THE WOMAN UNDER THE HINDU LAW OF Marriage & Succession

by

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PREFACE

I am grateful to the Pratibha Publications for undertaking to publish the two lectures I delivered on the two Bills relating to the Hindu Law of marriage and succession at anasthali Vidyapith on the 9th and 10th of last October. did not have much time to revise them and, therefore, they ppear in print with very slight changes. I am aware that ıy observations are sketchy, but they serve to point out the flaws.

Attempts to reform the Hindu Law relating to marriage and succession have so far been very spasmodic as can be seen from the following facts. Hindu Widows' Remarriage Act came into being in the fifties of the last century, Harising Gour'e Special Marriage Act, the Child Marriage Prevention Act, the Gains of Science Act were passed during the twenties of this century and the Hindu Widows' Right to Property Act in 1937. The reason for this slow progress is due to the opposition of the conservative element allied with the indifference of an alien government who, under the guise of a policy of non-interference, have not been anxious to improve things. Reform of the Hindu Law has been long over due. The appointment of the Rau Committee in 1941 was, therefore, a welcome measure. It was unfortunate, however, that the personnel of the committee was not very representative. The object of the Committee could not have been merely to patch up the Hindu Law here and there or to try to reconcile the orthodox and the heterodox views, but to reconstruct it in light of the new social requirements. Do we wish to continue the rigidity of the caste system ? Do

we wish to trace our ancestry to remote Rishies and continue the Gotra myth ? It would require persons with larger vision, persons who are students of sociology and not mere students of law to solve these and similar questions. Law must help and not hinder the social progress. This it can do by taking into consideration the needs of the changing time. It is on the understanding of this principle that we can improve, not only the Hindu Law, but even evolve a common code that will bring all the communities of India into one fold.

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THE HINDU WOMAN AND THE LAW OF INHERITANCE AND MARRIAGE

CHAPTER I

Introduction

I have chosen this subject for the reason that there are two Bills pending before the Central Assembly dealing with the Hindu Law of inheritance and marriage. Before taking each Bill separately it is necessary to know the genesis of the Bills so that with the knowledge of the background it will be easy for you to understand the Bills and you will be in a position to judge them at their proper value.

Any movement, political or social, is an outcome of the discontent of men and women with the existing state of things. The woman's movement in India is not an exception. As education spread among women, they began to look round and they were far from satisfied with what they saw. They saw the misery of the woman brought about by evil customs and her inferior position due to laws which had ceased to be just. They saw the evils of child marriages, the evils of enforced widowhood, the evils of the rigidity of the caste system, the evils of the rigid marriage laws and the woman's economic dependence on man and all the degradation and misery arising out of it. Their knowledge of the past made them realise that these evil conditions did not always exist but were brought about by the general degradation of the Hindu Society. They realised that with the decadence of Hindu Civilization, the position of the woman also deteriorated, for the status of woman in any society is

an index of the degree of the civilised state of society and vice-versa. With this realisation came a keen desire to remove the social evils and free woman from her disabilities; and out of this desire was born the woman's movement.

Long before any organised opinion of women was mobilised, however, there were a number of women pioneers in the cause of social reform like Pandita Ramabai and Ramabai Ranade to mention only two, along with a host of men like Raja Rammohan Roy and others who worked in their own way to ameliorate the condition of women and thus paved the way for a wider movement for social reform. It is always an uphill task for those who wish to bring about social changes, for they have to fight against the conservative element of society which is always for status quo and abhors even a suggestion to make the slightest change in the existing conditions. It forgets that change is the essence of life. Everything must change. To cease to change is to die. Social changes are inevitable as new circumstances arise and the social laws must change accordingly, otherwise they hamper rather than help the social progress. In course of the last thousands of years the Hindu Civilization under went many changes. It survived the onslaught of time so long as it adapted itself to the changing conditions ; the moment, however, it ceased to do so the rot set in and our decadence today is the result. It is a folly, therefore, not to recognise the signs of time and act accordingly.

The task of the social reformers would not have been so difficult if they had to fight the conservative element alone. But the orthodox party was indirectly backed by an alien government who under the guise of their policy of non-interference, in religious and social matters, has not been over anxious to pass any measure for the social betterment

of the people. We have an act for the prevention of cruelty to animals on the one hand and on the other we have the Hindu law which gives the right to the husband to beat his wife ! Only a few years ago in an assault case on the wife, a District Judge in Madras Presidency gave this famous judgment that under the Hindu law a husband has a right to beat his wife ! This attitude of government has been responsible to a great extent to the slow pace with which social reform has advanced. The Widow Remarriage Act was passed nearly a century ago—in the year 1856 to be more precise. Then came after a lapse of time the Child Marriage Prevention Act some fifteen years ago. This act was the result of the agitation carried on by women at the first session of the All-India Women's Conference held at Poona in the year 1927 under the presidentship of H. H. the dowager Maharanisaheb of Baroda. Soon after this a bill for the prevention of child marriage was introduced in the Central Assembly by Rai Saheb Harbilas Sarada. The government benches were definitely hostile to the bill which was considerably watered down before it found its way on the statute book, and in the form it was passed has proved ineffective. Much can be done if the government is in sympathy with the efforts of those who are striving for the betterment of social conditions. The government of Baroda, one of the premier states in India, is an example before us. It has revised the Hindu law with regard to inheritance and marriage and has been a source of inspiration to those who are working in the same direction.

Inspite of the opposition, however, of the orthodox section which was generally pampered by the government in power there was a large section of men and women who were working hard to bring about the social changes through legislation. Bills after bills were introduced and some were

passed during the last few years. These included amendments to the Child Marriage Prevention Act or to the Law of Inheritance or to the Marriage Law. It was then felt that such a piecemeal legislation was not desirable. The Hindu Law of Inheritance, as it is, is very complicated, and patching it here and patching it there was making the confusion worse confounded. Women demanded that the entire Hindu Law should be overhauled and asked the government to appoint a committee to take up this arduous task. The Rau Committee came into existence in 1941. The Committee consisted of three members. Women had protested against their exclusion but failed to impress upon an indifferent government the necessity of including a woman on a committee to revise the Hindu law which would affect the entire society of which women formed nearly half the section. This committee was appointed in the first instance to look into certain bills that were introduced in the Central Assembly. But later at the repeated demand of the women's organisations the terms of reference of the committee were widened. The Committee drafted two bills one concerning the Law of inheritance and the other concerning the Law of marriage. The former has already passed the first reading in the Central Assembly.

With the impetus given to women's movement by the political struggle of 1930, women were not content with mere social reforms but asked for complete equality, political, social, and economic with man. At the Karachi session of the Indian National Congress in 1931, a declaration of the fundamental rights of Citizenship in India was made. It lays down the woman's place to be equal to that of man. The National Planning Committee appointed by the Indian National Congress, on the report submitted by its women's sub-committee, in its meeting on the 31-8-40, resolved on the

basis of the Karachi declaration that (*a*) In a planned society, woman's place shall be equal to that of man. Equal status, equal opportunities, and equal responsibilities shall be the guiding principles to regulate the status of woman whatever the basis of society in the Plan ; (*b*) Woman shall not be excluded from any sphere of work merely on the ground of her sex

(*c*) Marriage shall not be a condition precedent to the enjoyment of full and equal civic status and social and economic rights by woman ;

(d) The State shall consider the Individual as the basic social unit and plan accordingly.

It is on the basis of equality, that men and women must be equal in the eyes of law, that women now demand that the laws be made. The first test, therefore, to be applied to any piece of legislation will be how far it satisfies the principle of equality ; and the second test will be that it shall not deprive men and women of their existing rights i.e. whatever new changes are to be made they must be an advance on the present position. On the basis of these we shall examine the two bills separately.

CHAPTER II

THE HINDU LAW OF INTESTATE SUCCESSION

As the Bill to amend the Hindu Law of Intestate Succession has been taken up first, I shall also begin with it, though, compared to the Law of marriage it is of lesser importance. The Bill has passed through the Select Committee stage but as the Committee report is not made public, my observations are confined to the original Bill.

The desire of the sponsers of the Bill as made clear in the statement of objects and reasons is :— (1) that there should be a common Law of intestate succession for all Hindus in British India ; (2) That the sex disqualification by which Hindu women in general have hitherto been precluded from inheriting property in various parts of India be removed ; and (3) that it should abolish the Hindu woman's limited estate. To a very great extent the Bill does succeed in satisfying these claims and to that extent the sponsers of the Bill have earned the gratitude of the Hindu women.

Before we examine the Bill, it is necessary to know what the present position of the Hindu woman is with regard to the Law of inheritance, so that it will be possible for us to appreciate the new proposals embodied in the Bill.

The Hindu Law is interpreted in such diverse ways that there is no uniform system throughout the country. The main schools of Hindu Law are, the Dayabhaga which holds sway in Bengal and the other Mitakshara which applies to the rest of India. The Mitakshara is again divided into Benares, Mithila, Dravid or Madras and Bombay or Mayukha.

Property known to Hindu Law is of two kinds :—(1) Joint family property or coparcenary property ; and (2) separate property. The joint family property devolves by survivorship and on the death of a member of the coparcenary goes to the other survivors who are always males. A male acquires the right to this property by birth while woman has no right to the property as she cannot be a coparcener. Woman is entitled only to maintenance, marriage expenses and the right to residence. This right to residence has been given recently on the acceptance of Dr. Deshmukh's Bill to that purpose. No woman whether wife,

sister or mother is entitled to a share in the joint family. Properly, the brothers and uncles take everything by survivorship.

The separate property devolves by succession as follows :—the son, grandson and greatgrandson take up the property together and form a coparcenary. Thereafter widows, daughter, daughter's son, father, mother, brother, brother's son, brother's son's son etc. Each takes this property to the exclusion of the rest. Here also the Hindu widow's Right to Property Act of 1937 has altered the position. The widow is no longer the fourth in the succession. Under this Act a widow and a pre-deceased son's widow both rank with the sons, grandsons and greatgrandsons and inherit in like manner.

We shall now examine woman's right with regard to the property separately as daughter, wife or a widow. As daughter she has no share in the joint family property but is entitled to maintenance if she is unmarried. With regard to separate property, she comes after sons and the widow, who each take to the exclusion of the others. Where the property is landed and titled such as jagir she is completely excluded. Under Mayukha school of law in the province of Bombay a daughter when she inherits property from her father, takes that property absolutely as opposed to limited estate she will take in other provinces of India. In the Punjab and U.P. a daughter has no right of inheritance. In Bengal an unmarried daughter gets precedence everywhere. If there is no unmarried daughter, then the married daughter who has a son or is likely to have a son takes precedence. In no case do daughters who are barren or daughters who are destitute of male issue or mothers of daughters inherit. In Benares an unmarried daughter takes

precedence, if there is none then one who is indigent among married daughters get it. According to the Mithila school the unmarried daughter gets precedence and after her the married daughter. No distinction is however made between indigent and wealthy. If there are more daughters of one class, then they hold the property jointly. In Bombay alone the property is divided between each daughter and they take the share as absolute owners.

Woman as wife has no right over her husband's property and is fully dependent on him. The only property over which she has control is her stridhana which is defined as property willed to her or gifted to her or is the result of her own earnings before her marriage. She has, however, no absolute ownership over property acquired by her exertion or skill or over property gifted to her from strangers during coverture. It is only with the husband's consent that she can transfer such property while the husband has the right to use this property in case of absolute necessity such as religious rights, medical treatment etc.

As a widow in a joint family woman is entitled only to maintenance and not to any share of her husband's estate. If the sons separate, then she is entitled to rank as a son and get her share equal to that of the son in the partition of the estate but has only a limited ownership over the share she gets. Uptil now she was not entitled to ask for partition but by the Hindu Widow's right to Property Act of 1937 she can demand a partition and on partition gets a share equal to that of her son. This act also affects woman's position with regard to her succession to separate property as she ranks with the sons and grandsons in the order of succession already stated above. Even then it is the limited estate she inherits.

In short this is the position that exists today viz. that woman under Hindu law does not inherit or hold porperty on the same footing as man and this is the position that the Bill tries to rectify, though not completely. The Bill restricts itself only to heritable property i.e. property passed by inheritance and not by survivorship i.e. separate property and not the joint family property. The position of woman with regard to joint family property remains the same. It also limits its scope further as per clause 3 by providing that the act shall not apply to (*a*) agricultural land or (*b*) to any estate which descends to a single heir by a customary or other rule of succession or by terms of any grant or enactments.

With these limitations the Bill has succeeded in removing the sex disqualification by which Hindu women in general have hitherto been precluded from inheriting property in various parts of India. The Bill recognises the right of woman to inherit property and inherit it in her absolute right. It defines the heir as male or female. In this bill the Stridhana also acquires a new definition which is : "property acquired by a woman by inheritance or devise or at a partition or in lieu of maintenance or by gift from a relative or stranger before, at, or after her marriage or by her own skill or exertion or by purchase or by prescription or by any other mode whatsoever"—and over this stridhana she has the same rights including the right to dispose off it by transfer inter vivos or by will as a man over property acquired by him in like manner ; that is to say, a woman's right over her stridhana shall not be deemed to be restricted in any respect whatsoever by reason only of her sex.

Having recognised the daughter's right to inherit her father's property along with the son, it is very disappointing that the Bill makes a distinction between the share of the

son and that of the daughter. The Bill is on a level with the Muhamedan law where a daughter receives half the share of the son. The framers of the Bill should have taken the Indian Succession Act as a model for this purpose. Under this Act the sons and daughters take equal shares. They should have done it for the reason that they aim to bring all the Hindus under one uniform law. Now, Hindus today who marry under the Special Marriage Act (amended Act of 1923) are governed by the Indian succession act so that their sons and daughters get an equal share in their father's property. The framers of the Bill have in their draft of the marriage bill clause 26 said that the word ' Hindu ' where it occurs for the second time in section 2 of the special Marriage Act and the whole of section 22 to 26 both inclusive be omitted ". This means that no Hindu in future if the Marriage Bill is passed can marry as Hindu under the Special Marriage Act. This will be a disadvantage to daughters of those parents who otherwise might have married under the Special Marriage Act, as they would be deprived of the advantages of the Indian Succession Act. The two Bills taken together intend to take away the right that exists. Either the desire to bring all Hindus under one act of inheritance be given up or the provisions in the Bill must be modelled on the more advanced Act so that no existing right would be affected. This would be the fit and proper thing to do.

If sons and daughters are placed on equal footing then there will be no need to make the clause 13 so complicated. Here stridhana is described as of two types and their devolution differs. Whatever the woman gets from her husband is to go to the husband's heir, i.e. the son would take one share and the daughter half the share of the son. On the other hand the property the woman gets in any other

way goes to daughter. The son is placed fourth in the list of heirs. In the first place, it will not be easy to distinguish between the two types of stridhana as described in Clause 13, viz. property a woman inherits from her husband and any other property. When a woman inherits a property in her absolute right, the property may not remain the same in course of time and it would be extremely difficult to make a distinction of the two types after her death. It would be simple and fair to give both son and daughter the same share in their father's as well as their mother's property.

These are some of the main features of criticism. I do not wish to go into any more details. One thing, however, I would like to mention, and that is that the Bill could have done away with the innumerable heirs mentioned therein. They are a vestige of the joint family system. Clause 10 is also not necessary these days. When there are no heirs, the property should devolve on the state.

On the whole, the Bill if passed into an Act will mean a considerable advance on the present position of Hindu women. The Bill has succeeded in evolving a uniform system and makes no difference between daughters and daughters, married or unmarried, indigent or rich. It has abolished the Hindu women's limited estate. These will be no mean achievements for which all those who have contributed deserve the gratitude of Hindu women.

CHAPTER III

THE HINDU LAW RELATING TO MARRIAGE

This is an important Bill as it deals with the law relating to marriage among Hindus. Marriage is the foundation of family life ; on the strength or weakness, therefore, of the

institution of marriage rests the wellbeing of society. Of late, however, this institution has come in for a great deal of criticism and abuse. Attempts have been made to destroy it but have failed for the simple reason, that so long as family life remains marriage in some from is bound to remain. The conditions attached, however, can be altered from time to time and should be altered so as to make it fit in with the new circumstances as they arise.

What exactly is the meaning of marriage ? We are not concerned here with any poetic definition or an idealistic definition. To describe it in plain words, it is a legalised union between man and woman entered into with a definite purpose of raising a family. It is because of this purpose that the state is interested in the union and takes upon itself the duty of regulating it. The problem of marriage resolves itself into three main questions on which the state legislates :— (1) Can a man enter into a union with any woman ? (2) Can men and women form more than one union at a time ? (3) Can the union be dissolved ?

The first question raises many issues. It would require a separate treatise to discuss the question in all its varied aspect. Here I shall merely touch the fringe of the problem. Every community today prohibits union between brothers and sisters though such unions were legally recognised among certain communities like the Greeks, Egyptians, etc. in the past. It was also not unknown in this country in ancient times. Today, however, such unions are unthinkable. Marriage between cousins is, however, recognized in most communities today while the Hindu Law is very strict on this point and allows only persons outside the prohibited degree of relationship to marry. In the south, however, there is a custom that the brother and failing him his son, has a right to marry the sister's daughter. With this exception the Hindu

Law goes so far as to disallow marriage between persons of the same Gotra, i.e. those whose remote ancestor is the same.

Secondly, while the laws of other communities place no other restrictions, Hindu Law prohibits marriage between men and women of different castes. The caste system prevails among the Hindus only. In its original form it was organised on functional basis. The society being divided into four main castes according to the four main functions. There was no rigidity about the system as man's caste was not determined by his birth but by the occupation he followed. Inter-caste marriages in the early Vedic times were also not unknown. Later however, the castes multiplied into sub-castes and sub-sub-castes and their number today is a legion. The system also became rigid and birth became the criterion of a man's caste, and not his occupation. A man who is born a Brahmin but doing a sweeper's work is a Brahmin and *vice versa.* Inter-caste marriages were also restricted to the extent that no woman belonging to a higher caste could marry a man belonging to a lower caste. While Pratiloma marriages were not allowed, the Law recognised Anuloma marriages, i.e. marriages between a man belonging to a higher caste and a woman of the lower caste ; and that is where the Hindu Law stands at present.

Then thirdly comes the question of age of the parties concerned. Marriage between children on the face of it sounds ridiculous and yet prohibition of child marriage raised a great deal of opposition from the orthodox section. In ancient times life was divided into four Ashrams, i.e. Brahmacharya, Grahastha, Vanaprastha and Sanyasta ; the Bramacharya ashrama was a period during which men and women acquired education and all other necessary equipment of body and mind

to prepare themselves for life. No man could, therefore, have married before he had finished his studies i.e. before the age of twenty at least. Subsequently, however, the Hindu society underwent many changes. The age of marriage became lower and lower and child marriage became the general rule with all its evil consequences. The Sharada Act has now fixed the marriage age for girls at fourteen and boys at sixteen. This Act, however, has proved ineffective in so far as it does not lay down the age as a condition of marriage. This, however, can be done by a Law relating to marriage.

The second question, viz. whether men and women can enter into more than one union at a time, leads to the problem of polyandry and polygamy. Polyandry exists in some parts of south India. Where the matriarchal system exists and the family takes its descent from mother, polyandry generally prevails. In the patriarchal system, it is the other way about. Under that system man has the privilege of marrying more than one wife. The ancient law givers, however, permitted a man to take more than one wife under certain conditions only, i.e. if the union bore no fruit, if there were no children, specially sons, then the man could marry again. This condition, however, has been forgotten and today a man marries as many wives as he can afford to have. The Muhammadan Law permits a man to marry upto four wives, but the Hindu Law is very generous and places no limit to the number of wives a man can take. Barring the Muslim and the Hindu no other advanced community permits polygamy today.

The third and the last question deals with the problem of divorce. The question is whether the union is a permanent union or can be dissolved. If it can be dissolved, then, one

must consider the conditions under which it admits of dissolution. The general notion is that the Hindu marriage is a sacrament and, therefore, admits of no dissolution ; once marriage takes place, no agency on earth can break the tie. This is not entirely correct nor has it always been so under the Hindu Law. Even according to Manu, if a man was insane, impotent or suffering from an incurable disease, his wife could not be blamed if she abandoned him. She was also permitted to marry again if the first marriage was not consummated. This virtually meant divorce. Parashar also allows a woman to take another husband in similar circumstances. Dharmasutra writers (400 B.C. to 100 A.D.) lay it down that a Brahmana woman should wait for her husband gone out on a long journey for five years. Koutilya on the other hand fixes the period of waiting to ten months only. If the husband did not return within this period and if the woman was unwilling or unable to go out to join him, she should regard him as dead and unite herself with another member of the same family or Gotra. The Arthashastra of Kautilya gives similar permission but requires judicial permission to be taken before contracting a second marriage. The jurists thus differ with regard to the period of waiting only and not with regard to the principle itself. Kautilya also gives detailed rules of divorce intended for the couples who found it impossible to live with each other. These however, were applicable to Asura, Gandharva, Kshatra and Pishach marriages. These forms of marriage were common among the lower sections of society. They were not entirely unknown among the higher castes. Divorce, therefore, must have prevailed among the higher castes to that extent. As Prof. Altekar puts it, it is difficult to know how far these rules of divorce were availed of. "Recorded cases of divorce are not to be found within Brahminical tradition. In Buddhist literature, how-

ever, we meet with a few. Thus we are told that a woman named Kana, refused to return to her husband when she learned that he had contracted a second marriage during her absence. At the request of Buddha, she was taken in adoption by a certain king who married her to a nobleman. The nun Isidasi had several divorces in her earlier life." And even today divorce is not unknown among lower castes of Hindu society.

The present position under the Hindu Law of marriage is : (1) Marriage between two persons belonging to the same Gotra is not allowed. (2) Marriage between Sapindas, i.e. between persons who are within three generations in the line of ascent on the mother's side and five generations on the father's side is not allowed. The only exception is in the south where the brother or failing him his son can marry the sister's daughter. (3) Inter-caste marriage, i.e. Pratiloma marriage is not allowed. (4) There is no age restriction. The Sharada Act is unable to prevent child marriages effectively. (5) Polygamy is allowed ; and (6) No divorce is permitted except among the lower castes where the practice has the sanction of custom and not of law.

It is obvious that the law is antidiluvian and requires to be properly overhauled in order to meet the present requirements. It is one sided and unjust to women. While it allows a man to marry any number of wives and thus makes it unnecessary for him to seek divorce, it gives no facility to woman even to divorce. Once a woman is married no matter to whom, she cannot escape from the bondage. She can at the most ask for separation but has no freedom to marry again. Woman has therefore, to put up with a man who may be cruel to her or who may be unfaithful to her. She may live in sin but not marry again. When the marriage bond is so tight that there is no escape it should not be a

matter of surprise if women are driven to live in sin and that is the state of affairs today. A man would treat his wife better if he knew the consequences of his illtreatment. It will also teach a woman to be independent and not be dependent on man whom she may have to leave if he broke the marriage vows in deserting her or in being unfaithful to her or in treating her with cruelty.

Women have demanded the law to be altered so as to bring it fully in line with modern conditions and secondly that it gives an equal treatment to both men and women. It is on this basis that we shall examine the provisions of the Bill now before the Central Assembly.

Clause 3 lays down that there shall be two forms of marriage, viz. (a) a sacramental marriage and (b) a civil marriage. This is evidently to bring all the Hindus under one fold of Hindu Law. While the bulk of Hindus go in for the first form there are some who marry under the Special Marriage Act (Amended Act, 1923). If the Bill is passed it will not be necessary for some of the Hindus in future, to restore to any other law. The Bill, however, makes a distinction between conditions laid down for each form. We shall, therefore, examine each form separately.

Clause 4 deals with the conditions attached to a sacramental form of marriage. Condition (a) lays down the principle of monogamy. It says "neither party must have a husband or a wife living at the time of marriage." This certainly is a much needed reform, but monogamy without divorce makes the law rigid. Today only the woman suffers from this rigidity of law, tomorrow if the Bill is passed, man will also suffer for he will not be able to marry again even if his wife leaves him, is unfaithful to him or is insane or is suffering from some incurable disease. The Bill therefore,

aims at equality in suffering for men and women. Women's demand is to make the law less rigid for both men and women and not to make it equally rigid for both of them. The Bill should have restored the ancient right recognised by Manu and Parashar which allowed men and women to take to a second marriage in certain circumstances. In so far as the Bill has provided for mongamy without a provision for divorce, it has failed to satisfy the present demand. It is no use saying that the right to divorce is recognised in the civil form of marriage. That is not a new thing. That right exists today.

The second condition attached is that (b) both the parties must belong to the same caste. In clause 7, however, it indirectly recognises an inter-caste marriage once performed. It says no sacramental marriage once completed will be deemed to be or ever to have been invalid merely that the parties to the marriage do not or did not belong to the same caste. Inter-caste marriages, i.e. Anuloma marriages are valid under the present law. Such a condition is, therefore, a step backward and not forward. It would have been better if the sponsors of the Bill had come out with a bold proposal of permitting all inter-caste marriages whether Anuloma or Pratiloma instead of recognising them indirectly.

The third condition is (c) if the parties are members of a caste having Gotras and Pravaras, they must not belong to the same Gotra or have a common Pravara. This is also modified by clause 7 in a similar way. Here too one fails to understand why we should go on talking about Gotras and Pravaras when they have become mere words without much significance.

The fourth condition which is not modified by clause 7 is that (d) "the parties must not be sapindas of each other."

The Sapinda relationship as defined in this Act is, 'it extends as far as fifth generation (inclusive) in the line of ascent through the mother and the seventh (inclusive) in the line of ascent through the father.' There has been a diversity of views with regard to the definition of Sapindas. The sponsors of the Bill could have arrived at a more liberal definition than this. It is not necessary for so many generations to intervene before two persons can marry. Clause 6, however, permits relaxation of this condition when there is custom or usage modifying the rule. In practice, the explanatory note says, in most parts of India Sapinda relationship for purposes of marriage is limited to three generations on the mother's side and five on the father's side and this is permissible under the Bill. If that is so why not lay down what the general practice is instead of that which is proposed ?

The fifth condition lays down that if the bride has not completed her sixteenth year, her guardian in marriage must consent to marriage. This also is modified in clause 7 (c) where the principle of *factum valet* is recognised. The Sharada Act lays down the age of marriage at 14 for girls and 16 for boys. A girl, therefore, who marries before 16 but after 14 does not break the law. The Bill requires that if she is less than 16 the consent of her guardian is necessary. This is a new thing introduced and is desirable. However, it would have been better if the age of marriage had been made a condition of valid marriage as is done in clause 8 (2) for the civil form of marriage.

With regard to the civil form of marriage, the provisions laid down in the Bill are more or less the same as those found in the special Marriage Act with the anomalies in the sections 15 and 16 removed. Clause 21 of the Bill also provides for divorce in the case of a civil marriage. This, therefore, does not alter the present position. One thing,

however, is worth noting. Clause 8 (2) says that the man must have completed his eighteenth year and the woman her fourteenth year according to the Gregorian calendar. Now a girl of 14 even if she does so with the consent of her guardian is too young to marry under this form. A contract would not be valid if signed by a minor and yet the Bill lays down 14 as age for a girl to sign a marriage contract. The age should be raised to 16 at least. Clause 8 (4) lays down that the parties must not be within the degrees of relationship prohibited by this Act. Clause 2 (d) defines persons to be within the "degrees of relationship provided by this Act" as related by blood to each other lineally, or as brother and sister, or as uncle and niece or as aunt and nephew. This is an advance on the present position as in the Special Marriage Act the definition is the same as that of the orthodox Hindu Law which does not permit marriage between cousins.

To sum up the position, the Bill tries to bring all the Hindus under one law. In trying to do so it recognises two distinct forms of marriage, viz. a sacramental marriage and a civil marriage. The Hindu Law as it exists today only recognises the first form. For those who will accept the first form, the Bill does not improve the position as it exists. on the contrary it goes a step back in not permitting anuloma marriages. It provides for monogamy without any provision for divorce and thus makes the marriage bond tighter for both men and women. It does not accept inter-caste or Sagotra marriages except indirectly. It does not permit marriages between Sapindas.

With regard to the second form, the present position remains the same except that the anomalies existing in the present Act are removed, and for the Clause 8 (4) which defines the degrees of relationship more liberally.

The Bill, therefore, cannot be considered a satisfactory measure. It is really immaterial how a marriage is solemnized, i.e. whether it is done according to Vedic rights or in a registration office. What matters are the conditions attached to marriage under each form. The woman's demand was to bring the present Hindu Law in line with modern conditions and not merely its codification. The sponsors of the Bill have failed to satisfy the main demand. They must have felt that introduction of monogamy was sufficient reform. It has been pointed out again and again that monogamy without any provision for divorce is likely to do more harm than good. The Bill should have aimed at the removal of all the evil customs that have grown round the present form of Hindu marriage and thus made the law more liberal and more progressive.

APPENDIX I

BILL

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

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

And whereas it is expedient first to amend and codify the general law of intestate succession ;

It is hereby enacted as follows :—

PRELIMINARY.

Short title extent and commencement

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

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

(3) It shall come into force on the Ist day of January 1946.

Definitions and interpretation

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

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

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

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

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

Illustration.

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

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

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

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

(h) "son" includes a *dattaka* son, *dwyámushyáyana* son and *kritrima* son, but not a*dásíputra* ; and *dattaka* son, *dwyámushyáyana* son, *kritrima* son and *dásíputra* have the same meanings as in the Hindu Law ;

(*i*) "*stridhana*" means property acquired by a woman by inheritance or devise, or at a partition, or in lieu

of maintenance, or by gift from a relative or stranger before, at, or after her marriage, or by her own skill or exertions, or by purchase, or by prescription, or by any other mode whatsoever.

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

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

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

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

(*d*) when an adoption takes place,—

(*i*) In the case of *dattaka* son, the natural tie is severed and is replaced by the tie created by the adoption,

(*ii*) in the case of a *dwyámushyáyana* son, the natural tie continues side by side with the tie created by adoption,

(*iii*) in the case of a *kritrima* son, the natural tie continues, while the tie created by the adoption is limited to the person adopted and the person or persons adopting him.

Illustration.

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

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

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

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

Application of Act

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

(*a*) where the property is moveable property, unless

it is proved that the intestate was not domiciled in British India at the time of death,

(*b*) where the property is immovable property situated in British India, whether at the time of death the intestate was domicile in British India or not ;

Provided that this Act shall not apply—

(*i*) to agricultural land, or

(*ii*) to any estate which descends to a single heir by a customary or other rule of succession or by the terms of any grant or enactment :

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

SUCCESSION TO THE PROPERTY OF MALES

Devolution of heritable property of males.

4. The heritable property of a male intestate shall devolve according to the rules laid down in this Act—

(*a*) upon the enumerated heirs referred to in section 5, if any ;

(*b*) if there is no enumerated heir, upon his agnates, if any ;

(*c*) if there is no agnate, upon his cognates, if any ;

(*d*) if there is no cognate, upon the heirs referred to in section 10, if any.

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

Class I.—Widow and descendants :—

(1) Widow, son, daughter, son of a pre-deceased son, and son of a pre-deceased son of pre-deceased son (the heirs in this entry being hereinafter in this Act referred to as "simultaneous heirs").

(2) Daughter's son.

(3) Son's daughter.

(4) Daughter's daughter.

Class II—Mother, father and his descendants :—

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

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

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

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

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

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

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

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

Order of succession among enumerated heirs.

Illustrations.

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

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

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

Manner of distribution among simultaneous heirs.

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

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

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

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

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

Illustrations.

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

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

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

Order of succession among non-enumerated heirs.

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

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

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

Illustrations.

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

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

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

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

of descent represented, in order, by (1) the daughter of the common ancestor, viz., the mother's father's father, and (2) her son (the heir).

Rules of Preference.

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

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

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

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

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

Illustrations.

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

(*i*) The competing heirs are (1) FFSD (father's brother's daughter) and (2) FDDS (sister's daughter's son). Although

No. (2) is descended from a nearer ancestor yet, as No. (1) is an agnate while No. (2) is only a cognate, No. (1) is preferred to No. (2).

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

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

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

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

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

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

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

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

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

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

Heirs not related by blood.

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

Rules for hermits, etc.

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

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

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

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

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

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

STRIDHANA

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

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

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

Explanation.—For the purposes of this clause, property devolving on another widow of the husband, whether under

this clause or under entry (9) in clause (*b*), shall be deemed to be property inherited by such widow from her husband.

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

(1) Daughter ;

(2) Daughter's daughter ;

(3) Daughter's son ;

(4) Son ;

(5) Son's son ;

(6) Son's daughter ;

(7) Husband ;

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

(9) Mother ;

(10) Father ;

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

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

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

Stirpital succession to 'stridhana' in certain cases

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

Illustration.

The surviving relatives of a woman are four grand-daughters by one daughter, A, and three grand-daughters by another daughter, B. Each of A's daughters takes 1/8th of the property and each of B's daughters takes 1/6th.

General Provisions.

Full blood prefered to half blood

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

Illustrations.

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

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

(iii) A full brother's daughter's daughter is prefered to a half brother's daughter's daughter ; but the former

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

Right of child in womb

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

Rights of surviving spouse and descendants of a valid marriage

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

Disqualification of widow who was unchaste during husband's lifetime

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

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

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

(*b*) a Court of Law has found her to have been unchaste as aforesaid in a proceeding to which she

and her husband were parties and in which the matter was specifically in issue, the finding of the Court not having been subsequently reversed.

Murderer disqualified

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

Disease, defeat, etc., not to disqualify

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

Mode of succession of two or more heirs

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

(*a*) save as otherwise expressly provided in this Act, *per capita* and not *per stirpes* ; and

(*b*) as tenants in common, and not as joint tenants.

Escheat.

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

Repeals.

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

APPENDIX II

[A]

BILL

to codify the Hindu Law relating to marriage

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

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

It is hereby enacted as follows :—

PRELIMINARY

Short title, extent and commencement

1. (1) This Act may be called the Hindu Code, Part II (Marriage).

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

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

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

Interpretation

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

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

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

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

Illustration

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

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

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

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

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

(ii) illegitimate blood relationship as well as legitimate;

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

and all terms of relationship shall be construed accordingly.

Two forms of Hindu Marriage

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

(a) a sacramental marriage ;

(b) a civil marriage.

Sacramental Marriages.

Requisites of a sacramental marriage

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

(a) neither party must have a husband or wife living at the time of marriage ;

(b) both the parties must belong to the same caste ;

(c) if the parties are members of a caste having *gotras* and *pravaras*, they must not belong to the same *gotra*, or have a common *pravara* ;

(d) the parties must not be sapindas of each other ;

(e) if the bride has not completed her sixteenth year, her guardian in marriage must consent to the marriage.

marriage contracted by a male or female Hindu outside his

Ceremonies essential for sacramental marriage

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

(*a*) invocation before the sacred fire :

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

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

Marriages according to custom deemed to be valid sacramental marriages

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

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

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

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

(*a*) that the parties to the marriage do not, or did not, belong to the same caste ;

(*b*) that the parties belonged to the same *gotra* or had a common *pravara* ; or

(*c*) unless there was force or fraud, that the consent of the bride's guardian in marriage to the marriage was not obtained.

Civil Marriages

Requisites of a civil marriage

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

(1) neither party must, at the time of the marriage, have a husband or wife living ;

(2) the man must have completed his eighteenth year, according to the Gregorian calendar ;

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

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

Marriage Registrars

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

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

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

Notice of marriage to Registrar

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

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

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

Marriage Notice Book

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

Objection to marriage

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

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

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

Procedure of Registrar on receipt of objection

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

Objector may file suit

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

Certificate of filing of suit to be lodged with Registrar

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

there is an appeal from such decision, till the decision of the Appellate Court has been given.

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

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

Court may fine when objection not reasonable

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

Declaration by parties and witnesses

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

Marriage how to be contracted

16. The marriage shall be contracted in the presence of the Registrar and of the three witnesses who signed the

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

Place where marriage may be contracted

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

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

Certificate of marriage

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

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

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

19. The Registrar shall send to the Registrar General

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

Fees

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

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

Indian Divorce Act to apply

IV of 1869

21. The Indian Divorce Act shall apply to all civil marriages contracted under this Act, and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that it contravenes some one or more of the conditions prescribed in clauses (1), (2), (3) and (4) of section 8 of this Act.

Penalty for signing declarations or certificates containing false statements

XLV of 1860

22. Every person making, signing or attesting any declaration or certificate required under this Act, containing a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be

deemed guilty of the offence described in section 199 of the Indian Penal Code.

General Provisions

Guardianship in marriage

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

(*a*) of a Hindu girl who has not completed her sixteenth year, for the purpose of her sacramental marriage,

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

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

(1) the father ;

(2) the mother ;

(3) the paternal grandfather ;

(4) the brother ;

(5) any other agnatic male relation ;

(6) the maternal grandfather ;

(7) the maternal uncle.

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

VIII of 1890

(3) Where there are two or more persons equally entitled to guardianship under the foregoing provisions, it shall be in the discretion of the Court having jurisdistion

under the Guardians and Wards Act, 1890, to decide which of them shall be regarded as the guardian.

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

Punishment of bigamy

XLV of 1860

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

Power to make rules

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

Enactment amended

III of 1872

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