Mackenzie Wallace Esquire

With the author's kind respects

A

REVIEW

OF THE

PROGRESS OF KNOWLEDGE

OF

HINDU LAW AND CUSTOM,

MADE AMONG

OUR BRITISH RULERS,

DURING THE PAST HUNDRED YEARS,

BY

R RAGOONATH ROW

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The following are extracted from Papers relating to East India Affairs, VIZ., *"Hindu Widows and Voluntary Immolations," ordered, by the House of Commons, to be printed, 10th July 1821 :—*

On the 5th February 1805, the Calcutta Government remarked, "That it is one of the fundamental maxims of the British Government to consult the religious opinions, customs, and prejudices of the natives, in all cases in which it has been practicable, consistently with *the principles of morality, reason, and humanity.*"

The Government asked the Nizamut Adawlut to ascertain whether the practice of Suttee or voluntary immolation was founded on any precept of the Hindu law; and if not, the custom of Suttee, which then prevailed, might, the Government hoped, gradually, if not immediately, be altogether abolished.

The Court replied on the 5th June 1805, that it appeared to the Court, from the opinions delivered by the Law officers, that the custom was "founded on the religious notions of the Hindus, and was expressly stated with approbation in their law."

The Government observed on the 5th December 1812, "That the course which the British Government should follow, according to the principles of religious toleration already noticed, is to allow the practice in those cases in which it is countenanced by their religion; and to prevent it in others in which it is by the same authority prohibited."

The Government added that its "Only object is to restrain the use of acts and practices not less repugnant to the doc-

any of the Shasters; on the contrary a crime which their own laws would punish with death; and only tolerated by our Government because we overlook the impudent imposition which has transformed a recommendation to the widow to accompany her husband, into an order which the relations must carry into effect, if she should evince symptoms of disobedience.

* * * *

"But I meet with frequent instances of the interference of Government in matters intimately connected with the prejudices of the Hindus; the repeal of the law prohibiting the capital punishment of Brahmins at Benares; the laws against Infanticide; the rules prohibiting Dhurna; and the sweeping clause, Section 3, Regulation VIII, 1799, in which even Suttee may be included. And, although, I am aware that the exposure of infants at Saugor and at other places, and the murder of their female offspring by the Rajkoomars, are neither of them duties either directly enjoined or authorised by the Shasters; yet, I submit, that the exposure of infants is, in consequence of vows, made by the mother for the purpose of obtaining some favour from the gods; and that the fulfilment of such is meritorious in the highest degree. The practice of the Rajkoomars is, I have reason to think, but little checked by the enactment above alluded to. It is a custom founded on immemorial usage; and, as such, does not require the aid of either religion or law to give it support. The practice of the widows of Jogees is not sanctioned by the Shasters, yet they will undoubtedly continue to prefer burying to burning, because it is the custom of their caste; and we may as well attempt to direct the mode of disposing of the husband's corpse, as prescribe rules for the conduct of the widow. I have noticed these cases not to prove that legal prohibition will have no success in opposing customs, but as instances of our interfering with the prejudices of the Hindus, without exciting any symptoms of dissatisfaction. It may be said that the people are aware that these practices are not authorised by the Shasters, and therefore

submit quietly; but it is well known that not one man in a thousand knows anything of the contents of the Shasters; or, if they are aware of these rules, why persist in illegal acts, if custom was not, in their eyes, paramount law?

"I have submitted the above remarks for the consideration of His Lordship in Council, not with the hope that I can have afforded any new information on a subject so frequently discussed by higher authorities, but only to offer the grounds of my opinion that "the barbarous custom of Suttee may be prohibited without exciting any serious or general dissatisfaction among our Hindu subjects."

The same gentleman says in his letter of the 14th December 1818: "Nor does it appear to me that the abolition of the practice is altogether inconsistent with the spirit of toleration which has ever distinguished the British Government."

Mr. H. Oakely stated in 1818, "Regarding the prevalence of Suttee as the effect of local immorality, instead of general religious prejudice, I do not hesitate in offering my opinion that a law for its abolition would only be objected to by the heirs, who derive worldly profit from the custom, by Brahmins who partly exist by it and by those whose depraved nature leads them to look on so horrid a sacrifice as a highly agreeable and entertaining show."

Mr. E. Lee Warner wrote thus: "A law might doubtless be promulgated for the abolition of this practice, without causing any serious disturbance. It has already been done in regard to the sacrifice of children at Sangor and elsewhere, as well as the practice of destroying female infants, and the burying alive of women. Why, if these customs, which were also generally practised, have been abolished by a humane Government, should not the practice of Suttee be abolished?" "Is the practice of Suttee in any part of the Shasters insisted upon?"

In Mr. Ewer's letter of the 11th January 1819, the following remarks appear:—"The origin of the custom (Suttee)

will most probably be found in the voluntary sacrifice of a widow inconsolable for the loss of her husband, and who resolves to accompany him on the pile, not with any idea that such an act could be acceptable to the gods, or of any benefit to herself in a future existence, but solely because her affection for the deceased made her regard life as a burden no longer to be borne." "Interest now began to whisper to the husband's relations, that the widow had a right to exclude them from his property during her life, but that she might be persuaded to accompany him." "Manu and the most ancient and respectable writers do not notice Suttee; it was therefore, in their time, either unknown or not approved of." "If known, but not mentioned, because not approved by Manu, the authority of the modern Shaster is not sufficient to give any merit to the sacrifice. In the first case, we do not find that the practice originates in the law, but that the law is the consequence of the practice." "Such can never become religious." "After all, I allow it may be said, that the practice of Suttee may not be enjoined by the religious Code of the Hindus, but that they think it is, and therefore we are not to abolish it; but if we compel them to follow the laws of the Shasters in one instance, we may in another." Mr. Morrieson thought that the people only wanted the excuse of a law to induce them "to evade the Sutteebhud of their little read and less understood Shasters."

In 1819, the Judges of the Nizamut Adawlut wrote as follows: "As long as the Hindu portion of the population continues so justly notorious for bigotry, and is, generally speaking, so uncivilised and illiterate, we cannot justly hope that the Hindus will be otherwise than exceedingly dissatisfied at every interference on our part, which has any cognisance of their religious ceremonies; and however plain may be the proof we adduce to them, that the interference we propose is only in cases not countenanced by the tenets of their religion, and therefore reasonably liable to prohibition, we shall not, by this or by any other means, gain their voluntary acquiescence in the propriety of such

proceedings; nor shall we get them, for an instant, to be satisfied with a less degree of toleration than that which shall commit unconditionally to the discretion of their priests, and of themselves, the entire discretion and regulation of all matters connected with their religion and its customs."

Mr. P. Hale, Judge of South Concan, wrote, in 1819, that in Sawuntwarree at one period during the reign of Kem Sawunt, a positive prohibition against the practice was enforced without creating any disturbance.

On the 3rd September 1819 the Nizamut Adawlut were still of opinion that the promulgation of the rules for the abolition of Suttee was not easy. Government agreed with this authority.

In the letter from the Governor-General in Council to the Court of Directors, dated 15th January 1820, the former remarked that Captain Pottinger having, in the most cautious and judicious manner, interfered, although unsuccessfully, to prevent a Hindu woman from performing a Suttee, the Government said that the greatest caution was requisite, on the part of the officers of Government in dissuading widows from Suttee, in order to avoid the imputation of interfering with the religious opinions of the inhabitants, to which the Government of a Brahmin prince could not be liable. It appeared to Government that women dissuaded from performing Suttee might be given the allowance of a small sum for their subsistence.

Mr. C. M. Lushington, Magistrate of Combaconum, stated "That the practice is neither prescribed by the Shasters nor encouraged by persons of education or influence." He said, "I can speak from positive authority, that His Highness the Rajah of Tanjore has ever discouraged it; and I feel assured that, with the exception of a few necessitous Brahmins, who derive a nefarious reward for presiding at this infernal rite, the prohibition of the practice would give universal satisfaction."

In the Circular, proposed on the 30th June 1837, by Mr. James Erskine, the following is found :—

"It is very painful for the British Government to learn how often the clear and express law of the Hindu Shasters has been broken," and that persons "have persevered in the actual commission of the practice at which all reasonable men will shudder, as highly offensive to the rewarder of good actions and the punisher of bad." He entreats natives "not to rest satisfied with following the customs of their fathers, but to examine them and convince themselves that they are in strict conformity to the law of God." "Let all Chiefs educate their children and teach them to read their Shasters, and see what they ought to do to obey the law of God and to maintain their estates in their ancient prosperity."

In a Minute by the Honorable Mr. Anderson, subscribed to by the Honorable Mr. Dunlop, the following appears :—

"I admit that education and knowledge will ultimately change the feelings and habits of a whole people; but this is a work of time; and it is not to knowledge so gained that we must look for the cessation of this great crime, (infanticide), but to the measures of Government, used with prudence and conciliation."

From the foregoing extracts, it is clear that the practice of Suttee, or women burning themselves with the corpses of their husbands, was a custom which had been in vogue in India during many hundreds of years. It was an ancient custom many centuries old, when the British began to rule in India. This Government, in 1805, proclaimed "That it is one of the fundamental maxims of the British Government to consult the religious opinions, customs, and prejudices of the natives in all cases in which it has been practicable, consistently with the principles of morality, reason and humanity." Applying this maxim to the practice of Suttee, which was not consistent with the principles of morality, reason and humanity, they were anxious to prohibit Suttee by a penal law. Before enacting

such a law, Government wished to satisfy themselves whether the practice of Suttee was enjoined by the religion and Shastra of the Hindus. The Government, therefore, asked the Nizamut Adawlut to ascertain from the Pandits, or learned men, whether the practice of Suttee was founded on any precept of the Hindu law. The Court replied that they had ascertained that the practice was expressly stated with approbation in the Hindu law. The Government deliberated on this question for seven years, and was able to find, in 1812, that the practice was countenanced by the Hindu religion or Shaster only in *certain* cases. They, therefore, ordered that the practice might be allowed in those cases only, and that in others it might be prevented as repugnant to the Shaster of the Hindus.

This order of Government saved a number of women from being murdered, *viz.*, all women under sixteen years of age, all women who did not voluntarily wish to be burnt, and all women who were pregnant, or who had babies to suckle and protect.

Simply because the Government were not able, or neglected, to ascertain what the Hindu Shaster was, they tolerated for seven years the murder of thousands of women by the custom-ridden and irreligious Hindus who had the audacity to tell Government that their Shastras, of which they knew little or nothing, prescribed Suttee. Even now in the latter part of the 19th Century, I find Hindus, both educated and uneducated, proclaiming such to be the law of the Hindus.

Another six years passed, during which thousands of women lost their lives in consequence of the teaching of the ignorant Brahmins, and the hesitation of Government to do justice on the score of policy. In 1818, Captain Henry Pottinger (Sir Henry Pottinger ?) wrote to Government: "I am satisfied that the exercise of a very trifling degree of authority would put a stop to this perversion of reason and humanity in future." And Mr. W. H. Macnaghten reported to Government that the Pandits stated that it was

optional with the widow to practise Suttee or not. The Pandit of the Supreme Court of Calcutta then pointed out that Suttee was *not only optional,* but was no mode of obtaining eternal heaven, the goal of all souls, but only a means of seeking a paradise of TEMPORARY AND INCONSIDERABLE HAPPINESS; that life, therefore, ought not to be expended for the sake of such ephemeral pleasure. He added, that eminently virtuous women did not, in former ages, perform Suttee, that the practice was frequent among modern women who contemplated eternity with indifference. He said that Yogeeshwer made no mention of Suttee, that Vedanta forbade it, and that any widow not performing Suttee, committed no sin. He concluded by saying that "the act of dying is not enjoined."

Emboldened by the light thrown upon the subject, as given in the preceding extracts, a Regulation prohibiting the practice of Suttee *only in certain cases* was drafted, but the Government, intimidated by unprincipled and avaricious Brahmins and their ignorant followers, were not bold enough to give it the force of law.

Four hundred and thirty-eight women died as Suttee in 1817 in one portion of India.

In 1819, the Nizamut Adawlut were satisfied with abusing the people, and advised Government not to pass any law, giving as their reason that—

"As long as the Hindu portion of the population continues so justly notorious for bigotry, and is, generally speaking, so uncivilized and illiterate, we cannot justly hope that the Hindus will be otherwise than exceedingly dissatisfied at every interference on our part, which has any cognisance of their religious ceremonies; and however plain may be the proof we adduce to them, that the interference we propose is only in cases not countenanced by the tenets of their religion, and therefore reasonably liable to prohibition."

Some of the officers of Government were not so dejected

as were the Nizamut Adawlut in 1819. With the true courage of his race, Mr. W. Ewer wrote to Government what he believed to be true, reasonable, just, necessary, humane and religious. He said that the practice was nowhere enjoined by any of the Shastras; that it was on the contrary a crime; that the Government might interfere by prohibiting Suttee, as they had done by repealing the law prohibiting the capital punishment of Brahmins, by prohibiting Infanticide, Dhurna, the exposure of infants at Saugor, and the burial of Jogee widows; that these were instances of Government interference with the prejudices and the immemorial usages of the Hindus, without exciting dissatisfaction. He added that not one in a thousand knew anything of the contents of the Shasters, or if they were aware of the Shastras, why did they persist in illegal acts, if custom was not in their eyes, paramount law? He concluded his remarks by saying that he had offered the grounds of his opinion that the barbarous custom of Suttee might be prohibited, without exciting any serious or general dissatisfaction among the Hindus.

Having shown that the practice of Suttee had not been enjoined by the Shasters, he explained in 1819 to Government how it had originated, though not prescribed by law, for Manu and the most ancient and respectable writers did not notice Suttee.

Ignorance of the masses, degeneration of Brahmins, evil motives of interested parties, led this honest critic into the belief that the most pernicious customs which existed either in contravention of the Shaster or were not prescribed by it, which were revolting to humanity, to all religions in general, and to the Hindu religion in particular, were parts of the Hindu religion and law, simply because they had been in practice for many centuries. He, therefore, would not at first prohibit them until he was satisfied that by imposing any prohibition, he would not offend the Hindu Shaster, and that he would not, by such a prohibition, create disaffection among the Hindus. To satisfy Government on these two points,

a number of disinterested philanthropists set to work. Mr. Ewer re-assured Government on these two points. Mr. Morrieson went further. He said: "Nor does it appear to me that the abolition of the practice is altogether inconsistent with the spirit of toleration which has ever distinguished the British Government;" "that the people only want the excuse of a law to induce them," "to evade the Sutteebhud of their little read and less understood Shaster."

Mr. H. Oakely stated in 1818, "Regarding the prevalence of Suttee as the effect of local immorality, instead of general religious prejudice, I do not hesitate in offering my opinion that a law for its abolition would only be objected to by the heirs, who derive worldly profit from the custom, and by Brahmins who partly exist by it."

Mr. E. Lee Warner wrote thus: "A law might doubtless be promulgated for the abolition of this practice, without causing any serious disturbance. It has already been done in regard to the sacrifice of children at Saugor, and elsewhere, as well as the practice of destroying female infants and the burying alive of women. Why, if these customs which were also generally practised, have been abolished by a humane Government, should not the practice of Suttee be abolished?"

The intrigue of the Brahmin, notwithstanding the efforts of these honorable men, was so strong as to intimidate the Nizamut Adawlut, and through them the Calcutta Government. They declared in 1819 that the promulgation of rules for the abolition of Suttee was not easy.

The Government, however, approved of the conduct of some of their eminent subordinates who had dissuaded certain of these would-be Suttees from committing the infernal crime of Suttee on promise of protection for the remainder of their lives. Grants for that purpose were approved of by the Court of Directors.

At this juncture European gentlemen of the Bombay Presidency came to the aid of their Calcutta brethren.

Mr. V. Hale, Judge of South Concan, said that at one period during the reign of a Sawant, in the Province of Sawantwaree, a positive prohibition against the practice was enforced without creating any disturbance.

Madras contributed its share to the work of restoring humanity to Hindu religion and justice to British administration. Mr. M. M. Lushington, Magistrate of Combaconum, reported "that the practice is neither prescribed by the Shaster nor encouraged by persons of education and influence."

In a Minute by the Honorable Mr. Anderson, subscribed to by the Honorable Mr. Dunlop, the following appeared :—

"I admit that education and knowledge will ultimately change the feelings and habits of a whole people, but this is a work of time; and it is not to knowledge so gained that we must look for the cessation of this great crime, but to the measures of Government, used with prudence and conciliation."

What discussion followed during the next ten years, I have not been able to discover. It is, however, a fact that in 1829, Regulation XXVII of 1829 (Bengal Code), prohibiting Suttee and making it penal to take any part in it, was passed by Lord William Bentinck, whose name is still fresh in the memories of educated men, and the benefits of whose wise administration were visible in Mysore until a few years ago.

Thus we see that two sets of generous Englishmen, the one cautious, the other just and philanthropic, were devoting all their energy and wisdom to bring about this happy result for a period of forty-five years. At last the conservative and timid, though honorable, section had to give way to Shaster, to humanity, and to the philanthropic efforts of a small body of their countrymen whose noble aim was to uproot that long-standing but illegal custom, which murdered the species and extirpated justice alike from the religion of the Hindus and from the administration of the British Govern-

ment. The Shaster, which the Government found out in 1829, was the Shaster that had always existed, and commented upon many centuries ago. Yet it took forty-five years of the disinterested and earnest labour of a number of English gentlemen (be it said to my shame, not of my countrymen,) to discover the existence of that Shaster. Even after the discovery of its existence, a strong-minded Statesman was needed to effect its promulgation and enforcement.

The following, taken from the preamble of Regulation I, of 1830 (Madras Code), shows why that Regulation was passed. "The Governor in Council, without intending to depart from one of the first and most important principles of the system of British Government in India, that all classes of the people be secure in the observance of their religious usages, so long as that system can be adhered to without violation of the paramount dictates of justice and humanity, deemed it right," to prohibit Suttee altogether.

Thus were our sisters taken out from the fiery grave by Lord William Bentinck. Did this merciful act save them from misery, and make them enjoy the benefits of a wise and humane Government?

Alas! no! Instead of having to suffer the torture of a few minutes, at the end of which they became incapable of feeling any further pain, they were thrust into a life-long misery, a life of wretchedness and unhappiness, which is a thousand-fold more insufferable than the momentary pangs of the funeral pyre.

Let us take the instance of a child, say of three years, which is declared by infernal custom to be widowed. This is not an exceptional, but a fairly general, instance. Of the fact that she had been once married and had become a widow, she knows nothing. She therefore mixes with children not widowed. Supposing there is a festivity, children run to the scene; but the sight of the widowed child is a bad omen to the parties concerned in the festivity. She

is removed by force. She cries, and is rewarded by the parents with a blow, accompanied by remarks such as these: "You were a most sinful being in your previous births, you have therefore been widowed already. Instead of hiding your shame in a corner of the house, you go and injure others." The child understands not a word. Some jaggery is given her, and she is appeased. She can wear no ornaments. She cannot bathe in the manner in which other children bathe. Her touch is pollution. In the meanwhile, if the priest, whose authority cannot be traced to the Vedas, Smrities, Puranas or any Shaster, happens to visit the place where the child is, she is immediately shaved and dressed like a widow in order that she may appear before the priest and get herself branded or initiated into mysteries. Only lately I saw a child moving about in such a garb to the immense sorrow of some, and the amusement of others. She is then asked to eat only once a day. The lightest stimulant is denied to her. She is made to fast once a fortnight, even at the risk of death. She often asks in vain why these things are done to her. During the earlier part of her life, she is told some story or other and quieted. When she reaches eleven years of age, such devices fail. Then it is explained to her that in her previous births, she was a bad woman, created feuds between a husband and wife, and God (that Merciful Father who is ever kind to all) being angry, was pleased to ordain that she should, in this generation, be a woman deprived of her husband. This is generally the first correct intimation to the girl of her having been declared a married female. She learns this with concern and anxiety, but is not able entirely to realise her position. Two more years pass away. Nature asserts its dominion. She begins to feel that, for no fault of hers in this generation, she is denied what her comrades are allowed to enjoy. She becomes an object of suspicion. The hide-and-seek system comes into play. If she be talking to one of her companions who enjoys the company of her husband, she is dissuaded from any conversation with her. The prohibition excites curiosity. Respectable companions

being denied, an evil one is secretly associated with, who opens the world to her. Her passions are roused. Feelings of shame cause her to struggle with them. This life-long war begins, and in most cases passion prevails over shame. She becomes pregnant; she learns it generally when she is advanced in pregnancy more than two months. No respectable doctor will remove the cause of her shame. Quackery must come to her help. Sometimes the object is gained with or without injuring her constitution. A failure is also possible. A series of attempts is then made for seven full months to hide her shame. If all these fail, then a wretched creature is brought into this world. The next step is to get rid of it. A small conspiracy is formed. It is killed, and its remains disposed of as best they can be. In this attempt great danger is incurred. The Policeman, not having much to do, considers it a piece of good fortune to discover such a body. He secures it, and makes a list of young widows. He exercises his detective cunning in finding out the culprit. He often gets on a wrong scent. Many a widow, perfectly innocent, is laid hold of, taken to the Police-station, and marched off to a dispensary for medical examination. An examination is held, and some of them declared innocent. They pay presents to the Police and recover their liberty from the clutches of the criminal law. To the priest, this acquittal is insufficient. His inquisition is set on foot, and is ended invariably by the infliction of a high fine payable to himself, on the receipt of which, she is branded in token of purification. She may have no money to do all this; she is compelled to court any paramour who will furnish her with the necessary funds, and this money enables her to come out of purgatory. Her relatives, however, are not satisfied. She is shunned by them. It then becomes necessary for her to sell her body for the sake of bread.

No doubt there are cases in which the girl finds herself strong enough to combat with her passions. What a life does she lead! Privation of food, of clothing, and even of

necessary comforts; observance of fasts, which at times extend to seventy-two hours; enforced absence from every scene of festivity; the enduring of execrations heaped upon her if she unwittingly or unfortunately comes in front of a man, a priest, a sovereign or a bride; these I say become the daily experiences of her life which is often prolonged to a great age.

Why is she subjected to all these annoyances? Is it for any fault or sin she has committed to her own knowledge? Is there any remedy in her power which she can apply and thus rid herself of these annoyances? She gets no reply to these questions. She is persuaded to believe that all these have proceeded from her Karma over which she has no control,—not a very logical or happy solution for her.

Thus it will be seen that the British Government by prohibiting Suttee, a prohibition *approved of by Shasters, by humanity* and *by justice,* and by stopping short *there,* have contributed towards rendering the condition of our widows worse than it was before.

The very Shaster, from which the British Government *after forty-five years' deliberation learned that Suttee "is* nowhere enjoined by the religion of the Hindus as an *imperative duty,"* lays down that no girl should be married before she is mature; that, before she is developed, she is possessed in turn by three deities; that after their possession only, can a girl become the wife of a man; that a few minutes before the man has sexual intercourse, he is called upon to invoke a deity and beg of it to surrender her to him for that purpose.—*Vide* Rig. Veda, 10-85-40, 41 and 21 and 22: Samvarta Smriti, one of the eighteen recognized Smrities, verse 65, page 589, Calcutta edition of 1876. Attri Smriti, another of that class, the same edition, page 29: Yagnavalkya, Chapter I, verse 17, and its Commentary called Mitakshara, mostly relied on (wrongly) by British Courts: Manu quoted by Vydinath Deechitta, a high authority with the Judges of the Madras High Court. Are not these as high authorities as were quoted to abolish Suttee?

Yet the timidity of the British Government, and the superstition, or something worse, of some of the Hindus is powerful enough to prevent an enactment prohibiting child-marriage. What has been the result? A large portion of 20,000,000 of widows is compelled, to the shame of Religion, Shasters, Christianity and to the disgrace of humanity and of the most just and liberal Government on the face of the earth, to lead one of the two shameful lives I have endeavoured to portray.

The very Shaster, which enabled Lord William Bentinck to abolish Suttee, and which I hold prohibits child-marriage, does not prescribe perpetual widowhood. It releases most of the Hindu widows, out of 20,000,000 now living in India, from perpetual widowhood, without interfering with the rights of inheritance guaranteed to them by the Shastras.

What has the British Government done in this matter? It took seventy years to make up its mind to pass a law, in which a sort of sanction is given for re-marriage, but with a provision for depriving the woman so married of her inheritance. It gave no protection to her from the fanatical persecution of people unlearned in their Shaster, and possessing much interest in enforcing perpetual widowhood. By depriving her of that inheritance which Manu gave her, the Act lowers her status in society.

It took the British Government, as I have said, seventy years to pass a defective, and in a way injurious, but well-intentioned, law, at the end of which time they were convinced that "many Hindus believe that this imputed legal incapacity to contract a second valid marriage, although it is in accordance with established custom, is not in accordance with a true interpretation of the precepts of their religion."

Another thirty years have passed and the precepts of the Shaster have been laid bare before the general public during this interval, confirming the truth of the aforesaid interpretation of the precepts of Hindu religion and Shaster, show-

ing further that child-marriages are illegal, that mere chanting of words, the meaning of which is not known as a rule to the chanter, the bride, the bridegroom, and the people assembled round them, does not disentitle the bride from taking another person as her husband with full marriage rites, if the bridegroom should die before sexual intercourse with her take place; that even non-virgin widows may re-marry, thereby occupying only a slightly inferior position, to that which, strictly speaking, is the present position of the *whole* Hindu population, *viz.*, receivers of interest on money lent, a barren woman, an impotent man, a foul-mouthed man, a fighter with his father, a gambler, a tale-bearer, a perpetual beggar, which most Brahmins are. Yet the British Government has not the courage to declare what the Shaster lays down, and enforce it although they cannot but be convinced that by so doing, they will promote "good morals" and "the public welfare."

To the omission of the British Legislature to do what is legal and just, what will promote good morals and the public welfare, the British Bench has added a rule that a widow possessed of her husband's estate cannot be dispossessed of it, if she have illicit intercourse with any man during her widowhood; although she must be dispossessed of it, under the Widow Marriage Act, if she have licit or lawful intercourse with the same man after *marrying* him!!! What a just, good, Shastraic rule this is! A rule against the legality of which a Hindu who had the right to pen a dissentient minute, vainly but loudly protested. He was told that though he was a Hindu, though he knew Hindu law, though the whole Hindu press supported him and affirmed that what he had said was according to the law or Shasters, yet his judgment was not according to the Hindu law; and an adultress was declared to be competent to hold on to the estate of her husband which the virtuous re-married widow was made incompetent to hold!!! This indeed is adding insult to injury.

In the close of the nineteenth century, of the Christian

era, under the most liberal Government on earth, in a country where the Shaster is relied on for every daily avocation of the people, after clear expositions have been given of Hindu Shaster by the greatest oriental scholars of the West, the British Indian Government has not been bold enough to promulgate the existing law and to insist upon its being obeyed.

Let us see how the law, as now administered, affects good morals and the public welfare.

A, *a rich person, master of a few lacs, dies, at the age of* sixty, leaving a girl, aged eight years, betrothed to him, or, as is now popularly called, married to him, and a mother aged seventy-six years old. Some days before his death, the girl and her parents come to his house and live with him. Unconscious of what is looming before her, the girl is engaged in playing with the children in the neighbourhood. The old man in his agonies gazes upon his mother, whose only child he is, wishing in vain to die before him. He dies. The parents of the girl, as her guardians, seal every room, every box, and secure everything that belonged to the deceased, and, after the dead body is disposed of, prevent the aged mother from getting inside the house, assuring her that she shall be paid maintenance according to usage, and that she need not trouble herself with the household which belongs, they say, to their daughter. They apply to the established Courts, and become recognized as the natural guardian of the heiress to the estate during her minority. The mother is allowed food in the house, or granted a few rupees, say twenty or twenty-five a month, for her livelihood. The girl is deprived of a piece of string from her neck, and is allowed to play, as hitherto, with her associates. For four or eight years the minority continues. All the mesne profits of the estate are enjoyed by the fortunate parents in the interval. The girl grows, and learns that her parents have made her a widow, that is, they have deprived her for life of a legal male companion. Her nature, however, requires one. Her parents on the contrary tell her that she should

not marry; for, this, they allege, is against Shaster, and is against her interest, inasmuch as she would, if married, be deprived of the rich inheritance they have secured for her. Nature is too strong for these considerations, and it prevails in the end. She thinks over the matter and argues thus: "Somehow or other without my knowledge and without any effort on my part, I am now master of a large and rich inheritance. I am young, but have no partner to share my happiness. My parents say that Shasters prohibit me from having a legal one. The British Indian Statute law warns me that, should I marry, I must give up the estate. The Judge-made law assures me that if I take illegal partners, or paramours, I can retain my estate. As the last-mentioned course enables me to enjoy my estate, and to indulge in free love, I will take possession of my estate from my parents, give them something to live upon comfortably, and become sole mistress of my house, entertaining as many lovers as I like." Is not this resolve reasonable and sensible? Can the young woman be found fault with by the utilitarian philosopher? *But*—Is not such a conduct immoral according to the sacred laws of Hindus and Christians alike? Is it not a shame that the Government should tolerate, authorize, and support such conduct? Will not the British Government be justified in promulgating laws rendering such conduct on the part of its subjects impossible? Surely, if Suttee and infanticide were evils which the British Government thought themselves bound to put down, child-marriage and attendant perpetual widowhood, with their train of evils, immoralities, crimes, murders, &c., are evils of greater moustrosity which peremptorily demand suppression at the hands of our Government.

It is the boast of the British Government to give liberty and freedom to the nations under its sway. Nay, more: such lovers of freedom have the British people shown themselves to be, that when they were once convinced of the unrighteousness of slavery, they determined not only at great pecuniary loss to themselves to prohibit slavery in

their own dominions, but to fight for its suppression against the whole world and at all risks. No matter what flag a slave ship may choose to fly, it affords her no protection if she crosses the path of a British man-of-war. She is captured, forfeited, and the slaves are liberated, and cared for. But the Government which, for more than eighty years, has waged all the world over so persistent a warfare against slavery, has here in British India taken no steps to give the blessings of freedom to hundreds of thousands of women! All Hindus must commend the resolution of the British Government not to interfere with their religious customs or with the religion they venerate. There is, however, no religious law of authority that prescribes that girls should be married at two or three years of age. A custom, it is true, has sprung up, but the result of that custom is that there are thousands of widows who have to live a life of what is slavery in everything but the name. Will the British Government that, at all risks, has fought against slavery over all the world, even in those places where, legally speaking, it had no right to interfere, do nothing on behalf of the 20,000,000 widows, who in their own dominions are living in a state of shame, subjection, and unhappiness?

It is worthy of consideration whether under the existing circumstances, a law containing the following provisions is not absolutely necessary. These provisions are given below in non-technical language:—

1. Marriage is optional.

2. Marriageable age for the male is from and after his sixteenth year.

3. Marriageable age for the female is from and after her eleventh year.

4. In the case of a girl widowed before sexual intercourse, the bride may be legally married to another, with vedic rites; and without them if she be a non-virgin.

5. The issue of these are legitimate.

6. Virgins widowed, whether re-married or not, have no lien on their first husband's estate, as they do not belong to his Gotra.

7. Widows who have come into possession of their husbands' estate shall forfeit it, and it shall pass on to the next heirs, if they are proved to have had sexual intercourse during their widowhood.

These are the main provisions of an Act which, I think, the Indian Imperial Legislature ought to pass.

The first three sections are declaratory and contain provisions of the Hindu law. There has been, so far as I am aware, *no decided case* of the Privy Council, or of the High Courts to the contrary. The object of declaring these provisions as those of Hindu law, is to prevent too early marriages.

The fourth, fifth and sixth sections are also declaratory provisions of Hindu law. These, together with the seventh section, have been in a way declared to be law by the Widow Marriage Act. There have been no decisions declaring these provisions to be no law. The object of re-enacting these is to show them to be purely Hindu law, and are not based upon expediency.

The seventh section is intended to cancel the bad ruling of the Privy Council in 1880.* The latter enables an unchaste widow to retain her husband's estate which she obtained when she was a chaste widow.

Are these provisions revolutionarily aggressive? Are they inconsistent with Hindu law? Are they revolting to common sense, to morality, to humanity? The first section will protect a female from persecution if she chooses not to enter into a married life up to any period of her life. Is this aggressive? Is this tyrannical to her, or to anybody else? The second section will save a great many girls from becoming widows; for it has been proved

* Mouiram Kolita *v.* Korry Kolitany, 13th March 1880.

from the experience of the world that deaths are more numerous below the age of sixteen than above it. It will make our children more robust and healthy than they have hitherto been. It will improve the physique of the nation. It will add soundness to the education imparted. It will afford opportunities for travelling, without which no education is complete. On the contrary, what harm can arise from such a provision? Will the Hindu nation rise against the British Government for declaring such a provision to be law? If I have correctly felt my national pulse, I am sure that the nation is fully prepared to welcome such a law.

The third section introduces no novelty. In Southern India I know, for a fact, that in some cases a marriage, (in the sense in which the would-be-orthodox party uses the word), takes place when the bride is ten years old. It being so, what is the aggressive novelty in this third section?

If the Widow Marriage Act was legal, these four proposed sections must be legal as the former was based on the very same authorities as the latter. These are only enabling clauses. They compel nobody to do anything against one's will, against conscience, against morality, against humanity, and even against the laws of nature.

The seventh section is an absolute necessity. The existing Judge-made law is opposed to Hindu law, and morality, and holds out a premium to such of the widows as would lead an immoral life instead of getting themselves married under the provisions of the Widow Marriage Act. This Judge-made law was bitterly condemned by, I think, the whole of the native press at the time it was published.

It is a great truth that history repeats itself. Out of every ten thousand human beings, there are about 9,990 persons who have no time to do anything more than what is necessary to keep their bodies and souls together. Of the other ten, more than five are generally engaged in bettering their own material prosperity. The rest may think of things beyond themselves, and may wish to better their follows.

This may be done in various ways. Many of these ways may not run counter to the opinions and feelings of the people. So they also may secure safe and pleasant sailing. Such is however not the case with the person who may be disposed to rescue his fellowmen from ignorance, superstition, slavery, and unhappiness. The moment he resolves to do this work, he becomes the butt for attacks from all around him. The 9,995 out of every 10,000 persons brand this man as a reformer, as distinguished from a statesman; as an ill-informed man, in comparison with his immediate preceding generations; as a heretic with reference to what was then considered by them to be the Gospel; as a *pseudo*-philanthropist and no sound-thinker; finally as a mad man, a dangerous adviser to the people, and a misleader of his government. To prove this, I need not quote from histories of the world. It has been shown in this paper how the small band of honest and humane Englishmen who advocated the abolition of Suttee, infanticide, privileges from capital punishments, the custom of Dhurna, the prohibition of the marriage of widows, special privileges for special classes, were opposed, and their attempts frustrated for many scores of years. The same tactics are applied even now in the close of the nineteenth century, and in the third century of British rule in India. They say what is now proposed is (1) opposed to law; (2) repugnant to customary law; (3) offensive to the religious feelings and sentiments of the people; (4) dangerous to the safety of the Government.

A small minority of Europeans said in 1785, that it is one of the fundamental maxims of the British Government to consult the religious opinions, customs and prejudices of natives in all cases in which it has been practicable, consistently with the principles of morality, reason and humanity. If, therefore, the custom of Suttee was not founded on any precept of Hindu law, they urged that it might be abolished.

The majority then opposed them and said that, from the opinions delivered by the law officers, the practice was founded on the religious notions of the Hindus, and

was expressly stated with approbation in their law. The highest Court were fully sensible how much it was to be wished that this practice, horrid and revolting, even as a voluntary one, should be prohibited and entirely abolished. But the Court had reason to believe that the prejudices in favour of this custom were then so strongly impressed on the minds of the inhabitants in most parts of the Provinces that all castes of Hindus would be extremely tenacious of its continuance. The Court apprehended that it would be impracticable at the time, consistently with the principle invariably observed by the British Government of manifesting every possible indulgence to the religious prejudices and opinions of natives, to abolish the custom in question; whilst such a measure would, in all probability, excite a considerable degree of alarm and dissatisfaction in the minds of the Hindu inhabitants, and that it was, therefore, highly inexpedient.

When a minority is now found to say that it is right that the British Government should consult the customs of the natives, provided they are not opposed to their Shastras, morality, reason and humanity, and that the custom prohibiting the re-marriage of Hindu women is opposed to the Hindu Shastra, reason, morality and humanity, and therefore may be abolished, and the Shaster restored, and reason, morality, and humanity vindicated; a leader of the majority opposes this, and says, "That the Hindu law which the Courts are bound to administer, and which the Legislature ought to respect, is not, I must submit, what R. Ragoonath Row expounds to have been the law of the Vedic period or of any other period in the history of this country; but the law which, whether rightly or wrongly, is at present received by the people as law." "Sound policy suggests that the customary law of a nation should be preserved to them as regards inheritance and marriage." "Among the non-Aryan tribes certain usages" "were allowed to be retained during the progress of the Aryan civilization. In their case, usage is an independent source of law, whether it accords or

conflicts with the sources already mentioned." "Another source" "is later juristic thought, which by its adoption by the people, has resulted into a rule of customary law. This source Ragoonath Row does not recognise; but it is a source which the Legislature and the Courts must recognise as it has influenced the law of the people." "The legislation suggested (for restoring Hindus their own Shaster) is aggressive. Policy and statesmanship forbid such legislation. It would be regarded as an irritating interference with national religion and cause disaffection among the people." Legislation to the effect that child-marriage is illegal "is aggressive."

Let me here repeat what was said of the practice of Suttee in 1817. The Pandit of the Supreme Court of Calcutta said, "That she who looks not to absorption (final beatitude) but seeks a paradise of temporary and inconsiderable happiness, might undergo Suttee." There were therefore, a few instances, of eminently virtuous women of former ages sacrificing themselves, to be met with in the Puraunas. In works treating of the duties of women, there is no mention made of the practice of Suttee and "the act of dying is not enjoined." The Nizamut Adawlut said in 1817, that suicide in these cases (Suttee) is not indeed a religious act, nor has it the sanction of Manu and other ancient legislators, revered by the Hindus. Mr. W. Ewer represented, "That in permitting or indeed authorising Suttees, we are by no means showing a proper forbearance towards the religious customs; for Suttee is an act nowhere enjoined by any of the Shasters; on the contrary, a crime which their own laws will punish with death, and only tolerated by our Government, because we overlook the impudent imposition "of interested parties." There have been instances of our interfering with the prejudices of the Hindus, without exciting any symptoms of dissatisfaction, and Manu and the most ancient and respectable writers did not notice Suttee, it was therefore in their time either unknown or not approved of."

Mr. Lee Warner submitted, "That a law might doubtless be promulgated for the abolition of this practice without causing any serious disturbance. It has already been done in regard to the sacrifice of children at Saugor and elsewhere, as well as the practice of destroying female infants, and the burying alive of women. Why, if these customs which are also generally practised have been abolished by a humane Government, should not the practice of Suttee be abolished? Is the practice of Suttee in any part of the Shastras insisted upon?"

This minority of humane gentlemen were however met by the *leaders of the majority in the following manner*:

In 1819, the Judges of the Nizamut Adawlut answered the above thus;—"Hindu nation was notorious for bigotry, is uncivilized and illiterate." It would, therefore, consider all attempt to restore its own Shaster, as illegal interference *with their religion. Let nothing be therefore done.*

The Government agreed with the Court and would not enact the law proposed.

It is *now* pointed out by a small minority that marriage is no road to final beatitude, and is, therefore, optional; that there are instances of unmarried women obtaining final beatitude recorded in Puranas; that a law may, therefore, be enacted declaring that marriage is optional for women which would prevent child-marriages, and which will be consistent with reason, with morality, and humanity.

The opponents reply, "Marriage, which was in Vedic times optional, with women, became compulsory during the *Smriti period.*" "Nor is the cause of progress or morality much injured by it." "Infant-marriage was enjoined as a preferable marriage." "That no girl ought to be given in marriage before her tenth year," "does not appear to be in accordance with several Smrities." Their leader says, "I do not deny that the principle of equality between man and woman in respect of freedom of marriage should be vindicated; but I think that in the backward state of education

among Hindu women at present, and amidst their firm faith in ritualistic practices, such legislation would not really aid progress."

Turning again to Suttee, one of the minority, Mr. Hale wrote in 1819, that in Sawantwaree, at one period, a positive prohibition against the practice was enforced without creating any disturbance, and Mr. Lushington stated that the practice is neither prescribed by the Shaster nor encouraged by persons of education or influence and that, with the exception of a few necessitous Brahmins who derive a nefarious reward for presiding at this infernal rite, the prohibition of the practice would give universal satisfaction. Mr. James Erskine entreated (Hindu Rajahs) not to rest satisfied with following the customs of their fathers, but to examine them and convince themselves that they are in strict conformity to the law of God.

The Honorables Anderson and Dunlop minuted "That education and knowledge will ultimately change the feelings and habits of a whole people; and it is not to knowledge so gained that we must look for the cessation of this great crime, but to the measures Government use with prudence and conciliation."

The majority, again prevented, and on the 1st February 1820, the Governor-General in Council wrote to the Court of Directors thus :—

"Concurring as we do in the foregoing sentiments of the Court of Nizamut Adawlut, we were satisfied that it would, at all events, be inexpedient to promulgate the circular orders prepared in 1817."

Now, when I say regarding widow marriages that, whereas according to Hindu law, no marriage is so complete until after actual cohabitation as to make the bride become one with her bridegroom in gotra (gens), Pinda (right to offer or partake funeral oblations), and Sootaka

(liability to pollution on births and deaths), and whereas no change takes place in the civil status of the pair and no rights of inheritance, &c., to the property of either party are acquired, a law may be enacted as follows:—I. No marriage contracted between Hindus shall be valid and complete until cohabitation takes place, and no rights of inheritance, of receiving maintenance, and the like, and no liabilities consequent on a complete marriage, shall accrue to either of the contracting parties whose marriage has been consummated by cohabitation.—*II.* A woman who may cohabit with a man other than her husband, shall, after conviction of having done so by a competent tribunal, cease to possess any of the rights and privileges secured and obtained by her under Hindu law or any statute and shall be liable to be dispossessed and disinherited of the property, which may have come in her possession before she cohabited as aforesaid;—I am met by opponents who say, That "it is suggested that the Legislature should declare that no Hindu marriage is valid unless it is followed by consummation, and that no legal relation and no legal rights shall arise from it prior to its consummation":—That the proposers are apparently not "prepared to recognise the conditions of sound legislation in aid of progress":—That they forget "that no statesman should be invited to commit himself to a course of legislative action which would invalidate marriages that are performed in accordance with national custom, and which would thereby involve in it an irritating interference with the most important domestic event of the majority of Her Majesty's Hindu subjects":—That they advocate "but two amendments of the Marriage law, *viz.*, that marriage is optional as well with woman as with man, and that until it is consummated, the bride's gotra is not changed, and unless it is changed, she is at liberty to marry again. The basis on which the movement rests is narrow and must be widened" "for real progress":—That "Viewing it as the outcome of enlightenment and progress it does not seem to recognise the right principle that man and woman must be placed on the same footing

regarding their right to marry" :—" That there was a time during the Vedic period when it was optional with women to marry, and that women ,married after they attained maturity" :—" That the principle on which R. Ragoonath Row supports his contention, is a general principle recognised in Smritis" :—That another notion, *viz.*, no marriage, no salvation " came into prominence at a later date, and modified the original conception" :—That " that this notion became dominant, and passed into a rule of conduct during the period of Smritis, is shewn by a number of Smritis which declare it to be the duty of a father to bestow his daughter in marriage before she attained her maturity" :—That then came the notion that conception and birth is a taint, that purification is necessary, and that marriage, which is the only rite prescribed for women and which is analogous to the rites of Oopanayanam in the case of men, is " indispensable. This is the conventional religious ground on which marriage became imperative on women belonging to the regenerate classes. The rational ground is also disclosed, though as it were, incidentally, by those texts which direct fathers to give their daughters in marriage before they attain their maturity, lest they may yield to temptation. The same principle on which infant-marriage was enjoined led also to marriage being enjoined as compulsory. Thus, it was that marriage, which was in Vedic times optional with women, became compulsory during the Smriti period" :—That " after going through the Vedic texts relating to the marriage ritual, I (a leader of the majority) am unable to resist the conclusion that those texts contemplated no infant-marriage" :—That " during the Smriti period, a notion came into prominence that every father ought to fear his daughter attaining maturity before she is married." " Thus a duty came to be recognised by Hindu fathers to give their daughters in marriage before they attained maturity. I must, however, add that infant-marriage was enjoined as a preferable marriage" :—That " that no girl ought to be given in marriage before her tenth year, does not appear to be in accordance with several Smritis" :—

That as regards the contention that the Gotra is not changed before cohabitation, the fourth and fifth principal oblations given immediately after walking seven steps on the first day of marriage, embody the idea that the bride had then been transferred from her father to her husband's-family :—That looking to the Vedic texts alone, they do not support the contention that the gotram is not changed until cohabitation takes place :—That "it is the taking by the hand and walking seven steps that constitute marriage according to custom. The practice is of Vedic origin." "The Homum to the fire is a prayer confirmatory of the new relation that has been formed." "The consecration of the domestic fire," presupposes the formation of the marriage tie. With many this ceremony takes place on the first night of the marriage, though with some, it takes place on the fourth day :—That "another, and last part of the ritual is the recitation of the Vedic texts which relate to the consummation of marriage. According to practice, this text is not always repeated on the fifth day" :—That therefore, there should be no legislation for a change.

Thus we see the repetition of history. One in a ten thousand points out a thing as not supported by written law and as opposed to reason, morality and humanity. The rest swoop down upon him and cry out that it is supported by law, or that it is customary, or, both ; and that whether it is reasonable, moral and humane or not, it is dangerous to interfere with it. The minority, after an uphill fight of a generation or so, proves that the custom is opposed to law. The majority turn round and proclaim that custom is a source of law, so powerful as to upset Divine and written law ! !

Let me here summarise the objections thus raised. They are :—

(1). That the proposed legislation would invalidate marriages that are performed in accordance with national custom, and would, therefore, be an irritating interference.

(2). That this legislation is too narrow for real progress.

(3). That this legislation does not place the sexes on the same footing.

(4). That the fact that marriage is optional with women is a rule, which, though it is consistent with the Vedas, and is a general principle recognised in Smritis, is superseded by a notion entertained at a later period.

(5). That the entertainment of this notion is evidenced by Smritis which declared it to be the duty of a father to bestow his daughter in marriage before she attained her maturity.

(6). That then came the notion that, as the only purificatory rite allowed to women, marriage is indispensable for women.

(7). That though the Vedas did not contemplate infant-marriages, Smritis sanctioned them.

(8). That the illegality of marriage before a girl is ten years old, is not in accordance with several Smritis.

(9). That the rule that Gotra is not changed before cohabitation is negatived by the Vedas.

Regarding the first objection, I say it is ill-founded. By the proposed legislation, it is not intended that effect should be given to its provisions retrospectively. It will, in no case, invalidate any marriage, whether legally or illegally contracted. Marriages, according to the idea of the so-called orthodox party, contracted between a couple of even a few month's old will still be marriages, and may be held and treated by the orthodox as marriages. The contracts thus entered into may still be viewed as binding on their lives. They may be held still so valid as to enable them to be so viewed for all purposes except for those of Pinda, Sootaka and Gotra, as these are not united, according to the Hindu Shaster, before their sexual intercourse. This was the case with the daughter-in-law of Krishna. Her name was Mayavatee. She had been married to Shumbera and lived with him and under his roof

for more than twenty years, had been his Putnee, a technical word to mean a lady who can perform a sacrifice with her husband. She is said to have preserved nevertheless her virginity. Her husband was killed by the eldest son of Krishna. He took this widow with him to his father's house to be married to her. Krishna's wife hesitated to take her as her daughter-in-law seeing that she had lived with a husband for a long time. Krishna and Narada, (the former is believed to be an incarnation of God, and the latter a great Rishi and a Jurist,) ruled that as she was still a virgin, she could legally become the wife of Krishna's son. She was accordingly married to him. The proposed legislation is, therefore, no irritating interference, but is consistent with the practice or custom honored by personages like Krishna and Narada.

As regards the second objection, *viz.*, that the proposed legislation is too narrow for real progress, it is observed that progress does not mean sanctioning any thing and every thing in social and religious matters at one's whim, opinion or desire, but bettering the existing state of things in the direction in which the authors of the existing state of things and the law-givers set it in motion. The promoters of progress, Jesus, Mohamed, Boodha, Krishna, Vyasa, Shunkera, and Luther did not run away at a tangent from the Old Testament, the Vedas, or the New Testament, and proclaimed their own views and opinions as progress. The British Government always based all their legislation on social matters in India not upon what they considered right, but upon the laws of the Hindus, although they would have been justified and would have acted according to their "fundamental maxims," if they had based the legislation on "the principles of morality, reason and humanity," alone. I have, therefore, proposed such legislation as is not only not inconsistent with Hindu law, but is entirely based on it. It enables all widows, whether virgin or non-virgins, to

marry if they are disposed to marry. I therefore submit that my proposals are not "narrow," and real progress cannot and should not go further.

The third item of objection is that the proposed legislation does not place both the sexes on the same footing. I must plead guilty to a certain extent, for; I am not bold enough to propose that a Hindu female should be allowed to have one and the same time many husbands, because Hindu Shastor does not sanction such a course, and because it would be revolting to the feelings of the largest majority of the population of the world. Nor am I bold enough to propose that the males should be prohibited from having several wives, at one and the same time, for fear that I may be guilty, by so doing, of proposing something against the custom of the majority which is happily dying out. In other respects, the sexes have been placed on perfect equality, in accordance with Hindu law.

The fourth objection contains its own refutation, as will be shown in detail hereafter. It is admitted by the objector that marriage was, according to the Vedas, optional with women, and it is a patent fact that no Smriti can, in any case, overrule the Vedas.

The fifth objection has been in fact answered in the preceding paragraph even if the Smritis have removed the option above referred to. But they indeed did no such thing. The Smriti writers knew that they could not do so, and they themselves did not see any necessity for doing so. All that the Smritis did was to provide for a contingency which they foresaw and feared would be left unprovided for, if they failed to introduce a rule to carry out ordination of the Vedas. These provided that a bride's inclinations to a married life should not be impeded by her guardians lest she might gratify in an unlawful manner her own desires. When the Rishis found that guardians attempted to impede marriages for the sake of obtaining good dowries or riches, they provided a rule that in cases in which a bride is

desirous to be married, when there are proper candidates available who demand her hand, they should *give* her away to a proper bridegroom before she attains her maturity, so that she might marry him when a little before her maturity, or during her menses, or after the attainment of her maturity. This rule certainly did not do away with her option to lead a married life or not. Our sacred works are replete with instances of the exercise of this right by women. These I have mentioned in my pamphlets. Ladies Vyyoona, Dharanee, Mundodaree, Madhavee and others are examples.—*Vide* Mahabharat and Puranas.

The sixth objection refers to a notion which is said to have been entertained that marriage to women is indispensible. Such a notion was not entertained by the Rishis. No sacred record or history shows that it was entertained by any one. At any rate, I have not come across any such record. Almost all the text writers and Smrities speak of female ascetics, provide punishments for attempts to destroy their virginity, &c.

The seventh objection is that Smrities sanctioned infant-marriages, though the Vedas had not contemplated them. On the ground of the inferiority of the Smritis to the Vedas, this objection has already been disposed of. In justice to the Smriti writers, I must protest against this calumny being thrown upon them. They never sanctioned any marriage of infants. They, no doubt, contemplated the *gift* of girls from their eighth year but not *marriage*; because, for marriage she should be desirous of leading a married life which is impossible in the case of girls of less than ten years old. Can any body adduce one instance in any of our sacred records of the celebration of a single marriage having taken place of a girl below the age of ten years?

The eighth objection is the illegality of marriage before a girl is ten years old is not in accordance with several Smritis. This is surely a misconception of the Smrities. The very Muntras or texts they prescribe to be chanted

during the marriage ceremonies, distinctly show that the bride should be a woman and not an infant at the time of her marriage. The Smrities prescribe rules for the conduct of ceremonies, if she should attain her maturity during the marriage ceremonies. They lay down that until a girl is developed, Agni is her husband, and that he should give her to man, who, *thenceforward*, becomes his wife and not before. They call a bride Kannya which she can be only from her tenth year. Sootras prescribe gifts of two cloths to the bride during the marriage ceremonies, and say that the second cloth was to cover her upper part of the body. The Smrities prescribe ceremonies for sexual intercourse on the fourth night of marriage. They prohibit sexual intercourse during the first three days of the marriage. In the teeth of these provisions, to accuse the authors of Smritis of having sanctioned infant-marriages, and not prohibiting marriage before the bride is ten years old, is simply unjust.

The ninth and the last objection is that the rule that Gotra is not changed before cohabitation is negatived by the Vedas. This is not correct. The Vedas do not speak a word about the change of Gotras but contain Mantras to be chanted during marriage. It is said to be a ceremony of four days, and the Mantras are called Panigrahanika Muntras. They end by the dawn of the fifth day as a rule and never earlier. The Aswalayana Sootra distinctly states that after the expiry of the vow of celibacy, the bride becomes one in Gotra, &c., with her husband. Manu, Samvarta, Yama, and a host of Smriti writers have distinctly stated that the Gotra changes not on the first day of marriage but on the fourth night.

The point, what constitutes law, and what is the relative weight of its component parts, appears to require elucidation. According to the Hindu Shaster, the law consists of the Vedas, the Grihya Sootras, the eighteen Smrities, the Itihasa, the eighteen Maha Puranas, Custom, and

satisfied consciousness, or one's own approval: and of these, the one which goes before another is a higher authority than the one which comes after it. The preceding one cannot be overruled by the succeeding. Of the Smrities, that of Manu is universally admitted to be the highest. This view of priority is held by Manu, Goutama, Vyasa, Yagnavalkya, Harita, Vashista, Aswalayana Grihya Sootra, Gobhila Grihya Sootra, Apastambha, Devi, Bhagavat, Shankara Charriar, Ramanujah Charriar, Anauda Teertha Charriar, Sridhara, Vignanaswerar, Mitakshara, Hemadri, Smriti Sara, Chetoorvimsati Mata, Vidikasarvabhoma or Tollapper, Vaidiyanath Deekshita, and many others.

It will be thus seen that according to the view of the Hindu authorities, customary law is the last authority but one in rank, and cannot upset Srutis, Sootras, Smrities, Itihass, and Puranas, and that it is an authority, only in case it is not antagonistic to, or at variance with, the preceding five constituents of the Hindu Shaster.

According to the English law too, customary law cannot override written law, much less the Divine law. Law is defined to be "a rule of action dictated by some superior being." The will of God "is called the law of nature." In compassion to the frailty, the imperfection, and the blindness of human reason, God has been pleased, at sundry times and in divers manners, to discover and enforce the nature's laws by an immediate and direct revelation. The doctrines thus delivered are called the revealed or Divine law. Municipal law is "a rule of civil conduct prescribed by the Supreme power in a State."

Thus, it will be seen that law signifies a rule of action, as laid down by the Maker of man. His will is called the law of nature. "*Being coeval with mankind, and dictated* by God himself, it is, of course, superior in obligation to any other. "To apply the law of nature to the particular exigencies of each individual, it is still necessary to have recourse to reason." "If our reason were always clear and

perfect, unruffled by passions, unclouded by prejudice, unimpaired by disease or intemperance, we should need no other guide than this. But every man now finds the contrary in his own experience; that his reason is corrupt, and his understanding full of ignorance and error. This has given manifold occasion for the benign interposition of Divine Providence." "No human laws should be suffered to contradict these." Murder "is expressly forbidden by the natural and Divine law." "If indeed any human law, (such as that of the Nihilist, &c.), should enjoin me to commit it, we are bound to transgress" it. "But with regard to matters in themselves indifferent, neither commanded nor forbidden by Divine laws," the laws enacted by human Legislature have "scope and opportunity to interpose."

Human laws are laws of nations. The law of each nation is called the Municipal law of that nation, that is, "a rule of civil conduct prescribed by the Supreme power in a State." "Albeit the Legislature acts only in subordination to the great Lawgiver, transcribing and publishing His precepts."

The Municipal law is either unwritten or written.

The unwritten law includes—(1) general customs, and (2) particular or local customs.

The goodness of a custom depends upon its having been used time out of mind; so that if any one show the beginning of it, it is no good custom.

The only method of proving it is by showing to the Judges that it has been always the custom to observe it. The Judges determine it. "Yet this rule admits of exception, where the determination is most evidently contrary to reason; much more if it be clearly contrary to the Divine law."

The doctrine of the customary "law then is this: that precedents and rules must, in general, be followed, unless flatly absurd or unjust."

"As a general rule, the decisions of Courts of Justice are the evidence of" customary law.

"When a custom is actually proved to exist, the next enquiry is into the legality of it; for, if it is not a good custom, it ought to be no longer used. *Malus usus abolendus est* is an established maxim of the law. To make a particular custom good, the following are necessary requisites:—

(1). It must have been used so long, that the memory of man runneth not to the contrary, so that, if any one can show the beginning of it, it is no good custom. Such is the rule at the common law, whence it follows that no custom can prevail against an express Act of Parliament, since the Statute itself is proof of a time when the custom did not exist.

(2). It must be continuous.

(3). It must have been peaceably enjoyed and acquiesced in; not subject to contention and dispute.

(4). A custom must be reasonable; or rather it must not be unreasonable. "It suffices, if no good legal reason can be assigned against it."

The written laws of the kingdom are Statutes.

"Where the common law (customary law) and a Statute law differ, the common law gives place to the Statute." *Vide* Sections 2 and 3, Vol. I, Commentaries on the laws of England, by Herbert Broom, LL.D., and Edward A. Hadley, M.A.

One of the sources of law is established custom, provided it is a reasonable one and not immoral. It must have been used so long that the memory of man runneth not to the contrary; so that, if any one can show the beginning of it, it is no good custom. In Hurpurshad *v.* Sheo Dyal, L. R. 3, I. A., p. 285; the Privy Council said: "A custom is a rule which, in a particular family or in a particular district, has, from a long usage, obtained the force of law. It must be ancient, certain, and reasonable." It must be at least not unreasonable or immoral.

"Custom exists as law in every country, though it every-

where tends to lose its importance relatively to other kinds of law."

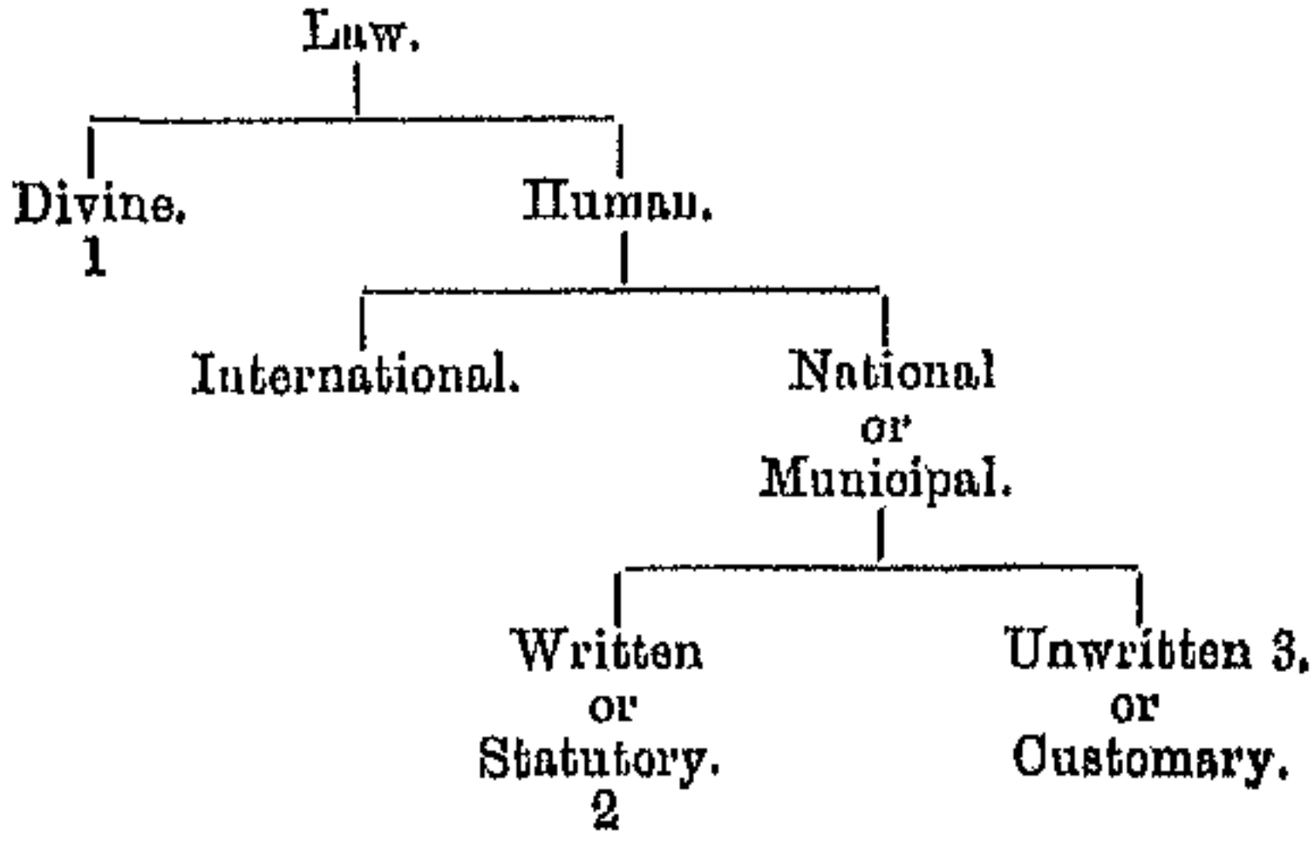
"English Courts require not only that a custom shall be proved to exist but also that it is reasonable. And the Legislature often abrogates customs partially or wholesale."

"The Courts have, therefore, long ago established as a fundamental principle of law, subject, of course, in each case to many restrictions and qualifications, that in the absence of a specific rule of written law, regard is to be had in looking for the rule which governs a given set of circumstances not only to equity and to previous decision, but also to custom."

"The theory of English law is that no Statute can become obsolete by desuetude."

"It is in the East that religion has been, to many nations besides the Jews, a direct and nearly exclusive source of law. The Pentateuch finds its parallel in the Koran and the Institutes of Manu." "The Hindu law and the Mahomedan law, it has been authoritatively stated, derive their authority respectively from the Hindu and Mahomedan religion." *Vide* pages 47 to 51, of Jurisprudence, P. E. Holland, 2nd ed., 1882.

The following is appended in the hope of making the point in question clear:—



Thus, it will be seen that according to the English or rather European law, (1) the Divine, (2) the Statute, and (3) the unwritten laws comprise all the laws of State, and that the third cannot upset the second, and the second, the first.

In page 35 of the second edition of Hindu law on marriage, I said, "Law does not cease to be law simply because it was neglected for centuries." And, in page 45, I said, "Hindu law is revealed law; if at all revocable, which it is not, it could be revoked by a subsequent revelation" of which there has been none. In pages 51 to 55 of my Sanscrit pamphlet, I have shown that custom is a source of law but inoperative against the Vedas, Smrities, &c., written sources of law.

To sum up:

1. It is clear that not only does the Hindu law not enjoin infant-marriages, but its spirit and its letter clearly show that marriage cannot be so complete until consummation, *i.e.*, after both the contracting parties have reached maturity, as to make the bride of the same Gotra as that of the bridegroom.

2. In spite of the law, a custom has grown up under which marriages are celebrated at very early ages varying from six months to ten years, and such marriages are recognized by the Civil Courts as conferring upon the bride all the civil rights and privileges she would be entitled as a married woman even if her husband dies before consummation.

3. This custom being opposed to law, and having led to widespread immorality and misery, is bad, and should, therefore, be abolished.

4. The Law Courts, by their misinterpretation of the law, having established this custom, it can now only be effectually abolished by an enactment of the Legislature.

In accordance with these views, the following Bill has been drafted for the consideration of the Hindu public, of the Government, and of the Imperial Legislature.

It is not intended that the Bill should at once be adopted as it is and passed into law. What is asked for is (1) an impartial, careful and critical examination of the principles of the Bill by the Hindu public; (2) an appointment by Government of a Commission composed of Hindus and Europeans, official and non-official, old and new Sanscrit Pandits, to ascertain and report whether the principles of the Bill are consistent with the Hindu law, (3) and, if found consistent, its introduction into the Imperial Legislature. When the principles of the Bill become law, it will afford relief among others to about ten millions of unfortunate Hindu women who are now compelled under the name of Hindu law to lead a disgraceful, sinful and criminal life, or the most painful, discontented and miserable life, a life utterly inconsistent with the administration of the most humane, wise, and just of European Governments.

BILL.

AN Act to define and declare the rights acquired according to Hindu law from marriage, and to provide rules for the registration of its celebration.

Whereas certain provisions of the Hindu law appear to have been not correctly understood; whereas, according to the Hindu law, marriage is optional with both the sexes; whereas the marriageable age for the male is from his sixteenth year, and that for the female is from her eleventh year, and no marriage is so complete until after actual cohabitation as to make the bride one with the bridegroom in Gotra, (Gens) Pinda, (right to offer or partake funeral cakes) and (Sootaka (liability to pollutions on births and deaths); and whereas no change takes place in the civil status of the couple, and no rights of inheritance, &c., to the property of either party are acquired until sexual intercourse takes place:—

It is enacted as follows:—

I. Marriages contracted between Hindus shall become so

complete *after* sexual intercourse has taken place, that all civil rights of inheritance, maintenance and the like, shall thenceforward accrue to either of the contracting couple, and not before.

II. A woman who may have sexual intercourse with any man other than her husband, shall after conviction of this offence by the District Criminal Courts, or by such competent judicial tribunal as the Government may appoint, be liable to be disinherited of the property obtained by her under any of the provisions of the Hindu law before she committed the aforesaid offence.

III. The contracting parties, who may complete their marriage by consummation, as aforesaid, shall, within fifteen days from the date of nuptials, sign their names, either personally or by a duly authorised agent, in a book to be kept for the purpose in the office of a Sub-Registrar of Assurance, or where there is no Sub-Registrar, in that of the Local Village Munsiff, in evidence of the fact of the completion of their marriage. Every such Sub-Registrar or Village Munsiff shall keep a book in his office and allow any person, of whose identity he is satisfied, to sign in it at any time prescribed for keeping open his office. He shall not demand any fee for the same. Each Village Munsiff shall send daily extracts from this book to the Sub-Registrar.

If the parties choose to sign this book at their houses, they may do so on payment, if demanded, of the travelling charges of the Sub-Registrar from his office or house and back.

The book referred to in the preceding clause shall show the names of the married parties, their ages, the Gotra of the bridegroom, that of the bride's parents, their names, their places of residence, the date of the aforesaid completion of marriage, if it was the bride's first marriage, the fact of the marriage being the first or otherwise, the name of the bride or bridegroom of the previous marriage or

betrothal, if any, and such other information as the married couple may wish to enter.

IV. Such entries, as are referred to in the preceding section, shall be *primâ facie* evidence of the fact they record.

V. No woman shall be prosecuted for the offence mentioned in Section II of this Act, except by her husband or by his next male heir if the husband be dead.

R. RAGOONATH ROW.

KRISHNAKLASS,
MYLAPORE, MADRAS,
1*st January* 1885.