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THE LATE Mr. S. SRINIVASA IYENGAR.

The death of Mr. S. Srinivasa Iyengar is an irreparable loss to the legal profession and has deprived it of a most brilliant lawyer and a forceful personality. Born in 1874 and enrolled as a High Court Vakil in 1898, he had the good fortune of being associated in the early days of his professional career with that great legal luminary, Sir V. Bhashyam Iyengar, and of coming into contact in the forensic field with other lawyers of eminence like Sir Sankaran Nair, Messrs V. Krishnaswami Aiyar and P. R. Sundara Aiyar and Sir K. Srinivasa Iyengar. From about 1907 he was easily in the first flight taking rank with the giants of the past. When still very young he read a paper on Hindu Law Reform which immediately impressed the profession and even public men outside as showing not merely the subtle mind of a practising lawyer but a man capable of deep thought on questions of sociology. When in 1916 he was appointed Advocate-General, though he was then the youngest Indian in our Presidency to hold that office, being but forty-two years old, it was recognised on all hands that it was but a fitting recognition of the stature that he had then attained at the Bar. A man of the most acute intellect and great learning, a quick thinker and tireless worker, he was one of our ablest lawyers of all time. For accurate and intensive learning, for deep and wide knowledge, for a keen and penetrating intellect — original as well as subtle — he had few equals and stood almost unsurpassed. Except perhaps during the last few years of his career at the Bar, there has been hardly any litigation of importance in this century in our Presidency, with which he has not been associated as an advocate for one side or the other. Whatever branch of the law he had to argue, whether it was a question of Hindu law or of trusts, or a question of property law or the construction of a code or a statute he was easily a *facile princeps*, compelling the admiration of his opponents and producing a powerful impression on the minds of all about his mastery of the fundamental principles

of jurisprudence and case-law. As an advocate he stood for thorough and conscientious preparation of cases, careful and cogent arrangement of facts, and mastery of even the most minute details relating to the same. His thoughts always outpaced his expression and he was frequently so far ahead of those associated with him in the case as regards the turn that could be given to any particular fact or to any suggestion from the Bench, that he used to grow impatient with them all. His mind was always alert and resourceful and his industry was something prodigious. Even after he had practically retired from the Bar, his services were availed of in a number of cases such as the Venkatagiri maintenance case and the Punganur adoption case. By his new edition of Mayne's Hindu law, a considerable part of which he has almost entirely re-written, he has laid the profession under a deep obligation. As President of the Madras Advocates' Association for a number of years, his advice and guidance were always helpful. He was a member of the Editorial Committee of Our Journal during 1912-1916 and the association is one that will always be cherished by us.

The lure of public life had always powerfully influenced Mr. Srinivasa Iyengar. But for it he might easily have found a place on the Bench of our High Court, if a preferment of that kind had been acceptable to him. In all his public activities since he relinquished the Advocate-Generalship in 1920, his vigorous personality often asserted itself but sometimes also led to clashes leaving his main objects and purposes unfulfilled. Only sixty-seven years old, Mr. Srinivasa Iyengar with his dynamic personality and wonderful talents was too young to die and it is matter for deep regret that his services should not have been available to us all for a longer period.

ANSWERS TO THE QUESTIONNAIRE

ISSUED BY

THE HINDU LAW COMMITTEE.

I. By Mr. T. R. Venkatarama Sastri, C.I.E.

Part I: Question 1.—Which of these two alternatives, (whether the Centre should legislate with respect to property other than agricultural land at once making the law take effect from a date dependent in each Province on the date of the necessary supplementary provincial legislation, or whether the Centre should legislate and bring the law into force, leaving the Provinces to do whatever they think fit with respect to agricultural land) would you prefer? Or, would you prefer to have no Central legislation at

all until there are normal legislatures in all the Provinces? Or, have you any other suggestion?

Laws of succession must apply alike to all forms of property. There should not be one rule of succession to agricultural land and another rule of succession to all other forms of property. It is rather unfortunate that two different legislative authorities should be vested with the right to frame laws of succession to different kinds of property. The right to legislate resting, as it does, with two different legislatures, their agreement to the same scheme of succession is necessary before legislation can equally affect all property alike. And if the scheme of succession is to be applicable to the whole of India, that is to say, to all the British Indian Provinces, then all the Provincial legislatures have to agree to the Central legislature's scheme of legislation. A small point of difference between the legislatures that have to agree must hold up the legislation. A single legislature must have the power to frame laws of succession for all India so as to affect all forms of property. That of course assumes that public opinion all over India is keen on having one uniform law of succession for all Hindus.

As the Questionnaire points out, the legislature is not functioning in what might be called the Congress Provinces. Until the legislatures begin to function in those Provinces, this legislation cannot usefully proceed. If the Central legislature now passes a measure, and the Provincial legislatures or any of them raise objection later to any provision or provisions, the whole thing will have to be reconsidered. As things now stand, the only thing that one can say is that unless there is such clear unanimity of enlightened opinion as gives us fair hope of final agreement of all the Provincial legislatures, the present legislative effort might turn out to be so much wasted labour. It seems to me really very difficult to be sure of final agreement on the part of all the legislatures concerned to any scheme however widely supported by public opinion. That the scheme was evolved at the present juncture may itself prove to be an objection to it when it comes up later on seeking the approval of the legislatures.

The idea of a uniform law for All-India has now for a long time appealed to me as eminently desirable. If there was the smallest chance of all the communities agreeing to a territorial law, I should personally be willing to entertain the idea of departing from the Hindu law scheme of succession altogether. But there is not the ghost of a chance of such agreement. Our brother Muslims will not agree to depart from the Shariat law in any the smallest respect. A uniform territorial law for all communities being out of the question, a uniform scheme of succession applicable to all Hindus is the only

thing that can be considered, and this Committee is concerned only with that question.

Even in regard to this question, the first impression is that the Provinces are not yet ready to consider it. It is very doubtful whether the Mitakshara and the Dayabhaga can strike a middle line acceptable to the generality of people now under each system. It is less doubtful, but still doubtful, whether the differences between the Provinces in regard to the administration of the Mitakshara law can be surmounted in the present state of public opinion. In any case it is a matter in regard to which opinions may be gathered and the Committee will then be able to say how near we are or how far we are in regard to any such unification. As a first impression I may say that the unification of all the Provincial divergences in the administration of the Mitakshara may be feasible; unification inclusive of the Dayabhaga is more difficult.

My suggestion is that the question may be studied in the light of public opinion and if a unified scheme appears feasible a Bill may be got ready and published so as to elicit opinion in regard to it.

I am also of opinion that the legislation should be brought into effect at the same time in the Centre and in the Provinces by parallel legislation and it must therefore wait until such time as all the Provincial legislatures are in a position to assist in the framing of a scheme acceptable to all concerned. It will not do to legislate in respect of all property other than agricultural land, leaving the provincial legislation as to agricultural land to a later time.

Question No. 16.—Which, if any, of these alternatives, (namely, whether with a view to avoid piece-meal legislation every Hindu should be empowered to make a formal declaration before a prescribed authority that his property should devolve according to Hindu law, in default whereof the property was to devolve according to the Indian Succession Act, or whether power should be given to make a declaration that the Succession Act shall apply failing which the property was to devolve under Hindu law, or whether the rules of the Succession Act or a set of rules representing the greatest common measure of the rules of succession in the various schools of Hindu law should be made applicable to all Hindus, after a specified date) would you prefer? etc.

The growth of a uniform system of law cannot be promoted by an option given to each individual to choose as between two schemes of succession.

There are laws of succession. There is a law of wills, within limits giving to individuals the right to determine the devolution of their property. Broadly speaking, the intestate law of succession

represents the general sense of the community as to the presumable preferences of the individuals of that community as to the devolution of their property. Subject to such restrictions as the law imposes on testamentary dispositions the individual is allowed to alter or set aside the line of succession according to his choice. That more than a third should not be disposed of by will, or that a member of a joint family shall not dispose of joint family property by will, or that the devolution shall not be controlled beyond a certain point of time are all illustrations of the restrictions which the law imposes on testamentary disposition.

Is the choice of the Indian Succession Act or the Hindu Law anything like the exercise of the power of making a will? Is it revocable? I think not. It is a choice once for all. The power of executing a will is still there to help him if he should regret the choice made. If each man or woman is given this option, then husband and wife, father and son, and mother and daughter, may choose different ways. Is it intended that subsequently born children should be bound by the parent's choice of the law of succession, as he may be by the parent's change of religion? What is to happen if the mother and the father had chosen differently. Does the son follow the father, and the daughter the mother? Apparently it is hoped that at some time all will have chosen the Indian Succession Act. As far as I can see the suggestion seems to be individual choice for all men and women in each generation. If I am right in that assumption, I see nothing but appalling confusion as the result, however unintended. In any case I am clearly of the opinion that this is the worst possible approach to the securing of a uniform law of succession for all Hindus.

Neither option stated in the question is acceptable to me. Many people would feel repugnance to a course which involves throwing overboard our own laws of inheritance and agreeing to adopt instead a wholly different law of inheritance. I must myself confess to a similar feeling in accepting the scheme of the Indian Succession Act in supersession of the Hindu law however much the scheme of the Indian Succession Act might be otherwise acceptable. The only proper solution is to weave into our own laws of inheritance such changes as new and changing circumstances and conditions of our time might seem to demand.

The changes that might be made and the principles that might be accepted as the basis of those changes I shall put down separately.*

They can be taken into consideration only after the Committee has decided whether to embark upon the scheme of unified legis-

* See the Tentative proposals *infra*.

lation and if so to what extent unification should be attempted in immediate legislation.

TENTATIVE PROPOSALS.

If the Mitakshara and the Dayabhaga are to have a unified scheme of succession the following suggestions are worth consideration :—

Right by birth of the Mitakshara system should be made applicable everywhere.

Survivorship is to be abolished except in the case of an unmarried minor's death without division of his share in his lifetime.

Agnates and cognates are to be shuffled in on the principle of propinquity or religious efficacy as in Bengal Dayabhaga.

Female heirs who are related by blood connection with the propositus should have absolute estates as in Bombay and the female heirs who enter the family of the propositus by marriage are entitled only to limited estate.

Note : The Dayabhaga may not agree to the right by birth. The Mitakshara may not agree to the cognates being shuffled in among the agnates. The daughter and the daughter's son though cognates came in on a peculiar history of their own. What the *appointed daughter* originally obtained by the *appointment* has now been extended to the case of daughters and daughter's sons who are "even as the son and son's son." The recent introduction of the cognate descendants and the sister and her son among the agnates has already cut into the Mitakshara preference of agnate claims. The Mitakshara has also lost the right of survivorship in recent legislation in the case of the new heirs introduced.

A scheme of succession discarding the preference "of the near to the remote" of the Hindu law and approximating to the rule of distribution as in the Muslim law or in the Indian Succession Act has already emerged in recent legislation. In the conditions of our time and in the agitation for the recognition of women's rights that trend is inevitable. Nor is it wholly alien to the spirit of earlier Hindu law which allotted shares on partition to the mother, the son and the daughter. In the devolution of separate property as distinguished from the devolution of joint property, the principle of nearness exclusively held the field and that is now being attacked and sought to be modified.

If the Dayabhaga could allow the introduction of right by birth, if the doctrine of survivorship associated with the right by birth could be accepted in the modified form put down above by the Mitakshara and the Dayabhaga alike and if as to woman's estate the distinction between those connected by blood and those connected by marriage could be accepted in all the Provinces a unified scheme of succession

will be possible. Each Province will have contributed to the scheme and each Province will have given up part of its principles for the effecting of the necessary compromise. I am not wholly clinging to any of these items as an absolutely necessary condition for the unification. If other suggestions are made, I am willing to consider them. Unification is worth some sacrifice on the part of every one. It is not possible without "give and take."

Questions 2 to 5.—These questions relate to what ought to be the respective position and rights *inter se* as between a widow, widowed daughter-in-law or grand daughter-in-law and a daughter for purposes of succession to the property of a deceased Hindu. They expose the incoherence and lack of principle in the provision for the daughter-in-law and the grand daughter-in-law in the provisoes to section 3 (1) of Act XVIII of 1937. In contrast to them, the provision in section 3 (2) is not without support in the principles of Hindu law. Survivorship left the widow with only maintenance. If survivorship is set aside, she may well succeed *to her husband's share* for life as a full provision for her maintenance. While heirship to the husband is nothing new or unnatural, heirship to the father-in-law is an innovation on no principle known to the Hindu law. The result of such innovation is a crop of problems the solution of which cannot be based on any principle.

Joint family property is divided among those entitled to benefits out of it. Some took shares and others maintenance. Even the share was only maintenance where a female heir took it. The separate property of a person is not divided among the near relations but taken by them in the order of nearness. The widow, mother, grandmother, daughter, sister did not take together, but widow, daughter, daughter's son, mother, grandmother and sister took in succession. If a daughter-in-law is to be a sharer with son, grandson and great grandson, how can these be ignored?

So far as the expansion of women's rights is concerned, the provision of a daughter's share along with the son of the one-fourth of the law-givers or one-third, not more than a half, is sufficient. Every daughter-in-law is a daughter in some family and she will take her share there. The succession to the estate of one who leaves sons and daughters and a widow may be fixed by giving one share to widow, one share to each son and the fractional share fixed for a daughter. (I am proposing later that the widow's share should be a life estate and the daughter's an absolute estate.)

If I go on to deal with the questions 2 to 5, I have but two objects to show how difficult it is to provide a logical solution and how you are driven to the repeal of the two provisoes as the least that is required to put things straight.

Now a daughter-in-law cannot be placed on any higher footing than the daughter. If the daughter-in-law is to be admitted to a particular share, the daughter will have to be admitted to at least the same share. If the daughter-in-law is admitted to a share along with the son (that is, her deceased husband's brother), the daughter must also be admitted to a share along with the son. The daughter had a share under the Hindu law at one time, though it has now become obsolete everywhere. The process by which it became obsolete may be readily visualised. It was at first deemed a provision for maintenance and marriage. The text easily lent itself to that construction. Therefore those already married were cut out as having had their share. Then the unmarried were deemed entitled only to a similar provision. If they were maintained and married, they cannot ask for a share in addition. There are other cases in which a previous provision is treated as liquidating *pro tanto* claims that arise later. One may perhaps add to this the latter-day consideration that the marriage expenses of girls in the result proved not merely as the allotment of the due share but complete pauperisation of the family. Further allotment may not justly be due in such cases. In fact one may well apprehend that the allotment of a definite share might reduce the concern of the brothers in getting her duly married. Nevertheless if the daughter-in-law's share is to be retained the daughter must be allotted a share. This allotment to a daughter, at any rate, is not an unprincipled innovation, but the restoration of an old law in a somewhat extended form. One-fourth share was the ancient rule. If that is the share that the daughter takes with the son, the daughter-in-law can be allowed to take no more. To allow her an equal share with a son and to allot less or nothing to the daughter is to promote fiction to a higher level than fact.

Now I take up the questions 2 to 5, each in its turn.

Question 2 : What would you desire to be the position as between the widowed daughter-in-law and the daughter, (where a Hindu dies leaving these relations only)?

In the case given the daughter is the heir under the Hindu law. The daughter-in-law was no heir. At best she had a right to maintenance from the father-in-law's separate property. Curiously the Act XVIII of 1937 gets rid of the daughter as heir and puts the daughter-in-law in. As I said, reality is here ousted by fiction. This illustrates how benevolence rooted in sentiment and not in reason might throw a well-knit system out of order.

On the provisions of the Act for the daughter-in-law and grand daughter-in-law being retained the only suggestion that one can make is that they should take equally. The daughter-in-law and

the grand-daughter-in-law, if they belonged to one branch of the family, can only take together a daughter's share. The daughter being the real heir and these other relations being new introductions and their allotments coming out of the daughter's share, I make the suggestion that these others should have their shares for life with remainder to the daughter and her heirs. It is a part of her property temporarily subtracted from it and falling into it again when it has served the purpose of maintaining the life tenants.

If instead of daughter there was mother or grandmother or sister the same principle is to be applied. The legal heir is the owner of the whole, the shares allotted to the others are to be life-estates with a vested remainder to the heir from whose share these are subtracted for the maintenance of the new sharers.

Questions 2 (a) *and* (b) : Should there be different rules according as the daughter is unmarried or married, rich or poor ? Should a daughter who is a widow without male issue be excluded ?

No difference need be made between married and unmarried, rich and poor, widow with or without children.

Question 3 : This question relates to what ought to be the position where a Hindu dies leaving a widow, a widowed daughter-in-law and a daughter.

One view may be that the widow is the legal owner and that the daughter-in-law takes a share with the remainder vested in the widow. After the mother both rights pass to the daughter. This solution has a certain illogicality in it. It might be put in two ways. If a son is there, it was suggested that a share should be given to the daughter also. That share should be given even if there is no son. In fact a larger share should be given in the absence of a son. And it may also be said that the daughter should not be excluded when the daughter-in-law is given a share.

The preferable solution is to give the mother a son's share and to the daughter and the daughter-in-law each a quarter share (or the fraction fixed) as our principle was to put the latter no higher than the former. Of course in due time all the property will pass to the daughter and further devolution depends upon the character of the estate which we allow to a daughter dealt with later on.

Question 3 (a): When a Hindu dies leaving only a widow and a daughter, should the daughter take equally with the widow exactly as a widowed daughter-in-law would do under the above Acts ?

My previous answers involve one-fourth or one-third to the daughter and a full share to the mother as in the case of the son.

Question 4 : A Hindu dies leaving a widowed daughter-in-law, a son and a daughter; what would you desire to be the position as between these three in such a case?

The answer to this is already expressed. The son takes a share; the daughter and daughter-in-law take each a quarter share or the share fixed.

Question 5 : (Assuming that the daughter is to be put on the same footing as the widowed daughter-in-law, which arguably is the same as that of a son in regard to the separate property of the deceased owner) should this be done in all circumstances, even when there is a surviving son of the deceased, or only in certain defined circumstances?

S. 3 (1) of Act XVIII of 1937 applies only to separate property; S. 3 (2) to joint family property. This is answered in the last question. Equality in the absence of a son or mother and in their presence one-fourth or other fixed fraction of the son's share for each.

Question 5 (a) : When a Hindu dies leaving only a son and a daughter, should the daughter take equally with the son exactly as a widowed daughter-in-law would do (under the Act of 1937 as amended in 1938)?

The daughter takes a one-fourth share, if we are restoring the old fraction exactly. As we are reconstructing it anew we can fix the fraction as we like. Instead of one-fourth it may be fixed at one-third. As we are extensively cutting into the son's share according to the scheme of Hindu law, I am not suggesting equal shares for son and daughter.

On the last unnumbered question after 5 (a) concerning cases of the mother and other relations I have answered it under question 2 for the case in question 2. In question 3 if the competitors are widow and mother unless the mother comes after the widow, as under the Hindu law, they can only be made to rank equally.

I MUST CONFESS THAT THERE IS NO PRINCIPLE ON WHICH A DAUGHTER-IN-LAW OR A GRAND DAUGHTER-IN-LAW IS ALLOWED A SHARE WITH THE SON AND A MOTHER OR GRANDMOTHER OR SISTER GETS NO SHARE. AND IF A SHARE IS TO BE PROVIDED AT THE SAME TIME THERE IS NO REASON FOR LESS THAN EQUALITY BETWEEN WIDOW, MOTHER AND GRANDMOTHER. AND HOW IS THE DAUGHTER-IN-LAW NEARER OF KIN THAN A SISTER?

All the above suggestions are arbitrary and all are proofs that the daughter-in-law's introduction as an heir to the father-in-law is the source of all the confusion. If the daughter-in-law is heir along with the widow, how can a mother or grandmother or sister be excluded? The cutting out of the daughter-in-law is the neatest

solution. If shares are provided for the daughter it will serve every woman who must be a daughter in her own family. If a share is to be given to a woman who has entered into another family she may have a share as a widow or mother or grandmother. If these are provided, the expansion of woman's rights will be secured amply without sacrifice of principle or logic.

Question 6 : Where a Hindu dies leaving a widow and an adopted son should the former take the same share as a son born to her after the adoption or the same share as the adopted son ?

The widow and the adopted son should take equally. It is only when there is a subsequently born aurasa son the adopted son is reduced in status and in share according to the Hindu law ; and *then* on a partition the mother has equality with the aurasa son. Until an aurasa son competes he is equal to an aurasa and on that basis is allowed even collateral succession on the adoptive father's and mother's sides. If an aurasa son is born and dies without a son or a widow the position is the same, the mother and the son take equally. It is possible to suggest in this case that the mother should take the share of an aurasa son on logical grounds.

Question 7 : Where a Hindu dies leaving only a widow and she later on adopts should the adoption divest the widow of the entire estate or only to the extent of one half of the estate ?

Even in this case the adoptive mother and the adopted son take equally. How can fiction be placed on a higher footing than fact ? The adopted son has under the law the same legal rights in his father's estate as he would have had if he had been born on the date of his adoptive father's death and in fact considerably less because the will of the father would prevail as against him. In any case he can have no higher right than a son born after the father's death.

Question 8 : (Where a Sudra dies leaving a widow and a dasiputra) should she inherit the same share as an ordinary son or as the dasiputra ?

Under the Hindu law an illegitimate son of a Sudra gets an equal share with a widow, or a daughter, or a daughter's son. Why alter it ? The text is : "*Abhratrko haret sarvam duhitrnam sutadrte,*" which posits that an illegitimate son by himself takes the whole in the absence of a daughter's son.

Question 9 : (Where a Hindu dies leaving a widow and a son of an anuloma marriage) should the widow inherit the same share as an ordinary son or as the son of the anuloma marriage ?

The customary law as to sharing may be maintained. The widow will inherit the same share as her son would have taken.

Probably equality between the widow of one caste and the anuloma son of another caste may be juster for the reason that the widow's share is a newly created one.

Question 9 (a): Should any provision be made to place the legality or otherwise of anuloma or other inter-caste marriages beyond doubt?

I think this may be left to custom. So far as marriages under the Civil Marriage Act are concerned they are not governed by the Hindu law and no question arises of the caste of the parties who enter into the marital relation, or of anuloma or pratiloma marriages.

Question 10: Where a Hindu dies leaving two widows and a number of sons should the position created by the Acts be maintained?

If the Hindu law gives a separate share to each widow, I do not see why it should be altered.

There was an old law that the superseded wife should be given one-third of the husband's property. I suppose the principle to be that even though there is ordinarily no division between husband and wife, yet when the husband puts her aside she must be given her share and one-third is fixed there being a husband and two wives. There is much to commend this old rule. This is however by the way. The answer to the question has been already given.

Question 11: Where a Hindu dies leaving widows of different castes should all the surviving widows take equally irrespective of caste? If not what rule would you prescribe?

The shares of the widows should be the same as their respective sons would have taken under the Hindu law. These cases are rare. They will not occur if monogamy became the rule. It is for theoretic completeness rather than the solution of an actual case that this rule is laid down.

Question 12: As to the effect of conversion or unchastity of or remarriage by any of the widows referred to in the Acts of 1937 and 1938 what provision should be made for each of these contingencies?

Where nothing is said as to any particular matter the Hindu law will remain. The Act should so state the law. It should be enacted: "Except in so far as this or any other Act has amended the Hindu law, the Hindu law remains in full force and effect."

Question 13: What express provision, if any, should be made for the devolution of the estate upon the death of any of the heirs provided for in the Acts in question?

In regard to the newly created estates, they are to be life estates with vested remainder to the heir under the Hindu law from whose rights these are carved out. As regards the old limited estates they remain as before and pass to the heir of the previous male owner at the time the life estate terminates.

I am inclined to adopt the Bombay rule of life-estates to women incorporated in the family by marriage and absolute estates to the daughters of the family and to all blood relations.

Question 14: What remedy, if any would you propose? Would you provide for (*a*) a limited estate in every case as under the Acts in question, or (*b*) an absolute estate in every case, or (*c*) an absolute estate in a certain specified share of the inheritance, such as one-sixth, or (*d*) the same kind of estate whether limited or absolute, as the widow would have taken under her own personal law but for the Acts?

This is answered above.

Question 14 (a): Do you consider that any special provision should be made for women in families with impartible estates or would you extend the same rules to them as may be formulated in the case of ordinary estates?

The estate being impartible only maintenance can be provided. Otherwise succession to these estates may be left to the already established law of primogeniture.

Question 15: (What position would you wish to see established regarding the respective rights of parties) where a Hindu governed by the Mithakshara school dies, leaving a widow, a mother, and a brother, all members of a joint family?

There is to be no survivorship as between the son and the widowed daughter-in-law. If there is to be, the mother will have it just like her husband, the father. No principle can suggest any other solution than that the son's share goes to the mother.

The source of all our difficulties is the mistake in Act XVIII of 1937 that the widow is not merely to step into her husband's place *at the moment of his death* but that on every future occasion when succession opens in the family she should share as if the husband survived in her. If that view is taken one may ask why not she be allowed to succeed to collaterals just like her husband? The principle of treating her as if the husband survived in her can be applied if at all only to prevent escheats and not to give her rights in the presence of preferential heirs.

Part II: The Bill* provides for separate residence and maintenance of the wife of a man, in cases falling under one or other of the seven grounds referred to in the Questionnaire, namely, (1) if the husband is suffering from leprosy, or any loathsome disease; (2) if the husband is suffering from venereal disease; (3) if the husband is an incurable lunatic; (4) if the husband is guilty of cruelty towards the wife; (5) if the husband deserts the wife; (6) if the husband marries again; or (7) if the husband turns a recluse or changes his religi n. The Bill enables the wife to institute a suit, but it is very doubtful whether in any but an infinitesimal class of cases, a woman will take advantage of the Act.

Of the seven grounds mentioned, I agree that legislation may give right to the wife to claim separate residence and maintenance in cases covered by grounds (1), (4), (5) and (7). As pointed out in the Questionnaire we shall practically be giving legislative sanction to what has been decided by the courts in those cases.

I hesitate to make venerea ldisease a ground of separation, unless it develops into a loathsome disease.

An incurable lunatic may, in the nature of things, require somebody to protect him and his property. The wife will, in many cases, have to take charge of the property and the person of the lunatic.

The second marriage of the husband may have been promoted or agreed to by the first wife. In such cases it may not be right to allow the wife to claim separate residence and maintenance.

I think that the better course is to retain the clear cases mentioned in grounds (1), (4), (5) and (7), and provide a further residuary clause enabling the courts to grant separate residence and maintenance in other cases in which it deems just and reasonable to provide separate residence and maintenance.

As to the question; "Should the law be made more precise, *e.g.*, by enacting that the marriage of a person who, from unsoundness of mind, is unable to understand its nature or meaning is null and void?".

I see no great advantage in enacting that the marriage of a person who from unsoundness of mind is unable to understand its nature and meaning is null and void. As a proposition, I understand, it is law even now; but, every time, the question will be, whether the unsoundness of mind in each particular case is of the description mentioned.

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* Dr. Deshmukh's Hindu Married Women's Right to Separate Residence and Maintenance Bill.

The second question is : " Has the time arrived for making a law that in future a subsisting marriage shall nullify any subsequent marriage of a Hindu?"

Enactment prohibiting bigamy is not feasible. Let us take the case where it is not the husband but the wife that is suffering from leprosy or any loathsome disease, or is an incurable lunatic, or changes religion. In such a case, should the husband have permission to contract a second marriage? A second marriage of the husband for want of issue or male issue is sometimes promoted by the first wife herself. Having regard to these cases, a prohibition of a second marriage during the subsistence of the first is not, even now, desirable.

Where a second marriage is just in given circumstances, law may prohibit bigamy only by providing for divorce. From the standpoint of the wife suffering, say, from a loathsome disease, the permission to contract a second marriage is less unjust or inconvenient to the wife than granting a divorce and depriving her of all protection in the shape of residence and maintenance.

Question 3 is : " Do you consider that the Bill should provide separately for decrees of nullity and decrees for separate residence and maintenance? If so, what should be the grounds for each?

On the view I take, question 3 does not arise. But if invalidity of marriage on the ground of unsoundness of mind is enacted, the provision suggested by this question will become necessary.

The next question is whether there should be a declaration by law, that a marriage shall not be invalid merely because the parties belong to the same gotra.

Sagotra marriages take place in some parts of the country. The cases where they occur with the support, it might be supposed, of local cutsom, are very few. Local conditions must have forced it on the population. The prejudice against such marriages is deep-seated and cannot easily be eradicated. Belonging as I do to a gotra with the largest number of adherents I confess to a feeling of repugnance to sagotra marriages. I do not expect that a very large number of persons will take advantage of the freedom given by legislation. I have, however, no objection to the legislature taking off the prohibition under the Hindu law.

Question 4 relates to the necessity or desirability of having separate courts of summary jurisdiction to deal with matrimonial problems.

If we are going into legislation in regard to the relation between husband and wife, the English system of having separate courts of summary jurisdiction for domestic proceedings is desirable.

Question 5 is directed at the desirability or otherwise of fixing a minimum proportion regarding maintenance payable to a wife on separation.

The quantum of maintenance should be left to the courts. It is not the minimum but the maximum that should be fixed. One-third of the property or share of the property of the husband should be the maximum that may be awarded by way of maintenance. Subject to that maximum, the quantum of maintenance should be left to the discretion of the courts to be exercised on a consideration of all the facts and circumstances of each particular case.

As to question 6, whether the wife should be given the right to separate maintenance if the husband is living in adultery, I am not in favour of a specific provision of the nature indicated. This case can, if the court thinks fit in any particular case, be brought under the residuary clause that I have suggested above.

It is incidentally remarked in the memorandum that "it may also be necessary to add detailed provisions regarding procedure, the effect of an order for separate residence on the property or other rights of the wife, etc., e.g., whether property "acquired by her after the order by her own exertions is to be her absolute property or not."

I take the view that property acquired by a woman by her own exertion belongs to her under all circumstances. It is her property whether acquired before or after an order for separate residence and maintenance. This I take to be the settled Madras view. It may be made an all India rule as far as my opinion goes.

*Part III:** *Question 1*: Whether the term sister in Act II of 1929 should be construed as including the half-sister, I should think that the term "sister" might not include the half-sister, but half-sister should be specifically added after the sister.

Question 1 (a): This relates to the position that should be accorded to a half-sister in the presence of a sister. The half-sister should take after the full sister.

Question 1 (b): If the only surviving heirs are a half-sister and a full sister's son, should the full sister's son take before, or after, or with the half-sister?

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* This concerns Mr. Santanam's Hindu Law of Inheritance (Amendment) Bill, seeking to interpose the son's daughter's son, the son's son's daughter, the daughter's son's son, the son's daughter's daughter and the daughter's daughter's son between the daughter's daughter and the sister in the line of heirs, and to add the sister's son's son as heir after the sister's son.

Full sister's son and half-sister should take together; so it seems to me.

Question 2. (Do you consider that the sister should be postponed to (the five heirs proposed to be interposed by the Bill between the daughter's daughter and the sister)? And what should be their order *inter se?* Do you consider it necessary to add the sister's son's son after the sister's son and before the father's brother?

Now that we think of admitting son and daughter, these cognates may well take together if they are related in equal degrees, the male and female heirs taking the shares of son and daughter respectively. If that is not acceptable, the order, on principles of Hindu law may be (1) the son's daughter's son, (2) the daughter's son's son, (3) the daughter's daughter's son, (4) son's son's daughter, and (5) son's daughter's daughter.

Sister's son's son may come in after the sister's son and before the father's brother.

I do not attach much importance to any particular suggestion except as an exercise in Smriti logic. The testator can always make a will changing the line of succession.

II. By A Religious Head*

Introductory :—

Every system of inheritance has a philosophy of social aims behind it. A Hindu should desire his property to devolve according to the ancient Hindu law of inheritance. The property of a deceased Hindu which passes with full ownership to another is known as *Daya*. All relations are not entitled to *Daya*. The object of allowing property to devolve is not merely the physical maintenance of those who take the inheritance. If it were so, a limited uniform provision may be made for all relations of the deceased alike, and the rest of the property disposed of otherwise. But the Hindu law rests upon a definite system. There are some members who are entitled only to proper maintenance from the assets of a joint family, or of a deceased Hindu. A Hindu desires that his decendants should keep up the high spiritual ideals and that the members of his family should continue to live the same mode of life, with the same *acharas* and beliefs, which his ancestors did. All members are to be provided with proper maintenance, so that they may maintain the family traditions, culture, and *achara*. They will not be able to do this properly, if they are left in want. Only some relations are declared entitled to inherit the *Daya*. The person who is entitled to the *Daya* takes it though it may be more than what is needed for his maintenance.

* H. H. the Jagatguru Sri Sankaracharya Swamigal of Kamakoti Pitham.

In return for taking the *Daya*, he is bound to offer *Pinda* or *Udaka* to his ancestors both immediate and remote. If the ancestors go without such *Pinda* or *Udaka* they are deprived of the legitimate spiritual benefit which they expect from their decendants. It is the duty of the person taking the *Daya* to prevent such a happening.

2. If a person takes the *Daya* who is not qualified to offer *Pinda* or *Udaka*, such taking would be an improper appropriation. No Government should allow such improper appropriation to take place. The Government would be acting without principle, if it allows such wrongful appropriation, in the name of Hindu law. Persons who have no such beliefs have no right to be called Hindus, and there can be no objection to their having their own rules of succession, which cannot be any part of Hindu law. It is also the duty of the persons who take the *Daya*, to sustain and to continue the traditions and the ideals of the ancestors whose property they take. Any new set of rules which disregard the above principles cannot be good and proper. The innovations made by the Acts of 1929, 1937 and 1938 will have the effect of allowing a large part of the joint family assets of Hindus to reach the hands of new heirs, who are not only not qualified to render the spiritual benefits to the ancestral line, but are enabled to take their portion without the corresponding responsibilities and obligations which have attached hitherto to the assets in the hands of the male heirs. Such obligations are numerous and include (i) the discharge of family debts, (ii) marriages of sisters and daughters of the family, (iii) the performance of various religious ceremonies (Samskaras) for all the members of the family whether male or female, (iv) maintenance of members of the family, (v) expenditure which has to be incurred in respect of the sisters and daughters of the family, who by tradition are to be invited and supported in the family until they have become mothers of two or three children, and similar other obligations.

3. The system of Hindu law is a homogeneous whole, and any tampering with it in any one place will have the effect of dislocating other parts of it. The main purpose of the new proposals is obviously to provide for women who may be neglected or uncared for by even their near male relations on account of modern conditions. But the new status and the new provisions made for them may produce results quite the opposite of those intended. They may cause the women to lose their family affections, and tempt them to live aloof. As a result, Hindu families will lose the beneficial moral and spiritual influence which women now exercise within every ordered Hindu family. In addition, it is likely that women with large assets in their hands and with no family responsibilities, are apt to be deceived by others and made to lose their assets, and ultimately the purpose of the new legislation may be frustrated. The ancient Hindu law

had made provision for such contingencies. For instance, the brother is enjoined to provide a 1/4th share of his income to a sister left without provision. The brother who does not make such provision becomes a *Pathitha*. The Pathitha loses his right to retain the share of his property.

4. The Acts of 1929 and 1937 and other similar legislation now proposed, all tend to affect vitally the hitherto established Hindu law relating to joint family and inheritance. The results of such legislation cannot but be injurious. Any tampering with the old rules, which are marked by comprehensive wisdom and foresight and have stood the test of time, will only result in producing confusion. It has been disclosed that the Act XVIII of 1937 is defective, ambiguous, and ineffective. (Vide paras 588 to 593, Srinivasa Iyengar's edition of Mayne's Hindu Law). Similar untoward results will follow if fresh legislation is undertaken to alter the Hindu law of joint family and succession.

5. For the above reasons we are of opinion that Hindu law should have been left as it was. We are opposed on principle to the changes introduced by the Acts of 1929, 1937 and 1938. Therefore, on principle we need not give any answers to the Questionnaire except to state that all the innovations proposed by them are uncalled for and unnecessary. But yet we have set forth the answers to the several questions from the viewpoint of preserving the rules of Hindu law according to the Smritis.

Question (1) : As to the manner in which legislation is to be made, there is no need for Central legislation. It is not desirable to have two systems of succession and partition, one for agricultural land and another for other kinds of property, as that would lead to numerous complications, and throw the whole system of inheritance and partition into confusion.

Question (2) : This concerns the case of the daughter. The right given to the widowed daughter-in-law by the Act XVIII of 1937 was a wrong innovation. According to the Smritis, if there is no widow and there are only a widowed daughter-in-law and a daughter, it is the daughter that should get the inheritance. By the Act of 1937 the widow and a widowed son-less daughter-in-law share equally. It may now be provided that the daughter, if there is one, should get the inheritance after the daughter-in-law. To this extent at least the former rule of inheritance may be made to prevail.

Question (2) : *Sub-question* : Where the daughter is to get the *Daya*, the preference or exclusion in regard to daughters by reference to their being married or unmarried, rich or poor, or having male issue or not having male issue, having been laid down by the

various Nibandhanakaras on the subject of succession by daughters may be adopted.

Question (3) : As to the relative positions of a widow, widowed daughter-in-law and a daughter, in such a case, by the rules of the Smritis, the widow alone will be entitled to retain the inheritance. The daughter-in-law will be entitled to maintenance, and the daughter if unmarried, is to be married at the expense of the family assets.

Question (3) (*a*) : The question is whether a daughter can take equally with the widow. The answer should be that the daughter can take only after the widow's death.

Question (4) : As to the position *inter se* between a son, a daughter and a widowed daughter-in-law, the son alone should take the inheritance, and not the daughter-in-law or daughter. After the widow, the daughter will take as per the Smriti rules.

Question (5) : If there is a surviving son of the deceased, such son alone should take the inheritance.

Question (5) (*a*) : When a Hindu dies leaving only a son and a daughter, the son alone should take the inheritance.

Supplementary Question (3) : When there is the widow and the mother of the deceased, the widow alone is entitled to the inheritance.

Supplementary Question (4) : When there is the widow and the father's mother of a deceased, the widow alone should take the inheritance.

Supplementary Question (5) : When there is the widow and a sister of the deceased, the widow alone should take the inheritance.

Question (6) : The adopted son should take the inheritance after adoption by the widow.

Question (7) : On adoption by a widow, the entire estate will be divested from the widow and should vest in the adopted son.

Question (8) : The *Dasi putra* will by the rules of Smriti take the entire estate.

Question (9) : As *Anuloma* marriages are prohibited, the widow should take the estate in preference to the son of an *Anuloma* marriage. In those localities where *Anuloma* marriages are recognised the law prevailing there may be followed, and the *Anuloma* son may take to the extent that he is permitted.

Question (9) (*a*) : No provision need be made for permitting *Anuloma* or other inter-caste marriages, as such marriages are against the Sastras.

Question (10) : Where the deceased has left a widow and a number of sons, the sons should also allow a share to the widow. Where there are two widows, each should be given a share like a son.

Question (*11*) : In cases of there being several widows, but not of the same caste, the widows may take the shares as their respective sons would have taken, that is, the mother of the *Anuloma* son taking less, in the same manner as the *Anuloma* son himself.

Question (*12*) : The widow in any one of the three cases, *viz.*, unchastity, remarriage, or conversion to another religion, should be disqualified from taking the inheritance.

Question (*13*) : On the death of the widow, the inheritance should go to the daughter, if any, and in default of the daughter, to the other heirs according to the Smritis. On the death of the daughter-in-law, the estate should go to the son if there is an only son. But if there are more than one son, the portion left by the daughter-in-law should on her death be divided among the sons and the widow (their mother).

Question (*14*) : The estate to be taken by the heirs created by the new Acts must be of the same kind, limited or absolute, as is prescribed in the Smritis according to the various Nibandakaras, (*i.e.*,) absolute in those localities where it was formerly absolute, and limited under those schools where it is limited.

Question (*14*) (*a*) : The Government may undertake suitable legislation for women in families with Impartible Estates. The ordinary law should not apply to them.

Question (*15*) : The widow should not be deemed to be a member of the co-parcenary exactly as her husband, for purposes of applying the rule of survivorship among co-parceners. It may be provided that the widow will have the same interest as her husband would have obtained if he had become separate from the co-parcenary immediately before his death.

Question (*16*) : The question relates to the desirability of every Hindu making a declaration to a competent authority choosing the rules of the Indian Succession Act or Hindu law, by which the devolution of his property is to be governed. The proposals in the three paras of this question amount to a stigma on Hindu law and an insult to Hindu society. The natural and ordinary rule that the member of every community should be governed by the personal law prevailing in that community shou'd always hold good.

The proposal that rules of Hindu law should apply only if a prior declaration desiring their application had been made, is uncalled for, and designed ultimately to disintegrate Hindu society and destroy Hindu law. The making of a new table of heirs is unnecessary, being opposed to principle, expediency, and the fundamental need for reverence and loyalty to the past, which every community desiring stability and strength should never fail to observe.

Part II:—

Part II of the Questionnaire relates to providing remedies for hardships which a wife may suffer from circumstances attributable to the husband. Their object is to ensure the woman's happiness as an individual, in spite of adverse circumstances. Social rules are intended to secure the welfare of society as a whole. The working of any system of social rules will involve the sacrifice of the interest or happiness of some individuals. But this is only for the purpose of achieving the larger welfare of society. Individuals should accept the hardships and sufferings incidental to social life (*Samsara*) as steps in the path of moral and spiritual progress.[1] The alteration of social rules with a view to remove hardships in some cases, may result in producing more suffering than before and injuring society as a whole. Hindu law is founded upon the revealed Vedas. The Vedic law has regard to the welfare of all creation. Man-made laws have regard to the happiness of individuals or particular groups. They change when the people's desires, or the desires of those who rule over them, change. But the law whose source is the Veda, cannot be changed to suit man's changing standards or whims. Its applicability stands valid for all time and for all men.

The Hindu social system is based on caste-life and family life. The maintenance of hereditary castes is essential for the performance of the duties to the *Devas*, who in return shower their blessings on mankind. The maintenance of family life with pure and unbroken descent from generation to generation (*Kula*) is necessary for fulfilling the duties to ancestors (*Pithrus*) which the Vedas enjoin. A Hindu householder has to perform all religious duties to the *Devas* or the *Pithrus*, only with his wife by his side.[2] These considerations have placed women in an exalted and protected position in Hindu families.[3] The *Rishis* lay down that a woman should live under the protection or care of the father, the husband, or the sons, or with the family of *Gnathis* (agnatic relations of the husband), but should never live alone.[4] The *Smritis* have enjoined that women should be treated with the utmost honour, and most solicitous regard shown for their personal welfare.[5] They prohibit the leaving of a wife abandoned and helpless, even if she is guilty of gross misconduct.[6]

As the main aim of the proposed legislation is to give rights to Hindu women to claim separate residence and separate maintenance, it is opposed to the fundamental spirit and aims of Hindu Law.[7] The "grounds" enumerated in the Bill for a wife

1. Manu 1—26. 2. Manu VI—36, IX—96.
3. Manu IX—25 to 28. 4 Manu IX—3, Yajnavalkya I—85, 86.
5. Manu IX—7, 55, 56, 95, III—59 to 62; Yajnavalkya I—71, 78, 82.
6. Yajnavalkya I—72, Mitakshara I—72.
7. Manu IX—45.

claiming separation have no reference to normal conditions, but only to rare instances. The Courts are even now able to render justice in most such cases. We can state that there are provisions in the *Smritis* to cover all cases where relief should legitimately be given.[1] There is no need for special legislation. The consequences of the proposals made, will not be confined to the particular points which they purport to touch, but will throw the whole system of Hindu marriage and family life into great confusion. If a beginning is allowed to be made on the lines proposed in the Questionnaire, many other provisions of similar kind relating to marriage and divorce prevailing in other communities will inevitably follow, *e.g.*, divorce Courts, decree *nisi*, re-marriage of divorced women, incompatibility of temper as a ground for divorce, etc. Historians and contemporary observers agree that the Hindu ideal of marriage and the Hindu system of family life have conduced both to secure a high degree of family welfare and happiness, and the preservation of Hindu society. It is recognised that communities, ancient or modern, which permitted freedom of marriage and divorce to women have not preserved their well-being and vitality in the same measure as Hindu society has. It would therefore be undesirable, to frame new laws based on notions of individual liberty and individual happiness, and apply them to a society governed by principles based on the eternal revealed law and designed to attain high social and spiritual ends. It is not beyond doubt that even communities, which regard marriage purely as a secular affair, enjoy better happiness and benefit by allowing dissolutions of marriage, and re-marriage of women. By the introduction of provisions for dissolution of marriage and re-marriage of women, Hindu society will lose gradually the degree of peace, security and happiness of domestic life which it now enjoys. It will also suffer irreparable injury from the spiritual and other worldly (*Adhyatma and para lowkika*) aspects.

The proposals give the wife the right of claiming separate maintenance in absolute terms. Good grounds may exist to justify the husband objecting to the wife's claim. She may be suffering from disease or infirmity referred to in clauses (1) and (2), or may be insane. Instances of a wife being cruel to the husband are not impossible to conceive. The wife may desert the husband without just cause. The wife's habits or conduct may be such as to threaten ruin to the peace or economy of the husband's household. Or, she may be immoral, or irreligious, or change her religion. The existence of one or other of these should disable the wife from claiming the right of separate maintenance.[2] From Part II of the Questionnaire, it does not appear that the Bill has made provisions to this effect.

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1. Manu IX—79.
2. Manu IX—79, 80.

The Bill seeks to help and encourage women to live separately when they feel that their living with the husband is uncomfortable. If the legislation is to be made impartial and complete, it would be necessary to give the husband the right to claim separation from the wife where grounds exist similar to those for which the wife is entitled to claim separation. In former times, the husband alone earned property by exertion, or got it by inheritance. Nowadays, the wife is likely to have as much property, got by earning or inheritance, as the husband. To make the reciprocity complete, it would be necessary to provide for the husband claiming separate maintenance from the wife where circumstances justifying such claim exist. If the impulses and reasoning by which legislation like Dr. Deshmuk's Bill are prompted, are allowed free play and worked out to their logical conclusion, in course of time and under the stress of modern conditions, cases of husband and wife living separately will greatly increase. By law and custom, Hindu women have always lived as inseparable units of Hindu families, exerting a unique moral and spiritual influence over the whole family atmosphere. Legislation of this kind will create and tend to multiply the occasions and temptations for women to tear themselves away from family life, and live separately. Ultimately, the purity and integrity of Hindu family life, and the strength and stability which caste-life has given to Hindu society will disappear. Clause (4) is worded in vague and general terms. It is liable to abuse in practice. Clause (6) of the " grounds " makes an one-sided and drastic provision.

We are of opinion that there is no need for undertaking legislation of the kind proposed by Dr. Deshmuk's Bill.

Question (1): No girl would knowingly have been given in marriage to a person of such unsoundness of mind as to be unable to understand the nature and meaning of marriage. In cases of the husband's insanity, nullifying the marriage would be no remedy, as that will leave the wife adrift. In such a case, the claim for maintenance cannot be against the husband who is insane, but against those who control his property. The better course for the wife would be to continue under the protection of the husband's relations. If those relations refuse to maintain her, the Court should apply the provisions for such cases laid down in the *Smritis* and order those in charge of the husband's property to grant the wife suitable maintenance.

Question (2): There ought to be no departure from the existing law. The cases of a husband marrying a second wife, when the first wife is living, are very rare. Hindu law permits the husband to marry a second wife under certain circumstances —like childlessness of the first wife, etc.[1] But the husband is

1. Manu IX—80; Yajnavalkya I—73.

enjoined to properly care for and maintain the first wife, on threat of dire sin if he does not do so.[1] The proposal to nullify a second marriage by the husband is against the very ideal of Hindu marriage, as the essential purpose of marriage is to get male offspring so as to ensure spiritual benefit to the line of ancestors, and to perpetuate Vedic culture and the practices of Dharma through unbroken continuity of lineage.[2] If the husband marries a second wife without just cause, the Smritis have made special provisions for penalising him and the Courts can enforce them. The nullification or penalisation of the husband's second marriage under any circumstances will not also work in practice so as to produce beneficial results.

The provision that the wife can claim separate maintenance, if the husband turns a recluse, has no point. If, as a recluse, the husband has left home and property he is civilly dead. No legal remedy can lie against him. If the husband changes his religion, according to the Sastras the husband becomes a *Pathitha* and the wife cannot live with him. Therefore, maintenance will have to be provided for her.[3]

Question (3): There is no need for providing grounds for passing decrees of nullity of marriage, or for Courts to administer such law. According to Manu, Yajnavalkya and other Rishis, *divorce* is ***not*** permissible, and no Hindu wife can free herself from the marriage tie.[4] The present arrangement in which ordinary civil Courts are able to grant relief by way of separate residence or maintenance to a wife in suitable cases is enough.

Question (3) (*a*): The two matters dealt with in the question are not relevant to the purpose or the scope of Dr. Deshmuk's Bill. The present rule of Hindu Law, that inter-caste marriages are invalid, should stand. Manu prohibits it. Yajnavalkya condemns it.[5] Gauthama, Baudhayana, Vishnu, are all against it. Even anuloma marriages are not permitted in this Kali Age (*Kali Varjya*). The proposal to validate inter-caste marriages is not only against the injunctions of the *Rishis*, it will also seriously interfere with the principles of hereditary caste and the division of functions, which are preserved by preventing inter-caste marriages. We are of opinion that the world outside the Hindu community is suffering from its present ills for not adopting the above principles in their social life. So also, *Sagotra* marriages are prohibited by all *Rishis*. Marriages made within the *Gotra* are null and void.[6] *Sagotra* marriages cannot

1. Yajnavalkya I—74. 2. Manu III—79, 80; IX—137.
3. Yajnavalkya I—77.
4. Manu IX—46, 47; Yajnavalkya I—62, 65, 75.
5. Manu III—15, 17; Yajnavalkya I—55, 56.
6. Manu III—5; Yajnavalkya I—53.

be valid even among Sudras. There are many Sudra families having their special *Gotras,* and marriages within such *Gotras* are null and void.

It is wrong to attempt to change the rules and *acharas* based on the express commands of *Rishis* and sanctified by tens of centuries of unbroken practice. Questions like *Sagotra* marriages and *Asavarna* (inter-caste) marriages can, if at all, be considered only by a body of persons well-versed and having full faith in the Vedas and Smritis.[1] Except for a few social reformers, the great millions of Hindus are all orthodox. They do not desire that inter-caste marriages or *Sagotra* marriages should be permitted.

Questions 2 and 3 (a) are framed in a misleading manner. The question begins "Has the time arrived....." The suggestions made in them are against the culture, and conscience of the Hindu community. They express the viewpoint of the reformer, who is ever wishing for the arrival of fresh times for making fresh changes. For the Hindu community, following the *Sastras* and *Sishtacharas,* the time for making such changes in the law can never arrive.

Question (4): No legislation is necessary to alter the rules of Hindu law governing marriage and family life. No new Courts, therefore, need be established for administering such laws.

Question (5): It is not necessary to bind the discretion of Courts by fixing the maintenance to be granted at a fixed proportion of the husband's income. The amount may be left to the discretion of the Court. It is a serious defect of the Bill that it gives an unqualified right to the wife to claim maintenance, without reference to the pecuniary circumstances of the husband or herself. The husband may be poor, or the wife seeking to claim maintenance may herself be rich, having property got by earnings or inheritance. The wife's right to claim maintenance should be qualified by having regard to the circumstances of the husband as well as of the wife.

Question (6): The suggestion should not be adopted. The remedy may be to punish the husband, not to allow the wife to cut herself away from the home. Provision may also be made for ejecting the adulterous woman from the home where her stay is illegitimate.

Part III:—

Question (1), 1 (*a*) of the questions are covered by the introductory remarks and by the answers given to Part I of the Questionnaire. The old rules of inheritance should have been

1. Yajnavalkya I—9.

allowed to stand. The *Smriti* injunctions alone are the sure and only guide for settling the order of inheritance. There can be no end to this kind of legislation, if changes in Hindu law are to be undertaken on theoretical or sentimental grounds, as such grounds will shift and vary unlimitedly.

JOTTINGS AND CUTTINGS.

Reference in Court to the late Mr. S. Srinivasa Iyengar.

A reference to the death of Mr. S. Srinivasa Iyengar was made on the 20th May, 41, by Sir Alladi Krishnaswami Aiyar, Advocate-General, before the Vacation Court, presided over by the Hon'ble Mr. Justice Somayya.

The Advocate-General said: "It is my sad and unfortunate duty that I have to refer here to the death of our esteemed leader and distinguished lawyer, Mr. S. Srinivasa Iyengar. It may be that I may have to reserve for another occasion or another place the task of giving a full review of his life and career. I feel the loss too personally and the stroke has been too sudden for me to command the necessary strength to give expression to my feelings of deep respect and regard for the departed.

The late Mr. V. Krishnaswami Aiyar who had a great regard for Mr. Srinivasa Iyengar is reported on very good authority to have introduced Mr. Srinivasa Iyengar, at a time when Mr. Srinivasa Iyengar was comparatively young, to Dr. Ghosh, the veteran lawyer, who presided over the deliberations of the Madras Congress, in these almost flattering terms at the time: "This is the son-in-law of Sir V. Bhashyam Iyengar and in some respects greater than Sir V. Bhashyam Iyengar." That briefly sums up Mr. Srinivasa Iyengar's position in the legal profession. At the early age of 42 or so, Mr. Srinivasa Iyengar was appointed Advocate-General and his appointment was received with universal satisfaction. He filled the office with great distinction, ability and credit. A brilliant and acute lawyer of great juristic eminence, a most resourceful advocate whose thoughts ran in advance of his expression, rich, pregnant and terse though the latter was, respected alike by his friends and opponents at the Bar and by the Bench—these briefly sum up his qualities as an Advocate.

Almost from the commencement of his career, I had close and intimate touch with him, first as a Junior with him in some important cases and latterly as opponent in several important cases both in the High Court and in the mofussil courts, the last of such being the Punganur case before Mr. Justice Pandrang Row and Mr. Justice Abdur Rahman. It is no exaggeration to say that there was none

whom I feared and respected more than Mr. Srinivasa Iyengar. His energy was phenomenal, his industry amazing and the fecundity of his ideas was tantalising to his juniors and made them feel sometimes puzzled and distracted.

Upon his contribution to the public life of this Province, his fervent patriotism, his almost religious zeal for the future of his country, while he always stood for the elimination of religion from politics, his early social reform activities, his career as a front-rank politician, his non-communal outlook on the political questions of the day, his contribution to the political thought through writings and speeches in recent times, it is unnecessary to dwell at length at this place. Deep and abiding as his patriotism was, Mr. Srinivasa Iyengar could not see his way to throw in his lot with any particular organisation or section in recent times. It looked as if he was in a self-imposed cage.

One noticed in conversation with him in recent years a sense of unfulfilled purpose, though it cannot be said that his mind was not full of solutions for the complicated political and social problems of the country. On account of failing eye-sight, he could not devote his attention to the profession though there were incessant and persistent calls on the part of the clientele for his services. His death is a great loss to the profession in Madras. As a public man and as a lawyer, Mr. Srinivasa Iyengar held a unique place in India and his loss will be deplored not merely in this province but in the whole of India.

On behalf of the Bar let me convey my condolences to the bereaved members of the family of the deceased."

Mr. Justice Somayya, endorsing the sentiments expressed by the Advocate-General, said: "I associate myself with every word of what you have said in regard to Mr. Srinivasa Iyengar. His was, indeed, a unique career right from the beginning. From 1910, when I became an apprentice, I have known him and from my experience I endorse every word of what you have said. He was a brilliant lawyer and his loss leaves a void which it would be very difficult to fill. Of his public life you have said enough and I need not add to it. I request you, Mr. Advocate-General, to convey my sympathy to the members of the bereaved family."

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[End of Volume 1941—I.]