations should not prevail with us in this respect. If a man became a convert before attaining the age of discretion and has not contracted a marriage as a convert, he may be allowed to come back into the fold. Farther than that, he would not go.

A statement showing that a gathering of 1,000 ladies at Madura supported the views of Mr. Natesa Iyer was also handed over to the Committee.

2. Mrs. PATTAMMAL of the Asthika Madar Sangham, Madras, was the next witness. She, giving her evidence in Tamil, said: Monogamy is practised now, but it should not be enforced by legislation. A law laying down monogamy will cause conflict. Improper marriages do take place sometimes and should be stopped, if possible.

I am against divorce: also against *sagotra*, *samanapratara* and inter-caste marriages.

Dr. MITTER: What is your view about the daughter's share?

WITNESS: It might look advantageous at first sight, but it is bound to create a lot of difficulties later on, especially in the middle class and poor families. It may work well in rich families. On the whole, I would give no share to the daughter, whether married or unmarried.

Q. MITTER: What about the absolute estate for women?

WITNESS: I am unable to say whether in cases where there are no children an absolute estate can be given to a woman or not. I wish to consult other ladies and then give you my opinion.

3. Diwan Bahadur GOVINDOSS CHATURBUJDOSS was the last witness for the day. He said:

I am a Gujarati Vaisya. I am a Vaishnavite. I am against monogamy and *sagotra* marriages. I am not particular about preventing *samanapravara* marriages. I am against inter-caste marriages. I am emphatically against divorce.

I would give no share to the daughter, whether married or unmarried. The father can make a gift to the daughter if he is so minded.

I am opposed to the grant of an absolute estate for women.

The Bombay rule of adoption applies to me, but it should not be made the rule of law for all India.

Right by birth and survivorship should remain. I strongly object to a divided son getting a share once again. The undivided son should take precedence over the divided son.

With the examination of this witness which terminated at 3-25 p.m., the Committee concluded their session at Madras.

## VII. NAGPUR.

Monday, 12th March 1945.

The Hindu Law Committee commenced their session at Nagpur at 2-15 p.m., on Monday the 12th March 1945, in the Legislative Assembly Buildings.

The following members were present:—

Dr. DWARKA NATH MITTER (*In the Chair.*)

Principal J. R. GHARPURE.

Mr. T. R. VENKATARAMA SASTRI, C.I.E.

1. *The National Council of Women in India*, represented by Mrs. RAMABAI THAMBE, Miss A. J. CAMA, Mrs. NAIDU and Mrs. MANDPA, gave evidence first.

There are 160 members on the rolls of the Nagpur Branch. It was started six years ago. The Council itself was started in 1926. Our object is to serve women and children and do social work. Here we have got centres for feeding poor children, give medical help at villages, etc. Mrs. THAMBE said that she was a graduate of the Calcutta University of 1919 and that she then went to England for earning the Diploma in Teaching.

We have read the Draft Hindu Code and are very much in its favour. We do not approve of all its provisions but we are in general agreement with the Code and welcome it.

We approve of the daughter being given a share as a simultaneous heir.

Mr. VENKATARAMA SASTRI: The daughter-in-law will not get any share according to the Draft Code though under the Deshmukh Act, she has a life estate. What are your views on this subject?

Mrs. THAMBE: The daughter-in-law also must be included as a simultaneous heir and should get half a share just like the daughter.

The daughter should get an absolute right in properties inherited by her. So also the widow. We are in favour of giving an absolute estate to all women, and removing the existing invidious sex distinctions in this regard.

Monogamy should be made a rule of law without any exceptions. The rule may be made retrospective in this sense, viz., that even those who are now married should be prevented from marrying again after the Code comes into operation. We do not think that men would become Muslims merely for securing the privilege of marrying more than one wife. That is most unlikely. There may be a stray case here and there but these should not deter us from enforcing monogamy by law.

We are in favour of *sagotra* and *sapravara* marriages.

Although we do not exactly welcome inter-caste marriages, such marriages do take place and should not be invalidated.

We are in favour of divorce. We support all the clauses in clause 30 of Part IV. We have got some expert opinion in regard to this matter. The divorce provision should apply to all marriages, whether they are contracted before or after the Code. In cases (a) (lunacy), and (c) (desertion), we would put the period at three years instead of at seven. We would not prescribe any time-limit at all, when either party is found to be suffering from leprosy, once the disease is discovered to be incurable. After the disease is found to be incurable, provision must be made for securing an immediate separation.

Mr. VENKATARAMA SASTRI: That is a point to be considered.

WITNESSES: In the cases referred to in clause (d) (conversion) and clause (f) (keeping of a concubine, etc.), we would allow for the lapse of a period of three years, so as to afford a *locus penitentiae* to the parties. In case (e) (venereal disease), we would also provide for the lapse of a period of three years, giving the other party a right to live apart if he or she wishes to do so.

We have not considered the point whether the Mitakshara or the Dayabagha should be preferred.

As regards adoption, we would apply the Bombay rule to the whole of India.

The mother also should agree to the giving of the boy in adoption.

Mr. VENKATARAMA SASTRI: Should the mother's permission be obtained for taking a boy also?

WITNESS: Yes, the consent of both the father and the mother should be obtained for giving as well as for taking in adoption.

We have discussed the Code at several meetings and also at our Conferences and the views we have expressed are generally in agreement with the resolutions passed at such Conferences.

2. Mrs. NATESHA DRAVID and Miss P. PRADHAN, M.A., LL.B., Advocate, Members of the All-India Women's Conference (Nagpur Branch), next gave evidence.

Mrs. DRAVID said that she was a graduate of the Nagpur University and was in charge of a Government High School, but that she had since retired. She was a member of the Managing Committee of various institutions.

Miss PRADHAN said that she was an M.A. and an LL.B., and that she was also a member of the Managing Committee of various institutions, for example, the Bhide Girls' School, Maternity Home, Bhajan Mandal, Hindusthan Scouts and the Women's Conference.

WITNESSES: We have carefully read the Draft Code and considered it with our friends, and we are in general agreement with its provisions.

We agree that the daughter should have a share along with the son and that she should retain the place in the list of heirs, accorded to her in the Draft Code.

Any property obtained by the daughter must be her absolute property. A widow also should have an absolute estate. In fact, all women inheriting property must have an absolute estate in the property. Their rights should be the same as those of men and should not be limited in any way merely by reason of their sex.

As regards the daughter-in-law, we are in favour of giving her only maintenance, and not a share in property.

Monogamy should be enforced as a rule of law without any exceptions.

*Sagotra*, *sapravara* and inter-caste marriages which have already taken place should be validated.

There should be some provision for divorce in the case of sacramental marriages also. Women should have the same facilities as men in this respect.

We agree to the grounds of divorce mentioned in clause 30 of Part IV but would reduce the period of seven years provided in it.

We are in favour of the Mitakshara being replaced by the Dayabagha.

3. The next witness examined was Mr. G. T. BHIDE, M.A., LL.B., Advocate, Nagpur, who said—

I have been an advocate for the last 24 years, having practised for 14 years in the mufassal and since 1936 in the High Court. I belong to Amroati and am giving evidence in my individual capacity.

I am neither wholly in favour nor wholly opposed to the Draft Code.

This is not the time for wholesale codification. The consideration of the Code should be postponed until two years after the War. Among the Aryans, the joint family

is the unit and not the individual. According to Burke, the partnership between man and woman is a sacred one (Reflections on the French Revolution, Clarendon Edition, page 93 and pages 113-14). This is much more true of the joint family, and we should not lay violent hands on the institution.

The unmarried daughter may be given one-fourth instead of one-half of the son's share. This may be given to her in cash. The one-fourth share should cover all her claims on the family including maintenance and marriage expenses. I have no serious objection to the Committee giving her her marriage expenses over and above the one-fourth share.

Any cash obtained by the daughter should be at her absolute disposal. In so far as it is not possible to give the daughter her share in cash, she may enjoy an absolute estate in the properties obtained by her in Bombay and a limited estate elsewhere. The widow, however, should have a limited estate everywhere.

Uniformity is not required and is impossible of achievement although it may be desirable. The law in the various Provinces should be maintained as at present.

Monogamy should not be made a rule of law.

*Sagotra* marriages should be avoided (see Sedgwick, Census of 1931, Volume I, page 137). I am not keen about retaining the *saprawara* prohibition. I am against inter-caste marriages.

I want to enlarge the ceremonies for sacramental marriages. The following requisites should be provided for in all cases:—(i) Declaration, (ii) Homa, (iii) Panigrahana involving a solemn oath by both the parties, and (iv) Sapthapathi.

I am against divorce in the case of sacramental marriages.

Mr. VENKATARAMA SASTRI: There are a number of cases of desertion all over the country. Would you not permit the wife to obtain a release from the marriage bond in such cases?

WITNESS: It is a difficult question. The woman, in such a case, has to thank her stars for her fate. But I do have pity for such cases. The deserting party may perhaps be called upon to abandon the desertion within a specified period, and where he or she does not comply with the call, relief may be given. I cannot interpret the text of Narada as allowing remarriage.

I congratulate the Committee on their draft of the Part relating to adoption. But I wish to urge that adoption should be of a child of tender years, the limit of age being eight or at the most ten. Adoption must take place before *upanayanam*. I approve of the retention of the *dattaka* form of adoption. I want this salutary rule also to be enacted, viz., that no stranger from outside the family should be allowed to be adopted. That is to say, a boy who is not related to the husband, the wife or the brothers of either should not be adopted.

I would insist on the performance of the *datta homa* in the case of all castes. The *homa* should be made compulsory even where the adopted boy belongs to the same gotra as the adoptive father.

Right by birth should be retained and the law should remain as it is in this respect in all the Mitakshara jurisdictions.

The Code should not come into force until the lapse of five years after its passage into law.

The aboriginal tribes should be specifically included within the scope of the Code.

One small point. I prefer the definitions of "agnate" and "cognate," which are found in the Mysore Law to those occurring in the Draft Code.

4. Dr. D. W. KATHALAY, Advocate, was the next witness. He was supported by Dr. B. S. MOONJE and Mr. B. G. KHAPARDE, an ex-Minister of the Central Provinces. Dr. KATHALAY said:

I am an M.A. and an LL.D. of the Nagpur University. I have been at the Bar for 35 years. We represent the Hindu Mahasabha point of view. My re-action to the Code is strongly adverse. I object to codification in general and to codification of the Hindu Law in particular.

Firstly, Muhammadans do not have a Code and I do not see any greater necessity for a Code in the case of the Hindus.

Secondly, The time is most inopportune for the introduction of the Code. The Provincial Legislatures and

Ministries are not functioning, and the Central Legislature is not representative of the people at all.

Thirdly, Codification virtually amounts to a burning of the Smritis, commentaries and Nibandhas.

Fourthly, Codification deprives the Hindu Law of its personal nature. Hindu Law can now be carried to Ceylon, Burma and the Indian States, whereas the Code cannot be so carried. It will cease to function as soon as one crosses the borders of British India.

Fifthly, In the Independence Pledge people take on the 26th January of every year, it is stated that cultural and spiritual destruction has been brought about by the British Regime in India. The codification of the Hindu Law, as proposed in the Draft Code, well illustrates this point. We resent strongly the codification of Hindu Law.

Sixthly, Even reformers should protest against the Hindu Code. There is no Hindu Law in the Code. It has transgressed all limits of reform.

Seventhly, The Code can be postponed until after the War and a new election should be fought on the Hindu Code issue.

Eighthly, Parliament has no power to codify the Hindu or the Muhammadan Law. (See Gour's Hindu Code, page 45, 1938 Edition).

And lastly, Codification will introduce an element of diversity in the law applicable to Hindus in British India and the Indian States. Whether living in British India or in the Indian States, they are now governed by one law. This will no longer be the case, if the Code becomes law.

Unless three-fourths of the Hindu members of the Legislature agree, there should be no codification. The different schools of law should not be abolished.

I am not much impressed by the argument about uniformity. There is no such uniformity in America and other countries. It is not possible to have one law for the whole of India.

I am for retaining the right by birth and survivorship and would like to introduce the Mitakshara into Bengal.

I am against inter-caste marriages. The majority of the High Courts have held that neither *anuloma* nor *pratiloma* marriages are valid. The Bombay High Court has upheld the validity of *anuloma* marriages. Why should the Bombay law be enforced in the other Provinces? Even if inter-caste marriages have taken place, I would not validate them by the application of the doctrine of *factum valet*.

I am against *sagotra* and *samanapravara* marriages also. Some *samanapravara* marriages are permitted in the texts and these I would allow, but not others.

The civil marriage provisions should be omitted from the Code.

I am against divorce. It is provided for the first time in the draft Code. Narada's text is relied upon but it has been treated as a dead letter for a long, long time. Remarriage for women is no doubt permissible under the text, but I would allow remarriage only when the husband dies. The Widow Remarriage Act is there and I would allow it to remain.

Mr. VENKATARAMA SASTRI: What about cases of desertion?

WITNESS: Hard cases should not make bad law.

Mr. VENKATARAMA SASTRI: Should not the Legislature give relief in such cases?

WITNESS: It cannot be done. The legislation should be for the majority of the people. The basic principle is that the law should be for the good of the greatest number. There should be no dissolution of sacramental marriages. I am quite against divorce.

I am against a share being given to the daughter as a simultaneous heir, whether she is married or unmarried.

I agree with some of the proposed changes, but they should be effected with the consent of the people and in gradual stages. Sudden changes, as proposed, are not necessary.

The Code destroys the position of the widow under the 1937 Act and under the Hindu Law. Her plight under the Code will be worse than under the existing law, or Deshmukh's Act.

I am against giving an absolute estate to women in inherited property. You wish to destroy the Mitakshara principle of right by birth and survivorship, and I do not see how you can rely upon it for conferring an absolute

state on women. The lot of the daughter who gets a share in the property under the Code will be worse than her present position. The daughter is a remoter heir than the widow and cannot take anything during the widow's lifetime.

We cannot afford to destroy the joint family system which exists in spite of the many inroads which have been made into it. (See I.L.R., 1943 All. 307; and A.I.R. 1943 Madras 246).

I am in favour of the Deshmukh Act. The alteration made by that Act has my approval. The daughter-in-law should, therefore, be brought back.

As regards adoption, I am not in favour of the application of the Bombay rule to the other Provinces. Even in Bombay, the rule is not uniform and it cannot be said to be in universal favour.

5. The next witness was Mr. A. R. KULKARNI, B.A., LL.B.

I am an advocate of 20 years' standing at the Bar and am now the Secretary of the Bar Council. I am in favour of the Code. The Code brings about uniformity and removes uncertainty. In my opinion, one common law is absolutely necessary for all Hindus. All invidious distinctions between Brahman and non-Brahman should be abolished. There should be one common law for all Hindus and in all parts of the country. This will bring about a very desirable consolidation in the Hindu community.

A daughter must be given a share.

Dr. MITTER: We are displacing the daughter-in-law?

WITNESS: But she is also a daughter in another family and will get her share there. The daughter-in-law is entitled only to maintenance.

Both the married as well as the unmarried daughters should get shares. The marriage expenses of an unmarried daughter will, no doubt, depend on her father's or brother's goodwill, but no provision need be made in the Code about it. She need not be given her marriage expenses in addition to her half share. Giving the daughter a share will raise the status of women in the country.

I am in favour of an absolute estate being given not only to the daughter, but also to the widow. The limited estate is the source of much litigation and does not enable the widow to realize funds easily when they are badly required.

I agree to the abolition of the right by birth and the principle of survivorship.

I am opposed to monogamy for political reasons. If it is introduced, it must be made applicable to Muslims also.

I agree to the provision of divorce for cases of desertion. In the other cases in which the Code provides for divorce, consider that mere judicial separation will be sufficient.

I am in favour of *sagotra*, *saprarava* and inter-caste marriages.

As regards adoption, I agree with the provisions of the Code generally and have no strong views of my own.

The word 'caste' should not occur in the Code. All legal differences based on caste may be specifically abolished. If, however, 'caste' is to be retained in any shape or form, it should be specifically provided that the offspring of the marriage between persons of different castes should be deemed to belong to the caste of that parent who is of the higher caste.

6. Diwan Bahadur K. V. BRAHMA, Advocate, was the last witness for the day. He said:

I am an advocate of 42 years' standing. I am also an advocate of the Judicial Commissioner's Court at Hyderabad. I am a native of Berar. I have read the Code and do not want it to be made into law. The present draft is no doubt much better than the previous one, but still I am opposed to it. I oppose codification, principally because it will destroy our culture, traditions and character.

To have a Hindu Code in the English language is very repugnant to me. Codification will make the law wooden, and place us at the mercy of those who know nothing of the Hindu Law except the Code. The spirit of Hinduism will be destroyed. I have mentioned other points in my written memorandum.

I am against the daughter being given a share. If possible, the Deshmukh Act should be repealed. I prefer the present law to the proposal in the Code to give women an absolute estate. Women ought to have absolute estate only in stridhan.

I would leave the Bombay rule giving daughters an absolute estate as it is.

I would retain the Mitakshara right by birth and the principle of survivorship.

Monogamy should not be made a rule of law. There should be no divorce in the case of sacramental marriage, even in cases of desertion. There should be no legislative interference in the matter. If Hindu society wants divorce, they may have it.

I am against *sagotra* and *saprarava* marriages.

I oppose the extension of the Bombay rule, permitting adoption by the widow in the absence of an express prohibition by the husband, to other Provinces. The present law may remain as it is.

The Bombay rule permitting the adoption of a married man may be retained, so far as that Province is concerned.

The Committee rose for the day at 7-40 p.m.

Tuesday, 13th March 1945.

The Committee reassembled on Tuesday the 13th March 1945 in the Assembly Buildings at 10 a.m. The following members were present:—

Dr. DWARKANATH MITTER. (*In the Chair*).

Principal J. R. GHARPURE.

Mr. T. R. VENKATARAMA SASTRI, C.I.E.

1. The first witness for the day was Mr. B. D. KATHALAY, B.A., LL.B., Advocate.

I have given a statement in writing embodying my views. Here is a copy of my article contributed to the All-India Reporter (*Hands in the copy*). I am opposed to the codification of the Hindu Law. In order to understand a Code, a commentary is necessary. The Swiss Code, for instance, has a commentary. Codification is of no use without a commentary. The Turkish Code had no commentary written for it, and finally the Code itself had to be given up. Once there is a Code, the Legislature will always be interfering with it in order to bring it up-to-date.

The Hindu Law is a logical system, and there is good reason for all the provisions found in it now.

After all, the Draft Code does not achieve its object of making a uniform law for the whole country, for agricultural land has had to be left out. Nor are Indian States affected by the Code.

The principles of international law will provide considerable practical difficulties in the administration of the Hindu Law in particular cases in Indian States. For example, there is now difficulty about divorces granted in Baroda State.

The present Code will give a death blow to the institution of the joint family. In Western countries on the other hand, in recent years, the attempt seems to be to rear some institution like the joint family. The right by birth and survivorship should be retained in the Mitakshara jurisdictions. The joint family is a sort of social insurance which is beneficial to the poorer members.

The daughter, whether married or unmarried, should not be a simultaneous heir with the son. The Deshmukh Act should stand. There should be no absolute right for women, except in stridhana over which, I agree, that they should retain absolute control.

There should be no inter-caste marriages. Where such marriages have already taken place, the parties should marry again in the civil form or according to the Arya Samaj rites. Children born before the subsequent ceremony may be made legitimate on the principle of *per subsequens matrimonium*. The Special Marriage Act may remain apart and distinct. I strongly desire however that those who marry under that Act and their progeny should remain within the Hindu fold. For this purpose, that Act may be amended, if necessary.

I have not considered the question of *sagotra* and *saprarava* marriages and have no views to offer thereon.

I do not want monogamy to be laid down by means of a law.

There should be no divorce in sacramental marriages.

I would not change the law of adoption prevailing in the different schools but if a change is to be made I would permit of the adoption of married men throughout the country.

2. The Jain Seva Mandal, Nagpur, and the Jain Research Institute, Central Provinces and Berar, then appeared jointly before the Committee and gave evidence. They were represented by the following gentlemen, Mr. M. B. MAHAJAN, Advocate, Akola, Mr. W. G. BANNODE, Pleader,

Chandar, Pandit SUMATHI CHANDEA DIVAKAR, Shastri NYAYATHIRTHA, B.A., LL.B., Mr. D. G. MAHAJAN, Working President of the Jain Research Institute and Mr. L. S. ALASPURKAR, B.A., LL.B., General Secretary, Jain Seva Mandal, Nagpur. They said:

We are all Digambar Jains. The Mandal represents the Svetambaris also.

There was recently a Jain Conference at Calcutta.

We are in favour of the codification, particularly as it makes the law certain. There should, however, be a separate Code for the Jain community. That is our principal point. Our community is about two millions strong in the whole of India and if the Committee recommend a separate Code for us, there will be no difficulty whatever. Our problems are not complicated at all.

Although the Hindu and the Jain laws are similar on many points, there are vital differences between the two and Badrabahu, our main authority, is anterior to Manu:

(1) Among Jains, there is no hell for the sonless man.

(2) The sister's daughter is the heir to stridhan property, immediately after the parents and before the husband's heirs.

(3) Widows have an absolute right of ownership, which they can assert even as against sons.

(4) Hermits cannot hold property.

(5) Adoption is a purely secular institution.

(6) There is no joint family in the Mitakshara sense and the family property is held by members of the family as tenants in common.

(7) The Vedas are no authority for us.

(8) There is no "sacred fire" in our marriages.

(9) There are no different schools of succession among Jains.

It is also wrong to regard us as descendants of Hindus. We are not part and parcel of the Hindu community. Jainism is an independent religion. Sankaracharya did not want Jains to be included among the Hindus. Lokamanya Tilak did not admit us to be Hindus. We are an independent community and our separate entity should be maintained. (See A.I.R. 1927 Madras 528, I.L.R. 50, Madras 228—see also Rangnekar, J.'s judgment in J.L.R. 1939 Bombay page 512).

We do not want the daughter, whether married or unmarried, to be a simultaneous heir with the son. An unmarried daughter should be given only maintenance. A widowed daughter should also be given maintenance if she is destitute.

The widow should get the property absolutely. So also the daughter. An absolute estate should be conferred not only in stridhana, but in respect of all property, including property inherited from the husband.

We favour the retention of the daughter-in-law as an heir.

We accept the abolition of the principle of survivorship. There is no right by birth amongst us, although the Mitakshara has been applied to us.

Monogamy, in principle, we accept. But the man should be allowed to remarry in certain exceptional cases, for example (1) where the wife is barren for ten years or (2) where she goes on bearing daughters for a period of 12 years, or (3) where for a period of 15 years all the children born to her die shortly after birth. In all other cases, second marriages should be prohibited.

We have no objection to *sagotra*, *sapranvara* and inter-caste marriages. Among Jains there are no castes or gotras. We have no doubt Jotras, but a Jotra means only a family name and not a Rishi's name. It is not therefore akin to a "gotra." We accept the limitation of seven and five degrees laid down in the Code for the *sapinda* relationship.

Marriage does take place sometimes between a man and his sister's daughter. We would not therefore prohibit such marriages.

We do not want any provision for the dissolution of marriages. A deserted woman is not entitled to remarry. In certain sections of the Jain community women do remarry during the lifetime of their husbands, but no such remarriage can take place, unless the husband grants a *chorchiti*, stating 'you can remarry.' A *chorchiti* amounts to a divorce.

As regards adoption, we are against the principle of implied prohibition by the husband. It will open the way to fraud. Prohibition should therefore be express

and not implied. Customs now prevailing among the Jains with regard to adoption must be saved.

3. Professor M. R. SAKHARE, M.A., T.D. (Cantab) and Mr. I. S. PAWATE, Sub-Judge, Baramati, Poona, then gave evidence on behalf of the Lingayats of the Bombay Presidency as follows:—

We appear as representatives of the All-India Veera Saiva Mahamandal, Sholapur, and also of the Veera Saiva Suddharan Samaj. We will first give our views in our representative capacity and then each of us will give his personal views.

We Lingayats should be recognized as having a separate religion. We do not worship images nor do we recognize the Varnashrama Dharma. (A book dealing with the Lingayat faith is handed in.) Professor SAKHARE referred extensively to references occurring in literature to Lingayats as a separate entity. He added that Professor RHYS DAVIDS also made separate reference to Lingayats. Lingayats had in the past produced great architecture, and high literature alike in Kannada, Telugu and Sanskrit. Many great men and women born in the community have shed lustre on India.

Our first submission is that in the definition of 'Hindus' the word 'Lingayats' should be included just as Sikhs and Jains have been included. We do not see why reference should not be made to us in the definition, when the Sikhs who are of more recent origin have been mentioned in it.

If we are treated as belonging to the Hindu religion, we will be placed in one of the Hindu castes. But such a classification will be absolutely wrong. Ours is a proselytising religion and Brahmans as well as Panchamas may become converts to it. If we are not treated separately a marriage between a Lingayat of Brahman origin and a Lingayat of Non-Brahman origin may possibly be prohibited by an injunction. This is a position which we cannot accept. Besides, if we are classified as Hindus we may continue to be treated as "Sudras," as some decisions of Courts have erroneously held us to be and that will be most derogatory to our dignity and status.

The sacramental marriage is the highest form of marriage, but *saptapathi* should not be insisted upon, as we do not have it. We have only *panigrahana*. We prefer the first alternative (clauses 3 to 5 of Part IV) but shall have no objection to the second if *saptapathi* is omitted.

Mr. PAWATE then gave his personal views:—

I am against codification on two grounds: firstly, that our religion and philosophy will disappear. The Code will kill the last remnants of our civilization. Secondly, the Code departs altogether from the Mitakshara. The Mitakshara is the most logical and just system conceivable. I do not mean that a rule here or a rule there may not be changed but the changes made must be consistent with the basic principles of the Mitakshara.

I may refer to clause 10 of Part II which speaks of heirs who are *not related*, but neither the Mitakshara nor the Dayabagha recognizes any heir who is not related. The preceptor, the sishya, etc., are heirs by spiritual relationship or *vidya sambanda*.

The right by birth works justice and not injustice for it acts as a restraint on the father. It may be retained.

I am against the married daughter being given a share. I have no objection to the unmarried daughter taking one-fourth the share of a son. But this should be divested on her marriage, on the same principle on which the *dattaka* son is divested of his share in the property of his natural family. This seems to me to be consistent with the Manu and Yajnavalkya Smritis. If she does not marry, the property will be hers.

I would retain the daughter-in-law's position as in the Deshmukh Act. The commentator Nandapandita has given her a share. (See Gharpure, page 206.)

I am against giving an absolute estate to the widow, because it is the family that has acquired the property, and it should not therefore be retained by her.

The wife should be a co-owner with the husband [See Yajnavalkya II (52)].

As regards monogamy, it all depends upon the proportions in which the sexes are found in the country. I do not want monogamy to be laid down as a rule of law. A second wife should be allowed where the first wife is barren, disobedient or unchaste. When the husband contracts a second marriage, the first wife may be given a



right to obtain divorce. I am in favour of the provisions regarding divorce, but would considerably relax the requirements proposed by the Code. For instance, in clause (c) (desertion) I would substitute one year for seven

I would, however, retain seven years in clause (e) (venereal disease). I would add unchastity of the wife as a ground for divorce, but adultery on the part of the man should not be a ground for divorce. I would also make cruelty a ground for divorce. I would specifically retain all customary rules of divorce.

Mr. SAKHARE then expressed his personal views:—

The Hindu Law should be codified. There is no use relying on antiquated books. Women should have an absolute estate. There should be complete equality of the sexes and there should be a provision for divorce.

4. Dr. K. L. DAFTARI, B.A., B.L., D.LITT., was the next witness. He said:

I am a B.A. and a B.L. of the Calcutta University and a D.Litt. of the Nagpur University.

I appear on behalf of the Dharma Nirnaya Mandal, and not in my personal capacity. I have given a written memorandum of my views. Generally, I am in favour of the Code and agree with the views of Mr. KANE who appeared before the Committee at Bombay as a representative of the Mandal.

A married daughter should not have a share. An unmarried daughter may be given one-fourth the share of a son. There should be no addition for her marriage expenses. There should be no absolute estate for women if any one exists in the compact series of heirs up to the uncle's son.

I favour the abolition of the right by birth and the principle of survivorship.

I am in favour of monogamy except in certain exceptional circumstances. For example where the wife is barren for fourteen years after marriage, is incurably sick or incapable of functioning as wife, or has deserted the husband for five years. In such cases, I would permit the man to marry after obtaining the permission of the District Judge.

In the case of the weaver and agricultural classes, where a second wife may be an economic necessity, I would permit a second marriage with the consent of the first wife. Incurable impotency for five years before the presentation of the petition, cruelty, and desertion for seven years may be good grounds for a wife's seeking divorce.

As regards adoption, I think that a woman should have a right to adopt even though the husband has prohibited her. In such cases, the adoption should be to the widow and not to her husband. Daughters should not be adopted.

The Committee then rose for lunch at 1-25 p.m.

5. Re-assembling after lunch at 2-25 p.m., the Committee examined Diwan Bahadur SITA CHARAN DUBE, Advocate. He said:

My family came here from the United Provinces and we are governed by the Benares School of Hindu Law.

I have not given any written statement, but I am against the Code, for I am against codification. This is my personal opinion. A secular State cannot be considered as having a right to legislate on religious matters and in Hindu Law religion plays a very important part.

I am not in favour of the daughter being made a simultaneous heir with the son. Nor am I in favour of the daughter-in-law or the widow being a simultaneous heir. I would therefore repeal the Deshmukh Act which was a piece of hasty and ill-considered legislation.

The unmarried daughter may get one-fourth of a son's share. If however the family provides for her marriage expenses, she should have no share. I am not for giving an absolute estate to women, except as regards stridhana property.

The Mitakshara right by birth and survivorship should remain. These rights are the very foundation of Hindu Society in these Provinces, and their abolition will result in disintegration. In all probability, the family may in future become a more closely-knit unit than it is now. I would leave the Bengal Law as it is and the Mitakshara Law also as it is.

I would not make monogamy a rule of law. Marriage is a sacrament and should be kept sacred. The sacramental form of marriage should not be tinkered with.

*Sagotra* and *saprarava* marriages ought to be prohibited. In cases where they have already taken place, they may be validated by the parties subsequently going through the civil form of marriage.

As regards adoption, I do not agree to the extension to other Provinces of the Bombay rule which lays down a presumption of husband's authority in the absence of prohibition. The Benares rule which requires the husband's express authority should be retained where it is now in force.

While, on the one hand, the Code provides for monogamy, on the other, it gives a right of maintenance to the concubine. This appears to me to be anomalous.

It is also very curious that the Code proposes that divided and undivided sons should take equal shares in their father's property.

I am opposed to the registration of adoptions or of marriages.

6. Mr. P. B. GOLE, B.A., LL.B. (Ex-Minister of the Central Provinces), Mr. GANGADHAR HARI PAREDKAR, Miss VIMAL THAKKAR and Mr. RADHAKRISHNA LACHMI NARAIN, representing the *Varnashrama Swarajya Sangh of Akola*, were the next witnesses.

The *Varnashrama Swarajya Sangh of Akola*, which we represent, has a membership of more than 500.

We are opposed to codification. The present legislature should not undertake any enactment regarding the Hindu Law. Hindu Society is at present in a transitional stage and we do not know what the result will be of the impact on it of the war. The proposals may be postponed until some time after the termination of the war.

We are opposed to bringing about uniformity in the Hindu Law, as different customs prevail in the different Provinces. It is up to each Province to enact any changes which it may desire. The law in each Province will then be certain and definite and there will be no confusion.

As regards marriage, the present system of sacramental marriage should remain and not be interfered with. Monogamy should not be enforced compulsorily. Even now, polygamy obtains only in very rare and exceptional cases. We are against the dissolution of marriage by divorce. We do not want an institution like the English Matrimonial Court to interfere in our family matters.

We are against inter-caste marriages. Where children have been born of such marriages, the civil marriage provisions may be made applicable. Recognition of inter-caste marriages is tantamount to abolition of caste. We are equally against *anuloma* and *pratiloma* marriages. We are opposed to *sagotra* and *saprarava* marriages. The sapinda relationship may be fixed at the limit of seven and five degrees as proposed by the Code.

We are opposed to giving any share to the daughter simultaneously with the son. We are against the Deshmukh Act and consider that it should be repealed. The daughter-in-law may be given a right to maintenance and the right of inheritance may be taken away. We are against giving an absolute estate to the widow. Even the daughter's absolute estate has proved detrimental to her real interest, as she has often been duped by deceitful persons.

The right by birth and survivorship should remain. The family is the unit in Hindu Law, and there are many advantages in keeping it so, wherever possible. The joint family is a peculiar institution of the Hindu Law and is worthy of preservation.

As regards adoption, it is better to keep to the existing rules. In particular, the restrictions on the widow may be maintained in the Benares School.

7. Miss VIMAL THAKKAR, a member of the above deputation, then gave her personal views.

The present Code destroys the stability of women's life. It severs family ties and the brother will cease to feel sympathy for his sister. Litigation will increase. The principle of equality pervades the Code, but the majority of Hindu women do not have the capacity to manage property properly. Inequality between man and woman is in the nature of things and is due to physical and biological differences. This inequality is recognized by and is at the root of the Hindu Dharma. The institution of the family will be destroyed if the daughter gets absolute property, and this danger should be guarded against.

8. Mr. N. V. MACHEWA, Organizer of Reformed Marriage Institutions, Nagpur, was the next witness.

We have four branches. We support the Code but the additions and alterations suggested by Mahamahopadhyaya KANE of Bombay and Dr. K. L. DARTARI of Nagpur should be incorporated in it. I am a member of the Dharma Nirnaya Mandal on whose behalf they gave evidence. I am submitting a written statement of my views.

9. Mr. KASTURCHAND AGARWAL, B.A., LL.B., Pleader, Seoni, Chindwara, then gave evidence.

I have been a pleader since 1926. I am entirely opposed to the codification of the Hindu Law. The idea of codification is repugnant and offensive to our feelings. We believe that our law is divine. It forms part of Hindu scriptures which have been revered from time immemorial.

The daughter, whether married or unmarried, should not have a share along with the son. The existing law sufficiently provides for the daughter.

The widow should not have an absolute estate.

The right by birth and survivorship should be retained.

Monogamy, though desirable, should not be made a rule of law. Inter-caste marriages should continue to be governed by the Civil Marriage Act. I am opposed to *sagotra* and *samanapravara* marriages, and also to divorce in the case of sacramental marriages.

I would leave the law of adoption as it is and am opposed to any change being brought about in it. If we insist on putting the same meaning on the same text throughout India, we will be upsetting the existing provincial laws which are different in different Provinces. The widow's right to adopt may continue as at present in the various Mitakshara jurisdictions.

10. Mr. S. N. KHERDEKAR, B.A., M.L., Advocate, Nagpur.

I am a Master of Laws of the Madras University. My special subject was "Personal Laws." I have been practising in the Nagpur High Court for the last eleven years.

I have read the Code. I am opposed to codification. The present Hindu Law is almost settled and the Code will unsettle it again. I am not opposed to piece-meal amendment of the law being undertaken, as and when necessity arises. I am definitely opposed to wholesale codification as proposed by the Committee. Besides, the Code does not cover the whole range of subjects included in the Hindu Law at present. Thus the Code is only a partial piece of legislation, and upsets the fundamental principles of the Mitakshara; in particular, it destroys the joint family system. I am not therefore in favour of it.

The daughter, whether married or unmarried, should not be a simultaneous heir with the son. A married daughter gets a full right in her husband's property and there is no need for giving her a share in her father's property also.

The widow's estate should be a limited one as under the existing law.

The daughter may get an absolute estate as in Bombay. I would extend this Bombay principle to all Provinces.

The civil marriage provisions should not form part of the Hindu Code. The disabilities imposed by sections 22-26 of the Special Marriage Act may be removed by an amendment of that Act.

Monogamy should not be made a rule of law and polygamy should be retained.

I am opposed to *pratiloma* but not to *anuloma* marriages. I would invalidate *sagotra* marriages, even where they have taken place. *Sagotra* marriages beyond the limits of sapinda relationship may be validated by the application of the *factum valet* doctrine. I would limit sapinda relationship to five degrees on both the sides.

Some form of divorce is necessary in the case of sacramental marriages also. I would allow divorce in cases (a) (lunacy) and (b) (leprosy) of clause 30 of Part IV. As regards case (c) (desertion), I would say that where the husband's desertion is not in consequence of the wife's unchastity, she may have the right to apply for divorce. As regards case (d) (conversion to another religion) I would provide that if the husband becomes a convert, provision should be made for the dissolution of the marriage, but if the wife becomes a convert I would not give her a right to apply for divorce. The Muslims have made their law in this way and we may follow suit. Case (e) (venereal disease) may be omitted. As for case (f), I would say that unless a man, in addition to keeping a concubine, behaves with cruelty to his wife, she should have no divorce. As

regards the man's right to a divorce in case (f), no change is necessary in this clause.

If the husband wants a divorce I would allow him to apply for it, even though according to my proposals he will be at liberty to marry a second wife.

As regards adoption, I would call Part VI, 'Sonship' instead of 'Adoption.'

Women should be able to adopt children to themselves. Maidens should have this right and also widows without the permission of their husband. A wife should not be able to adopt in defiance of her husband's will. If a maiden who has adopted a son subsequently marries, then the adopted son should be capable of inheriting the property of his adoptive mother, but not of her husband.

Mr. VENKATARAMA SASTRI: We have maintained the *dattaka* form of adoption because it is a religious institution spread all over India.

WITNESS: I would modify clause 11 of Part VI so as to revive the power of the mother-in-law to adopt, in case of the demise of the son's son or son's widow.

Clause 13 lays down the restriction that an adopted boy should be of the same caste as his adoptive father. It is not clear what the caste is of the issue of a marriage between members of different castes.

11. A women's deputation representing the Mahasabha point of view and consisting of Lady PARVATIBAI CHITNAVIS, Mrs. LAXMIBAI PARANJPE, Mrs. PREMILABAI VARADPANDE, Miss SANTABAI DAWANDE (a graduate of the Nagpur University) and Mrs. TARABAI GHATATE then waited on the Committee. Their evidence was given in Marathi, mainly by Miss SANTABAI DAWANDE.

We have read the Code, but are against it.

The first question is why in a country like India where there is no Code for the Muslims or the Christians, there should be one for the Hindus?

By passing this Code, all our past traditions about religious law will stand abolished.

If monogamy is imposed upon the Hindus only and the Muhammadans are left free to act according to their will, the Hindu population will decrease and the Muhammadan population will increase. This is politically undesirable.

If the daughter is given a share in her father's property and she marries a Muslim, not only will Hindu property go into Muslim hands, but a number of complicated questions will arise. The Muslim husband will enter the Hindu family and create trouble.

If a woman is given a right to obtain divorce on the ground of her husband's impotency, the men will have to be given a similar right in the case of the wife's barrenness and what is to happen to the wives in such cases?

Our submission is that the majority of women are not educated on western lines, and that they do not want the Code. Surely, the Committee are not going to impose the Code on all for the sake of a handful of educated women.

Are there facts to show how many women demand divorce? Have the Committee considered whether the provision for divorce will be for the benefit of the women or whether it will lead to more hardships? We feel that the remedy will be worse than the disease and we therefore desire the *status quo* be maintained.

This Code has not been properly explained to women, particularly in the country-side and will therefore bear little fruit.

Uniformity in the law is not possible; there are several intricate questions of law which have first to be settled.

We are against the daughter getting any share. Some provision should be made for the unmarried daughters. We are opposed to the absolute right of women. They are not well educated and cannot manage property properly.

We are opposed to the abolition of the right by birth and survivorship. The Mitakshara should remain.

We are also opposed to inter-caste marriages; to *sagotra* and *sapravara* marriages; and to the enforcement of monogamy by means of a law.

The *status quo* should remain as regards adoption.

12. The Hon'ble Justice Sir M. B. NIROCI of the Nagpur High Court, was the next witness. He said:

I support codification, because I consider a Hindu Code to be necessary. I am generally in favour of the provisions found in the draft Code. The Christians have

the Indian Succession Act and the Muslims have also a Code of sorts. Likewise, the Hindus also should have a Code of their own. This is an age of statutes and Codes. We have now to depend on the Dharma Shastras and the commentaries thereon. These frequently embody conflicting views as different interpretations have come to be placed on the original smṛiti texts by different writers. Our present Hindu Law is not entirely based on the Dharma Shastras, it is in many instances judge-made law. Again and again conflicting decisions are rendered. I shall give one instance. The Kayasthas have been held to be Kshatriyas by one High Court and to be Sudras by another. What is one to do in such cases? The present time seems therefore to me to be very propitious for undertaking this legislation. The Code achieves uniformity to the maximum extent possible under the existing state of affairs and I like it.

After all *dharma* is always changing from age to age. All social institutions have to adjust and adapt themselves to the changing needs of the times. In fact, accommodation to changing circumstances has been the chief characteristic of the Hindu race. We now live in representative society and not in individual units. I do not think that the principle of referendum is one which should be applied in the present case. It is resorted to in continental countries only in very exceptional circumstances. Even if the legislation is postponed for a little time, I shall not mind very much, as it will give a further opportunity to the public to study the Code and then have its say, and this is desirable and proper. Much of the present opposition which seems to me to be due to ignorance of what is proposed and to lack of a far-sighted vision of things, may also disappear if we give time.

I have no objection to the Code being made an issue at the next elections. I do not think there will be any pronounced opposition from the Provinces. If there is, the principle of self-determination may be applied. I do not however think that provincial opinion in the present case is so parochial as to require the application of that principle. The votes of the representatives in the Provincial Assembly may decide whether the Code should apply to any particular Province or not. If Bengal or any other Province desires to stand out, let it. I do not however think that things will take that turn.

In a number of cases, legislation is the only remedy. I have come across many cases for which no other remedy is possible. The *mbandhakaras* who settled the law from time to time in the olden days represented the social conscience of their respective periods and the rules formulated by them naturally carried weight. We do not have, and it is not possible to have, such *mbandhakaras* now.

The *Mitakshara* is 800 years old and surely there must be scope for development of the law in accordance with the changes which have happened during this long period of eight centuries. At the present time, public opinion has practically taken the place which custom occupied in ancient days and changes in the law should therefore take place in accordance with public opinion. The Privy Council consisting as it does of European Judges could not properly interpret the Indian view. (See *Bhagwandin v. Mynabai*, 11 MIA 487.) The rule laid down by Katyayana was misinterpreted by somebody, and that misinterpretation was upheld by the Privy Council.

When the social conscience is roused—I am sure it will be, if not now, sometime later—this legislation is bound to be passed. As I have already said, there is no harm in waiting patiently for some time. At present, the question of the reform of the Hindu Law is mixed up with all kinds of political considerations. For instance, the impression prevails in the country that because Sir SULTAN AHMED was the Law Member when the Intestate Succession Bill was first introduced, it has been drawn up according to Muslim ideas. This is entirely erroneous. Sir SULTAN did not make any changes in the Bill as drawn up by the Rau Committee. Irrelevant considerations like these should be kept apart and for this, we have to wait for some time.

After all, Manu and Yajñavalkya are Codes of Hindu Law. When the customs change, a different Code is bound to come out. We have no Manu now nor is it possible to have one. Consequently the codification will have to be

made by the representatives of the people. A Code is now a legislative business. Our ancient Codes are a mixture of morals and law. We cannot rule by morality. When the Privy Council say a thing, we have got to follow it.

I have yet to come across a man in Nagpur who has studied our ancient shastras and texts. Our past heritage should not handicap us in our progress.

As regards *stridhana*, if the expression "*adhya*" had been properly interpreted, there would have been no difficulty at all. In *Bhagwandin's* case, there was a clash of views between the pundits, and those who represented the custom then prevailing were thrown over. The limitations in respect of property were there even in the case of males. The joint family system requires that limitations should be placed. The managing member is a representative owner as defined by Mr Justice TRAVEL-YAN. The mere existence of limitations was, therefore, no ground for denying to women their legitimate rights.

On matters like this we have to weigh opinion and not merely count heads.

We have not lived as human beings, but have merely been slaves of custom. There is therefore no improvement in our status. We are as we were in 1894.

Law now is so nebulous and our people do not know their own minds. In *Guahar's* case, Nagpur and Bombay took different views and the Nagpur view was accepted by the Privy Council.

The joint family system is going and it must go. It has to be given a decent burial. People have spent large sums of money to know what our Hindu Law is. Muslims do not go so often to the Privy Council. The Muslim Law is not based on religion or morality. It is purely secular. There is no conflict of decisions in the case of Muhammadan Law. All our money which was wasted on litigation would have been better spent in building up our Hindu social structure.

The Hindu Law, though it recognizes only the son as an heir, has made provision for the daughter by way of maintenance. There are many difficulties in arranging the scale of maintenance, and I would suggest that a share be given instead to the daughter. The property inherited by a woman from her husband should pass to her husband's heirs. I would give the daughter-in-law and the unmarried daughter an one-fourth share. This is a compromise, I agree personally that the half share provided in the Code would be better. The share should be given to her absolutely. Otherwise, there would be litigation.

Alienations made by a widow should be capable of being challenged by an heir who is not remoter than a brother's son. This is in deference to public opinion. If the heir is remoter than the brother's son, he should have no right to impeach the widow's transactions, and she should enjoy an absolute estate in the properties.

I am decidedly of the opinion that caste must go. It is a handicap to our progress just as the joint family is. Hindu culture does not depend upon caste. The provision made in the Code for inter-caste marriage is only an enabling one and I can see no objection to it whatsoever. After all, a Mahar may marry a Brahman woman even now under the Civil Marriage Act. Narada quotes *Rajasasana* as the first source of law. *Vyavahara* should be separated from *Dharma*. In the earlier texts, e.g., *Apasthamba*, this classification does not exist.

The origin of *gotra* has been investigated by Dr. BHAGWANDAS. People lived with their cattle within a certain area, and to prevent promiscuous connexions a restriction was imposed, that people of the same *gotra*, that is, those living together in the same enclosure or place should not marry. This restriction is a totally irrelevant one at the present time.

Divorce should be allowed. Narada allowed it. I come across many heart-rending cases for which there is no other remedy. It will be the height of cruelty not to deny divorce in such cases. Divorce is after all only an enabling provision and there is no compulsion whatever to resort to it. The more the liberty you give, the greater will be the desire to stay within the old moorings.

I do not advocate monogamy being enforced as a rule of law now. In my judgment, it will be too soon to enact such a provision. I feel that the time has not yet come for it. I want the Code for the present to confine itself to enabling legislation.

My opinions are based upon my experience at the Bar for 20 years and as a judge for the last 15 years.

At the conclusion of Mr. Justice Niyogi's evidence Dr. MITTER conveyed to him the warm thanks of the Committee for the considerable assistance given by him.

13. The Hindu Mahasabha deputation led by Dr. B. S. MOONJE and Dr. KATHALAY then appeared before the Committee. Dr. KATHALAY said that the Mahakoshal Hindu Sabha agreed with his views. A statement of the views of the Sabha in writing was then given to the Committee.

Dr. KATHALAY took the opportunity to supplement the evidence given by him on the previous day. He explained that if there should be provision for the dissolution of marriage on the ground of the impotency of the man, there should be provision also for the dissolution of the marriage on the ground of the sterility of the wife. Both the grounds should be provided for or none.

14. Mr. R. M. KATE, representing the Hindu Nationalist Party of Nagpur, was the last witness. He said that his Party was against the codification. The draft Code was opposed to the basic principles of Hindu Law. There is a curious mixture of thought in it, as regards biological evolution and immutability of law. Our culture is based on the divine law and the Vedas are only the expression of that law. It is an immutable law. Our Sanatanism is ever fresh and suitable to all times. It is not merely an old historical relic, devoid of present significance.

With the examination of this witness, which terminated at 6-45 p.m. the Committee concluded their session at Nagpur.

#### VIII. LAHORE.

Friday, 16th March 1945.

The Hindu Law Committee commenced their session at Lahore, in the Central Museum Hall, Lower Mall, on Friday, the 16th March 1945, at 12 o'clock. The following members were present:—

Dr. DWARKA NATH MITTER (*in the Chair*).

Principal J. R. GHARPURE.

Mr. T. R. VENKATARAMA SASTRI, C.I.E.

1. LALA JAMNA DAS (Secretary) and Pandit JAGAT RAM SASTRI, Principal of the Sanathan Sanskrit College, Hoshiarpur, representing the Sri Sanathana Dharma Sabha, Hoshiarpur, were the first witnesses to be examined.

We have about 500 members on our rolls. Our Sabha was formed in 1890, 55 years ago. We are a registered body. We have a printed book setting forth the objects of the Association, but we have not brought it here. Our object is to see that Hindus do not depart from ancient customs and the shastras.

We are opposed to the codification of Hindu law generally.

We are against the daughter succeeding simultaneously with the son. We are not in favour of giving any share to the daughter, whether she is married or unmarried.

We are opposed to the widow getting an absolute estate in her husband's property.

Pandit JAGAT RAM SASTRI: Property is only for samskarartham, the performance of necessary samskaras or ceremonies. I interpret the texts of Yajnavalkya and Vasishtha regarding the share for the unmarried daughter as only authorizing the allotment of an one-fourth share, for the purpose of getting her marriage performed. I do not read the texts as giving a share to the unmarried daughter absolutely and irrespective of her marriage. I do not agree with the Mitakshara interpretation of the texts. The daughters have got a share in *stridhana*.

LALA JAMNA DAS: In our memorandum, we have said that the daughter's son may take the inheritance after the parents. We see that this is based on a mistake. We are satisfied now that the existing provision may stand in this regard.

We do not wish to see any change made in regard to the right by birth and the rule of survivorship in the Mitakshara family. We would retain the Mitakshara as it is.

The Sabha is against monogamy. (LALA JAMNA DAS: Personally, I am in favour of monogamy). After waiting for a number of years, say 8, 10 or 12, if the wife is barren, another wife may be permitted to be taken for procreating children, without putting aside the first wife.

Mr. VENKATARAMA SASTRI: Will not an adoption do in such cases?

Pandit JAGAT RAM SASTRI: No, an *aurasa* son is to be preferred to the *dattaka* son.

We are against validating *sagotra* and *saprarava* marriages. Even where such marriages have taken place, we would not apply the doctrine of *factum valet* to them. The proper course in such cases is to perform *prayaschitta*.

We are against divorce or dissolution of marriage under any circumstances.

Mr. VENKATARAMA SASTRI: What is to be done in cases of desertion, e.g., where a girl is married at a tender age and is abandoned almost from the time of marriage?

WITNESS: We are against the dissolution of the marriage even in such cases.

We would leave the law of adoption as it is. Each Province may retain its own law of adoption as at present.

2. *The All-India Jat Pat Torak Mandal* represented by Mr. SANT RAM, President (Editor "*Kranthi*"), Mr. INDAR SINGH, Assistant Secretary and Dr. NATHURAM, Member of the Working Committee then gave evidence.

Our Mandal was formed in 1922. We have about 100 members at Lahore, and there are besides branches at Bombay, Ajmer and elsewhere.

Dr. MITTER: Are you connected with the Arya Samaj?

WITNESS: No, we are an independent body.

Witnesses handed over a written memorandum embodying the views of the Mandal and said that they welcomed the Code and approved of almost the whole of it.

We welcome the share given to the daughter, whether she is married or unmarried. We are willing to give an absolute right to women in property.

We do not want to abolish the Mitakshara principles of right by birth and survivorship.

We are strongly in favour of inter-caste marriages. We are equally strongly in favour of monogamy being made a rule of law.

We approve of *sagotra* and *saprarava* marriages outside the *sapinda* relationship of seven and five degrees.

We are in favour of divorce. The conditions prescribed in the draft Code are too rigid and we would like them to be relaxed. We would also like adultery and cruelty to be grounds for divorce.

We have nothing to say against the provisions regarding adoption.

3. *The Sanathan Dharma Prathinidhi Mahasabha, Rawalpindi*, represented by Mr. LAXMI NARAIN SUDAN, Vice-President, gave evidence next. Our Mahasabha was formed in 1933. We have 25 members. Our Mahasabha is representative of several Sanathan Dharam Sabhas in the Punjab, the Frontier Province, Sind and Baluchistan.

We oppose the Code altogether. In fact, we do not think that there should be a codification of the Hindu law at all. The Hindu law is not a mere mundane thing. It is a *dharma sastra* or a divine law regulating Hindu life. The expression "*dharma*" does not connote mere law. It is not merely for this world; it is also for the other world.

I am opposed to giving any share to the daughter, whether married or unmarried, along with the son. If the daughter gets a share, the property will get fragmented. Not merely fragmentation, but total ruin will result. Family businesses will get dissolved, and it may finally lead to bankruptcy all round. We do not know where we will ultimately find ourselves if a daughter gets a share. The duty of giving a share to the daughter is only laid upon the brother as a matter of moral obligation by the texts.

In no part of India is a daughter given a share simultaneously with the son. The claim that a uniform law is evolved by 'blending' the most progressive elements in the different schools is, therefore, not correct in this instance.

Dr. MITTER: What about the Deshmukh Act of 1937?

WITNESS: I would repeal that Act and give the widowed daughter-in-law only a right to maintenance.

I am opposed to absolute rights being given to a woman except as regards *stridhana* property in the technical sense attached to it by the *nibandhakaras*. In other words, I want the existing law to continue as it is in this regard.

In reply to questions from Principal GHARPURE, witness said that the system of giving dowries was prevalent in the Province to a much greater extent than in Bombay.

The order of succession laid down in the Code is not in accordance with the Hindu law.

The widows of *gotraja sapindas* are provided for only in the Mayukha and they need not be made heirs elsewhere than in the Bombay Presidency.

Our Mahasabha is opposed to the abolition of the right by birth and survivorship. If the right by birth is abolished, there will be no check on the father's alienation of the ancestral property.

The Mitakshara governs the whole of India except Bengal, and I do not see why it should give place to the Dayabagha. Even in Bengal, the Mitakshara is a high authority.

We are opposed to laying down monogamy as a rule of law.

We are opposed to *sagotra*, *saprawara* and inter-caste marriages. The doctrine of *factum valet* should not be applied to validate marriages in such cases.

In regard to *sapinda* relationship, we would maintain the degrees at seven on the father's side and five on the mother's. Whatever the practice may be, this is what is laid down in the Dharma Shastras, and must, therefore, be reproduced as law.

If a man marries in contravention of the Dharma Shastras, he must take the consequences of his actions. That the children of the marriage should suffer is unfortunate. But it is an inescapable necessity of the situation and cannot be helped.

The provision for divorce is, no doubt, only an enabling one, but the tendency would be to apply for divorce in increasing measure. Chastity is the most treasured possession of our women and there should be no lowering of standards or fall from our present high pedestal in this regard. That the Hindu nation has not been broken and that it has survived the most vigorous onslaughts by Muslims and others is, in no small measure, due to the chastity of our women.

As regards adoption, I prefer the *dattaka* form, but would not interfere with the *dyayamushkyayana* in the jurisdictions in which it obtains now. The consent of the husband should not be presumed merely on the ground that he has not expressly prohibited the adoption. The Bombay rule should not be extended to other Provinces.

As regards maintenance, the witness said that the amount should not be left to the discretion of the Courts, as they generally make a mess of the matter.

4. Mr. C. L. ANAND, Principal, Law College, Lahore, was the last witness for the day.

Dr. MITTER: How long have you been Principal of the Law College here?

WITNESS: Since 1924.

Dr. MITTER: Do you teach Hindu law?

WITNESS: No, I do not teach Hindu law.

Dr. MITTER: You have, no doubt, read the Code. What do you think of it?

WITNESS: Yes, I have read the Code carefully, and I warmly support the general principles on which it is based. It is informed by two basic principles, viz., (i) a radical reform of the Hindu law and (ii) codification.

As regards the first, viz., reform, the Hindu law has long become a rigid system. For this, two reasons are mainly responsible: (a) judicial decisions being binding precedents, the law has become incapable of assimilating new ideas and (b) custom which is the real agency for effecting changes in the Hindu law has ceased to be operative, as according to British Indian jurisprudence, a custom must be ancient to possess legal validity. Remoulding the Hindu law in accordance with the needs of the age by bringing about gradual changes in the customs of the people is, therefore, no longer possible, as in the days of old.

As regards the second principle, viz., codification, many parts of the Hindu law are based on theories and ideas

of primitive ages. The *smritis* are many centuries old, and in the main, they are only authorities which state the customs which were prevalent when they were composed.

I consider that there is only one way of reforming Hindu law to-day, and that is, by legislation. There could be no reasonable objection to this. In fact, it has been adopted on numerous occasions in the past.

Dr. MITTER: For reforming, should we not have public opinion behind us?

WITNESS: Yes, but it is the quality of the public opinion which must be taken into account, and regard should not be had to mere quantity. Meticulous attention need not be paid to the numbers of those holding opinions either way. I do not say that numbers should be disregarded altogether. We will have to make an assessment which is based both on numbers and on quality.

Codification of the Hindu law is a task of extraordinary complexity. There are many *smritis* and *dharma shastras* and these do not always say the same thing. They are frequently in conflict. There are not merely many schools of law, but also several sub-schools and these take their stands on different works of law. A Code implies the simplification of the law. In fact, that will be its great boon to society. The Hindu law-givers, Manu, Yajnavalkya and the rest, only propounded Codes of law, so that there can be no reasonable objection to a repetition of the process at the present day. Politically and socially, a uniform Code of Hindu law will forge a new and powerful bond of solidarity amongst the Hindus. Almost all Indian law has been codified to-day, and I see no reason why the Hindu law should remain an exception. Unlike Muhammadan law, the real sanction of Hindu law is custom.

Even if absolute uniformity is not achievable, we should strive at attaining uniformity to the maximum extent possible and in course of time, even absolute uniformity may be expected to result.

I support the abolition of the right by birth and of the coparcenary. I cannot see how the abolition of the right by birth can be said to be against the *smritis*, because in the Dayabagha system which is equally founded on them, there is no coparcenary. As a result of the legislation of 1937 and 1938, the Mitakshara coparcenary has already lost one of its chief characteristics. With the admission of the widow, it will no longer consist of male members only. The power of free disposition is recognized in every other system of law, and it is time for the Hindu law to fall into line. The theory of coparcenary rests on conceptions of primitive law and is a relic of the patriarchal theory. Even under the Code, there is nothing whatever to prevent brothers from continuing to live together as members of a joint family as in the Dayabagha, and there need, therefore, be no real interruption to family life.

A Code which gives the widow an uncertain share in property must be regarded as unsatisfactory. Her claims are always superior to those of a son. From the time of their marriage, she has been connected with the husband and has shared in his joys and sorrows, and would have rendered a far greater measure of service to the husband. The Muhammadan law gives her one-eighth in the presence of children and one-fourth in their absence. The Indian Succession Act gives her one-third and the Swiss law one-fourth. I would give her an one-third share where there are two or more children, one-half where there is only one child, and the whole where there is no issue.

As regards the daughter, I consider that there is ample justification for her admission as a simultaneous heir. Once the principle of individualism is accepted, there is no family and there is no reason for giving preference to the son over the daughter. Both become equally entitled. In actual practice, they are the recipients of their father's affection in an equal measure, and they also render an equal measure of service to him. The rights of the daughter are recognized in the *smritis*, though these have not been followed for some centuries. According to the Vedic texts, the unmarried daughter gets a share (Rig Veda II, Parts 17 and 7, quoted in Altekar's book, page 286). Sukracharya has said that if the father divides the property in his lifetime, the son should get one share and the

daughter another. The social and economic conditions which led to the exclusion of the daughter no longer exist. The ancient theory was that the property belonged to the village community which is a compact body. Under the *smritis*, the marriage of girls was obligatory and there was no possibility of a spinster remaining unprovided for.

In all civilized countries to-day, the daughters share in the inheritance—in the United States, in Germany, in France, in Switzerland and also in China, daughters get the same shares as sons. Sex should not be a disqualification for inheritance. There should be no difference in the case of agricultural land; in the case of such land also, the daughter should get a share. Fragmentation is an inevitable result of numbers and the evil has to be tackled in other ways, and not by depriving daughters of their share. Methods have been devised in the United States to get over the difficulty of fragmentation.

In my opinion, the son and the daughter should get equal shares. Manu has recommended that both should inherit. When the daughter dies without issue, property obtained by her from her father should go back to his heirs.

Dr. MITTER: What about your statement that the wife is the surviving half of the husband? Should we not give the whole to the widow?

WITNESS: The widow will take the daughter's share on her death as her husband's heir. The powers of the surviving half cannot be less than those of the expiring half.

It follows from what I have said that daughters and sons should also take the *stridhana* property of their mother in equal shares.

All males take property inherited by them absolutely and I do not see why women should not also inherit property absolutely. In Bombay, the daughter gets an absolute estate and no havoc has been caused by bad management of property on the part of the daughters.

The *smritis* are by no means unanimous that widows should inherit a limited estate. Vishnu and Yajnavalkya have not used any expression connoting that they should take as limited heirs. In all other legal systems, female heirs except the widow get full rights as heirs. Why should Hindu women be exceptions?

I support the Code as regards *sagotra* and *saprawara* marriages. Gotra is not necessarily evidence of consanguinity, and there is no reasonable ground for objecting to a marriage between parties removed by a hundred generations.

Inter-caste marriages should not be made invalid. I go further than the Code. *Anuloma* marriages were not unknown to the *smritis*. Radical distinctions between the different castes were mostly due to cultural differences which have ceased to exist at the present day. Hindu society consists of caste Hindus and non-caste Hindus. There are millions including a large section of the educated community who have ceased to believe in caste. Why should a law prohibiting inter-caste marriages be forced on such people as do not believe in caste or its ethnological basis.

I agree that monogamy should be made an absolute rule of law, without exceptions. Monogamy is a part of Hindu culture.

I support the proposal for divorce or dissolution of marriage, but I would confine it to cases of infidelity and desertion. As regards insanity, leprosy and venereal disease, I consider that they should not be grounds for divorce. The union between husband and wife is not for pleasure alone; it is also for suffering. Change of religion should support a claim for separation but not for divorce. It is not inconsistent with the continuance of conjugal love.

Only the innocent party should have the right to apply for divorce. This will act as a restraint on the irresponsible.

I would have no marriage performed before a boy or girl attains the age of 18. I wish the Hindu marriage to be retained as a sacramental institution as at present.

Saturday, 17th March 1945.

The Committee resumed their sittings at Lahore at 11 o'clock, on Saturday the 17th March 1945, in the Central Museum Hall, Lower Mall. The following members were present:—

Dr. DWARKANATH MITTER (in the Chair).

Principal J. R. GHARPURE.

1. Mr. NAROTTAM SINGH BINDRA, Advocate, was the first witness examined.

I am an Advocate of the High Court of Lahore of 22 years' standing.

In the first place, my impression is that this is not a Hindu Code, but a Code for the Hindus. What I mean is that the Code is based not so very much on the original sources of Hindu Law, and that the Committee have endeavoured to evolve a model Hindu Law with reference to certain *a priori* considerations, without taking full account of the conditions which actually obtain in Hindu society at the present day.

I am in favour of codifying the Hindu Law, but public opinion should be educated beforehand, without a proper public opinion, the Code would be meaningless.

Each portion of the Hindu Law must be considered separately on its merits. I would retain whatever is good in each portion and reject whatever is bad. A test of goodness or general acceptability can be applied if the Code is made optional in its operation in the first instance, that is to say, if people are given full liberty to choose to abide by its provisions or not. If a substantial body of persons accepts the Code, then *prima facie* it is an indication that the Code is a good one.

Dr. MITTER: When a law is enacted by the Legislature, it has the sanction of the State behind it—that is the juristic conception, is it not? How then can there be room for any option in the matter of accepting the Code?

WITNESS: May I draw the Committee's attention to the Cutchi-Memon Act which was at first only optional in its operation? In the same way, I would make the Code enforceable in the first instance only in respect of those persons who accept it specifically. The question of making it universally applicable may be considered after some time.

Dr. MITTER: What is your view as regards abolition of the right by birth and survivorship?

WITNESS: I am against the suggested abolition of these rights in the Mitakshara jurisdictions. Joint family property is of many kinds; it may consist of a joint family business, of the ancestral dwelling-house, of agricultural lands, of money, etc.

Take first the case of a joint family business. The essence of such a business consists in its continuity, irrespective of the constitution or membership of the joint family for the time being. If the business is to be divided as soon as the karta or manager dies, it will come to an end in most cases.

The Englishman has created the private limited company to deal with analogous situations. In my opinion, the Hindu joint family contains the best elements of the English private limited company with certain advantages added. The introduction of the daughter as a sharer, in practice, will mean the introduction of her husband, an extraneous element, and this will not be conducive to the long continuance or effective management of the joint family business. Although in a Muslim family business, each person gets a share, as a matter of fact they carry on the business in much the same way as a Hindu joint family carries it on.

Surely, a law of succession which has such consequences is open to objection. My point is that the joint family business will lose its property value if the provisions of the Code are enforced.

Take next the case of ancestral family property. The attachment of the average Hindu to such property is very great and far exceeds what the average Englishman feels. A Hindu son-in-law cannot be expected to have the same strong feeling as a son of the family for ancestral property or the same repugnance to alienating it. The law of inheritance should not be such as to compel a man to make a will for the purpose of cutting out the daughter and preserving the ancestral property in the family.

The joint Hindu family has usually only one dwelling-house. If the daughter is to get a share in it, difficulties are bound to arise. Even in England they tie down the succession to the manor house, by confining it in the male line. The estate tail is of very common occurrence in England.

In personal chattels or household goods and in movable property, excepting what is employed in the family business, I would give a share to the daughter and an absolute interest to the widow. But in immovable property and in the family business including movable property and funds employed therein, I would not give the widow anything more than the limited estate she enjoys at present. Nor would I make the daughter a simultaneous heir with the son in such cases.

Dr. MITTER : What about the Deshmukfi Act ? Do you want to retain it ?

WITNESS : Yes. I am in favour of retaining that Act with the addition of daughter as a simultaneous heir. But the daughter should have no right of partition. If the brothers or mother do not want a partition, the daughter should have no right to ask for it, but if the partition takes place at the instance of a brother or of the mother or any other member of the family, then the daughter should have her share. Of course, I am presuming, that if a person dies without sons or other issue in the male line, then the widow and the daughters, if any, should succeed to the property absolutely as simultaneous heirs. I would include the son's widow and the grandson's widow also as heirs and give them also an equal share.

I am for monogamy without any exception whatsoever. There must be a universal law of marriage after the war. Politically and internationally, monogamy is very desirable.

I am in favour of inter-caste, *sagotra* and *saprawara* marriages but I would prevent marriage between persons within the sapinda relationship. Sapinda relationship may be limited to seven and five degrees as provided in the Code.

I am in favour of providing for decrees of nullity and divorce on the grounds specified in clauses 29 and 30 of Part IV of the Code.

As regards adoption, I am in favour of making the Bombay rule applicable to all India. I am against adoption by minors and would fix the age of majority for purposes of adoption at 21. I would not insist on the adopted son being of the same caste as the father to whom the adoption is made.

2. Rai Bahadur BADRI DAS, Mr. JIVAN LAL KAPUR, Bar-at-Law, and Mr. HARNAM SINGH, Advocate, representing the Bar Association of the Lahore High Court were the next witnesses.

We represent the Bar Association of Lahore High Court. We are generally opposed to the Code, but not to modification in the abstract. It is not essential that there should be uniformity between the different schools of Hindu law. It will be very difficult, if not impossible, to secure this uniformity.

Dr. MITTER : Would codification be possible if the different schools of law are not to be assimilated to a common pattern ?

Rai Bahadur BADRI DAS : Yes, it would still be possible. We, lawyers, cannot advise properly now on account of differences in customs from one district in the Punjab to another. We want some uniformity in the Punjab even at the cost of sacrificing some locally cherished notions.

Dr. MITTER : What is your view on giving rights of inheritance to the daughter ?

Rai Bahadur BADRI DAS : The prevailing opinion here is against it. If the daughter should take as a simultaneous heir with the son, reciprocity would be wanting. If the daughter dies after marriage, her father's son, i.e., her brother, appears nowhere in the list of her heirs. But if the son dies, she is given a high place as his sister in the order of succession. [See clauses 5 and 14 (b) of Part II.]

ORAL.—10

In the Punjab, the unmarried daughter in an average family is in a much more favourable position than she would be if she were merely allotted a share. On her marriage she generally gets a big sum by way of dowry which is much larger than the value of a half-share.

I would exclude the unmarried daughter on another ground also, viz., that it would lead to excessive fragmentation. In societies where there is excessive fragmentation, there is little economic stability.

In the cities of the Punjab, most people live on trade and the son contributes his share of effort to the family business even from his minority and has therefore a claim on the property acquired by the family, which the daughter has not.

Dr. MITTER : What about the absolute estate for women ?

WITNESSES : We are opposed to an absolute estate being conferred on widows, especially in the case of inherited property. Otherwise, the property will pass into the hands of strangers. Women in the Punjab have not got much commercial acumen or experience and they really do not know how to manage property efficiently.

The Association has not really applied its mind to the subject of divorce. Rai Bahadur BADRI DAS and Sardar HARNAM SINGH : Speaking in our personal capacity, we approve of all the provisions contained on the subject in clause 30 of Part IV of the Code. (The Rai Bahadur would add unchastity of the wife and immorality of the husband as additional grounds for divorce. Sardar HARNAM SINGH would make cruelty an additional ground for divorce.)

Mr. JIVAN LAL KAPUR : My personal view, on the other hand, is that laxity in matters of divorce would lead to a great deal of immorality and unchastity and that it would cause friction in the family. A husband came to me and expressed himself in favour of divorce, but the wife of this man who also came to me was against it.

As regards adoption, we are not in favour of the Bombay rule. If a widow is to have a limited estate, it follows logically that she must secure the consent of her husband or at least of his kinsmen for the adoption of a son. The Bombay rule could not, therefore, be applied to the whole of India.

We agree that the dattaka form should be retained, but we consider that the incidents of the *kritrima* form should be attached to it.

In conclusion, our view is that the existing law may be codified, but that there is no warrant for the enactment of a new law which the people may disown.

Mr. HARNAM SINGH, a member of the deputation, then gave his personal views : In marriage and allied matters, Sikhs have their own ceremonies, both according to custom and according to the Anand Marriage Act. The argument of uniformity will not appeal to Sikhs. The Sikhs form a casteless society and this should be taken into account.

Mr. J. L. KAPUR then gave his personal views : Having regard to the political situation in the country, the introduction of the Code will further divide and weaken Hindu society. The Code may wait for more propitious times. The right by birth and survivorship should be retained in the Mitakshara jurisdictions. Monogamy may be made a rule of law without any exception.

The Committee then adjourned for lunch.

3. Resuming their sittings after lunch, at 2-40 p.m., the Committee, examined the representatives of the Sanatana Dharma Pratinidhi Sabha of the Punjab, viz.—Dr. PRABHU DATT SHASTRI, PH.D., Dr. PARASU RAM SHARMA, Mahamahopadyaya Pandit PARAMESHWARANAND, and Pandit RAGHUNATH DATTA SHASTRI, Vidyalanagar.

Dr. PRABHU DATT SHASTRI who acted as spokesman, said that the draft Code was opposed by the Sabha on the following grounds :—

(i) Hindu law is a part of the *dharma sastra* and is not ordinary secular law. Peculiar sanctity attaches to our dharma shastras.

(ii) No alien or non-Hindu Government has any right to legislate for Hindus in matters of succession, marriage and the like. A national Government alone has the moral

authority to revise and codify the Hindu law. The present Government is neither responsible nor representative and we had better wait until a national Government comes into being. It may not be long before this happens.

(iii) The Hindu law has been in force for thousands of years, and there seems to be no reason why this legislation should be rushed through and brought into force in January 1946.

(iv) Apart from our political subjection, we are being conquered culturally. If we agree to have a Hindu Code in the English language, we would be admitting our cultural defeat at the hands of the British Government. If there is necessity for a Code, let it be in the Sanskrit language.

Dr. SHASTRI continuing, said: I should prefer a more orderly and rational juxtaposition of the Smriti texts, making additions here and alterations there, which may be found to be essential and which are acceptable to the majority of Hindus. I have no objection to a codification on such lines. This should, of course, be done in the Sanskrit language.

If the text of the Code is in English, the original Sanskrit sources will be relegated to the background. I have no objection to an English rendering of the Code being made available to the public.

Legislation should be undertaken with the general consensus of public opinion. A Code should not be enacted merely because it is expedient to do so. Codification is advisable only when there is an imperative necessity for it. There should be no codification without a strong public opinion in its favour.

Orthodox people, and Indians who are really Indian in their ways and habits of life and thought must be consulted, not merely anglicized Indians.

The subject-matter dealt with in the Code is of such fundamental importance that copies of the Code should be distributed throughout the whole of India including Indian States. The Code should not apply only to British India.

The Manu Smriti is not merely a Code of law. It deals with *achara*, *vyavahara* and *prayaschitta* and the draft Hindu Code touches only a portion of the *vyavahara* part. We have no objection to change as such, if it is necessary, and so long as the fundamental principles of the law are strictly adhered to.

Dr. MITTER: What are your views about making the daughter a co-sharer with the son?

WITNESS: We are against it. The daughter has been provided for in the *Smriti*. She is an heir in the absence of the wife and the son. The mother's *stridhana* comes to her as her exclusive property. After marriage, she is out off entirely from the family of her birth and goes into another family. The inclusion of the daughter as a simultaneous heir will lead to fragmentation, increase litigation, and diminish family affection. The inclusion of the daughter is due to a European outlook on life and ignores the spiritual basis of married life among the Hindus, which has nothing in common with Europe.

Dr. MITTER: What about the absolute estate for women?

WITNESS: We are not in favour of the absolute estate being given to the widow in inherited properties.

Dr. MITTER: What are your views on the assimilation of the *Mitakshara* with the *Dayabagha*?

WITNESS: We are against such assimilation, and would maintain the right by birth and survivorship in the *Mitakshara* jurisdictions.

A Hindu marriage is a sacrament and we dislike the provisions for civil marriage being included in the Code. [Dr. PRABHU DATT SHASTRI: My personal view is that civil marriage is a necessary evil which ought to be tolerated.]

We are against inter-caste marriages. We are willing to tolerate *anuloma* marriages, but not *pratiloma* marriages which should be strictly forbidden. The issue of *anuloma* and *pratiloma* marriages should be regarded as *asavarna*.

We are strongly opposed to *sagotra* marriages. Such marriages may be legalized under the Special Marriage Act, if they have been actually contracted. Any other method which would keep people contracting *sagotra* marriages within the Hindu fold may be adopted. Conversions to alien religions should be prevented of Hindus who want to contract such marriages. There should be no bar of illegitimacy in such cases.

Our objection to *sagotra* marriages is based on the fact that the bridegroom and the bride have a common origin, lineally or spiritually, however remote or untraceable the origin may be.

As regards *sapinda* relationship, we agree to the limit of seven degrees on the father's side and five degrees on the mother's side, as proposed in the Code.

We are in favour of monogamy, except in certain exceptional cases, as detailed in the *Mitakshara*, e.g., barrenness, desertion, etc.

The Sangh's view is that no dissolution of the marriage should be permitted under any circumstances and we are all agreed on that.

As regards adoption, we would leave the existing law as it is in the different Provinces. We are not for making the Bombay rule universally applicable to the whole of India.

4. MALIK ARJAN DAS, General Secretary, Punjab Provincial Hindu Sabha, gave evidence next as its representative.

I am against codification of the Hindu law generally and especially by the present Government and Legislature. The time is inopportune and it will divert Hindus from national activities and make them turn their attention to things which can easily wait.

I am opposed to the daughter being made a simultaneous heir with the son and would prefer to maintain the present position. In the Punjab, banking and agriculture will be adversely affected if the daughters are made sharers. Agricultural property will become fragmented into uneconomic holdings. Family businesses will deteriorate and banking business will be ruined. It will bring about discord between brother and sister. The dowry given to the daughter almost invariably represents her share.

I am in favour of the widows being given only a life interest and would prefer the *status quo*.

The right by birth and survivorship should also be preserved.

Monogamy should not be made a rule of law.

The circumstances in which it will be permissible to marry a second wife should be stated in the Code and a second marriage in such circumstances should not be made illegal or punishable.

As regards divorce, personally, I am in favour of it, but I cannot say anything definitely unless it is made clear to me what its effect will be on women.

This legislation should not be proceeded with until a new Assembly is elected and the matter is made an election issue.

5. Miss NIRMAL ANAND, M.A., Lecturer in Geography, Kinnaird College for Women, was the next witness.

Dr. MITTER: You are an M.A. in Geography and you are in the teaching profession?

WITNESS: Yes, I am on the staff of the Kinnaird College for Women. I claim to represent 90 per cent of the educated women of Lahore. I am in personal touch with them. I do not like the idea of the Committee's travelling from place to place collecting evidence on the Code. Ninety per cent of our women are illiterate and they are not in a position to understand what the Code contains. The Code has received the support of a very large number of intelligent men and women and this should be sufficient.

We, women, claim the status given to us under the original Hindu system. I should think that any Hindu who is not prepared to concede to us the rights specifically conferred on us by the *Vedas* has no *locus standi* to appear and give evidence before the Committee. Whatever



rights have been conferred on us by the *Vedas* and the *Smritis* and whatever other rights might be necessary in consonance with the present needs of our society and are in conflict with the *Smritis* or the *Smritis*, must be conferred upon us. I should like to add that ideas accepted in the other civilized countries at present regarding the position of women, their rights to property and the incidents of married life, must also be embodied in the Code.

I have carefully read the Code and support its basic principles. There is hardly anything in it with which I disagree.

My personal view is that so long as the widow is alive, the family property should not be divided. The widow, as the surviving half of her husband, must take the whole property, except in cases where step-children are living, in which case the property may devolve on the widow and the step-children.

If, as I have advocated, no division in the property is to be made so long as the widow is alive, I would be satisfied with giving her a life estate in the entire property. Where there is a partition at the instance of step-sons, she should get her share absolutely.

Dr. MITTER: What about the daughter's share?

WITNESS: I think she should get the same share as the son. There is no reason why her share should be restricted to one-half.

The widowed daughter-in-law should get the share of her husband.

Dr. MITTER: You are not afraid of excessive fragmentation?

WITNESS: No, suppose there are five sons, will there not be fragmentation? There will be no more fragmentation if there are four sons and a daughter.

Dr. MITTER: Another argument which you have to meet is that giving the daughter a share will bring about discord between brother and sister.

WITNESS: If that is right, will there not be discord between brother and brother when they come to share the property.

Dr. MITTER: What about the right by birth?

WITNESS: I am in favour of the Code which does away with that right. Once the principle of individual ownership is recognized, there is no room for the Mitakshara principle of right by birth.

Dr. MITTER: What about monogamy?

WITNESS: It should be made an absolute rule of law.

I am also in favour of inter-caste, *sagotra* and *saprawara* marriages.

As regards divorce, generally speaking, I feel that divorce ought not to be allowed except in cases of extreme necessity. I would not allow divorce in cases (a), (b), (d) and (e) of clause 30, but in case (c) where there is desertion for seven years and in case (f) (concubinage), I would allow divorce. I am not in favour of making cruelty a ground for divorce. The husband and wife can live apart and need not break the marriage bond. There is a possibility of their subsequent reconciliation in such cases. As regards infidelity, I would insist on its continuance for five years. That is, I am in favour of clause (f), but the husband should have kept a concubine, or the wife should have been a concubine of some other man, for a period of five years, before the other party can claim a right of divorce.

Dr. MITTER: What about the Part on adoption? Have you anything to say?

WITNESS: I have got only one suggestion to make, viz., that women above the age of majority should be allowed an independent right of adoption.

In conclusion, the witness said: This is a mild and reasonable measure of reform: there should be peaceful reform as proposed in the Code, or there will be violent agitation for securing to women their reasonable and legitimate rights.

6. A women's delegation claiming to represent all sections of women in the Punjab, then waited on the Committee and gave evidence. The following were members of this delegation:—

- (1) Mrs. DUNICHAND of Ambala, M.L.A.
- (2) Miss KRISHNA NANDLAL, M.A., LL.B., Advocate.
- (3) Mrs. SNEHALATA SANYAL, Lecturer, B.T. Class, Sir Gangaram Training College.
- (4) Dr. Mrs. DAMYANTI BAI, Member of the Arya Samaj.
- (5) Miss SITA SURI, Member of the Istri Sahay Sangatan.
- (6) Mrs. ACHINT RAM.
- (7) Mrs. ARUN SARMA from Amritsar, President, Brahman Sanathan Sabha.
- (8) Miss VIDYAVATHI SETH, Secretary of Stri Samaj.
- (9) Mrs. AMARNATH KIRPAL, Arya Samajist.
- (10) Mrs. SITADEVI CHABILDAS, Member of the Arya Samaj.

Mrs. SITADEVI CHABILDAS expressed the views of the delegation as follows: We support the draft Code, as we are in favour of the broad principles laid down in it. Hindu women are now suffering considerable hardships owing to the inequitable social laws. They should be economically independent. I have carefully studied the objections put forth to the proposals contained in the Code. They can all be easily met by pointing out that the proposed reforms are only of a permissive nature, that the right to make a will is not taken away and that by making a will, it will be easy to defeat the Code. If any father does not want to give his daughter the share provided for her in the Code, he has simply to make a will depriving her of that right. I think, therefore, that there is no point in the opposition to the proposals.

Left to myself, I would go further and provide for the right of women being undisturbed by the caprice of the male members of the family. In my view, the Code takes a conservative view of the needs of the situation.

In the list of simultaneous heirs, the widow of the predeceased son should be included. The omission of a provision for the daughter-in-law has been made much of by the opposition.

As regards the argument that the Code interferes with religion, I see no force in it at all. I do not concede that the Hindu law should be regarded as sacrosanct by virtue of its alleged divine origin. It was made by man and many changes have been made in it by the great commentators from time to time. The right to make changes has been recognized in the dharma-shastras themselves and forms part of them. Nobody, therefore, has a right to cavil at the changes proposed in the Code.

Women should have absolute rights over property. Of course, they should have no rights over their children's property. (Miss KRISHNA NANDLAL: A widow may be given an absolute right to her own share, and it may be laid down that partition should not take place between the children so long as the mother is alive. After all, property in this country is not much.)

We are in favour of the abolition of the son's right by birth.

Monogamy should be made a rule of law and no exception whatsoever should be recognized.

We support inter-caste, *sagotra* and *samanaprawara* marriages.

As regards divorce, with the exception of two members of the delegation (Mrs. SITADEVI and Mrs. DUNICHAND) they were in favour of it. We are against dissolution of marriages on the ground of illness or of cruelty. There may be provision for divorce on the ground of infidelity. Mrs. SITADEVI said that there was great opposition to the proposal in the Punjab. In the cases mentioned in clause 30 of Part IV there may be judicial separation but not divorce. If the law was passed husbands might get an advantage. Rich men might get certificates of disease to get rid of unwanted wives.

[In a letter written subsequently, Mrs. SITADEVI expressed her opinion as follows:—I am in favour of divorce under the circumstances stated in the draft Hindu Code (except for divorce being given for either party contracting any disease), provided it is clearly stated in the Code that an adequate maintenance is given to the wife. In my opinion one-third of the husband's income would be the correct alimony to be given to the wife. If this were agreed to, I would support divorce under the conditions stated other than disease.]

We are otherwise, in favour of the main principles on which the Code has been drafted.

Mrs. DUNICHAND giving her personal views said that the sister should be bracketed with the brother. She was against the abolition of the right by birth and survivorship. If there is a remarriage after divorce, the women should be deprived of their property. She was in favour of giving women a right to their shares for life, without absolute powers. They should not have the right to mortgage or to sell their shares for a period of say 30 or 40 years.

Mrs. VIDYAVATI, M.L.A., representing the Sikh community said that in Amritsar they were in favour of the Code.

Mrs. AMARNATH SARMA said that the Amritsar Brahman Sabha was in favour of the Code.

The delegation emphasized that propaganda was being deliberately carried on by interested persons by raising the false plea that religion was in danger. But once the clauses of the Code were read and explained to the women, they immediately declared themselves as staunchly in favour of it.

The Committee rose for the day at 6-15 p.m.

Sunday, 18th March 1945.

The Committee resumed their sittings at Lahore in the Central Museum Hall, Lower Mall, at 11-25 a.m. on Saturday the 18th March. The following members were present:—

Dr. DWARKA NATH MITTER (in the Chair).

Principal J. R. GHARPURE.

1. The first witnesses for the day, viz.—(i) Mchamahopadhyaya GIRDHAR SHARMA CHATURVEDI, (ii) Pandit NITRAMANI SASTRI, Professor of Dharma, (iii) Pandit CHANDRABANU SASTRI, Professor of Puranas and (iv) Dr. D. S. TRIVEDI, Ph.D., Itihas Siromani, Professor of History, representing the Sanathan Dharam Vidyapith of Lahore gave evidence as follows: We represent the Sanskrit Vidyapith, Lower Mall, Lahore. It is a Research Institute and we admit 20 students. There are six professors. It was started two years ago. We have read the Hindu Code, which has been translated into Hindi by the Punjab Government. Some of us have read the Code in English.

We are altogether against the Code. It is not a mere collection of existing laws, but makes several innovations. According to our belief, no man has a right to alter the Hindu Law. Our law forms part of our religion and nobody has a right to change our religion. Hindu civilization and culture will be entirely destroyed by the Code.

We consider that the daughter, whether married or unmarried, should not take along with the son. She should be given only her maintenance and marriage expenses.

As for widows, they should have no right to dispose of immovable property inherited from their husbands but they may have this right in movables. The widow should enjoy her husband's properties only so long as she continues chaste and faithful to the memory of her husband.

We are opposed to the abolition of the right by birth and survivorship.

We are in favour of monogamy being made a rule of law, but certain exceptions should be made, for example, where the wife is barren. The other exceptions recognized in the *dharma shastras* should also be embodied in the Code.

We are against inter-caste marriages, both *anuloma* and *pratiloma*. We are opposed to *sagotra*, *samanapravara* and *sapinda* marriages. The limits of *sapinda* relationship should remain at seven and five degrees, as laid down in the Code.

We are strongly opposed to the dissolution of Hindu marriages under any circumstances whatsoever. The texts of Narada, Katyayana and Vasishta which are cited in favour of remarriages apply only to cases of betrothal and have no application where a regular marriage has taken place by the performance of *saptapathi*.

We are for maintaining the *status quo* in the matter of adoption in the *dattaka* form by the widow.

Dr. TRIVEDI then gave his personal views:—Nobody except Hindus should vote on this measure in the Legislature. Only men of ripe years and experience are competent to give evidence before the Committee. In my personal judgment, no one below 60 years of age can have any moral authority to give evidence. The Code will destroy Hindu property. There is a political motive behind the Code.

Dr. MITTER: I assure you that there is none.

2. Sardar Sahib IQBAL SINGH, Advocate, was the next witness.

I am a senior member of the Lahore High Court Bar of 36 years' standing. I have come forward to represent Sikh opinion, but I have not been authorized to do so by anybody and my evidence may, therefore, be treated as a personal expression of what, I feel, is the opinion of Sikhs in general.

I am totally opposed to the codification of the Hindu law. It constitutes an interference with the Hindu religion. Hindu law cannot be divorced from the Hindu religion; the two are intimately mixed. Nobody has a right to tinker with the Hindu religion. The source of the Hindu law is the Vedas, and no earthly individual has a right to alter the Vedas.

The draft Code has not been properly circulated or published. The general public has little knowledge of its provisions. The time allowed for people to express their views is very limited. The Sikhs have not come to present their point of view because they have not had time to consider it. The price of the Urdu edition was Rs. 3-4-0, of the Hindi edition, Rs. 4-12-0, and of the Gurmukhi edition, Rs. 13-2-0. The Urdu copies need not have been published at all. As a result of popular agitation, the prices of the copies have been reduced to 12 annas and a Press Note to that effect bearing the date 17th March has been published in the *Tribune* of today. The proposals are so defective and so opposed to popular sentiment that people in the countryside will not think of them for one minute. If the Committee wish to ascertain the extent of the opposition felt by the masses to the proposals contained in the Code, they should go to the countryside.

The Punjab is mainly an agricultural province. There can be no uniformity where there is one law for house property and another law for lands. Another difficulty about securing uniformity is that Indian States are left out of the scope of the measure. There would, therefore, be one law for the Indian States in the Punjab and another law for British territory. Again, the Punjab is mainly a land of customs, and the Mitakshara, in the strict sense, has been modified by custom. Manuals of customary law have been compiled both in English and in Urdu for each district at the time of the Lands Settlement and these have got the *imprimatur* of the Privy Council. These manuals govern the countryside now (I.L.R. 45 Cal. 450 and 10 Lahore 86). The draft Code contains no saving of the customs now prevalent in the Punjab.

I am against the daughter succeeding simultaneously with the son. (See Sir Louis Tupper's views, Vol. I, p. 87.) The son is with the father and helps him in cultivation. The daughter does not so assist him, but goes into another family and the only result of giving her half a share as proposed will be fragmentation of properties, leading to total ruin.

The time is inopportune for legislation like this. Our sons are fighting on the battlefield. Fifty per cent of our young men have gone abroad to fight, and they have no time now to study the Code and give their views. You cannot legislate for soldiers who are fighting, behind their backs.

The present Central Legislature is not representative and a new legislature should be re-elected and the Hindu Code should be an issue at the election. In a matter of great moment like this, there should be a referendum, so that the views of all, throughout the length and breadth of the country, may be properly ascertained.

The Hindu Law has worked well for centuries on account of its adaptability and elasticity. It is not a rigid Code and that is its merit. The draft Code will lead to litigation and discord. I may cite Mayne's well-known views on the impracticability of satisfactorily codifying the Hindu Law. Some years ago, attempts were made to modify the Customary Law, but were dropped as being highly detrimental to the community. Why should the work be begun again, when the previous attempt was so unsuccessful.

The Constitution Act of 1935 seems to me to confer no power on the legislature to deal with personal laws. Queen Victoria's Proclamation has also assured us of non-interference in religious matters.

In 1939, the Muslims went back to the Shariat. Why should Hindus go away from the ancient Hindu Law?

I am opposed to the abolition of the right by birth and survivorship.

I do not want any legislative interference in the matter of monogamy.

Divorce is an absolutely foreign idea and will lead to infidelity on the part of Hindu women who are now models of chastity.

3. Mr. S. NIHAL SINGH, Advocate, was the next witness.

I am the President of the All-India Hindu Women's Protection Society. I am a Sikh Advocate of 26 years' standing. Codification is desirable and will make the law handy, but uniformity for all Provinces is not possible. I suggest that Schedules of Provincial amendments may be appended to the Code to suit the varying provincial conditions. (Compare schedules to the Civil Procedure Code).

I am against giving the daughter a share simultaneously with the son. This proposal will divide Hindu society and, therefore, I would retain the *status quo*, especially as the women appear to be satisfied with the Deshmukh Act of 1937.

There is again no logic in giving only a half share to the daughter. If you want sex equality, why should you not give a full share?

As regards absolute estate, I am in favour of the present position and would give only a life estate. Similarly as regards the right by birth and survivorship, I would refer the *status quo* to continue.

I am in favour of monogamy with certain exceptions—for instance, where there is no male child for a period of ten years.

I approve of the provision for divorce in special circumstances, for example, in the case of desertion for two years. The desertion should be wilful and of a cruel nature before it entitles the deserted party to a divorce. The provision for divorce should be made retrospective. (I.R. 1941 Lahore, 167.) I am not in favour of any other ground of divorce.

I would not make bigamy a criminal offence and suggest an amendment to section 494 of the Penal Code, excepting from its scope cases where the first husband has been guilty of gross cruelty.

As regards adoption, where there is no authority from the husband, I would permit the widow to adopt only an adopted son.

4. The Hindu ladies of Lahore then appeared in very large numbers before the Committee and gave their evidence through Srimathi Panditha KRISHNA DEVI.

I hand in a petition against the Code signed by 1,500 women. Two thousand women who have not signed are standing in the grounds outside, and they have also asked me to voice forth their views. A large number of women are fasting and performing *vratas* with the object of preventing the passage of this Code into law. We are all against the provisions of the Code, root and branch.

We are against the daughter being given a share along with the son, as it is against our *shastras*. The daughter receives gifts and presents throughout her life from her brother. There is no necessity, therefore, to give her a share.

We are against an absolute estate being given to the widow.

We are also against the abolition of the son's right by birth and survivorship.

We do not want to make monogamy a rule of law. We are very strongly opposed to the dissolution of marriage. The provision for divorce is an attack on our religion. We do not want any change and Government should not interfere in the matter.

The ladies who have supported the Code before the Committee do not represent Hindu Punjab. If the Code is passed, Hindu society will be destroyed.

5. The Hindu ladies of Amritsar represented by Sardarni KAMALAWATI MISRA, Vice-President of the All-India Hindu Women's Conference, gave evidence next. They had also come in very large numbers. The hall and the balconies were full to overflowing. The Sardarni said:

We represent the All-India Hindu Mahila Association which has branches in Amritsar and other parts of India. Our membership runs into lakhs. We are against the Hindu Code and all its provisions. In particular—

(i) The daughter should not be a simultaneous heir with the son, whether she is married or unmarried. The girl remains with the parents until her marriage.

(ii) The widow should not have an absolute estate in property inherited from her husband. The present law should continue.

(iii) Right by birth and survivorship should remain.

(iv) Monogamy should not be made a rule of law. It is already there in practice.

(v) We are strongly opposed to divorce in the case of sacramental marriages. A husband or wife who deserts the other partner in marriage is looked down upon by society. We keep the ideal of Sita ever before us and there should not be any interference with our religion.

Srimathi CHANDRAKUMARI GUPTA, widow of the late Seth Jagatbandhuji, patron of the Hindu Mahila Samrakshana Sabha and of the Arya Samaj and founder of the Institute for Blind Girls in Amritsar, Srimathi SANTHI DEVI, and a number of other women then appeared successively before the Committee and testified to their strong opposition to the Code.

After this was over and the evidence of the Amritsar ladies had concluded, they were asked to make room for the witnesses next on the list. But the number of women and that of their men supporters having become very huge by this time, the situation became uncontrollable. There was much confusion. Neither the members of the Committee nor the leaders of the women themselves or of their men supporters could make much headway in getting the hall cleared. The Committee consequently adjourned their proceedings until the morning of the next day. It should be mentioned that the huge gathering maintained throughout a thoroughly friendly attitude towards the Committee.

Monday, 19th March 1945.

The Hindu Law Committee resumed their sittings at the Central Museum Hall, Lower Mall, at 11-20 a.m. on Sunday, the 19th March 1945.

The following members were present:—

Dr. DWARKANATH MITTER (in the Chair).

Mr. T. R. VENKATRAMA SASTRI, C.I.B.

1. Pandit NANDLAL SHARMA of Rawalpindi was the first witness for the day. He said—

I was once practising at the Bar at Kohat. I am now the General Secretary of the Sri Sanatan Dharma Pratinidi Mahasaba, Punjab, Rawalpindi. I am also the President of the Dharam Sangh, Rawalpindi and of the North-West Frontier Province Brahman Sabha (Vidwat Parishad). I represent all the above associations.

We are opposed to the present Code as well as to the codification of the Hindu Law. The Hindu Law is of divine origin and no Government has the authority to change it. Religion and religious rights do not constitute a central subject and the Code is, therefore *ultra vires* the present legislature.

As the Indian States will not be governed by the Code, its enactment into law will create a barrier between British India and the States and uniformity will not be secured.

The definition of 'Hindu' is defective. The Code must apply, in the main to those who submit to the undisputed authority of the Hindu Dharma Shastras. Secondly, it should also apply to those who want to be governed by the Hindu Law. This may be made clear.

I do not also like the definitions of 'agnates' and 'cognates.'

No share should be given to the daughter, whether she is married or unmarried.

The Deshmukh Act should be repealed and the previous law should be restored.

The whole of Class II in clause 5 of Part II—"Other descendants," should be omitted from the Code.

The present law should not be altered, although I personally wish that the father's father and the father's mother should be heirs before the brother's grandson.

I am against giving an absolute estate to the widow or even to the daughters in inherited property.

Right by birth and survivorship should be retained.

The Code disqualifies the convert's descendants from inheriting but not the convert himself. I want the convert also to be disqualified.

Monogamy should not be made a rule of law. *Sagotra* and *samanapravara* marriages must be declared null and void and there should be no application of the *factum valet* doctrine to such marriages. The children born of such unions should be maintained and if they are daughters, the father should get them married. Maintenance in the case of the sons should cease when they attain majority.

The civil marriage provisions should not form part of the Code, even if, by any chance, the Code itself is accepted by the legislature.

Idiocy should not be a ground for declaring a marriage void.

Dr. MITTER: The Code only states the present law. Why do you require an alteration in it?

WITNESS: An idiot can procreate children and perpetuate the family.

I am against the dissolution of a marriage contracted in the sacramental form in any circumstances whatever.

Adoption by widows may continue to be governed by the different rules now obtaining in the different Provinces.

If any legislation is required on the matter at all, I would urge you to go back to the ancient *Srutis* and *Shastras*.

2. Dr. Miss VIDYAWATI SABHARWAL, M.B., CH.B. (Edin.) was the next witness. She said—

I began practising in 1925 and am giving evidence now in my personal capacity as a medical practitioner. My evidence is based on intimate experiences gained during a long professional career.

The divorce question is very important and there should be provision for divorce in the first year of married life. The marriages should be treated as null and void if the body of either of the parties is found to be physiologically or anatomically deficient. I have had thirty such cases—both men and women—during the last 13 years. There should be a Special Court for dealing with such cases. The proceedings should be *in camera* so that the limelight may

be avoided. (Witness narrated the case of a man who implored her not to reveal his impotency to his wife. There was also another case of a man occupying an exalted position who was impotent).

In my opinion, descendants of a common great-grand-father should not marry. But if there is no common ancestor within three degrees, a marriage may take place, whether the parties belong to the same gotra or not. The intellect does not flourish where the marriage takes place between very near relations.

I am against the adoption of strangers and would confine adoption to *sagotra* relations.

I feel that man is dominant now and that the position of a woman has been reduced almost to a cipher. There should be a wholesome change in this respect.

3. Pandita Raj BOLLAJI RAM VIDYA SAGAR, Punjab Bushan, retired Religious Instructor, Mayo College, Ajmer, President of the Anti-Hindu Code Committee, Amritsar, was the next witness.

I am opposed to the Code as it is against the *Shastras*. The Government have no power to alter the *Shastras*. Manu's Code is unalterable for all time.

There should be no deviation from the law as laid down in the *Mitakshara*. I am against the daughter being made a simultaneous heir with the son. Even if the *Mitakshara* says that the daughter must be given a share, I will not agree to it. Only the daughter's *samskaras* should be got performed by the father. After some discussion mainly with Mr. Venkatarama Sastri, the witness conceded that an one-fourth share may also be given to the daughter, besides having her *samskaras* performed.

There should be no absolute estate in immovable property for women, and they should have no power of gift or sale over such property except in cases of necessity.

I would retain the right by birth and survivorship.

I am against monogamy being made a rule of law. A man may have more than one wife, but a woman should be confined to one husband. That is the ancient rule and it should be maintained.

I oppose the dissolution of sacramental marriages. The *Nashte Mrite* text refers to only *vagdatta* (betrothal) and not to cases of marriage.

As regards adoption, I would maintain the *status quo*, each Province being governed by the existing law. The *Dattaka Mimamsa* and the *Dattaka Chandrika* should be maintained in the Provinces where they are now in force.

4. MR. MEHTA PURANCHAND, Advocate, representing the Dharma Sangh, Lahore, was the next witness.

Our Sangh has a membership running into thousands. It was started about three years ago. It is a religious society intended for the propagation of Hindu religious doctrines. It is not a registered body.

I have read the Code. My first point is that the Code has not been properly circulated in the Punjab and that there has therefore been no proper opportunity for the people to place their objections before the Committee. The Code has not been circulated in the rural areas where the bulk of the population lives. Besides, even in cities, the percentage of literate persons who can read and understand the Code is very small.

The Code goes directly against the *Smritis* and that is my main objection.

If daughters are made simultaneous heirs with the sons there will be further fragmentation of property which is not desirable. Discord will arise between brothers and sisters as a result of giving daughters a share.

We think that the Deshmukh Act which provides for simultaneous heirship of the widow, the daughter-in-law, and the granddaughter-in-law, should be repealed. We would not give a share even to the unmarried daughter. For her, marriage expenses may be provided. In fact, this has been already done in clause 3 of Part III-A of the Code. I want the *status quo* to be maintained in regard to this point.

I am against the grant of absolute estate for women.

The right by birth and survivorship should remain.

Monogamy should not be made a rule of law.

I am opposed to *sagotra*, *samanapravara* and inter-caste marriages. The provision for civil marriage is there and may be availed of by those who want to enter into such alliances.

There should be no provision for dissolution of marriage in any shape or form. The Hindu marriage is a sacrament and the relationship brought about by it must be held sacrosanct.

Divorce may be restricted to those contracting a civil marriage.

As regards adoption, I would maintain the existing rules in the Punjab. The different schools in the different provinces may also continue as at present.

5. Mr. C. L. MATHUR, Reader, Law College, Lahore, next gave evidence.

Dr. MITTER: How long have you been Reader?

WITNESS: For 18 years.

I am generally in favour of the Code. I want a single Code for the whole of India. Any exception based on customs or judicial decisions which may be necessary in particular areas may be provided for in the Code itself.

In deference to public opinion, I would suggest that as few changes as possible should be made in the existing law.

I am against the abolition of the right by birth in ancestral property or of the principle of survivorship.

I would maintain the limited estate of widows in properties inherited from their husbands, if any of the relations in Class I (compact series of heirs) are present. Reversioners remoter than those relations should have no right to challenge alienations made by the widow. In France (see also the Swiss Code), in the presence of these heirs, the widow takes only a life estate in a portion of the property. In other systems of law also, there are analogies which support my suggestion.

I am in favour of the daughter being given half a share, but any dowry already given to her should be deducted from the value of her share. Jewellery or cash given to her should be her absolute property. I would suggest that the shares of the daughter and the son in movable property be made equal.

As regards the order of succession, I am in general agreement with the Code though, left to myself, I might wish to shuffle the agnates and the cognates about a bit. I want some means to be provided in the Code to protect jewellery, etc., given to women as *stridhan*, so as to prevent its diversion to any purpose other than that for which it is intended. Perhaps an inventory might be made of jewellery and the like given to a woman.

I am in favour of making monogamy a rule of law.

I am also distinctly of the opinion that *sagotra*, *samanapravara* and inter-caste marriages should be validated where they have taken place.

I would make no change in the law of adoption and suggest that each province may retain its own rules.

6. Pandit MEHR CHAND SASTRI of the Sanatana Dharam Sanskrit College, Bannu, N.W.F., then gave evidence in Hindi.

I have read a Hindi translation of the Code. I am against it. The public of Bannu are also against it. There is a Hindu population of about 13,000 there. There are also some Sikhs in Bannu, but I have no right or authority to speak for them: The Sikhs are about 2,000 strong there.

Hindu public opinion in Bannu is against giving the daughter a share simultaneously with the son, whether she is married or unmarried.

I am against the grant of an absolute estate to women. I am also opposed to the abolition of the right by birth in ancestral property and survivorship.

I am in favour of monogamy with certain exceptions; where a woman is barren, I would allow the man to marry after the lapse of some time. But a man with children should not be allowed to marry again, and if he does so he should be punished, but the marriage itself need not be declared invalid.

I am opposed to divorce. Neither the *smritis* nor the *acharas* sanction it.

I am also opposed to *sagotra*, *samanapravara* and inter-caste marriages.

A widow has no right to adopt without permission. I cannot give any detailed opinion on the provision contained in the Part on adoption, as we in Bannu have not thought about the matter.

The Committee adjourned for lunch at 1-30 p.m.

7. Resuming after lunch at 2-45 p.m., the Committee examined Miss SUBBUL, Principal, Fateh Chand College for Women, who said:-

Codification of the Hindu law is desirable, but the Code must be in Sanskrit and the work must be done by scholars well versed in the Hindu *dharma shastras*.

The unmarried daughter, one who is not fit for marriage or one who has made up her mind not to marry, should get the same share as the son and she should also be subject to the same obligations as the son. A married daughter should not have any share in the property. If an unmarried daughter marries, her share should go back to her brother.

A husband should not be permitted to alienate property without his wife's consent.

I would retain the Deshmukh Act as it is.

A widow is entitled to preference even over the son. She should, I think, get her husband's property in full but exercise only a limited right over it if there are sons. The sons should get the property only after her death. There should be no division between the sons so long as the widow is alive. I would provide that no deed of transfer by a widow should be valid except with the consent of her son or sons.

A convert should have no right to inherit the property of his Hindu relatives. The Caste Disabilities Act should be repealed or altered, so as to give effect to this principle.

If a woman dies without issue her *stridhan* property should be taken by her husband only so long as he remains unmarried. If he marries again, the property should go back to her father's heirs.

I approve of monogamy.

A widower should marry only a widow. Otherwise his marriage should be declared invalid.

I am opposed to divorce under any circumstances. Besides, the conditions for permitting divorce seem to me to be too liberal.

As regards adoption, I would maintain the *status quo*.

8. Mrs. LEKHWATI JAIN of Amritsar was the next witness.

I am here as the representative of the Jain Mahasamiti, which is an all-India body. I support the Bill but there are some provisions in it which I do not like.

I would give no share to the daughter. This is a very objectionable proposal. I would, however, give half share to a daughter who is labouring under an incapacitating her for marriage or who has attained 25 years of age without marrying. In the latter case, if she marries, her share should go back to the family. The provision made in the Code will lead to discord among brothers and sisters, and I see no advantage in it.

I think that where male descendants of the husband are alive, the widow should have only a limited right. If there is no male descendant, then she should get an absolute estate. Where the daughter is the only heir, she should get an absolute estate, as in Bombay.

The right by birth and survivorship should remain as at present.

I am in favour of validating *sagotra* marriages by the application of the *factum valet* doctrine.

I approve of monogamy being made a rule of law with certain exceptions. I am in favour of the provision for divorce but if a man divorces his wife, he should make some provision for the maintenance of his divorced wife. It is not her fault that a divorce becomes necessary. I would rather say that it is the fault of nature. I would give one-third of the husband's property to the divorced wife by way of maintenance.

I accept all the clauses in Part IV.

I also like the Bombay Rule of adoption as embodied in the Code, permitting the widow to adopt even in the absence of express authority from the husband.

9. Pandit RURLAL SHARMA, Secretary, All-India Dharma Sangh; LALA MOHKAMCHAND, B.A., LL.B., Advocate, Lahore High Court; Pandit RAGHUNANDAN PRASAD, M.A., M.O.L., Professor, Oriental College, Punjab; Pandit PARASHIVJI RAMDWARA, representing the Sanatan Dharma Prachar Sabha were the next witnesses.

We represent the Dharam Sangh and the Sanatan Dharma Prachara Sabha. We strongly object to the Code. Our objections are manifold.

The draft Code has not been sufficiently published in the Punjab. The Hindu Law is a Vedic law and is unalterable. Again there is no demand for the Code. The Code is against the basic conceptions contained in our Shastras. It is against the Hindu culture and character.

We do not want a share to be given to the daughter.

We are opposed to the right by birth and survivorship being abolished.

We are opposed to monogamy being made a rule of law. We are also opposed to the provision of divorce in the case of sacramental marriages. The provisions for civil marriages have no place in the Hindu Code. Adoption should not be made without the express permission of the husband.

If the Code is passed, there should be a special saving of the customary laws of the Punjab.

As regards maintenance, we want the present law to be maintained.

10. Mr. KESHO RAM, Advocate, Amritsar gave evidence next.—I am the President of the Bar Association, Amritsar and also of the Durgiana Temple Committee. I am giving evidence now in my representative capacity.

The whole of Amritsar, including the Arya Samajists, are opposed to the codification of Hindu Law. We want the Mitakshara right by birth and survivorship to remain.

We do not want any share to be given to the daughters, whether married or unmarried. We want the life estate of widows in inherited property to remain.

We do not want monogamy to be made a rule of law. We are against divorce under any circumstances and we want that a widow should not adopt without the express permission of the husband.

11. MOOLRAJ KAPOOR KSHATRIYA, Upamantri, Dharma Sangh, Punjab. Erantik: I oppose the Code as it destroys the Hindu religion. I am against a share being given to the daughter as it will bring about discord between brother and sister. The Mitakshara right by birth and survivorship should remain. I am also opposed to the dissolution of marriages. Everything should remain as under the existing law.

12. Brahmachari GOPI KRISHAN VYAS: I am the representative and delegate of all the Sanskrit students of Sitala Mandir in Lahore. We require no change in the existing law. We are all against the Hindu Code.

13. Mr. RAGHUNATH RAI, Barrister, Lahore: I speak for myself and have no representative capacity. No substantial changes should be made in the existing Hindu Law. Some slight changes in the rules of succession, etc., may be made. The Deshmukh Act may remain. The Hindu Code should be merely declaratory of the existing law. I would provide against desertion by making it a penal offence instead of changing the marriage law.

14. Pandit BRAHMU RAM, General Secretary, Kangra Sudhar Sabha: I represent an area inhabited by 9 lakhs of Hindus. I am against the Code. I am, however, in favour of monogamy except where there is no male child, or where the wife is unfit to beget children, or where she is labouring under any permanent disability unfitting her for conjugal duties. I am against *sagotra* marriage but am in favour of *samanapravara* marriages. I am not against inter-caste marriages. All bride prices, including *taka bata*, should be strictly prohibited. No share should be given to the daughter, whether married or unmarried, nor should there be any provision for divorce. The Mitakshara right by birth should remain. Permission should be necessary for adoption by widows.

15. Mr. BUTARAM, Arya Pratinidhi Sabha, Punjab: Husband and wife are equal in status and this should be made clear in the Code.

16. Mr. SOME PRAKASH SUD, Joint Secretary of the Arya Samaj, Lahore Cantonment: I am a Kshatriya. I have read a translation of the Code and am completely against it.

[With the examination of this witness which terminated at 4-15 p.m., the Hindu Law Committee concluded their session at Lahore.]

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