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HONORARY EDITORS.

MR. E. VINAYAKA ROW, B.A., B.L. (Editor in charge).

RAO BAHADUR S. K. YEGNANARAYANA IYER, M.A.

17 FEB 1945



चित्रं वटतरोर्मले वृद्धाः शिष्या गुरुं वा गुरुस्तु मौने व्याख्यानं शिष्यस्तु छिन्नसंशयाः॥

The wonder under the Banyan tree! A young teacher and old disciples. The teaching is silence and the disciples' doubts are cleared.

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THE BHARATA DHARMA.

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THE

Bharata Dharma



VOL. XXII]

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[No. 10

GITA STUDIES V.

BY MR. S. K. YEGNANARAYANA AIYAR.

Prof. HIRIYANNA, M.A.

Prof. Hiriyantha combines with profound scholarship characteristic of our Pundits, a critical approach to problems, the result of his English education. Hence his chapter on the Gita in his "Outlines of Indian Philosophy" is well worth perusal.

He examines the causes of the increasing popularity of the book and attributes it to the popularity of the great epic of which it is a part and of the two characters Krishna and Arjuna. It is also due to the significant occasion when the fate of Humanity and of Dharma hung in the balance. Its simple style also endears it to millions. Its characteristic feature is stated to be its toleration laying emphasis more on the spirit of worship than on the object worshipped.

It deals with a concrete ethical problem and that in a concrete way without going too much into metaphysics; yet differences in interpretation have come about because of differences in the metaphysical standpoint of the Acharyas who have commented on it.

It is refreshing to note that Prof. Hiriyantha considers the book in spite of having a main message, to be heterogeneous in character even as the Mahabharata is of which it is a part. Even Tilak (and to speak of the ancient Acharyas) speaks of it as being one pointed. Jnana, says Sankara, is its theme. No; bhakti says Ramanuja. Neither, Karma is the one topic discussed right through, says Tilak. Prof. Hiriyantha takes karma-yoga to be the central teaching of the Gita, which is a happy compromise between the ideals of Pravriti and nivriti. It

discards neither ideal but by combining them refines and ennobles both Gita's teaching stands not for renunciation of action, but for renunciation in action."

This karma-yoga, looking upon duty as an end in itself and doing it without expectation of reward is taken as tending to *Atma-sudhi* or as subserving the purpose of God, leading to self-realization or to God's presence. "But whether we look upon the Gita as the gospel of enlightenment or of love it is equally the gospel of action."

The source of ideas in the Gita is then discussed; it derives its ideas mainly though not exclusively from the Upanishads. Theism of the Bhagavath school is another source which theism later on was much strengthened by the Gita itself. Whether Sankhya philosophy as we now understand it was a thin source is discussed; but he comes to no definite conclusion as the history of the system itself is not quite well established.

On the whole it is a fair and critical estimate of the gospel though only a few important topics have been touched upon.

"DHARMA" IN THE RAMAYANA.

BY

R. SRINIVASA IYENGAR, Headmaster, S. T. H. School, Peelamedu.

I

There is not a more unique contribution to World-Thought than Dharma, the sublime concept of Hindu, nay, Indian culture. Whichever book on Hindu religion we may take on hand, the attention of even indifferent readers is drawn to the spell of this concept. As Prof. C. E. M. Toad observes, "This distinctively Hindu conception does not admit of summary description." The word "Dharma" is used in different senses in different contexts; and it is worthwhile to try to understand the true import of this wonderful word which signifies the great contribution to Indian culture and Indian civilization. It is sometimes used in the sense of an action leading to happiness in the other worlds, called "Moksha Dharma". It is sometimes used, as in Mimamsa, to refer to the performance of Vaidik rites or sacrifices. Again, the word has been used to refer to the king's duties, traditions of the country, of caste, of family, of friendship etc. called "Niti Dharma". Dharma is thus interpreted to mean the ethical codes and laws controlling our worldly activities. It is a most comprehensive term in which all the strands of Indian culture are woven together. In its essence, Dharma is that by which Man is borne up: (1) धार्यते अनेन: इति धर्मः; (2) धारणाद् धर्ममित्याहुः It is that which supports and bears up

Man's personality for the full realisation of the Purusharthas or what I may call the culture of the individual. At the same time, it connotes the social and ethical obligations of the individual. Dharma is that which holds or sustains society at best. If Dharma is violated, the bonds of society are let loose. Hinduism is not a religion which emphasises mere individualism. Collective good or the good of the society is the objective of all Hindu ethics. Social obligation is on a par with man's other natural and individual aspirations. Anything which stifles, starves, stuns or breaks up a man's personality and thwarts his realisation of all the Purusharthas is not Dharma.

सर्वेषां यः सुहृन्नित्यं सर्वेषां च हिते रतः ।

कर्मणा मनसा वाचा स धर्म वेद जाजले ॥

(He who is the friend of all beings; he who is intent on the welfare of all, with act and thought and speech—he only knoweth Dharma, O Jajali.)

So then we learn that the Dharma of the individual should harmonise with the Dharma of the society and the Dharma as enjoined by the good. With this prefatory note as the back ground, we shall learn what note this soul-elevating, soul-inspiring and soul-saving concept of Hindu thought and Indian culture strikes, in the famous epic, the Ramayana.

II

The hero of the epic is called धर्मज्ञः (knower of Dharma) धर्मस्य परिरक्षिता, (upholder of Dharma), धर्मवत्सलः (devoted to Dharma) धर्मार्थः (one who has realised the essence of Dharma) etc. The essence of Dharma is given in a nutshell in the character-sketch of Sri Rama, सत्ये धर्मे इवापरः (in truthfulness like another Dharma).

The essence of Dharma is brought out by Kaikayi, too, who, in urging Dasaratha to send Sri Rama to the forest, says,

आहुः सत्यं हि परम धर्मं धर्मविदो जनाः ।

(Those well-versed in Dharma say that truth is the highest Dharma).

The power and nature of Dharma are strikingly brought out by Sri Rama who, in explaining to Lakshmana, why his father's command, being based on Dharma, should be obeyed, says,

धर्मो हि परमो लोके धर्मो सत्यं प्रतिष्ठितम् ।

(Dharma indeed is supreme in the world; Truth is rooted in Dharma)

The finest exposition of the efficacy of Dharma giving consolation to us, poor mortals hungering for material wealth and happiness, is given by Sita.

धर्मादर्थः प्रभवति धर्मात् प्रभवते सुखम् ।

धर्मेण लभते सर्वं धर्मसारमिदं जगत् ॥

(Wealth is born of Dharma; Happiness is born of Dharma; everything is got through Dharma. This world is made of the essence of Dharma).

JL
R4 m2, N239D N44.22.

The protective of Dharma is brought out by Kausalya in her farewell blessings to Sri Rama, a verse worthy of being remembered when any person embarks on a new adventure or enterprise :

ये पालयसि धर्मं त्वं धृत्या च नियमेन च ।

स वै राघवशार्दूल धर्मस्त्वामभिरक्षतु ॥

(O noblest of Raghus ! May that Dharma safeguard and protect you, the Dharma which you preserve, follow and guard with courage, perseverance and self-restraint !)

One of the most interesting episodes in the Ramayana affording full scope for debate is the discourse between Sri Rama and Vali on the propriety of Sri Rama's action. Vali spoke polite, but yet harsh words, words full of justice (धर्मसंहितम्), and accused Sri Rama of having resorted to 'adharmic' means (अधर्मेण). The accusation covered several points ; and Rama answered every one of them. Valmiki says that Vali was in the end fully satisfied of Rama's reasons.

Vali was ignorant of dharma and worldly experience, had never learnt from elderly and honoured gurus. Rama was rooted in the traditional dharma, the heritage from his father and grandfather (धर्मं पितृ पौत्रादिहेतुतः) and it is the duty of princes who are rooted in their own exalted dharma to punish the transgressors of dharma in accordance with the king's orders and with the law of the land. It is not possible to traverse the whole field of arguments. But one important argument that Sri Rama used has a bearing on the import to be attached to the concept of 'dharma'.

सूक्ष्मः परमदुर्ज्ञेयः सतां धर्मः प्लवङ्गमम् ।

हृदिस्थः सर्वभूतानाम् आत्मा वेद शुभाशुभम्

The 'dharma' of the good is subtle and difficult to comprehend. The 'atman' that dwells in the heart of every being knows what is good and what is not good ! The dharma of the individual must harmonise with the religion of the good, the Wise Ones, the highly developed spiritual souls. We should try to understand सतां धर्मः, the dharma or the religion of the good, and follow it in our personal lives.

Again, the idea that dharma is in consonance with the religion of the good is found in Sita Devi's warning to Ravana

साधु धर्ममेतस्व साधु साधुव्रतं चर ।

यथा तव तथा अन्येषां दारा रक्ष्या निशाचर ॥

Carefully safeguard dharma; carefully observe the rule or the pledged vows of the good, O Rakhshasa, the wives of others must be protected like your own.

Again, Hanuman found that Ravana had realised the essence of dharma and that, but for his adharmic act, he could be the protector of

the world of the gods even with Indra, and warned him to take his advice which was based on dharma and which followed the sastra.

Thus from the utterances of every character in the glorious epic, we may learn the high place of honour that the concept of dharma occupied in those ancient times, and that, even like the epic, this concept has been handed down to us from ages past.

No wonder, then, in Rama Rajya, everyone was devoted to dharma (सर्वो धर्मपरो अभवत्). Everyone was happy. No one injured another; no one fell a victim to any calamity. The world was absolutely free from fear, a post-war millenium envisaged by President Roosevelt.

May we prove to be the worthy heirs of the founders of the sublime and unique concept of 'dharma' and true notaries of Indian culture and Indian civilisation !!!

KALISANTARANA UPANISHAD.

By

K. VISWANATHAN.

Upanishads are the height of sublimity of Hindu thought. The Western idealism of Berkeley and others is already anticipated in these. The ideas may appear detached and not treated as one logical syllogism as known in Western philosophy ; but there are reasons for it. Such logic was not unknown to the Hindu.

The Upanishads are classified as Brahma, Saiva, Sakta, Vaishnava, yoga etc., pertaining to the different topics under which they are treated. The object in all these Upanishads is the attaining of freedom from bondage to matter. Some upanishads are not for all, because of their unfitness to grasp the idea and practise the necessary and requisite meditation for the realisation thereof.

But the Kalisantarana Upanishad is for all, irrespective of race, caste, creed, age or sex. Before I offer further thoughts on the same let me quote the same and give a free translation thereof.

द्वापरान्ते नारदो ब्रह्माणं जगाम कथं भगवन् गां पर्यटनं कलिं संतरेयमिति । स होवाच ब्रह्मा साधु पृष्टोऽसि सर्वश्रुतिरहस्यं गोप्यं तच्छृणु येन कलिसंसारं तरिष्यसि । भगवत आदिपुरुषस्य नारायणस्य नामोच्चारणमात्रेण निर्धूतकलिर्भवतीति ॥ १ ॥

At the end of the Dwapara age Narada went to Brahma and said, " O Lord, roaming the earth how can I cross Kali ? " Brahma said, " Thou hast well asked ; hear the secret of all scriptures that is to be zealously guarded, by which thou wilt cross the Kali. By the mere utterance of the name of the blessed Narayana, the first Purusha, one becomes cleansed of all kali (sins)."

नारदः पुनः प्रच्छ तन्नाम किमिति । स होवाच हिरण्यगर्भः ।

हरे राम हरे राम राम हरे हरे ।

हरे कृष्ण हरे कृष्ण कृष्ण हरे हरे ॥

इति षोडशकं नाम्नां कलिकल्मषनाशनम् ।

नातः परतरोपायः सर्ववेदेषु दृश्यते ॥

षोडशकलाऽवृतस्य जीवस्यावरणविनाशनम् ।

ततः प्रकाशते परं ब्रह्म मेघापाये रविरश्मिमण्डलीवेति ॥ २ ॥

Narada again asked "What is that name?" Hiranyagarbha (born of the golden egg) said, "O Hari, O Rama, O Hari, O Rama, O Rama, O Rama, O Hari, O Hari, O Hari, O Krishna, O Hari, O Krishna, O Krishna, O Krishna, O Hari, O Hari. These sixteen names destroy the sin or dirt of Kali; except this there is no better remedy found in all the Vedas. These sixteen names remove the veils which cover the *jiva*; then shines the Supreme Brahman as the rays of the sun on the clouds dispersing."

पुनर्नारदः प्रच्छ भगवन् कोऽस्य विधिरिति । तं होवाच नारदः विधिरिति । सर्वदा शुचिरशुचिर्वा पठन् ब्राह्मणः सलोकतां समीपतां सरूपतां सायुज्यतामेति । यदाऽस्य षोडशी-
कस्य सार्धत्रिकोटीर्जपति तदा ब्रह्महत्यां तरति । तरति वीरहत्याम् । स्वर्गस्तेयात् पूतो भवति ।
वृषलीगमनात् पूतो भवति । पितृदेवमनुष्याणामपकारात् पूतो भवति । सर्वधर्मपरित्यागात्
सद्यः शुचितामाप्नुयात् । सद्यो मुच्यते सद्यो मुच्यते इत्युपनिषत् ॥ ३ ॥

Narada again said, "O Lord, what is the rule for this?" He said to him, "There is no rule for this." Clean or unclean, the Brahmin ever repeating attains Salokata, Samipata, Sarupata and Sayujyata. When he has finished repeating these sixteen names three and a half crores of times he overcomes the sin of a brahmin-murder; he overcomes the sin of murdering a warrior; he is cleansed of the theft of gold; he is purged of the sin of joining a low-class woman; he is cleansed of the sin of injury to the manes, gods and men. He stands at once purified from all sins of commission and omission; he is at once released from bondage; he is at once released from thralldom to matter. Thus ends the upanishad."

Other upanishads are applicable to certain classes only; the mantras are also difficult to pronounce by all; wrong pronunciation or utterance leads to undesirable results. The ritual of some upanishads is elaborate and cannot be performed by all.

The mantra in this upanishad which is a part of Krishna Yajus is easy and utterable without any untoward result by all; there is no restriction on account of caste, sex, age or any other count. It secures liberation. In this age of Kali the sins committed and committable are too many. Many or all the sins are wiped off or expiated by the

utterance a certain number of times of the mantra in this upanishad. Such are the wonderful effects of this mantra.

The only thing is patience to utter the number of times said in the body of the upanishad. No one can be so gullible as to believe that the penalty for murder is overcome by this. The legal penalty of death may not be waived by the utterance of this mantra. But even after a person suffers capital punishment for murder, there is a moral and spiritual responsibility for it, and a corresponding penalty thereto. And this moral and spiritual aspect of a crime is stressed more in Hinduism as in all true religions. The utterance of the mantra absolves a person from the moral and spiritual responsibility of a crime and the expiation thereof removes the penalty. That is what is meant. As such this is the upanishad *par excellence* for all and for all periods in this age of spiritual and moral darkness. Though it is a Vaishnava upanishad, the others as saivas, saktas etc., can have no objection to repeat the mantra as they also repeat the names of Vishnu, Sakti etc.

REVIEW

The Fundamentals of the four Schools of Vedic Philosophy.

BY

A. S. AIYENGAR, B.A., LL.B., J. P. (Bombay); Published

by the Nirnaya Sagara Press, Price Re. 1.

This leaflet of about 30 pages was originally written as an Introduction to a Sanskrit work called Mata-traya-Sara Sangraha by Pandit Rangacharya of Pudukottah. We are not concerned with that work; but only to this Introduction appearing as a separate leaflet.

On pages 25 and 26 the author gives us a brief account of his search for spiritual truth; but today he is no longer a seeker. Like Cardinal Newman he has found his haven of peace. He has no problems; at least he thinks he has a solution for all. Visishtadwaita as expounded by Sri Andavan of Ther-izhandur is the highest philosophy according to him. Unfortunately we are seekers still; our fragile ship is still being tossed over a stormy ocean and has not reached a harbour of safety. We cannot, therefore, see eye to eye with him on many points.

The leaflet to whose work it is an Introduction leaving out references to the Pundit consists of three parts; in the first part there is a statement of the main principles of each of the four schools of philosophy, Advaita, Visishtadwaita, Dwaita and Suddhadwaita of Vallabhacharya. Secondly, an attempt is made at a comparative estimate and thirdly the superiority of Visishtadwaita is established.

The author states the main points pretty clearly regarding each of the four systems though even there he could not state things with objective impartiality without letting his predilections to bubble out. "The statement that Bramhan did not even dream appears to be too good a fairy tale to be swallowed without protest."

It is in the second and the third part that the author's own views colour the whole. After posing questions whether all the Acharyas can be correct, or all incorrect, or partly correct, or partly incorrect he examines Sankara's system and points out its defects. Sankara's Vivartavada is supported "neither by the Sutras of Badarayana nor by the Upanishads of the Veda purusha." This statement is not argued out and proved. Thibaut and a few Western scholars hold the same view with regard to Sutra Bhashya; but even they are of opinion that Sankara's interpretation of the Upanishads is more in conformity with the spirit of the original. Secondly Sankara's theory of Ishta-devata is criticised and the Geeta is said not to countenance the theory of ishta-devata. May we respectfully request Mr. Aiyengar to read his Geeta once more, especially IV-11, VII-21 and IX-23?

Even as a follower of Sri Ramanuja the author has his limitations. It is true he has the boldness to say that "As a redeemer of souls Sri Ramanuja has done more than even what Sri Rama or Sri Krishna was able to achieve (page 15), a statement which Udayavar would be the first to disown, and that "Sri Vedanta Desika is the greatest poetic and dialectic genius of the world" (p. 3; italics are mine). But "Andal is several times superior to Namalwar" is a statement which I cannot let go without a challenge. I have in my own humble way, studied the Prabandhas and however great my admiration for the poetess of Sri Villiputtur she is certainly not superior to the sage of Kurugoor, much less several times his superior.

It is interesting to know whether the learned Pundit to whose work this forms an Introduction endorses these views of the Introducer.

The book is thought-provoking and useful as an introduction to a critical study of Vedanta.

S. K. Y.

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THE PAKISTAN PROBLEM.

BY

MR. E. VINAYAKA ROW, BA., B.L.

Advocate, Madras.

In 1933 while the deliberations of the constitution makers were in progress and two years prior to the passing of the Government of India Act, 1935, one Mr. Rahmat Ali not known to be a prominent active politician either then or thereafter, sponsored a scheme in the form of a pamphlet which was supposed to be for the benefit of the Muslims of India. The word 'Pakistan' was coined as a mnemonic to indicate the areas which according to the propounder of the scheme had to come together to constitute a separate Muslim State. Nobody paid serious attention to that scheme then, and for some years thereafter. It was recently mentioned by some persons in the Punjab that the ideas embodied in that pamphlet were due to the inspiration of some members of the Indian Civil Service. Perhaps it was then thought it was one more conundrum that can be thrown on the table of the Round Table Conference, to create further confusion and further differences and to put off as far as possible the various elements in India's national life coming to an agreed solution on the constitutional question. No Muslim league politician of any standing, Mr. Jinnah himself not excluded, supported the scheme openly and no definite enunciation was made of the main ideas underlying the scheme.

In the elections that followed the passing of the Government of India Act, 1935, Congress swept the polls in most places and the

Muslim League candidates who contested the elections even in Provinces like the Punjab and Bengal sustained grievous electoral defeats. In no Province could the Muslim League claim definite electoral success. Having lost at the polls unmistakably those few Muslims who were returned on the Muslim League ticket by separate electorates, wanted to have notwithstanding the election results the benefits of electoral success. They put forward the plausible theory, of course with the active encouragement of those who had to gain by accentuating the differences between the political elements in the country, that India was not England and well-tried political methods which have proved big successes in English political life must be abandoned in India and that those who do not command the confidence of either the general electorates or the special separate communal electorates should be given the privilege of participating as Ministers in the various Provincial Governments by the formation of coalition Governments. In places where these efforts failed, a cry was raised that Muslims were the victims of special bad treatment at the hands of the popular ministries that commanded the majority in the several provincial legislatures. Although the Prime Ministers of the Provinces concerned were able to demonstrate with facts and figures that any such complaints were entirely unfounded, the Muslim League elements continued to carry on their agitation that they suffered at the hands of the majority parties which it may be pointed out at this stage were not communal majorities but political majorities returned on the political programme which won them their electoral successes. But Mr. Jinnah who was emerging into Muslim League leadership would have none of it.

A Committee was appointed by the Muslim League to tour the various Provinces and to prepare a catalogue of the grievances in justification of what was said. By sheer repetition several times from different platforms by different speakers a volume of opinion was created that political majorities of the kind that emerged after the elections under the new Act could not be trusted to deal fairly the Muslims who formed a communal minority of about 22.6 per cent. of population. The Muslim League officially declared in favour of non-co-operation with War effort and such members of the League who had the temerity to join National war fronts in the Centre or in the Provinces were threatened with disciplinary action. Some got scared, some evaded or wriggled out, but few were able to resist on the

bed-rock of principle that non-co-operation with war effort was not wise for any party.

Mr. Jinnah was insistently putting forward his claim that the 66 millions of Muslims in this country formed a separate nation and that the Hindus formed a separate nation and that the two cannot live together in India as a homogeneous popular unit, and that therefore it was necessary to form a separate State for the Muslim nation and a separate State for the rest. It may be noted here that both in the Punjab and in Bengal which ought to be the citadels of the Pakistan States contemplated by the Muslim League, the Muslim League did not form the Ministries in power for they were not politically strong enough to do that. The Unionist party in the Punjab has been in power and is still in power notwithstanding all the efforts of Mr. Jinnah and his group to displace them. In the Punjab Mr. Fazlul Huq was in power with the strong support of the Krishak Party and other Hindu elements. Later if Sir Nazimuddin and his friends were put into the Ministry it is well known that it was due to the support of the European block with the active assistance of the Governor who perhaps thought that some form of popular Government was better than Government under section 93.

Though in the two Provinces that really mattered politically, the Muslim League was in no way strong, the agitation for Pakistan was continued, those who were loudest in support thereof, coming from the Provinces which are not likely to be incorporated in the Pakistan zone, if the Pakistan solution adumbrated by Mr. Jinnah should find general acceptance. In March 1940 the Muslim League adopted the following resolution which we may conveniently call the Lahore resolution.

The following is the text of the resolution relating to Pakistan which was adopted at the Muslim League Session at Lahore on 23rd March 1940:

"While approving and endorsing the action taken by the Council and the Working Committee of the All India Muslim League, as indicated in their resolutions dated the 27th of August, the 17th and 18th of September and 22nd of October, 1939, and the 3rd of February, 1940, on the constitutional issue, this session of the All-India Muslim League emphatically reiterates that the scheme of Federation embodied in the Government of India Act, 1935, is totally unsuited to and unworkable

in the peculiar conditions of this country and is altogether unacceptable to Muslim India.

"It further records its emphatic view that, while the declaration dated the 18th of October, 1939, made by the Viceroy on behalf of His Majesty's Government is reassuring in so far as it declares that the policy and plan on which the Government of India Act, 1935, is based will be reconsidered in consultation with the various parties, interests and communities in India, Muslim India will not be satisfied unless the whole constitutional plan is reconsidered *de novo* and that no revised plan will be acceptable to the Muslims unless it is framed with their approval and consent."

"Resolved that it is the considered view of this session of the All-India Muslim League that no constitutional plan would be workable in this country or acceptable to the Muslims, unless it is designed on the following basic principles, namely that geographically contiguous units are demarcated into regions which should be so constituted, with such territorial readjustments as may be necessary, that the areas in which the Muslims are numerically in a majority, as in the north-western and eastern zones of India, should be grouped to constitute "independent States" in which the constituent units shall be autonomous and sovereign and that adequate, effective, and mandatory safeguards should be specifically provided in the constitution for minorities in the units and in the regions for the protection of their religious, cultural, economic, political, administrative and other rights and interests in consultation with them and, in other parts of India where the Mussalmans are in a minority, adequate, effective and mandatory safeguards shall be specifically provided in the Constitution for them and other minorities for the protection of their religious, cultural, economic, political, administrative and other rights and interests in consultation with them.

"This session further authorises the Working Committee to frame a scheme of Constitution in accordance with these basic principles, providing for the assumption finally by the respective regions of all powers such as, Defence, External Affairs, Communications, Customs and such other matters as may be necessary."

This resolution has been carefully analysed in the course of the Gandhi-Jinnah's correspondence. But apart from the interpretation that Mr. Jinnah would like to put on the language of the Lahore resolution we have to remember that this resolution was endorsed by the open

session of the Muslim League in December 1940. As the result of the All India Muslim League in open session accepting and reiterating its Lahore resolution, the creed of the Muslim League was altered as follows :

"The aims and objects of the All India Muslim League shall be (a) the establishment of completely independent states formed by demarcating geographically contiguous units into regions which shall be so constituted, with such territorial readjustments as may be necessary, that the areas in which the Mussalmans are numerically in a majority as in the North-Western and Eastern zones of India, shall be grouped together to constitute independent states which shall be free national homelands in which the constituent units are autonomous and sovereign."

In clarification of what was meant by this part of the creed Mr. Jinnah said as follows :

"Let me tell you as early as I can possibly define it, that the goal of All India Muslim League is this : We want the establishment of completely independent States in North-West and Eastern zones of India with full control finally of defence, Foreign affairs, communications, customs, currency and exchange etc. We do not want in any circumstances, a constitution of an All India character with one Government at the centre. We will never agree to that. If we once agree to that, let me tell you the Muslims will be absolutely wiped out of existence. We shall never be tributaries of any power or any Government at the centre, so far as North-Western and Eastern zones of our free National homelands are concerned".

The creed has incorporated in the second part the following provision :

"The adequate, effective and mandatory safeguards shall be specifically provided in the constitution for minorities in the above mentioned units and regions for the protection of religious, cultural, economic, political, administrative and other rights and interest in consultation with them."

The third part of the league creed as altered is

"that in other parts of India where the Muslims are in a minority adequate, effective and mandatory safe-guards shall be specifically provided in the constitution for them and other minorities for the protection of religious, cultural, economic political, administrative and other rights and interests in consultation with them."

In the same session in December 1940 Mr. Jinnah talked of organising volunteers to safeguard and promote the political rights of Muslims as envisaged in the altered creed. The new danger that was emerging was quickly perceived by the National Liberal Federation of India. At their 23rd session held at Madras in December 1941 the following resolution was unanimously carried after well argued speeches were made :

"The National Liberal Federation of India is emphatically opposed to any idea of dividing India into Pakistan and Hindusthan on communal basis. Such a division in the opinion of the Federation is non-national, inimical to unity, and cohesion of India and entails the danger of disintegrating the national units, resulting in complete disruption of the nation."

As a corollary they also passed unanimously the following resolution:—

"The National Liberal Federation while agreeable to the safeguarding of the interests of all sections of the people, considers that the aim of Indian Political evolution should be a democracy not based on considerations of race or creed, and therefore the Federation is definitely opposed to the permanent existence of communal electorates and the present communal award, at the same time, as it would not be practicable to effect this reform immediately owing to existing conditions, it considers that steps should be taken towards the elimination of separate electorates by the creation of joint electorates with reserved seats for a definite period".

The Liberal Party of India deserves warm praise and the gratitude of the public for the wise lead that it has given on this question. The Hindu Mahasabha has followed suit and the recent speeches of the Rt. Hon'ble V. S. Srinivasa Sastri as an outstanding spokesman of the Liberal Party have clarified with inimitable eloquence, political wisdom and statesmanship all the issues involved in such a manner that every patriotic Indian, be he a Hindu or Muslim will accept the inevitable conclusion that a division of India in the manner contemplated by the sponsors the Pakistan is impossible, unworkable, unpatriotic and will disrupt and dislocate the edifice of national life built up for the last two centuries with India as a single geographical, cultural and administrative unit. In all the Gandhi—Jinnah correspondence it does not appear that adequate notice has been given to the fundamental change of the Muslim League creed which even with all the dictatorial powers vested in Mr. Jinnah it is not open to him to rescind without a formal resolution of the League. On the basis that is clearly enunciated in the creed of the Muslim League of which Mr. Jinnah claims to be an accredited spokesman, it is not understandable on what basis Mr. C. Rajagopalachari and Mr. Gandhi both of them ex congressmen hoped to effect a conversion of Mr. Jinnah to the national point of view or in the alternative conversion of the Congress to Mr. Jinnah's Pakistan point of view.

Just at a time when Mr. Jinnah had failed in his efforts to disrupt the Unionist Party in the Punjab and he was fast losing ground in Bengal as the result of the calamitous famine and administration of the Province under the ægis of Sir Nazimuddin, the League Prime Minister, when the political influence of Mr. Jinnah as the Muslim League dictator seemed to be receding into the back ground just at such a time Mr. C. Rajagopalachari published the formula that he placed before Mr. Jinnah for his acceptance. The following is a text of what is known as the C. R. Formula.

"Basis for terms of settlement between the Indian National Congress and the All-India Muslim League to which Gandhiji and Mr.

Jinnah agree and which they will endeavour respectively to get the Congress and the League to approve :

(1) Subject to the terms set out below as regards the constitution for Free India, the Muslim League endorses the Indian demand for independence and will co-operate with the Congress in the formation of a Provisional Interim Government for the transitional period.

(2) After the termination of the war, a commission shall be appointed for demarcating contiguous districts in the north-west and east of India, wherein the Muslim population is in absolute majority. In the areas thus demarcated, a plebiscite of all the inhabitants held on the basis of adult suffrage or other practicable franchise shall ultimately decide the issue of separation from Hindustan. If the majority decide in favour of forming a sovereign State separate from Hindustan, such decision shall be given effect to without prejudice to the right of the districts on the border to choose to join either State.

(3) It will be open to all parties to advocate their points of view before the plebiscite is held.

(4) In the event of separation mutual agreement shall be entered into for safeguarding defence and commerce and communications and for other essential purposes.

(5) Any transfer of population shall only be on an absolutely voluntary basis.

(6) These terms shall be binding only in case of transfer by Britain of full power and responsibility for the governance of India."

At the time when Mr. C. Rajagopalachari made this formula he had ceased to be a member of the Congress and he held no office in any congress body. He was negotiating with Mr. Jinnah in his personal capacity as an ordinary publicist interested in political work. These ideas of his did not command the acceptance of his colleagues on the All India Congress committee while he was a member thereof. It will be useful to remember that what is known as Pandit Jagat Narain resolution was passed by the All India Congress committee sometime before the famous August resolution. The All India Congress committee had expressed in clear and unequivocal terms its opposition to the dismemberment of India on communal or racial principles. After August 194 the All India Congress committee could not function nor could any plenary session of the Congress be held. With this official view on record, an ex-congressman put forward a formula opposed to the terms of the official resolution. Soon after his resignation from all

congress bodies Mr. C. Rajagopalachari toured the country and tried to enlist public support for his position that some compromise with Mr. Jinnah was inevitable even if it be on his own terms. But that agitation though enormous newspaper publicity was given to it made no impression. The few congressmen that were outside jails and were free to express their opinions disapproved of any such vivisection of the country.

It is now learnt that before Mr. C. Rajagopalachari formally made his proposals to Mr. Jinnah he obtained the approval of Mahatmaji, at a time when he was in detention.

After Mahatmaji was released unconditionally Mr. C. Rajagopalachari announced the terms in which he made his offer to Mr. Jinnah and also the fact that it had the previous approval of Mahatmaji.

The association of Mahatmaji's name with this offer and Mahatmaji's recommendation of it had as could be naturally expected a tremendous effect. Big political land-slides happened. Out of sheer respect for Mahatmaji well known political leaders in different provinces retracted their condemnation and began to discover new points and tried to cover up their volteface and to give their loyal and unquestioned obedience to Mahatmaji.

The historic meeting between Mr. Gandhi and Mr. Jinnah then took place and in the course of their conversation Mahatmaji both won and lost. He gave his offer to Mr. Jinnah in the following terms :

GANDHIJI'S OFFER

I have your two letters of 23rd September in reply to my letters of the 22nd and 23rd.

With your assistance, I am exploring the possibilities of reaching an agreement, so that the claim embodied in the Muslim League Resolution of Lahore may be reasonably satisfied. You must, therefore, have no apprehensions that the August Resolution will stand in the way of our reaching an agreement. That Resolution dealt with the question of India as against Britain, and it cannot stand in the way of our settlement.

I proceed on the assumption that India is not to be regarded as two or more nations, but as one family consisting of many members, of whom the Muslims living in the north-west zones, i.e., Baluchistan, Sind, North-West Frontier Province and that part of the Punjab where they are in absolute majority over all the other elements and in parts

of Bengal and Assam, where they are in absolute majority, desire to live in separation from the rest of India.

Differing from you on the general basis, I can yet recommend to the Congress and the country the acceptance of the claim for separation contained in the Muslim League Resolution of Lahore 1940 on the basis and on the following terms.

The areas should be demarcated by a Commission, approved by the Congress and the League. The wishes of the inhabitants of the areas demarcated should be ascertained through the votes of the adult populations of the areas or through some equivalent method.

If the vote is in favour of separation, it shall be agreed that these areas shall form a separate State as soon as possible after India is free from foreign domination and can, therefore, be constituted into two sovereign independent States.

There shall be a treaty of separation which should also provide for the efficient and satisfactory administration of Foreign Affairs, Defence, Internal Communications, Customs, Commerce and the like, which must necessarily continue to be matters of common interest between the contracting parties.

The treaty shall also contain terms for safeguarding the rights of minorities in the two states.

Immediately on the acceptance of this agreement by the Congress and the League, the two shall decide upon a common course of action for the attainment of the Independence of India.

The League will, however, be free to remain out of any direct action, to which the Congress may resort and in which the League may not be willing to participate.

If you do not agree to these terms, could you let me know in precise terms what you would have me to accept in terms of the Lahore Resolution and bind myself to recommend to the Congress? If you could kindly do this, I shall be able to see, apart from the difference in approach what definite terms I can agree to. In your letter of 23rd September, you refer to the basis and fundamental principles embodied in the Lahore Resolution and ask me to accept them. Surely, this is unnecessary when as I feel I have accepted the concrete consequence that should follow from such acceptance.

The definite rejection of the two nations theory is a political mile stone. So too is the uncompromising adherence to the principle of self-determination to the Hindus in the Provinces of Punjab and Bengal in areas where they are in a numerical majority. Yet another

notable triumph is the insistence on some central machinery to regulate subjects of common concern such as defence, foreign relations, transport, currency etc. If Mahatmaji will stand by these three cardinal points the integrity of India will yet be safeguarded and saved for ever. The losses are however that Mahatmaji has yielded to Mr. Jinnah on the principle that if the result of a plebiscite of the areas concerned in which every adult member of the population participates is in favour of the creation of a separate sovereign state for Muslims the same should be conceded. Here there are various other matters that have to be borne in mind and the calamitous consequences of any such concession should be adequately perceived. Only about 18 millions of muslims will be in the North West zone and about 27 millions will be in the North East zone. About 18 millions more will be in the Provinces in Hindusthan proper. The separation will in no conceivable way prove a good or lasting solution of the Muslim minority question. The question of Indian States is altogether left out of account and it is impossible to have Pakistan or Hindustan central Governments without taking into account the position of the Indian States. This would only lead to the Balkanisation of India making every Province weak and ineffective both in internal and in external affairs and India will once again become a prey to internal strife and external aggression without any efficient central organisation to deal with both and maintain even normal administrative efficiency to which the people of India are entitled by reason of the economic and cultural progress which India has now attained.

We should have been happy indeed if at the termination of the Gandhi-Jinnah correspondence, Gandhiji had withdrawn his offer. But unfortunately both Mahatmaji and other responsible politicians are freely mentioning that the offer still stands. To that extent the seed of trouble is still there. Once again we may advert to the further speeches of the Rt. Hon'ble V. S. Srinivasa Sastri on this aspect of the question and particularly to the Arbitration solution suggested by him. I have no doubt that when all the Congress leaders are released and free and uncontrolled discussions and decisions become possible, the Indian National Congress will stand side by side with the National Liberal Federation of India in persuading the whole nation including Hindus and Muslims to accept the grand national ideal of a united powerful modern democratic India as envisaged in the 1941 resolutions of the National Liberal Federation of India, which have been extracted above.

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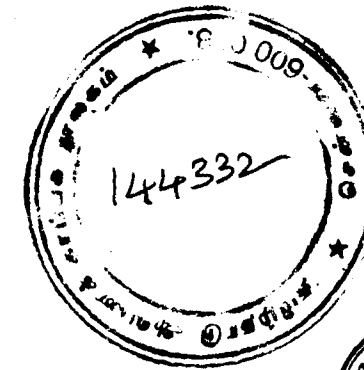
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THE DRAFT HINDU CODE

BY

Mr. K. BALASUBRAMANIA AIYAR, BA., B.L.

Advocate, Madras.

At the outset, I have to advert to the question whether it is necessary or desirable or even feasible to introduce legislation on many of the important branches of Hindu Law at the present situation when the war is still on and is not yet concluded, with complete victory for the allies and when the constitutional future of India is still undecided. Six, out of the eleven Provinces of India, have no provincial legislatures working at present and the future constitution of the Central Government and its powers are entirely unknown. Nobody knows whether, after the war, there will be a strong Central Government in India which will have the power of legislating for the whole of the country or whether India will be divided into a number of autonomous sovereign states. Even now, so far as agricultural land is concerned, the power of legislation rests entirely with the Provinces. Even if the draft Hindu Code is to be passed by the present Central Legislature, the Committee can only hope, "that the provincial legislatures will speedily extend its relevant provisions to agricultural land also". As there are no provincial legislatures working in six provinces, only Governors' Acts have to be passed in those provinces, if the Hindu Code passed by the Central Legislature is to be applied to agricultural land also. In the explanatory statement appended to the published draft Hindu Code the Committee point out that the only topics on which the Centre can

legislate upon are 'Intestate and testamentary succession', 'Marriage and divorce', 'Minority and Guardianship' and 'adoption'. They have necessarily to leave out the important topic of religious endowments and the Hindu Law relating to charities and gifts. It has also been pointed out on many occasions by leading politicians that the present Central Legislature has been in existence for such a long time that it has ceased to be truly representative of the present currents of thought in the country and of the opinion among the people. It is also to be doubted whether a legislation passed by the present Central Legislative Assembly can at all have any permanent effect and will remain unchanged for sometime at least when the whole constitution of India is itself in the melting pot and when it is doubtful whether finally there will be even the Central Legislature for the whole of India with powers to legislate upon topics of Hindu Law for the whole of the country. I feel that, to embark upon a legislation of this kind, at the present juncture, will not be the part of wisdom and practical politics.

Further the committee has invited the views of representative persons and of the general public upon the draft code. But, the public mind is very much agitated over the difficulties, economical and political, created by the war situation and people are absorbed in the problem of trying to tackle the difficulties of even daily existence. A calm, peaceful and happy atmosphere, really necessary for the effective discussion of the very important changes tried to be introduced in the Draft Hindu Code on the topics of Hindu Law, which deeply affect the Hindu Society, does not exist and it is undesirable that the Government of India should embark upon a legislation affecting vitally the lives of many millions of Hindus who form the majority of the population of India at the present juncture.

It is not really correct to say that there is any general feeling expressed in the country that "an entire Hindu Code should be in operation at an early date." Even assuming that some people who have dedicated their lives for social reform may have given utterance to such a feeling, it does not represent the general opinion as they form only a small section of the large body of the Hindus. Moreover, the evils of piecemeal legislation which the Committee feels should be avoided, will continue to remain, as admittedly, the proposed legislation does not affect the agricultural land which forms the major part of the property of the Hindus and does not comprise other topics of Hindu Law such as Religious Endowments and the Hindu Law of gifts and

charities which lie exclusively within the powers of the Provincial legislatures. It therefore seems to me to be desirable to drop the legislation for the present and to wait, if necessary for the proper time.

I shall now discuss the various important provisions of the code.

The draft code introduces certain very important changes. Some of them have been done with a view to bring uniformity, in matters where the various schools of Hindu Law differ. There are certain other provisions which try to settle the conflicts of judicial decisions. But there are certain important provisions which introduce fundamental changes in the existing Hindu Law and usage. It will be very conducive to a proper and satisfactory codification of Hindu Law, if the codification is dealt with in two stages by the Committee and by the Legislature.

At the first stage, the codification should be of the existing law and attention should be confined to settling of conflict of judicial decisions and of interpretations by the various schools of Hindu Law. Thereafter, seeing how it is received by the Hindu community and after gaining experience of its working sometime, attempt may be made to introduce any fundamental and drastic changes that are demanded by a large body of public opinion among the Hindu community. I feel that the task in the first stage itself is a sufficiently difficult one, as we are dealing with a law like the Hindu Law which has not been codified during all these many centuries and which is a composite law applicable to many communities having different customs and made up of differing schools of law adopted by the various portions of this vast sub-continent.

In the definition of the term "Hindu" itself, a very important principle has been enunciated which has to be really welcomed. The Hindu religion has, from the days of the medieval period in Indian History, been a merely ethnic religion and its policy has been not to readmit those who strayed away from the Hindu fold by the adoption of other faiths. It will not be wrong to say that there is a strong general feeling among the Hindu community that all facilities should be given for taking back into the Hindu fold those of our brethren, who desire to come back to the religion of their forefathers and that the policy adopted in recent times by our ancestors is a short sighted one and will seriously endanger the existence of the Hindu society itself, in the future, when the Hindu religion has to co-exist with other

active proselytizing religions in India. I have to point out that the feeling of the orthodox community in the matter is not warranted by the smritis and by the early commentaries like the Mitakshara. So far as one could see, the smritis and commentaries like the Mitakshara do not provide in express terms any change in the law applicable to a person who renounces or changes his religion. The definition of "patita" does not include a mere change in religion. In Colebrooke's digest Vol. II P. 431 the definition given of a "patita" by the Brahma Purana is quoted—"They who have committed crimes in the first degree are considered as degraded persons viz., the "Mahapatakis." The Yagnyavalkya Smriti regards "a belief in Asat Sastra" as one of the upapatakas (patakas of the minor degree). The Mitakshara annotates 'Asat Sastra,' "as atheism and the like. But it must be borne in mind that an upapataka does not render a person a patita. So a conversion to Mohammanism or Christianity, with the consequent change in the habits of food etc., may, at the worst, render a person a patita in the eye of Hindu religion. But the texts in the chapters relating to Prayaschitta provide expiatory penances and rites for the patita and it is pointed out that after undergoing such expiations his right of inheritance is established. Even in the case of a patita according to the texts he and his offspring are liable to be maintained out of the family property. The wives of the patita have got rights of maintenance. The daughters born even after his degradation are not to be treated as outcastes (vide Vasishta Smriti quoted in Apararka. Dr. Jha's "Hindu Law in its Sources," p. 97). In Colebrooke's Digest, Vol. II p. 432, it is said, quoting Vachaspati Bhattacharya :

"Penance or other atonement which legalises his claim to property can only be performed with money begged during his fallen state from his son or some other person. It is not proper to affirm that his property in wealth acquired during his fallen state is forfeited by reason of his degradation."

From the foregoing, it is clear that patitas are not beyond the pale of Hindu Law. They do not cease to be Hindus. If, therefore, a change of religion is regarded as an upapataka, the convert does not cease to be a Hindu, and the Hindu Law is clearly applicable to him. Even if change of religion is regarded as a degradation the consequence necessarily follows that according to that law, the degradation may be atoned for and that the convert may be readmitted to his status. Accordingly in (I.L.R. 9 Mad. P. 470) the High Court observes:

"that the convert may be readmitted to his status, had he had at any time during his life renounced Christianity and performed the rites of expiation enjoined by his caste." In castes where no expiatory ceremonies are necessary, he can be reconverted without them. (Vide 67 M.L.J. P. 389).

The Draft code proposes to divide Hindu Marriages into "sacramental" and "Civil marriages". This division is opposed to the fundamental principles of Hindu religion and to immemorial tradition and usage. It also runs counter to the sentiments of Hindu Society, as a whole. The Hindu Law relating to marriage is inextricably mixed up with Hindu religion, rituals and customs. The Hindu Law as such, apart from legislation, has never upto now recognised a purely civil marriage. According to the Hindu religion, marriage is not a civil contract but a *samskara* or sacrament conferring a status and the Hindu Law has adopted this principle. This is recognized for all classes of Hindu Society. There may be differences in ritual or in custom in regard to marriages among the various communities in Hindu society but upon the general principle that marriage is not a contract but a religious *samskara*, there is no difference among all the classes and communities of the Hindu population in India. It will therefore be a revolutionary change opposed to the fundamental notions of Hindu Law, custom, religion and ritual, to introduce civil marriage as part of the ordinary Hindu Law. Civil marriage has been recognized only by Statute i. e., in the Special Marriage Act of 1872 which, before its amendment in 1923, applied to those who do not profess the Hindu, or the Christian, Jewish, Mohammedan, Parsi, Buddhist or Jain religions, as seen from the preamble to the Act. But only in 1923 a clause was added as follows :

For persons who profess the Hindu, Buddhist, Sikh or Jain religions and to legalize certain marriages, the validity of which is doubtful.

This amendment was made to meet the problems which arose on account of inter-caste marriages taking place. The provisions of the Special Marriage Act were sought to be taken advantage of by people who married outside their caste, by making a formal declaration that they, the parties to the marriage, do not profess the Hindu or other religions mentioned therein. In many cases such declarations were only meant for the purposes of the Act and with a view to take advantage of its provisions, the parties remaining Hindus, all the time. A

doubt was also thrown otherwise upon the validity of such marriages by judicial decisions. Hence the amendment was made. But it is worthy of note that sections 22 to 26 added by the amendment to the Special Marriage Act clearly show that these inter-caste marriages were generally opposed to the sentiments of Hindus and to the spirit of the Hindu Law. Hence various disabilities were imposed under these sections upon those marrying under that Act. The marriage under this Act of any member of an undivided family who professes the Hindu religion shall be deemed, to effect a severance from such family. He shall have the same rights and will be subject to the same disabilities in regard to any right of succession to any property as a person to whom the Caste Disabilities Removal Act of 1850 applies. Under that Act of 1850 though the rights of inheritance of the person to whom the Act applies is not impaired his descendants cannot claim any right as reversioners or collaterals to the estate of deceased Hindu. Section 23 of the Special Marriage Act shall not enable a person marrying under the Act to claim any right to any religious office or service or the management of any religious and charitable Institutions. The succession to his property shall be regulated by the provisions of the Indian Succession Act of 1865. He has no right of adoption as other Hindus have. Finally, his father, shall, if he has no other son living, have the right to adopt another person as a son under the law to which he is subject. All these provisions clearly emphasize the fact that the marriage was not one according to the Hindu Law and is opposed to the Hindu religion and custom, and ritual. In fact, it severs him from the Hindu communion. It also proceeds on the principle that according to Hindu Law only such issue as are born as the result of the samskara of marriage according to the Hindu rites and customs can confer spiritual benefit on their parents by the performance of funeral rites and other ceremonies. While this is the state of the Hindu Law and also of legislation, the present proposal in the Hindu Code to introduce civil marriage as part of that code, and to assimilate the provisions of the Special Marriage Act omitting Sections 22 to 26 (both inclusive) by the first schedule clearly makes a drastic and revolutionary change in the existing law and legislation. So long as the majority of the Hindu population observe the rules and customs of caste and so long as, in their opinion the caste system is not abolished in the country, any codification of the Hindu Law including such provisions as the above, cannot be said to reflect the

opinions or notions or embody the usages of the Hindu society, but will be an attempt in the direction of abolishing the caste system altogether under the guise of codification of the Hindu Law. Though everything may be regarded as a step in the right direction by those reformers who advocate the abolishing of the caste system altogether, it must be admitted by all, that the proposal is opposed to the opinions and usages of the majority of the Hindu population. I am of opinion that, it is not within the scope of any codification to introduce a change like that.

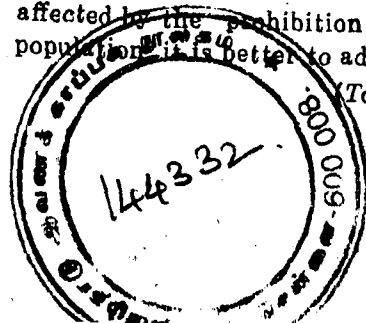
The code proposes to enforce the rule of strict monogamy for Hindu males also. The Hindu Law has enforced strict monogamy in the case of females. But it has not enforced strict monogamy till now in the case of Hindu males. The Hindu Law has never prohibited second marriages for males. The Hindu Smritis, while favouring ordinarily the observance of monogamy by males allow them to have second marriages in certain cases, viz., when the first wife is barren or diseased, or vicious, or where she consents to the husband taking a second wife. But the draft Hindu Code makes it a condition for valid marriage that neither party must have a spouse living at the time of the marriage and Part IV clause 24 makes all second marriages null and void, and makes them also offences punishable under sections 494 and 495 of the Indian Penal Code. It is well to remember, in this connection, that monogamy is not enforced under the Mohammedan Law, and therefore, a fairly considerable portion of the population of India who follow the Mohammedan Law are not obliged to observe monogamy. It is only the Christian Law that enforces monogamy strictly.

It is true that some social reformers among women have strongly advocated the view that monogamy should be strictly enforced in this country but even their desire cannot be entirely fulfilled so long as the Mohammedan Law is not changed similarly. There has been no persistent public opinion demanding the strict enforcement of monogamy, and the second marriage of males has not been generally viewed with abhorrence or disfavour by the majority of the Hindu women in the country. It may even be said that in some cases Hindu wives have been willing consenting parties to their husband's marrying a second time, for example, where they have borne no issue to their husbands. The desire to have progeny who will continue their family name and perform funeral ceremonies and confer spiritual benefit by staddhas is

still a strong and enduring sentiment amongst Hindus. Hence it is desirable that strict monogamy for males should not be enforced by statute. Exceptions will have to be provided for cases where the first wife is barren or consents to the husband marrying a second wife. Especially, when we have regard to the fact, that among Hindus, females are greater in number than males (vide census figures of 1941) it will be seen readily that it is not desirable to enforce strict monogamy. It may give rise to the problem of spinsters. The great Swami Vivekananda once remarked: "In India we have the problem of widows and in England, they have the problem of spinsters." It may also give room to other dangers when we have Mohammedan populations, who do not observe monogamy, living side by side with Hindus in many parts of India. Even those of us who feel that monogamy is a healthy and progressive institution must have regard to these special circumstances in our country. In my opinion, therefore, the rule as to strict monogamy in the case of Hindu males need not be enforced.

The Code proposes also to abolish the prohibition as regards Sagotra and Samana pravara marriages among castes having gotras and pravaras. This prohibition has existed all these many centuries without any change in the Hindu Law. Though there have been many differences among the smriti writers and other later Hindu jurists in regard to many matters, they have all been of the same opinion as regards sagotra and samana pravara marriages viz., that they are null and void. While the Smriti writers attempted in the course of centuries, to effect changes according to the exigencies of the times, in this matter, they have not advocated any change. The custom has been uniform throughout the centuries. Though some educated men now have felt that the prohibition is unnecessary, still the rule as regards marriage outside the gotra has been generally followed and never consciously departed from. At this distance of time it is difficult to know exactly the reasons why this prohibition has been so strictly laid down and observed all these centuries. I am aware that Mr. Deshmukh has introduced a bill in the Legislative Assembly in regard to this matter and that some people feel that this prohibition narrows the circle from which husbands may be chosen for Hindu girls and makes it difficult in some cases for parents to get their daughters married. Still, the reasons are not sufficiently strong to abolish the uniform custom of centuries. I feel, therefore, that it is not desirable that, in the guise of codification, a revolutionary change like that should be introduced. Especially when the communities affected by the prohibition form a small percentage of the Hindu population, it is better to adopt the existing usage in regard to them.

(To be continued)



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