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THE
PRESENT POSITION OF HINDU WOMEN
AND THE
MEANS OF AMELIORATING THEIR LOT

BY
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BOMBAY HIGH COURT.

FOREWORD

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PREFACE

The contents of this booklet first appeared in the February and March issues of this year of the "Bombay Law Journal." My friends liked the articles and it was suggested that in view of the importance of the subject, the articles should be published in book form and circulated in the whole of India to elicit further public opinion on the subject. I have, therefore, great pleasure in offering this small publication in the hope that Hindu women will have their legitimate rights at no distant date.

I have now nothing to add except that I wish to express my feelings of sincere gratefulness to Mr. N. H. Pandia and Mr. B. G. Kher for all their kindness to me and for their keen interest in the publication of this work.

I also thank the Government of Bombay, Home Department, for granting my request to allow facilities to Mr. Kher to write the Foreword.

Dated 28-3-1941.

R. G. BURWAY.

FOREWORD

The question of Hindu women's rights is engaging every one's attention. The questionnaire issued by the Rau Committee is before the public. Mr. Burway's little brochure on the present position of Hindu women and the means of ameliorating their lot will, therefore, be very useful to all who are interested in the reconstruction of Hindu society. The author's view-point is best expressed in his own words. In requesting me to write a brief foreword, he wrote, "I honestly feel that the present generation of Indians should try to imbibe the national virtues of the West. But when we try to adjust our social fabric to suit the altered conditions of life, the progress of Hindu women should be on the solid foundations of Hindu culture and civilization which are essentially based on piety, discipline, self-sacrifice for one another, simple living and high thinking—in fact everything that is noble in man—which is bound to make one's economic and earthly life smooth, happy and in tune with the Infinite." I am in agreement with his view-point generally. I believe the education which is now imparted to our girls in our schools and colleges, is leading them away from the path of true happiness.

Mr. Burway deals with personal rights on page 8, rights to property on page 13 and with the question of marriage and divorce on page 21—which latter is really the most important question for women. Marriage involves self-restraint and self-discipline. While it may be necessary to provide for divorce in certain circumstances I do not feel that divorce provides an infallible remedy for marital unhappiness, and would proceed cautiously before imitating the divorce laws of Western countries. Economic improvement of woman's position is more urgent. The subject is so complicated, but the author has tried to elucidate it as much as he could. Reference has been made to Mysore and Baroda legislation. Mr. Burway's conclusions are to be found at page 27 and I think they are worthy of careful consideration. My personal relations with Mr. Burway, who has served Articles under me, make it a matter of deep gratification to write these few lines to commend his little booklet to public attention.

THE PRESENT POSITION OF HINDU WOMEN AND THE MEANS OF AMELIORATING THEIR LOT

(By R. G. BURWAY, Esq., B.A., LL.B., *Advocate* (O.S.))

Historical Background.

WOMAN'S position in all societies and in all ages has always been of dependence on man. There may be a difference of degree here and there as time and circumstance permitted. All the same, man has always been chivalrous in his attitude towards women, although that chivalrous spirit differed according to age and country and the religion to which the man or woman belonged. Some regarded women as a covetable possession and as objects of enjoyment. But that was the index of a rude age and rude minds. As man became more cultured and civilised, his attitude towards the weaker sex also softened and today, woman is being universally regarded by man as his partner in life with more or less equal rights with himself. All the same her inherent dependence on man remains as ever. In this article, it is proposed to examine the present condition of Hindu women and to suggest some means of ameliorating their lot still further, in perfect consonance with Hindu culture and civilisation.

In order to arrive at proper conclusions, it is necessary to take a brief historical retrospect of the status of Hindu women as it obtained in Vedic times and trace it down to present days. That will clearly bring home to the reader how the structure of Hindu society has been built on the solid foundations of piety and virtue. At the outset it should be borne in mind that Hindu Dharma-Shastras and Hindu law givers never considered man or woman as separate entities, in that in their view, man or woman had never any separate or exclusive existence. Consequently they regarded man and woman put together as one entity—one whole—and the one without the other was never complete in their eyes. This conception in its trail, led to the further view that every man must have

a wife and every woman a husband, for achieving stability and permanence in the Home Life. The contrary idea, therefore, was to prevent man or woman leading a desultory and irresponsible life. The result was that the Hindu Dharma was always aimed at giving every woman the status of a wife and thus prevent her, as far as possible, from leading a dissolute and irresponsible life.

It was, however, not possible for every woman to go through the approved and the best form of marriage owing to circumstances over which she had no control or which she never foresaw. Sometimes she herself fell a prey to temptations and sometimes the lust of man had been instrumental in causing her degradation or moral turpitude. But the Hindu law givers had always been generous even towards such fallen women and to prevent their further downfall and social ridicule, they invented further forms of marriage, which afforded an opportunity to every woman, in however deplorable a condition she might be, to attain the status of a wife and thereby give a full stop to her further degradation. These ideas, therefore, gave rise to eight forms of marriage, of which four were Approved forms and the rest Unapproved. The Approved forms were :—*Bramha*, *Daiva*, *Arsha* and *Prajapatya*. A marriage was said to be according to *Bramha* form when the father or the guardian of the bride gave her in marriage without receiving any consideration from the bridegroom for giving the girl in marriage. It was *Daiva* when the girl was given in marriage to the Officiating Priest. The marriage was *Arsha* when the father of the girl received from the bridegroom a pair of kine. It was styled *Prajapatya* when the father gave his daughter to the bridegroom saying, "You two be partners for performing secular and religious duties."

The four Unapproved forms of marriage were :—*Asura*, i.e., where the father or the guardian of the girl received consideration from the bridegroom for giving the girl in marriage ; *Gandharva*, i.e., where the marriage was by mutual consent of the bride and the bridegroom ; the *Rakshas*, where the marriage was by forcible capture ; the last and the most condemned form of marriage was *Paishachya* which meant marriage of a girl by a man who had ravished her when asleep or when flushed with liquor. It is rather unfortunate that a learned scholar like Mr. Mayne should have described some of these unapproved forms of marriage as "euphemisms for seduction and rape." (Vide page 73 of Mayne's "Hindu Law and Usage," 1914 Edn.). If the learned author had gone into

the real spirit which actuated the ancient law givers to recognise even such forms of marriage, he would certainly have refrained from passing such a scathing criticism of these forms of marriage, which aimed at affording every woman an opportunity of improving her life by attaining to the status of a wife and thereby prevent herself from being involved into further moral turpitude. The Hindu Dharma Shastras, always legislated round the man and the woman and never between them, as they regarded man and woman together, as forming the one whole.

The other characteristic of Hindu law givers was their scrupulous regard for the chastity of every woman. The essential value of chastity is keenly realised and extolled by all the races and religions of the world and the exact import of it is just the same to the Hindu mind as it is to the Westerner and so well described in Milton's "Comus." But in its application to human life and conduct the degree of its rigour differs according to race and religion and the view points with which the union of man and woman is regarded by the various religions of the world. This union of man and woman is generally styled as marriage. In most of the religions, marriage is held to be a contract, whereas to the Hindu mind marriage is a sacrament ; and it is further held to be an indissoluble tie which knows no breaking away from the union once formed. Consequently the life of chastity as between man and woman entailed much more sacrifice, especially on the part of the woman, to attain to the true Hindu ideal of chastity than it did in the case of women of other religions. How Hindu society attained to this very high and noble form of chastity on the part of Hindu women, has been very lucidly described by the late Mr. C. V. Vaidya, M.A., LL.B., in his very learned treatise on the Mahabharat, entitled "Mahabharatacha Upasanhara," in Marathi language. I quote below an extract from this very charming Magnum Opus of the talented author :—

“ भारतीय आर्यांची व आर्यज्ञियांची पातिव्रत्याविषयीची कल्पना पूर्व काळी फारच उच्च स्थितीस जाऊन पोचली होती. महाभारतातील अनेक उदाहरणावरून व कथांवरून आर्यज्ञियांच्या पातिव्रत्याविषयी आपल्या मनावर विलक्षण आदराचा ठसा उमटतो. अशा प्रकारचे भारतीय आर्य ज्ञियांचे उदात्त चरित्र दुसऱ्या कोणत्याही लोकांत दृष्टोत्पत्तीस येणार नाही. ॥ श्रीणामार्यस्वभावानाम् पतिर्एकोहि दैवतम् ॥ आर्य ज्ञियांना पति हेच एक दैवत आहे अशी समजूत ह्या वेळच्या आर्य ज्ञियांच्या वर्णनावरून स्पष्ट दिसून येते. सावित्रीचे आख्यान

म्हणजे या संबंधाने आपल्या समोर एक पातिव्रत्य धर्माचा अति उच्च मूर्तिमंत सुंदर पुतळा महाभारतांत उभारलेला आहे. त्याचा आज हजारों वर्षे हिंदुस्त्रियांच्या अंतःकरणावर पूर्ण परिणाम घडत आहे. द्रौपदी, सीता, दमयंती इत्यादी अनेक पतिव्रता स्त्रियांची सुंदर चरित्रे आज हजारों वर्षे आमच्या हिंदु लोकांच्या स्त्रियांच्या दृष्टीसमोर महाभारताने ठवलेली असल्यामुळे पातिव्रत्य हा आमच्या हिंदुस्त्रियांचा अवर्णनीय अलंकार होऊन बसला आहे. महाभारताचे हिंदु समाजावर जे अनेक उपकार आहेत, त्यापैकी, स्त्रियांच्या पातिव्रत्याचे जे अतिशय उदात्त स्वरूप त्यांत वर्णन केले आहे. हा एक मोठा महत्वाचा उपकार आहे. आणि तो हिंदुसमाज कधीही विसरणार नाही.

पुनर्विवाहाची बंदी.

असो पातिव्रत्याच्या उच्च कल्पनेमुळे आर्य लोकांत नियोगाची चाल बंद पडली. इतकेच नव्हे तर पुनर्विवाहाची चाल सुद्धा त्याचमुळे आर्यलोकांत म्हणजे त्रैवर्णिकांत बंद पडली. भारतीय आर्यांमध्ये प्राचीन काळापासून पुनर्विवाहाचा प्रघात बंद आहे. जगताच्या पाठीवरील अनेक लोकांत दोनच आर्य जातींत पुनर्विवाहाचा प्रकार बंद असल्याचे आपल्या इतिहासावरून दिसते हिंदुस्थानातील भारतीय आर्यांत व पश्चिमेकडील जर्मन लोकांच्या एका शाखेत रोमन इतिहासकार टॅसिटस जर्मन लोकांचे वर्णन देताना असे लिहितो की, “काहीं जर्मनलोकांत स्त्रिया यावजाव एकच पति करतात व आपल्या जीवितातील सुखाचे निधान सर्वस्वी त्यास समजून त्याजवर अतिशय प्रीति करतात” यावरून पातिव्रत्याच्या उदात्त कल्पनेने ही चाल भारतीय आर्यांप्रमाणेच जुन्या जर्मन लोकांच्या एका जातींत प्रचलीत झालेली दिसते. भारतीय आर्यांमध्ये पुनर्विवाहाची बंदी फार प्राचीन काळापासून महाभारताच्या काळापर्यंत असावी असे ग्रीक इतिहासकारांच्या वर्णना वरूनही आपल्या निदर्शनास येते.”*

Prohibition to Re-marriage : On account of their very high ideals about chastity, the custom of *Niyoga* automatically came to an end. Not only this, but even the custom of re-marriage fell into disuse amongst the *Trivarnikas*, i.e., Brahmans, Kshatryias and Vaishyas. Amongst the Aryans of the Mahabharat times the

* The following is a rough translation of the above passage :— Amongst the Aryans of the Mahabharat period, the ideas of chastity entertained by the Arya women had reached a very high level. From the various stories about the chastity of Arya women during the Mahabharat times, one is highly impressed about the chastity of the Aryan women of those times. One will not find in any other society the noble life which the Aryan women of the Mahabharat period led. From the account of the Aryan woman of those times it is clearly found that she regarded her husband as her true solace in life. The life of Sawitri is as if it were a beautifully carved statue of the most noble life of chastity. Her life has had a great hold upon the Hindu mind for the last thousands of years and even today. A life of chastity has become a natural ornament to Hindu women as the Mahabharat has placed before them the noble lives of Draupadi, Sita, Damayanti and others. One of the numerous blessings that the Mahabharat has conferred upon the Hindus, is the one giving a true perspective of the life of chastity led by the Mahabharat women ; and the Hindu society will never forget it.

practice of re-marriage was abandoned for a very long time. From the history of the world we find that only in two societies the custom of re-marriage was not followed, *viz.*, amongst the Aryans of Hindusthan and a certain class of Germans in the West. The Roman Historian Tacitus says as follows regarding the German people :—"Amongst some Germans, the women stick on to only one man as a husband for the whole of their life and they regard him as the sole end of their happiness." From this it appears that this custom prevailed amongst the people of this class of the Germans owing to their very high ideals about chastity. Even the Greek historians state that re-marriages were prohibited amongst the Aryans of Hindusthan long before the Mahabharat period.

From the foregoing, therefore, the reader will find that the relations between man and woman in Hindu Society have been so well harmonised on the solid foundations of piety and virtue that both of them serve as complementary to each other in an ideal way and there is not any the least spirit of competition or rivalry between the two sexes as we unfortunately find these days in the West. The Hindu woman ever acts as a help to man and consequently Hindu law givers always legislated round the couple. The happy result, therefore, has been as described in the following couplet :—

अर्धे भार्या मनुष्यस्य, भार्या श्रेष्ठ तमः सखा ।

भार्या मूलं त्रिवर्गस्य, भार्या मूलं तरिष्यत ॥ १ ॥

(Translation :—A wife is the half of man, she is his best companion, she is the root of the three aims, *viz.*, righteousness, prosperity and fulfilment of desires (धर्म, अर्थ, काम), in fact she is the means of salvation).

The above Sanskrit couplet shows the veneration in which woman has been held by the Hindu Dharma Shastras and how her willing and self-less co-operation with man through thick and thin led to happy homes in Hindu Society from the highest to the lowest of the population.

With these preliminaries, we now propose to describe in brief the position of Hindu women during the Vedic times. The cultural and moral development of the Hindus of those times was at a very high level and in spiritual matters none was their equal. Consequently we find the women of those times intellectually as high as man and morally even his superior. Her pious disposition and unswerving devotion to her husband, whether he was rich or poor,

good or bad, lame or sound, had been a source of added strength to the social life of the Hindus of those times. Women then were highly educated and cultured and the wives of ancient Rishis even composed hymns in company of their pious and learned husbands. In short, we find in their lives everything which goes to make an ideal life for all time and ages, both for man and woman alike, on the salubrious foundation of Simple Living and High Thinking.

In the Epic periods also, we find that woman had attained a very high intellectual and moral standard. Lives of Sita, Damayanti, Sawitri, Draupadi and others have even today such a powerful hold on the Hindu minds and their revered memory is being regarded with such veneration and love, that their acts of piety and virtue, of devotion to their partners in life, their courage, fortitude, love and wisdom, and their noble self-sacrifices, are considered by Hindu men and women at large as the very pivot of Hindu culture and every pious Hindu woman to-day, who sits either on the floor of a lowly hut or on an ivory throne in a marble palace, regards herself to be the custodian of the traditions handed down by those pure and noble ladies of the Epic ages.

In the mediæval period of the Hindu era, we find degeneracy creeping into Hindu society, both in the case of man and woman. Illiteracy in the case of woman gradually began to be the order of the day, although her moral and religious life continued to remain at a very high level. In the higher classes, however, we find instances of very cultured and enlightened women who acted as counsellors to their husbands in times of need.

With the end of the mediæval period of the Hindu era commences, the beginning of slavery and constant subordination for the Hindu Society. No country in the world was then so happy in the possession of natural resources as India was. She was then a land of gold and precious stones, the cradle and home of religion and philosophy and of arts and industries. She, therefore, attracted the attention of foreign countries and invasions after invasions of foreign people came to this land, producing an intermingling of new modes of life and thought. The first onslaught on Hindu civilisation and culture was, witnessed in the various Moslem invasions from 12th century onwards till the advent of the British in India. The occupation of India by the Mohamedans and their domination over the Hindu society, however, did not seriously affect the Hindu culture and civilisation as a whole. Hindus at the

most changed their attire and imitated that of the Mohomedans, but the Hindu woman within her home remained unchanged as ever and she carried on her pious and devout life as enjoined by the Hindu Dharma Shastras.

The British Impact : With the advent of the British rule in India, however, came some blessings as well as evils in this country, which have produced a violent disturbance in the constitution of Hindu society, giving rise to several new forces and problems which the old and isolated Hindu society had no occasion to face. The glitter of Western civilisation has dazzled one so enormously on account of its materialistic superiority that one in one's slavish spirit began to acknowledge its superiority even in the realms of morality, religion and ethics, in which Hindus really far surpass the Westerners in every way. Today, in spite of degeneration and decrepitude owing to other causes, Hindus have still retained the blessing of a more stable home life than that of the Westerners. Any way, so far as the relations of man and woman are concerned, the Western civilisation has certainly introduced a very pernicious rivalry between the two sexes, which hitherto was quite unknown to Hindu society. Regarding present day women in the West, Mr. H. Horton Hollingworth says :—" Woman of today has been described as the eighth wonder of the world. Now she is to be found in all sorts of strange occupations undreamed of a few years ago, and she is becoming a serious rival to man." Herr Hitler, however, realised this danger in time and he issued a *Firman* that every man and woman below the age of 25 years must marry and that women above everything else ought to be good housewives first rather than be a serious rival to man. It is proposed to deal with this side of the question further when dealing with the subject of divorce in Hindu society.

The Present Personal Rights of Hindu Women : The above is a bird's eye view of the original foundations on which the structure of Hindu society has been built. Now I shall briefly deal with the rights of Hindu women as they exist today under Hindu law. These fall into two classes, *viz.*, her *personal* rights and her rights with regard to her *property* which further admits of two subdivisions, *viz.*, property which devolves upon her by *inheritance* from a male owner and property which she has obtained *in any other way*, which is generally termed as her *Stridhan*.

Her personal rights : This subject involves the consideration principally of the following points, *viz.*, (1) her position as a married woman, (2) the right of divorcing her husband, (3) the right of claiming maintenance, (4) the right of re-marriage on attaining widowhood, (5) her right of adopting a son, and (6) guardianship of her children.

(1) After marriage, the husband is the lawful guardian of his wife and he is entitled to require her to live in his house. But this right does not subsist in the husband where by custom or by agreement, the wife is to remain in her parents' house till puberty. The husband is bound to live with his wife and to maintain her. That is the position of a Hindu woman where she is married under the ordinary Hindu law. But the Hindu woman now gets some extended rights where her marriage is solemnised under the Special Marriage Act (Act III of 1872 as amended by Act XXX of 1923). Under section 22 of this Act, marriage *ipso facto* effects a severance of the joint family status, and succession to property is regulated by the Indian Succession Act. Section 25 of the Special Marriage Act, however, takes away the right of adoption. But the benefits conferred upon the Hindu women by this Act are not yet availed of by Hindu women *in extenso*, mainly owing to ignorance of the provisions of this enactment and also on account of the general apathy to give up the ordinary Hindu law.

The Special Marriage Act has gone a great way in making the position of the Hindu women more easy and consistent with the prevailing ideas of the day. This Act validates by registration a marriage between a man and a woman of any caste and it has created many important rights in favour of women which so far were denied to them under the ordinary Hindu law. It enjoins the consent of both the parties to marriage as quite essential for the validity of the marriage and makes it punishable for the husband to marry again during the life-time of the first wife. The Indian Divorce Act has also been made applicable to a marriage under this Act and if the husband changes his religion or marries again or is guilty of adultery, cruelty or desertion, the wife can seek a divorce. Further, the marriage can be declared a nullity if the husband is impotent or lunatic or had a first wife living.

As regards her rights in property under this Act : I have already said above that marriage *ipso facto* effects the dissolution of the joint family status and the Indian Succession Act applies to

such marriages in matters of succession according to which after the death of the husband, his widow gets one-third share in his property and the lineal descendants are entitled to get the remainder. In the absence of the lineal descendants, the kindred get half to half and in the absence of the kindred, the widow succeeds to the whole of her husband's property. Further, the daughter has an equal share with the son, and the widow or the daughter thus succeeding to the estate is the absolute owner of the property that falls to her share.

This Act has thus removed many a disability to which a Hindu woman is subjected under the present system of Hindu law and it is, therefore, earnestly hoped that unmarried Hindu girls will not be slow in taking the fullest benefit of this Act and that their parents or guardians for the time being will also help them to do so. If at all they wish to adhere to the old traditions and religious observances of a Hindu marriage, they may do so after first registering their marriage under the provisions of this Act, which will thus emancipate the position of Hindu women to an eminent degree and afford them a reasonable chance to safeguard their position, both as regards their personal rights and privileges as also with regard to their interest in property which falls to their share.

(2) As regards the woman's right of divorcing her husband, it is unknown to general Hindu law, the reason being that a marriage according to Hindu law and religion is an unbreakable and indissoluble tie. Neither party, therefore, to a marriage can divorce the other unless divorce is allowed by custom. But divorce has now been allowed in a very circuitous way only in the case of a change of religion by the husband.

(3) A wife is further entitled to be maintained by her husband, whether he has property or no property, as it is entirely a matter of personal obligation. She can even claim maintenance from her husband in case she has to stay away from him for some reasons. She is, however, disqualified from claiming any maintenance if she is proved to be unchaste. The same rules apply in the case of a widow.

(4) The remarriage of a Hindu widow has now been legalised by the Hindu Widows' Re-marriage Act of 1856. This Act has any way enabled young Hindu widows from leading a desultory and flippant life and it can at once be said without reserve that this Act has brought about a very salubrious and a desirable change

in the hard lot of young Hindu widows who were being ground down so far under the tyranny of the present joint family system, which today is a misnomer and hardly exists in its true and literal sense. The Hindu joint family worked very nicely at one time, but in the present economic life of the world it is hardly calculated to exist efficiently. All the same it is still being upheld by the Legislature, notwithstanding all its awkwardness and unsuitability to present day life of the Hindus.

(5) A Hindu woman's right to adopt a son to her deceased husband is based on the text of Vasishtha, *viz.*, "A woman should neither give nor receive a son except with her husband's permission." This text of Vasishtha has been interpreted in different ways by the different schools of Hindu law. The Mithila School interpreted it to mean that the permission of the husband must be given at the time the adoption takes place. The widow, therefore, is precluded from adopting a son to her deceased husband under the Mithila School. The Bengal and the Benares Schools hold that the above text enjoins an express permission from the husband during his life time, but should he die after giving the permission to his wife, it would validate the adoption by his widow. The Madras School is of opinion that the word "husband" or "lord" is merely illustrative and it means only the guardians of the widow for the time being, who are generally her husband's Sapindas, and, therefore, their consent would validate an adoption by a Hindu widow where the husband's permission is not expressly given. The Bombay School has put a still more liberal interpretation on the same text by explaining it to mean that it applies to an adoption made during the husband's life time, but that it does not take away the widow's right to adopt a son to her husband, as the general law prescribes it as beneficial to her husband's soul and therefore the assent of the husband is presumed so long as he has not expressly or impliedly forbidden his widow to adopt a son to him. This interpretation, led Sir Lawrence Jenkins, one of the most talented Chief Justices of the High Court of Bombay, to opine that according to the Bombay School of Hindu Law, the widow's right to adopt a son to her husband in a joint family is inherent, except that *Ramji v. Ghaman*, I.L.R. 6 Bom. 498, had restricted it to this extent that she could not adopt without the consent of her father-in-law and in his absence, her husband's undivided coparceners. This had been the law on adoption according to the Bombay School

for a very long time right down to the decision of the Privy Council in *Yadeo v. Namdeo*, (24 Bom. L.R. 609), in which it has been laid down that a widow in the Maratha country of the Presidency of Bombay has an inherent right to adopt in a joint Hindu family, where there is no express prohibition from the husband, and that she could so adopt without the consent of her husband's kinsmen, independently of the fact that her husband's estate is not vested in her. The late Sir Lallubhai Shah, however, struck a note of dissent against this decision of the Privy Council in *Yeknath v. Lakshmibai*, 24 Bom. L.R. 836, and in *Shivbasappa v. Nilava*, 24 Bom. L.R. 1162, where that learned Judge observed : "*Yadeo v. Namdeo* cannot be taken as overruling the current of decisions," and he further held the observations of the Privy Council on this point as *obiter dicta*. This opposition of the eminent Judge led to the Full Bench decision of the High Court of Bombay in *Ishwar Dadu v. Gajabai*, 28 Bom. L.R. 782, consisting of seven Judges of that Court. The Full Bench agreed with the views of the late Sir Lallubhai Shah with the exception of Mr. Justice Crump who held that the decision in *Yadeo v. Namdeo* overruled *Raniji v. Ghaman* and that the Privy Council laid it down as a correct rule of Law that a widow of a Hindu in the Maratha country of the Presidency of Bombay has, where there is no prohibition by the deceased husband, an inherent right to adopt, which is not subject to any of those limitations which have hitherto been placed upon it. That was therefore the definite law in Bombay Presidency on this point till the decision of the Privy Council in *Bhimabai v. Gurunath Gauda*, 60 I.A. 25, which in unequivocal terms reiterated its decision in *Yadeo v. Namdeo*.

The above decision of the Privy Council led to much perturbation and opposition among the lawyers of the old school in the Presidency of Bombay and since then various articles for and against this decision have been appearing in the Law Journals and other papers in the Bombay Presidency leading up to a Bill by Mr. Desai calling upon the Legislature to set aside the decision of the Privy Council arrived at in *Bhimabai's* case.

With great respect to the lawyers of the old school who wish to stick to the decision laid down in *Raniji v. Ghaman*, it is respectfully submitted that the Privy Council decision in *Bhimabai's* case has been very rightly arrived at by their Lordships after duly considering the present position of the Hindu woman in Hindu joint families and it must, therefore, be upheld, as it has improved the

lot of the Hindu woman, at least to a certain extent. This decision of the Privy Council may not perhaps fit into all the four corners of the ancient texts on the point, but the practical side of the question has also to be looked to. The joint Hindu family, as the old Hindu law givers contemplated and brought into practice, no longer exists in Hindu society and it is now a misnomer to style it a *joint* Hindu family in its true and literal sense. In the present degeneracy of the Hindu joint family system if any body has suffered the most, it is the poor and helpless widow living therein. Formerly if a person died leaving him surviving his widow, the other coparceners in the family treated her with such affection, love and respect as almost made her forget the loss of her husband. They gave to her sons and daughters, if any, equal treatment with their own children. But now that spirit of self-sacrifice for the best interests of the family as a whole and that mutual confidence in each other, no longer exist in Hindu joint families, when as a matter of fact they are absolutely necessary for the healthy development of the family on the basis of the ancient Hindu ideal. Consequently the widow must have some kind of weapon in her hands (such as to defeat the right of survivorship of the remaining coparceners, by adopting a son), that will keep the other coparceners in check and induce them to mete out to the widow just and the proper treatment which she deserves to have within the family circle. The above Privy Council decision must, therefore, be looked at from this view point and if that is done, I am sure, it will be approved not only by the old school of lawyers in the Bombay Presidency, but the other provinces in India will also like to adopt this decision in their own provinces if they really wish to ameliorate the hard lot of the poor and helpless widow in Hindu joint families.

(6) On the death of her husband, a Hindu widow is entitled to the guardianship of her children to the exclusion of all others in the family.

(7) One more personal right of the wife is to sue her husband for restitution of conjugal rights if the husband fails in performing his marital duties. At the same time she can prevent her husband from seeking restitution of conjugal rights if she is able to prove that he is suffering from a loathsome disease, or is guilty of cruelty, or keeps a concubine in the house, or adopts another religion.

(To be continued.)

In 1939, Mrs. Lilavati Munshi, M.L.A., tried to ameliorate the lot of young and helpless girls, who are given away in marriage to much too older men, by introducing a Bill in the Bombay Legislature for the prevention of unequal marriages. The term "unequal marriage" has been defined in the Bill as a marriage between a male of more than 45 years of age and a female of less than eighteen years. Mrs. Munshi deserves to be congratulated on introducing this Bill in the Bombay Legislature. I wish this Bill becomes an Act at no distant date. The Indore State has passed a similar Act on the basis of the Baroda legislation, entitled "The Old Marriage Prevention Act." I have found that this Act has worked very nicely in some cases in the Indore State. Similar legislation has also been passed by the Mysore and the Kotah States.

Her rights in property.

This subject admits of two sub-divisions, *viz.*, (1) the property that devolves upon the woman by inheritance through a male owner and (2) property which she has obtained in any other way. Generally a woman is the limited owner of the property which comes to her through a male except in the Province of Bombay, where women born into the family take an absolute estate whereas those married into the family take a limited estate. The property that comes to a woman otherwise than through a male by inheritance is called her *Stridhan*, of which she is supposed to be an absolute owner. But there too her rights over her *Stridhan* have been clipped to a certain extent. I refrain from dilating further on this subject, as I shall be presently discussing the position of the woman with regard to her rights in property while discussing at length the various reforms which have been effected by the Governments of Mysore and Baroda.

I have thus discussed above in brief the position of the Hindu woman as it obtained in the Vedic times and have traced it through the epic ages right down to the present time. With the advent of the British rule in India, some enactments have been passed to ameliorate her lot. All the same her position as yet is far from satisfactory, and it can hardly be said to be a secure one, especially with regard to her rights in property. The Joint Family system is practically dead but the position of the Hindu woman as a limited owner has, however, remained the same as in the old Hindu joint

family when it functioned well and efficiently. Consequently it has been causing much hardship and trouble in the matter of the property rights of Hindu women. When the joint family system was a living institution and it was being adhered to and followed by Hindu society in its true and literal sense and in consonance with the sacrifice that it entailed on the part of the coparceners, the position of the woman had been really and truly perfectly safe and secure, and she enjoyed her due status in the family in spite of the limited character of her estate and dependence on the male members of the family. But now selfishness is day by day becoming the rule of the day in Hindu joint families and every male member in the family generally cares only for his wife and children and even his widowed mother, nay aged parents who gave him birth, are sometimes felt by him as a burden, what of brothers then and their widows, if any ! It has, therefore, now become essentially necessary for the Legislature to invent means to safeguard the position of the Hindu woman, especially with regard to her rights in property, and that only can be secured by recognising her as an absolute owner of the property which devolves upon her in any way and further by affording her the right of demanding a partition of the joint family property after her husband's death. It is good to find that the right of demanding a partition of her husband's share in the joint family property has now been given to the widow by the Hindu Women's Rights to Property Act of 1937, as amended by the Act of 1938. I would say, however, in the words of Dr. Gour, "It seems to me that the time for tinkering legislation has long since passed, and what we now want is a comprehensive new law of Hindu succession based upon the law of affinity and affection and not upon the vanished myth of spiritual benefit." (*Vide Bombay Law Journal*, Vol. XV, p. 98).

Mysore Legislation.

Recently, the Governments of Mysore and Baroda have taken very effective steps for ameliorating the lot of the Hindu woman, which I may be permitted to say, are much in advance of British India. I shall first discuss in brief the Mysore Legislation for the benefit of my readers.

In view of the increasing feeling that under the present system of Hindu Law, the position of the Hindu woman as regards

proprietary rights had been unsatisfactory and unjust, the Mysore Government appointed a Committee in 1929 with Rajadharmapravin Dewan Bahadur K. S. Chandrasekhara Aiyer, B.A., B.L., as Chairman to examine the question of improving the position of Hindu women and to submit recommendations in the form of a Bill. The Committee was bent on effecting substantial reforms in the matter of Hindu women and they therefore made a full and careful survey in all matters affecting Hindu women, and they submitted a workable scheme of reform in 1933 in the form of a Bill which received the assent of H. H. the Maharaja of Mysore on June 29, 1933, and it is now known as the Regulation No. 10 of 1933. The salient provisions of this Regulation are as under :—

1. The principal provision under this Regulation is that no woman shall be excluded from inheritance or deemed to be disqualified for the exercise of any right of property or other civil right by reason of her sex. The words "or other civil right" would appear to confer a higher status on the Hindu woman than is enjoyed by her even in the Province of Bombay, where women's rights are much higher than in other parts of British India.

2. The widow, the mother, the unmarried daughter and the unmarried sister have each a share for herself in all property or properties. This legislation is thus in advance of British India, where the two last mentioned females receive no share. This is section 8 of the Regulation. But the Mysore Government does not seem to be wise in giving more rights to the daughter in her father's property, for after all a daughter in the Hindu society generally marries and has her rights in the husband's family. Why then lessen the share of the brother by making the unmarried sister or daughter a sharer also ?

3. Section 9 of the Regulation acknowledges the inherent right of the Hindu widow to adopt a son, except where she is expressly prohibited by her husband to adopt a son. The section further provides that "No adoption made by a widow shall (a) divest her of her estate in any *Stridhan* property, other than such as she may have taken by inheritance from her husband, or (b) affect her right to obtain at any time at her option either maintenance charged upon the property inherited from her husband or

a separate share therein equal to one-half of the share of the adopted son." Clause (3) of this section further states that an arrangement whereby the rights of the boy are curtailed or limited in the interest of the adoptive mother shall be valid. The law in British India, however, is different. *Krishnamurti v. Krishnamurti*, (1927), 54 I.A. 248, is the leading case on this point, which has settled that an arrangement which gives the widow property absolutely or which has the effect of giving that property to strangers, is opposed to Hindu Law and therefore invalid.

4. Section 10 of the Regulation describes woman's full estate, which is termed her *Stridhan* in the Regulation, according to which a woman's *Stridhan* means property of every description belonging to a Hindu female, other than property in which she has, by law or under the terms of an instrument, only a limited estate. Under sub-sec. (2) to this section *Stridhan* includes all ornaments and apparel belonging to a woman, all gifts received by her at any time (whether before, at or after her marriage) and from any person (whether her husband or other relative or a stranger); property acquired by her own exertion, skill, learning or talents; property acquired by purchase, agreement, compromise, finding or adverse possession; the income and savings from income of all property vested in her, whether absolutely or otherwise; property obtained by her as her share at a partition; and all property taken by inheritance by a female from another female and property taken by her by inheritance from her husband or son, or from a male relative connected by blood. Sec. 11 of the Regulation lays down that a female owning *Stridhan* property shall have over it absolute and unrestricted powers, both of enjoyment and disposition *inter vivos* and by will, subject only to the general law relating to guardianship during minority. The husband further has absolutely no control of any kind whatsoever upon her wife's *Stridhan*, except when acting as the lawful guardian of his wife.

Thus the scope of *stridhan* property in the Mysore State goes much beyond the law prevailing in British India and the *Stridhan* property there has been now understood in a much different sense from that in British India.

The above in brief are the salient features of this Regulation which is certainly a bold measure and its effect on the future generation will be watched with great interest.

Baroda Legislation.

The Baroda Legislation is also more or less on the same lines as in the Mysore State. All the same I propose to give below a brief outline of the same to enable the reader to make a comparative study of the rights granted to females in both the States. That will further enable the reader to realise keenly the comparatively helpless condition of the females in British India and it is further earnestly hoped that our Legislators in the Assembly will be pleased to afford them at least the rights and the privileges which the Mysore and the Baroda Governments have given to the females, in their respective dominions.

In the Baroda State also His late Highness Maharaja, Sayaji Rao Gaikwad III, whose keenness for social reform is well-known, appointed a Committee in the year 1929 under the chairmanship of Rao Bahadur G. H. Desai, retired Naib Dewan of that State, "to examine the question of the rights of women under the Hindu Law and suggest amendments, if any, called for under modern conditions". The Committee was asked to "examine the whole question of the rights of the Hindu women and submit proposals for removing defects in the existing law." The amendments proposed by the Committee were sanctioned by the Maharaja on 16th November, 1933. Hindu Law in the Baroda State with regard to females stands in brief as under:

1. The widow's position in Baroda has now been greatly improved. The Hindu joint family in British India consists of male members in the family only and the females in the family have not the status of coparceners. But now in Baroda the widow of a deceased coparcener shall be a coparcener herself with all the rights of survivorship, partition and so forth, at par with the male member in the family. On a partition the widow will get a share equal to that of a son, if there is one, and in the absence of a son, she will get what her husband would have got. With regard to the separate or self-acquired property of her husband, the widow in Baroda will now inherit her husband's property along with her son, grandson and great-grandson and she will be entitled to a share equal to that of a son. This change has thus assuredly placed the widow in a more advantageous position than the one she hitherto held.

2. The position of a widowed daughter-in-law is also improved inasmuch as she now ranks next after the mother in the order of succession. Formerly she had no place in the enumerated heirs who inherited the property of a deceased person in the prescribed order.

3. The law as regards daughters has also been greatly amended. A daughter inherited to her father only in the absence of a son, grandson and great-grandson and the widow of the deceased. If any of these was living, a daughter got nothing by way of inheritance. No change is made in this position. But now the daughter has more rights in Baroda in her father's family than she enjoyed heretofore. Formerly, a married daughter had no rights in her father's family. Even if she became a widow and had no means of subsistence in her father-in-law's family she could not claim any maintenance from her father's family. This was a real hardship in some cases and according to the law now amended in Baroda State, a widowed daughter is given a right to maintenance in her father's family, provided she is living with her father from the time of her husband's death, and there are no means of subsistence in her father-in-law's family and her father can afford to maintain her.

4. The unmarried daughter so far was only a dependent in her father's family and she had only a right of maintenance and marriage expenses, and when a partition took place in the family, she was entitled to get one-fourth of what her brother got in lieu of maintenance and marriage expenses, even if no partition takes place in the family. This has thus placed an unmarried daughter in a more independent and secure position than she hitherto had.

5. Similarly when the daughter inherited her father's property before the amended law came into force, the son of a predeceased daughter did not take any share with the daughter or daughters living. To remove this injustice, the law is altered so as to make the sons of a predeceased daughter co-heirs with the living daughters. A similar right of representation is also given to the sons of a predeceased sister, when the inheritance goes to the sisters of a deceased person.

6. In the same way the law as to succession in the case of daughters and also *Stridhan* has been simplified and made more uniform. Formerly unmarried daughters excluded married daughters, and among married daughters a poor daughter was preferred

to a rich one. All these distinctions have now been removed and all daughters, whether married or unmarried, rich or poor, will take equally. Similarly the law of succession to Stridhan has been very much simplified. Under the law as administered in British India, the three kinds of Stridhan, *viz.*, *Yautaka*, *Ayautaka* and *Shulka* descend to heirs, each in a different order. All these complications have been removed and one uniform order has now been prescribed for succession to all forms of Stridhan.

7. Woman's estate. Formerly a woman had an absolute interest in her Stridhan only, with some restrictions all the same, and a limited interest in all other property which she could enjoy but she had no power to alienate it except for legal necessity, and after her death such property descended not to her heirs but to the heirs of the last male owner. A great change has now been effected in this position. A woman will now have an absolute interest in property which she acquires either by partition or as an heir, provided the value of such property does not exceed Rs. 12,000. If the property is worth more than Rs. 12,000, she will have absolute interest in property worth Rs. 12,000 and only a limited interest in the rest of the property. She has now as much right of alienating property which she holds absolutely as a male owner has.

8. The most revolutionary change made is in the Hindu law of marriage. Until now the Hindu law as administered in Baroda as also in British India, allowed marriages between Hindus belonging to the same *Varna*. Inter caste marriages were held legal only where custom allowed them. In the absence of custom, such marriages were held to be illegal in Baroda. Parties belonging to different castes were compelled to resort to the Civil Marriage Act if they wanted to marry. This restriction of *Varna* is now completely removed, so that a Hindu belonging to any caste will now be at liberty to marry a girl of any other Hindu caste without having any recourse to the Civil Marriage Act. These reforms seem to have been made mainly with a view to bringing about unity among Hindus of all communities, for which H. H. the Maharaja Saheb of Baroda must really be congratulated and the entire Hindu community should feel grateful to him for bringing about this salutary reform in his State with far reaching consequences in that it

will unify the entire Hindu community and sow the seeds of a national regeneration. I heartily wish that our Legislators in British India do follow up this reform and take immediate steps to introduce it in British India also.

9. **Adoption.** The Hindu Adoption Act has also been amended in conformity with the amendment made in the Hindu Marriage Act. Uptil now the law allowed the adoption of a boy who belonged to the community to which his adoptive parents belonged. It is now laid down that if the adoptive parents belong to the same *Varna*, the adoptive son shall also be of the same *Varna* ; but if the adoptive parents are not of the same *Varna*, the son to be adopted shall be from the family of the adoptive father.

10. By passing the Hindu Divorce Act of 1931, the Baroda Government takes the credit of saying that they have placed "the women in Baroda State in a far more advantageous and enviable position than women in British India or elsewhere." With great respect, I beg to differ from this view. At the most it can be conceded that the Baroda Government have provided for a necessary evil. But all the same the law with regard to divorce has to be administered with the greatest care and alertness. I am, however, presently discussing this subject in some detail, which will serve as a reply to what the Baroda Government think as a praiseworthy reform.

The above in brief is the analysis of the various reforms which the Governments of Baroda and Mysore have effected in their respective dominions, in the matter of the disabilities of Hindu women. Personally, I feel that the Baroda Legislation is quite practical and has conceded facilities to Hindu women in consonance with the advancement achieved by them so far, and they justly deserve what they have got in the Baroda State. The Mysore Legislation is radical in its nature and therefore it is much too in advance of the times. I am afraid if the Mysore Legislation is not properly administered it is likely to be misused. All the same both the States have effected salutary reforms in their respective dominions, for which they deserve every praise. It is further earnestly hoped that our Legislators in British India will not be slow in bringing about similar reforms in British India at an early date.

Marriage and Divorce

I shall now deal with the question of marriage and divorce. At the outset I wish to bring home to my readers that it is very wrong to introduce western ways of life in the Hindu society, the main reason being that the Western ways of living are unsuited to Indian conditions.* But today even the Hindu women, who so far preserved their culture very scrupulously with almost religious fervour, seem now to fast give it up, and imitate the Western ways of life in the most slavish spirit. The result has been that the demands of the present day Hindu woman have been running just on parallel lines with those of the women in the West. There is much in the West which is good and charming. But the modern Hindu woman ought to think of her own culture too, which is equally good and charming,—and in the matter of steady home life even superior to that in the West. She should, therefore, think for herself, and think over this point very seriously, whether the Western ways of living really suit the environments of her own country. Instead, she has been imitating the Western life in a slavish spirit as did the man a few decades before. She wishes to be independent of man ; she wants the same education which man receives in schools and colleges ; she wants to compete with man in all walks of life and become his rival in every way. She wishes to do away with the sacramental form of marriage ; not only this, but these days she does not even much appreciate the contract form of marriage as understood in the English Law. She wants the Russian form of marriage with liberty to do away with the marital tie the moment she begins to dislike her husband. She wants to marry at her sweet will without any interference from her elders. These are at least some of the present demands of the modern *ultra* fashionable Hindu woman. Dr. Deshmukh's Divorce Bill is, therefore, the natural consequence of these ideas and, therefore, there must exist some legislation to regulate these demands.

Recently much water has run under the bridge in discussing the point whether divorce should be made of universal application in India. But before we answer this question, we have at first to fix up the limits of marriage. I have already said above that all our reforms must always be in due conformity with Hindu civilisation and culture and not in slavish imitation of the West. At one

*Vide the Appendix to this Article.

time, we had a lot of national virtues in us, but by and by we have forgotten them, or better time and circumstance have made us forget them. The Western countries have those virtues in abundance for the present and if we now strain our nerves in imbibing in us those national virtues of the West, that will be a step in the right direction and for the welfare of India in the long run. But so far as social and religious matters are concerned, the West has nothing to teach us and we have really no earthly reason to look to the West in that matter in view of the fact that our culture and civilisation are entirely different, I may say poles asunder, from those of the West. And so long as it is not proved that our culture and standard of morality are inferior to that in the Western countries, we have certainly no reason to look to them for guidance while reforming our society to suit the altered conditions of life. All our reforms must, therefore, be essentially Hindu and nothing but Hindu and we must never forget our individuality.

The question of marriage and divorce, therefore, is one of very vital importance to the Hindu society for the present. Marriage to us is a sacrament. It is an indissoluble tie. In the West and in most other countries marriage is held to be a contract. Some regard it as terminable at the will of either spouse, as in Russia at present.

Russian Marriage Law.

In Russia, the religious form of marriage has now been abolished and in its place marriage is performed by the solemnisation of going through the registration formalities. The registration of marriage before the recognised Registrar is considered conclusive evidence of marriage. The form which the parties are required to sign contains *inter alia* a very important clause, *viz.*, that "During the life-time of the spouses the marriage may be terminated either by mutual consent of both spouses or by the unilateral desire of either of them." Thus if either of the parties desires to dissolve the marriage, he or she has simply to go to the proper Registration Office and make a declaration dissolving the marriage and nothing further is then necessary.

Our readers will thus find that there is no sort of permanency in the Russian form of marriage and there the union of man and woman more or less means joining hands only and not hearts. This form of marriage, therefore, ought to be unacceptable to every Hindu mind and even in England the Russian form of marriage was

recently disapproved by Mr. Justice Hill in the case of *Nachimson v. Nachimson*, (1930) 1 K. B. 85, where after reviewing the authorities the learned Judge observed, "In marriage under the Russian law the parties are bound to one another until death or until one desires a dissolution. It may be that the Law of Russia recognises such a union, attaches legal consequences to it and calls it by a Russian word which is properly translated 'Marriage.' But by the term 'marriage,' the Law of England and the Law of Russia do not mean the same thing." Mr. Justice Hill, therefore, dismissed the petition of the wife for judicial separation. On appeal, however, this decision was reversed as violating the principle of International Law, (1930), 2 K. B. 217. All the same the decision of Mr. Justice Hill shows the trend of the English mind as regards marriage.

English Marriage.

To my mind the English definition of marriage is the best as regards contract marriage and it may be taken as typically representative of the notions of marriage in the advanced countries of Europe. "Marriage in English law," says Mr. Justice Hill, "means a voluntary union of one man and one woman to the exclusion of all others, which is by them indissoluble except by death." Thus according to the English Law of marriage, the union must be (a) voluntary, (b) for life, and (c) of one man and one woman to the exclusion of all others.

I have discussed the above laws of marriage, because the tendency of our present generation seems to lean towards contract marriages and attempts are being made these days to reduce our form of marriage also to a contract marriage. If at all our Hindu society were to reduce our present system of marriage to a contract, then my submission is that the English form of marriage is the best and notionally it is much superior to the Russian notions of marriage. But our young generation will bear in mind the fact that our Hindu idea of marriage is the best in every way. The Hindu ideas are on a far higher plane and marriage according to Hindu ideals does entail a lot of self-sacrifice on the part of the husband and the wife. But for a higher and really noble life, the sacrifice also must be equally high. The indissolubility of the marriage tie is really based on a very sound principle in that it leads to permanency of home life, as the husband and the wife know full well that they have got to live with each other, whether they agree or do not agree. Secondly, our women as yet do not think

of themselves independently of man, and the result is that even when there are differences, the husband and the wife have the training of tolerating each other quite all right. Consequently, the Hindus have a more stable and permanent home life than in the Western countries. Our home life may not look so polished and glittering as in the West, but our homes are certainly more steady and permanent and the love between the spouses is more lasting than in the West. I am afraid if our society were to adopt the Western system of marriage and allow free divorces as in the West, the permanency of our home life is bound to be seriously jeopardised.

Personally I am not a believer in the maxim : *Love at First Sight*, and marriages based on this shaky ground of the so called *Love* are bound to lead to another saying : *Marry in Haste and Repent at Leisure*. At least a legislator cannot afford to pay any the least attention to such poetic ideas. It is all right to speak of this so called "Love" at first sight, in the poetic fancy of a Kalidas or Shakespeare, but it is no more than an outburst of passion for the time being. It is only after this first effervescence of "Love" has cooled down and when both the spouses do have fancy for each other after knowing each other's defects and still have veneration and respect for each other, that real love comes into operation, which in its turn leads to really happy homes. Sometimes this result comes early by the inherent goodness of the husband and the wife and sometimes by the pressure of law and custom. Consequently if the weapon of divorce is freely placed in the hands of the spouses, they will rush to this weapon to cut off the marital tie as soon as there is a little disagreement between the husband and the wife and there may possibly be no opportunity for them to understand each other well and fully and study the moods of each other. Secondly, our social life is so shaped that as yet love marriages as understood in the West have no scope to develop in our society, and in this view I am supported by the experience of an England returned gentleman who writes as follows in the issue of the "Times of India," dated the 12th December, 1935 :—

".....Marrying for love is more dangerous in India than in the West. It does not fit into our society as it is at present constituted. I consider the old practice of the parents arranging marriage for their children is far better. It will at least guarantee all things (except, of course, love), which are so necessary for a happy

married life. When other things are favourable, love will come in course of time, provided there is a spirit of give and take on the part of the husband and the wife. Love is not so illusive and beyond our control as the poets and novelists lead us to think....."

Now with the spread of education and in view of the fact that the boys are now fairly advanced in age so as to be able to make the selection of the bride, I would not go to the length of saying that the parents should select the bride for their children. The parents may offer their advice and try to bring about equal matches, but the ultimate choice must rest with the boy and the girl. But that is not the point I wish to drive at. My principal contention is that once the marriage is performed, the marital tie must remain fast for ever. Consequently, I do feel honestly that the element of the indissolubility of the marital tie must continue in Hindu marriages, as it leads to permanency of married life and therefore to a stable home-life.

Now perhaps cases may be cited where divorce may be felt as a real necessity. To that my only submission is that to allow a divorce is no doubt a hardship and not to allow a divorce is also a hardship in some cases. The solution of this problem lies in the fact that we must above everything else first guard the permanency of married life, and, therefore, divorce should be granted only as an *exception* to the rule that marriage is a permanent and an indissoluble union between man and woman. Under the English Law also marriage is held to be a permanent union and divorce is not regarded as an incidence of marriage. But in practice we find otherwise, which, therefore, led Mr. Justice Mac Cardie to pass serious strictures against the practice of granting easy divorces by Courts of Law. We must, therefore, guard against this evil in our society. In short, my submission is that real blessings of home life will only be realised when marriage will be held as a permanent union by the world at large in its true and literal sense.

The following extract from the "Times of India," dated the 15th April, 1935, is very instructive in this connection :

"U. S. Divorces are Equalling U. S. Marriages.

There have been nearly as many divorces as marriages in the United States during the last seven years. The prophesy in 1928 of Judge Ben Lindsey and advocate of companionate marriage, is coming true. He said that in 1938, the number of divorces would equal the number of marriages.

"Marriage is doomed," he declared the other day.

"Free love, domestic chaos, and sexual anarchy are at hand. And why? Because the ideas of our grand-parents,—the good old-fashioned until-death-do-us-part marriage and the old time home,—are passing. In their place has come a flimsy irresponsible attitude towards marriage."

Marrying Ages.

Judge Lindsey puts it all down to the economic condition of modern life, in which women compete with men for jobs, and make it difficult or impossible for men to marry between the "ideal" ages of twenty and thirty.

"Marriage," he said, "has been rigid and unyielding to the forces of a new social and economic situation. Human nature has been allowed to run free, driving close to a social catastrophe. There is only one remedy. The aid of science must be called in, and we must turn to our religion and our education to meet the altered condition of the day."

As regards the haste with which divorces and remarriages take place in the United States, the issue of the "Times of India" of the same date contains the following :

"Divorce and Re-marriage in Two Hours"

A speed record for divorce and remarriage was established at Chicago the other day by Rosemary Ames, the film actress.

The time-table was as follows :

11 A. M. : Miss Ames applied for divorce from Bertie Meyer, described in the suit as a London theatrical producer :

11-6 A. M. : Petition granted by the Judge.

Noon : A license to marry Miss Ames was obtained by Mr. J. Abner Stilwell, Vice-President of the Continental Illinois National Bank and Trust Company.

1 P. M. : Miss Ames and Mr. Stilwell were married at a Chicago Hotel.

Mr. Stilwell, who is 45, is the third husband of Miss Ames, who is 28. Her first husband was Ogden Ketting, a former executive in the Insull Utility Companies".

The above extract well illustrates the degeneracy to which the institution of marriage has reached in the materially advanced country like the United States of America. I fervently hope and trust that it will serve as an eye-opener to those who regard everything coming from the West as the best. I again repeat that so far

as our social regeneration is concerned, we do not need any the least aid or enlightenment from the West, as the basic ideals of the Hindu society and those obtaining in the West are poles asunder from one another. Consequently, our legislation in social matters also must be based essentially on Hindu ideals and Hindu culture. As a matter of fact, some of the Western countries are actually getting sick of the present state of their society, as will be evident from the learned observations of Mr. Justice Mac Cardie and Judge Lindsey and the radical reforms brought about by Herr Hitler in Germany in the matter of women, which I have briefly noted above.

In conclusion, I have only to submit that there is still many a disability under which the weaker sex in the Hindu society has been suffering. It is certainly our duty to ameliorate their lot, but that must be done in a manner which will never make woman a serious rival of man, and which will enable her to progress on lines of harmony and goodwill.

My conclusions, in brief, therefore, are :

(1) that our legislation in the matter of Hindu women should be essentially based on Hindu ideal, and Hindu culture ;

(2) that in view of the decay of the Hindu Joint Family System, the woman's status in the joint family should be made more independent than heretofore ;

(3) that therefore, she should be regarded as a coparcener in the family into which she is married, with full rights of ownership over property which comes to her by inheritance or in any other way, and also other rights of demanding partition, etc., which a coparcener in a joint Hindu family ordinarily enjoys today under the Hindu Law.

N. B.:—In this connection, it would be more practical and sound to follow the new legislation in the Baroda State, referred to above, at least for some time to come, which will enable us to know how far the weaker sex are able to manage their own affairs on their own responsibility and also to what extent they are exploited by others.

(4) that a widow's right to adopt a son to her deceased husband ~~should be regarded as inherent~~, in the absence of express prohibition from her husband.

✓(5) that in matters of marriage, the marital tie should be regarded as indissoluble as heretofore and that it should be never reduced to the form of a contract marriage.

(6) that therefore, the law of divorce should be administered very strictly and with very great caution and divorce should be granted in very rare and deserving cases only, as an *exception* to the rule that marriage is a permanent and indissoluble union between man and woman and that it should never be so freely granted as to lead people to believe that divorce is an incidence of marriage.

(7) that as regards daughters, their position should be the same as under the new legislation in the Baroda State referred to above.

APPENDIX

LOVE MARRIAGES IN INDIA.

Many educated young Indians influenced by Western ideas are protesting at the prevailing system of marrying according to the dictates of their parents and are declaring their right to choose their own partners. In this article an Indian youth who has recently returned from England discusses the feasibility of love-marriages under the existing social code in India, and decides against it.

"To marry for love is dangerous. Dangerous—but a risk worth taking," says Mary Borden, the novelist, in a recent article. But dangers attending love-marriages are so grave, at least in India, and the rewards so uncertain that, to me, it seems, the risk is not worth taking.

In the West, society recognises love-marriages. Its social codes and customs are such that these are not only made possible, but also the risks attending them are brought to a minimum. Young men and women choose their own partners in life and there is usually a period of courting and love-making before marriage. The free social intercourse between the sexes makes it possible for boys and girls to cultivate one another's acquaintance and to choose the best mate. Theoretically a girl is free to choose any young man as her partner, to whatever social status he belongs. But this is not so in practice. The unwritten laws of social etiquette prevent too much intimacy between members belonging to different classes. Besides love-making usually begins at balls, dances and other social functions, and these are usually arranged by the girl's parents and only select young men and women invited. Thus the parents have got some control over the love-making of their children.

The Position in India.

But none of these arrangements and safeguards exist in India. Here the usual practice is for the parents to arrange the marriage of their children. But the modern educated young man, probably through the influence of Western films and novels is not satisfied with anybody else arranging

marriage for him. He insists on doing that for himself. This is fraught with great dangers. Since Indian society does not recognise love-marriages, its social code is not so framed as to enable the young man or woman to make the right choice of a partner. There is no recognised period of courting; neither do men and women intermingle freely. This makes impossible for the young man to gain any insight into the real nature of his girl's character. At the most the young lover in India might have talked to his fiancée a few times while at school or college. But this does not give him any adequate idea of her temperament or character, the knowledge of which is so essential to make the right choice.

Again, young people are quite inexperienced in the realities of life. Their knowledge of life is derived from books. But books seldom give a faithful account of life as it is. Poets and novelists invariably give undue importance to love in their works. According to them all things work together for good to the husband and wife who love each other dearly. But this is not so in actual life. The girl who marries below her status will have to undergo severe hardships. No rich uncle or aunt will leave her husband any legacy as happens in the novels. And the young man who marries a girl from a lower caste must be prepared for ostracism.

Not Love, but Illusion.

True, if there is real love between husband and wife many of the difficulties and hardships of married life can be borne cheerfully, though not prevented. But how to know before marriage whether there is real love or not? From the meagre knowledge of each other which the young man or woman gather before marriage, it is difficult, it not impossible, to know whether there is true love between them. I know a certain Indian graduate who fell in love with a girl, a class-mate of his. It was love at first sight. Within a year he found out that he was really in love, not with that girl, but with her beautiful voice. There was something in her features which reminded him (unconsciously) of his dead sister whom he had dearly loved. That was responsible for the attraction which he felt at first sight, and which he mistook for love. Love at first sight is in most cases mere illusion, and illusion, from its very nature, cannot last long.

¶ Hence marrying for love is more dangerous in India than in the West. It does not fit into our society as it is at present constituted. I consider that the old practice of the parents arranging marriage for their children is far better. It will at least guarantee all things, (except, of course, love), which are so necessary for a happy married life. When other things are favourable, love will come in course of time, provided there is a spirit of give and take on the part of the husband and the wife. Love is not so illusive and beyond our control as the poets and novelists lead us to think,—(*"The Times of India"*, dated 12-12-1934.

